

1
2
3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 JUICERO, INC.,
8 Plaintiff,

9 v.

10 ITASTE CO., et al.,
11 Defendants.

Case No. 17-cv-01921-BLF

**ORDER GRANTING MOTION TO
SEAL**

[Re: ECF 35]

12
13 Before the Court is Plaintiff's motion to file under seal portions of its motion for
14 preliminary injunction and declaration in support thereof. ECF 35. For the reasons discussed
15 below, the Court GRANTS the motion.

16 **I. LEGAL STANDARD**

17 "Historically, courts have recognized a 'general right to inspect and copy public records
18 and documents, including judicial records and documents.'" *Kamakana v. City & Cty. of*
19 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435
20 U.S. 589, 597 & n. 7 (1978)). Accordingly, when considering a sealing request, "a 'strong
21 presumption in favor of access' is the starting point." *Id.* (quoting *Foltz v. State Farm Mut. Auto.*
22 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to
23 motions that are "more than tangentially related to the underlying cause of action" bear the burden
24 of overcoming the presumption with "compelling reasons" that outweigh the general history of
25 access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d
26 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

27 However, "while protecting the public's interest in access to the courts, we must remain
28 mindful of the parties' right to access those same courts upon terms which will not unduly harm

1 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228–29 (Fed.
2 Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the
3 merits of a case” therefore are not subject to the strong presumption of access. *Ctr. for Auto*
4 *Safety*, 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need
5 for access to court records attached only to non-dispositive motions because those documents are
6 often unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving
7 to seal the documents attached to such motions must meet the lower “good cause” standard of
8 Rule 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This
9 standard requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
10 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
11 1210–11 (9th Cir. 2002); *see Fed. R. Civ. P. 26(c)*. “Broad allegations of harm, unsubstantiated
12 by specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins.*
13 *Co.*, 966 F.2d 470, 476 (9th Cir. 1992). A protective order sealing the documents during
14 discovery may reflect the court’s previous determination that good cause exists to keep the
15 documents sealed, *see Kamakana*, 447 F.3d at 1179–80, but a blanket protective order that allows
16 the parties to designate confidential documents does not provide sufficient judicial scrutiny to
17 determine whether each particular document should remain sealed. *See Civ. L.R. 79-5(d)(1)(A)*
18 (“Reference to a stipulation or protective order that allows a party to designate certain documents
19 as confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

20 In addition to making particularized showings of good cause, parties moving to seal
21 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
22 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
23 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
24 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
25 must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the
26 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable
27 material” which “lists in table format each document or portion thereof that is sought to be
28 sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by

1 highlighting or other clear method, the portions of the document that have been omitted from the
 2 redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative
 3 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
 4 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

5 **II. DISCUSSION**

6 Because the sealing motion relates to a motion for preliminary injunction, which is more
 7 than tangentially related to the merits of the case, the instant motion is resolved under the
 8 compelling reasons standard. *Ctr. for Auto Safety*, 809 F.3d at 1101-2 (holding that “public access
 9 will turn on whether the motion is more than tangentially related to the merits of a case” and
 10 finding that a “motion for preliminary injunction is more than tangentially related to the merits”).

11 With this standard in mind, the Court rules on the instant motion as follows:

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
35-4	Plaintiff’s Motion for Preliminary Injunction	GRANTED as to highlighted portions.	The highlighted portions contain proprietary financial and research and development information. <i>See</i> Arnold Decl. ¶ 2, ECF 35-1.
35-6	Declaration of Michael Rosenthal	GRANTED as to highlighted portions.	The highlighted portions contain proprietary financial and research and development information. <i>See</i> Arnold Decl. ¶ 2, ECF 35-1.

17 For the foregoing reasons, the sealing motion at ECF 35 is GRANTED.

18 **IT IS SO ORDERED.**

19

20 Dated: May 30, 2017

21


 BETH LABSON FREEMAN
 United States District Judge

22

23

24

25

26

27

28