

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

QUALCOMM INCORPORATED,

Defendant.

Case No. 17-CV-00220-LHK

ORDER GRANTING IN PART AND DENYING IN PART JOINT ADMINISTRATIVE MOTION TO FILE UNDER SEAL SNYDER EXPERT REPORT

Re: Dkt. 1048

Before the Court is the parties’ joint administrative motion to file under seal portions of the expert report of Dr. Edward Snyder (“Snyder Report”). ECF No. 1048. For the following reasons, the Court GRANTS in part and DENIES in part the parties’ motion to seal.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a strong presumption in favor of access is the starting point.” *Id.* (internal quotation marks omitted).

Parties seeking to seal judicial records relating to motions that are “more than tangentially

1 related to the underlying cause of action,” *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092,
2 1099 (9th Cir. 2016), bear the burden of overcoming the presumption with “compelling reasons
3 supported by specific factual findings that outweigh the general history of access and the public
4 policies favoring disclosure,” *Kamakana*, 447 F.3d at 1178–79 (internal quotation marks and
5 citation omitted). Compelling reasons justifying the sealing of court records generally exist “when
6 such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to
7 gratify private spite, promote public scandal, circulate libelous statements, or release trade
8 secrets.” *Id.* at 1179 (quoting *Nixon*, 435 U.S. at 598). However, “[t]he mere fact that the
9 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further
10 litigation will not, without more, compel the court to seal its records.” *Id.*

11 Records attached to motions that are “not related, or only tangentially related, to the merits
12 of a case” are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809 F.3d at
13 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to court
14 records attached only to non-dispositive motions because those documents are often unrelated, or
15 only tangentially related, to the underlying cause of action.” (internal quotation marks and citation
16 omitted)). Parties moving to seal records attached to motions unrelated or only tangentially
17 related to the merits of a case must meet the lower “good cause” standard of Rule 26(c) of the
18 Federal Rules of Civil Procedure. *Ctr. for Auto Safety*, 809 F.3d at 1098–99; *Kamakana*, 447 F.3d
19 at 1179–80. The “good cause” standard requires a “particularized showing” that “specific
20 prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v.*
21 *Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002) (citation omitted); *see Fed. R. Civ. P.*
22 *26(c)*. “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning”
23 will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (citation
24 omitted).

25 Pursuant to Rule 26(c), a trial court has broad discretion to permit sealing of court
26 documents for, inter alia, the protection of “a trade secret or other confidential research,
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1 development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has
 2 adopted the definition of “trade secrets” set forth in the Restatement of Torts, holding that “[a]
 3 trade secret may consist of any formula, pattern, device or compilation of information which is
 4 used in one’s business, and which gives him an opportunity to obtain an advantage over
 5 competitors who do not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)
 6 (quoting Restatement (First) of Torts § 757 cmt. b). “Generally [a trade secret] relates to the
 7 production of goods It may, however, relate to the sale of goods or to other operations in the
 8 business” *Id.* (alterations in original). Furthermore, the United States Supreme Court has
 9 recognized that sealing may be justified to prevent judicial documents from being used “as sources
 10 of business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at
 11 598.

12 In addition, parties moving to seal documents must comply with the procedures established
 13 by Civil Local Rule 79-5. Pursuant to that rule, a sealing order is appropriate only upon a request
 14 that establishes the document is “sealable,” or “privileged, protectable as a trade secret or
 15 otherwise entitled to protection under the law.” Civ. L. R. 79-5(b). “The request must be
 16 narrowly tailored to seek sealing only of sealable material, and must conform with Civil [Local
 17 Rule] 79-5(d).” *Id.* Civil Local Rule 79-5(d), moreover, requires the submitting party to attach a
 18 “proposed order that is narrowly tailored to seal only the sealable material” and that “lists in table
 19 format each document or portion thereof that is sought to be sealed,” as well as an “unredacted
 20 version of the document” that “indicate[s], by highlighting or other clear method, the portions of
 21 the document that have been omitted from the redacted version.” Civ. L. R. 79-5(d)(1). The
 22 parties shall file concurrent with the administrative motion to file under seal all necessary
 23 declarations establishing that the information sought to be sealed is sealable. *Id.* Pursuant to the
 24 Court’s order at ECF No. 821, where the parties seek to seal information designated confidential
 25 by a third party and the parties are unable to file that third party’s declaration in support of sealing
 26 concurrently with the motion, the third party “will have seven days, rather than the four days
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1 prescribed in Civil Local Rule 79-5” to file the third party’s declaration in support of sealing.
2 ECF No. 821 at 2.

3 Here, the information sought to be sealed consists of portions of the Snyder Report, which
4 was attached to the FTC’s motion to exclude Dr. Snyder’s opinions. The Court concludes that the
5 “compelling reasons” standard applies because the FTC’s motion is “more than tangentially
6 related to the underlying cause of action.” *Ctr. For Auto Safety*, 809 F.3d at 1099. The motion’s
7 subject matter—whether to allow the expert opinions of Dr. Edward Snyder, who submitted a 372-
8 page expert report on whether Qualcomm’s conduct had anticompetitive effects—is central to the
9 merits of the FTC’s claims in the instant case. *See* ECF No. 1014 at 4 (explaining, in previous
10 order addressing motions to seal connected with motion to exclude Dr. Snyder, why compelling
11 reasons standard applies). The Court previously denied without prejudice the motion to seal the
12 Snyder Report because the parties sought to the seal the Snyder Report in its entirety. *Id.* at 5.
13 The parties have complied with the Court’s instruction to refile the motion to seal portions of the
14 Snyder Report with a chart with a row for each portion of the Snyder Report sought to be sealed.
15 *See id.*

16 The Court now turns to the substance of the sealing motion. Qualcomm and several third
17 parties have designated as confidential material in the Snyder Report pursuant to the protective
18 orders governing this and related cases involving Qualcomm. *See* ECF No. 1048 at 2. Qualcomm
19 and the third parties have filed declarations in support of sealing. ECF Nos. 828, 830, 832, 834,
20 835, 837, 840, 841, 743, 845, 849, 850. For example, Qualcomm attests that portions of the
21 Snyder Report reveal Qualcomm’s confidential information relating to “commercial and
22 operational strategies, sales and pricing negotiations and strategies, . . . competitive positioning for
23 sales of certain products and for certain customers, product development, and finances. ECF No.
24 850-2, ¶ 11. Similarly, third party MediaTek declares that the Snyder Report “contains detailed,
25 non-public and confidential . . . information of MediaTek regarding its commercial negotiations
26 and agreements with customers, its competitive strategy, and its research and development
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activities.” ECF No. 849, ¶ 4; *see also* ECF No. 832, ¶ 9 (Samsung declaring that the Snyder Report “contains, cites and directly quotes from a myriad of confidential sources containing Samsung’s highly confidential documents, data and testimony”).

Applying the compelling reasons standard, the Court grants in part and denies in part the parties’ motion to seal. As explained, in *Kamakana*, the Ninth Circuit held that compelling reasons exist to seal court records when the records may be used to “release trade secrets.” 447 F.3d at 1179 (citing *Nixon*, 435 U.S. at 598). Moreover, “the common law right of inspection has bowed before the power of a court to insure that its records are not used . . . as sources of business information that might harm a litigant’s competitive standing.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Nixon*, 435 U.S. at 598). Thus, to the extent that the instant motion seeks to seal information that, if published, may harm Qualcomm’s or third parties’ competitive standing and divulges terms of confidential contracts, contract negotiations, or trade secrets, the Court agrees with the parties that compelling reasons exist to seal this information.

However, not all information that the motion seeks to seal is sealable. The parties have not articulated “compelling reasons” to keep such information from the public. For example, the motion seeks to seal Apple’s commonsense statement that Apple “looks for the highest quality suppliers and competitive pricing” when sourcing modem chips. *See* ECF No. 1048-5, ¶ 134. In addition, the parties also seek to seal the readily available information that Apple selected Intel to supply modem chips for Apple’s 2018 iPhone. *Id.* ¶ 310; *see* ECF No. 929 (Qualcomm public filing referring to Apple’s selection of Intel as a “public fact”). Accordingly, with the Ninth Circuit’s sealing case law in mind, the Court rules on the instant motion as follows:

Document	Page/Line	Ruling
Snyder Report	¶ 32(c)	GRANTED.
Snyder Report	¶ 32(g)	GRANTED.
Snyder Report	¶ 35(b)	GRANTED.
Snyder Report	¶ 36(c)	GRANTED.
Snyder Report	¶ 37(a)	GRANTED.
Snyder Report	¶ 37(b), second sentence	DENIED

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Snyder Report	¶ 37(b), remainder	GRANTED.
Snyder Report	¶ 76 & associated footnotes ¹	GRANTED.
Snyder Report	¶ 77	GRANTED.
Snyder Report	¶ 86, n.167	GRANTED.
Snyder Report	¶ 89	GRANTED.
Snyder Report	¶ 96	GRANTED.
Snyder Report	¶ 97	GRANTED.
Snyder Report	¶ 102	GRANTED.
Snyder Report	¶ 103	GRANTED.
Snyder Report	¶ 103, n.220	GRANTED.
Snyder Report	¶ 106	DENIED.
Snyder Report	¶ 108	GRANTED.
Snyder Report	¶ 110, n.230	GRANTED.
Snyder Report	¶ 112, n.234, beginning with “Q”	DENIED.
Snyder Report	¶ 112, remainder	GRANTED.
Snyder Report	¶ 133	GRANTED.
Snyder Report	¶ 134	DENIED.
Snyder Report	¶ 135	GRANTED.
Snyder Report	¶ 137	GRANTED.
Snyder Report	¶ 142	GRANTED.
Snyder Report	¶ 158, nn.317-319	GRANTED.
Snyder Report	¶ 160	GRANTED.
Snyder Report	¶ 161	GRANTED.
Snyder Report	¶ 165, portion of first sentence up until “that”	DENIED.
Snyder Report	¶ 165, remainder	GRANTED.
Snyder Report	¶ 170, “John Moynihan”	DENIED.
Snyder Report	¶ 170, remainder	GRANTED.
Snyder Report	¶ 171	GRANTED.
Snyder Report	¶ 175, n.358	GRANTED.
Snyder Report	¶ 181	DENIED.
Snyder Report	¶ 202	GRANTED.
Snyder Report	¶ 202, n.384	GRANTED.
Snyder Report	¶ 206, n.386	GRANTED.
Snyder Report	¶ 207	GRANTED.
Snyder Report	¶ 207, n.388	GRANTED.
Snyder Report	¶ 208, nn.389-90	GRANTED.
Snyder Report	¶ 211	DENIED.
Snyder Report	¶ 211, nn.394-95	GRANTED.
Snyder Report	¶ 212	GRANTED.

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¹ Unless the Court specifically addresses the relevant footnote, where the Court grants the motion to seal a portion of a paragraph in the Snyder Report and the parties also seek to seal the associated footnote(s), the Court also grants the motion to seal the associated footnote.

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Snyder Report	¶ 235	GRANTED.
Snyder Report	¶ 237(ii), n.461	GRANTED.
Snyder Report	¶ 237(iv), second sentence & n.470	GRANTED.
Snyder Report	¶ 239	DENIED.
Snyder Report	¶ 239, n.484	GRANTED.
Snyder Report	¶ 243	GRANTED.
Snyder Report	¶ 243, nn.498-500	GRANTED.
Snyder Report	¶ 244	GRANTED.
Snyder Report	¶ 243, n.503	GRANTED.
Snyder Report	¶ 246	GRANTED.
Snyder Report	¶ 246, n.514	GRANTED.
Snyder Report	¶ 247 & nn.515, 517	GRANTED.
Snyder Report	¶ 248, nn.522-23	GRANTED.
Snyder Report	¶ 250	GRANTED.
Snyder Report	¶ 253, n.534	GRANTED.
Snyder Report	¶ 262	GRANTED.
Snyder Report	¶ 263, n.557	GRANTED.
Snyder Report	¶ 268	GRANTED.
Snyder Report	¶ 270, nn.578, 580-81	GRANTED.
Snyder Report	¶ 271(iii)	GRANTED.
Snyder Report	¶ 272, first sentence	DENIED.
Snyder Report	¶ 272, remainder	GRANTED.
Snyder Report	¶ 274	GRANTED.
Snyder Report	¶ 275	GRANTED.
Snyder Report	¶ 286	GRANTED.
Snyder Report	¶ 287, nn.637-38, 640	GRANTED.
Snyder Report	¶ 288, nn.643-44	GRANTED.
Snyder Report	¶ 290, first sentence	DENIED.
Snyder Report	¶ 290, remainder	GRANTED.
Snyder Report	¶ 291	GRANTED.
Snyder Report	¶ 292	GRANTED.
Snyder Report	¶ 293	GRANTED.
Snyder Report	¶ 296	GRANTED.
Snyder Report	¶ 297	GRANTED.
Snyder Report	¶ 303-05	GRANTED.
Snyder Report	¶ 306, nn.728-29, 731	GRANTED.
Snyder Report	¶ 307, nn.733-34	GRANTED.
Snyder Report	¶ 308, n.736	GRANTED.
Snyder Report	¶ 309	GRANTED.
Snyder Report	¶ 310, last sentence	DENIED.
Snyder Report	¶ 310, remainder	GRANTED.
Snyder Report	¶ 315	GRANTED.
Snyder Report	¶ 317, between “for example” and “resulting”	DENIED.

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Snyder Report	¶ 317, remainder	GRANTED.
Snyder Report	¶¶ 318-20	GRANTED.
Snyder Report	¶ 322, first sentence	DENIED.
Snyder Report	¶ 322, remainder	GRANTED.
Snyder Report	¶¶ 324-25	GRANTED.
Snyder Report	¶ 327, first sentence	DENIED.
Snyder Report	¶ 327, remainder	GRANTED.
Snyder Report	¶¶ 328-31	GRANTED.
Snyder Report	¶ 332, second sentence from “However” to “support”	DENIED.
Snyder Report	¶ 332, remainder	GRANTED.
Snyder Report	¶ 333	GRANTED.
Snyder Report	¶ 334	DENIED.
Snyder Report	¶ 335	GRANTED.
Snyder Report	¶ 336	GRANTED.
Snyder Report	¶ 337	GRANTED.
Snyder Report	¶¶ 339-41	GRANTED.
Snyder Report	¶¶ 344-46	GRANTED.
Snyder Report	¶ 349	GRANTED.
Snyder Report	¶¶ 352-54	GRANTED.
Snyder Report	¶ 356	GRANTED.
Snyder Report	¶¶ 358	GRANTED.
Snyder Report	¶ 359, from “This execution” to “leading smartphones”	DENIED.
Snyder Report	¶ 359, remainder	GRANTED.
Snyder Report	¶ 361	GRANTED.
Snyder Report	¶ 364	GRANTED.
Snyder Report	¶ 365 (sentence associated with n.975 only) ²	GRANTED.
Snyder Report	¶ 366	GRANTED.
Snyder Report	¶ 368	DENIED.
Snyder Report	¶ 370	GRANTED.
Snyder Report	¶ 373	GRANTED.
Snyder Report	¶ 374	GRANTED.
Snyder Report	¶ 376, from “HiSilicon’s” to “strength in execution”	DENIED.
Snyder Report	¶ 376, remainder	GRANTED.
Snyder Report	¶¶ 379-80	GRANTED.
Snyder Report	¶¶ 382-85	GRANTED.
Snyder Report	¶ 388	GRANTED.

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² When filing the redacted version of the Snyder Report, the parties also redacted the sentence associated with n.976. ECF No. 1048-4 at 242. However, no party or third party in fact seeks to seal that sentence. *See* ECF No. 1048. The parties shall remove the redaction when refiling the redacted Snyder Report in accordance with this order.

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Snyder Report	¶ 395	GRANTED.
Snyder Report	¶ 403	GRANTED.
Snyder Report	¶¶ 406-07	GRANTED.
Snyder Report	¶¶ 411-12	GRANTED.
Snyder Report	¶ 434	GRANTED.
Snyder Report	¶ 436, "Via Telecom" in first sentence	DENIED.
Snyder Report	¶ 436, remainder	GRANTED.
Snyder Report	¶¶ 437-40	GRANTED.
Snyder Report	¶ 444	GRANTED.
Snyder Report	¶ 449	GRANTED.
Snyder Report	¶ 451	GRANTED.
Snyder Report	¶ 466(a)	GRANTED.
Snyder Report	¶¶ 468(a)-(b)	GRANTED.
Snyder Report	¶ 469	DENIED.
Snyder Report	¶ 471(d)	GRANTED.
Snyder Report	¶ 472(e), last sentence	DENIED.
Snyder Report	¶¶ 472(a), (c)-(e), remainder	GRANTED.
Snyder Report	¶ 473	DENIED.
Snyder Report	¶ 502	DENIED.
Snyder Report	¶ 509	GRANTED.
Snyder Report	¶ 511	GRANTED.
Snyder Report	¶ 517	GRANTED.
Snyder Report	¶¶ 518-20	GRANTED.
Snyder Report	¶ 525	GRANTED.
Snyder Report	¶ 527(a), (c)-(e)	GRANTED.
Snyder Report	¶ 528	GRANTED.
Snyder Report	¶ 529	GRANTED.
Snyder Report	¶¶ 531-32	GRANTED.
Snyder Report	¶¶ 536-37	GRANTED.
Snyder Report	¶¶ 541-42	GRANTED.
Snyder Report	¶¶ 547-50	GRANTED.
Snyder Report	¶ 552	GRANTED.
Snyder Report	¶ 554	GRANTED.
Snyder Report	¶ 556	DENIED.
Snyder Report	¶ 562	GRANTED.
Snyder Report	n.177	GRANTED.
Snyder Report	n.201	GRANTED.
Snyder Report	nn.221-23	GRANTED.
Snyder Report	n.227	GRANTED.
Snyder Report	n.228	GRANTED.
Snyder Report	n.238	GRANTED.
Snyder Report	n.239	GRANTED.
Snyder Report	n.242	GRANTED.
Snyder Report	n.244	GRANTED.

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Snyder Report	n.245	GRANTED.
Snyder Report	n.247	GRANTED.
Snyder Report	n.248	GRANTED.
Snyder Report	n.252	GRANTED.
Snyder Report	n.257	GRANTED.
Snyder Report	n.260	GRANTED.
Snyder Report	n.263	GRANTED.
Snyder Report	n.268	GRANTED.
Snyder Report	n.269	GRANTED.
Snyder Report	n.272	GRANTED.
Snyder Report	n.277	DENIED.
Snyder Report	n.296	GRANTED.
Snyder Report	n.312	GRANTED.
Snyder Report	n.315	GRANTED.
Snyder Report	n.317	GRANTED.
Snyder Report	n.322	GRANTED.
Snyder Report	n.328	GRANTED.
Snyder Report	n.337	GRANTED.
Snyder Report	nn.342-43	GRANTED.
Snyder Report	n.344, first line	DENIED.
Snyder Report	n.344, remainder	GRANTED.
Snyder Report	n.345	DENIED.
Snyder Report	n.350-54	GRANTED.
Snyder Report	n.356	DENIED.
Snyder Report	n.480	DENIED.
Snyder Report	n.496	GRANTED.
Snyder Report	n.501	GRANTED.
Snyder Report	n.509	GRANTED.
Snyder Report	n.510	GRANTED.
Snyder Report	n.512	GRANTED.
Snyder Report	n.513	GRANTED.
Snyder Report	n.515	GRANTED.
Snyder Report	n.518	GRANTED.
Snyder Report	n.527	GRANTED.
Snyder Report	n.535	GRANTED.
Snyder Report	n.536	GRANTED.
Snyder Report	n.542	GRANTED.
Snyder Report	n.545	GRANTED.
Snyder Report	n.561	DENIED.
Snyder Report	n.576	GRANTED.
Snyder Report	n.581	GRANTED.
Snyder Report	n.594	GRANTED.
Snyder Report	nn.597-98	GRANTED.
Snyder Report	n.604	GRANTED.

United States District Court
Northern District of California

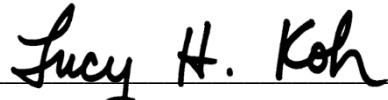
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Snyder Report	n.605	GRANTED.
Snyder Report	n.609	GRANTED.
Snyder Report	n.611	GRANTED.
Snyder Report	n.615	GRANTED.
Snyder Report	n.630	GRANTED.
Snyder Report	n.732	GRANTED.
Snyder Report	n.737	GRANTED.
Snyder Report	n.751	GRANTED.
Snyder Report	n.783	GRANTED.
Snyder Report	nn.788-89	DENIED.
Snyder Report	n.828	GRANTED.
Snyder Report	n.842	DENIED.
Snyder Report	n.857	GRANTED.
Snyder Report	n.860	GRANTED.
Snyder Report	n.875	GRANTED.
Snyder Report	n.886	GRANTED.
Snyder Report	n.904	GRANTED.
Snyder Report	n.906	GRANTED.
Snyder Report	n.920	GRANTED.
Snyder Report	n.932	GRANTED.
Snyder Report	n.933, first line	DENIED.
Snyder Report	n.933, remainder	GRANTED.
Snyder Report	n.946	GRANTED.
Snyder Report	n.960	DENIED.
Snyder Report	n.972	GRANTED.
Snyder Report	n.974	GRANTED.
Snyder Report	n.978	GRANTED.
Snyder Report	n.981	GRANTED.
Snyder Report	n.986	GRANTED.
Snyder Report	n.1258	GRANTED.
Snyder Report	n.1301	GRANTED.
Snyder Report	n.1303	GRANTED.
Snyder Report	n.1304	GRANTED.
Snyder Report	n.1305	GRANTED.
Snyder Report	n.1307	GRANTED.
Snyder Report	n.1392	GRANTED.
Snyder Report	n.1430	GRANTED.
Snyder Report	n.1439	GRANTED.
Snyder Report	n.1461	GRANTED.
Snyder Report	n.1477	GRANTED.
Snyder Report	n.1510	GRANTED.
Snyder Report	n.1517	GRANTED.
Snyder Report	n.1576	GRANTED.

IT IS SO ORDERED.

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Dated: January 3, 2019



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California