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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 OPENTV, INC., NAGRAVISION S.A., and
NAGRA FRANCE S.A.S.

23 Plaintiffs,

24 v.

25 APPLE INC.,

26 Defendant.

CASE NO. 5:15-cv-02008-EJD (NMC)

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO PARTIALLY FILE
UNDER SEAL PLAINTIFFS'
OPPOSITION TO DEFENDANT'S
MOTION TO PRECLUDE RELIANCE
ON CERTAIN INVENTION DATES
AND TO STRIKE CERTAIN
ALLEGATIONS AND CERTAIN
SUPPORTING EXHIBIT**

1 Pursuant to Civil Local Rules 7-11 and 79-5(b) and (d), Plaintiffs OpenTV, Inc., NagraVision
2 S.A., and Nagra France S.A.S. (collectively “OpenTV”) hereby move the Court for leave to partially
3 file under seal (1) portions of Plaintiffs’ Opposition to Defendant’s Motion to Preclude Reliance on
4 Certain Invention Dates and to Strike Certain Allegations (“OpenTV’s Opposition”), and (2)
5 portions of Exhibit 4 to the Declaration of Elizabeth A. Niemeyer in Support of OpenTV’s
6 Opposition (“Niemeyer Exhibit 4”).

7 For the same reasons set forth in OpenTV’s recently filed Administrative Motion to File
8 Under Seal (D.I. 86), OpenTV hereby moves to file under seal portions of OpenTV’s Opposition and
9 of Niemeyer Exhibit 4 that disclose OpenTV confidential and proprietary information. OpenTV is
10 lodging herewith highlighted versions of OpenTV’s Opposition and of Niemeyer Exhibit 4, which
11 highlight the portions OpenTV requests be sealed, and OpenTV is also publicly filing corresponding
12 redacted versions of OpenTV’s Opposition and of Niemeyer Exhibit 4 along with this motion to
13 partially seal.

14 This motion to seal by OpenTV is supported by a concurrently filed Declaration of William
15 Goldman (“Goldman Declaration”). As explained in the Goldman Declaration, OpenTV’s
16 Opposition and Niemeyer Exhibit 4 lodged herewith disclose a confidential and proprietary
17 development date for the invention that led to U.S. Patent No. 7,725,740 (“the ’740 patent”). As
18 attested in the Goldman Declaration, the development date for the invention that led to ’740 patent is
19 confidential and proprietary information belonging to OpenTV that concerns the domain of security
20 modules. Disclosure of the date when such a security system was developed and potentially
21 incorporated into certain OpenTV’s products, and related information, would provide would-be
22 hackers with information about the security protocols present (or not present) in certain OpenTV
23 products that would otherwise remain secret. Such disclosure would weaken the strong security
24 protocols that OpenTV has worked to develop and market to its customers as part of its competitive
25 advantage over its competitors in the marketplace. Goldman Decl. ¶ 5.

26 Although there is a general presumption of public access to dispositive motions (and papers
27 and exhibits supporting them), *e.g.*, *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d

28 1206, 1212 (9th Cir. 2002) that presumption “do[es] not apply with equal force to non-dispositive

1 materials.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006) (citing
2 *Phillips*, 307 F.3d at 1213). “The application of a strong presumption of access to sealed records, not
3 directly relevant to the merits of the case, would eviscerate the broad power of the district court to
4 fashion protective orders.” *Id.* (internal quotations omitted). “*In short, ‘good cause’ suffices to*
5 *warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.*”
6 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (emphasis added); *see*
7 *also Kamakana*, 447 F.3d. at 1180 (same, citing *Foltz*); *see also OpenTV, Inc. v. Apple Inc.*, Case
8 No. 14-cv-01622-HSG, Order Granting Administrative Motion to Seal (D.I. 168).

9 Here, OpenTV submits OpenTV’s Opposition and Niemeyer Exhibit 4 in opposition to
10 Defendant’s Motion to Preclude Reliance on Certain Invention Dates and to Strike Certain
11 Allegations (D.I. 85), addressing a non-dispositive issue, and the Goldman Declaration satisfies the
12 good cause requirement to seal the portions of OpenTV’s Opposition and of Niemeyer Exhibit 4
13 requested by OpenTV here and in the Goldman Declaration.¹ *See In re Wachovia Corp. “Pick a*
14 *Payment” Mortgage Marketing and Sales Practices Litigation*, Case No. 3:09-cv-02015-RS-PSG,
15 2013 WL 6200008, *2 (N.D. Cal. Nov. 27, 2013) (granting motion to seal under Civil L.R. 79-5,
16 citing declaration attesting to the risk of “competitive disadvantage” if a motion to seal were not
17 granted). OpenTV’s highlights/redactions of the opposition and exhibit are also narrowly tailored to
18 seek sealing of only sealable material per Civil L.R. 79-5(b). Accordingly, OpenTV respectfully
19 requests that its motion to partially seal OpenTV’s Opposition and corresponding Niemeyer Exhibit
20 4 be granted.

21 Respectfully submitted,

22 Dated: April 27, 2016

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24 By: /s/ Elizabeth A. Niemeyer
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¹ The Goldman Declaration also satisfies the more demanding standard for dispositive motions.