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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FINJAN LLC,
Plaintiff,
v.
SONICWALL, INC.,
Defendant.

Case No. 17-cv-04467-BLF

**OMNIBUS ORDER RE: SEALING
MOTIONS AT ECF 319, 327, 329, 335**

United States District Court
Northern District of California

Before the Court are administrative motions filed by Plaintiff Finjan, Inc. (“Finjan”) and Defendant SonicWall, Inc. (“SonicWall”) to file under seal portions of their briefs and exhibits in connection with SonicWall’s Motion for Partial Summary Judgment (at ECF 320). For the reasons stated below, (1) SonicWall’s Administrative Motion to File Under Seal at ECF 319 is GRANTED, (2) Finjan’s Administrative Motion to File Under Seal at ECF 327 is TERMINATED as moot, (3) Finjan’s Amended Administrative Motion to File Under Seal at ECF 329 is GRANTED, and (4) SonicWall’s Administrative Motion to File Under Seal at ECF 335 is GRANTED.

I. LEGAL STANDARD

“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.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more than tangentially related to the underlying cause of action” bear the burden of overcoming the

1 policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir.
2 2016); *Kamakana*, 447 F.3d at 1178–79.

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

24 In addition to making particularized showings of good cause, parties moving to seal
25 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
26 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
27 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under

1 conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the
 2 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable
 3 material” which “lists in table format each document or portion thereof that is sought to be sealed,”
 4 Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by highlighting
 5 or other clear method, the portions of the document that have been omitted from the redacted
 6 version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative Motion to File
 7 Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A)
 8 establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

9 II. DISCUSSION

10 The Court has reviewed the parties’ sealing motions and the declarations of the designating
 11 parties submitted in support thereof. The Court’s rulings on the sealing requests are set forth in the
 12 tables below. Where the designating party has requested sealing, the Court finds that the parties
 13 have articulated compelling reasons to seal certain portions of the submitted documents and the
 14 proposed redactions are generally narrowly tailored.

15 A. ECF 319, Sealing Motion Related to SonicWall’s Motion for Partial Summary 16 Judgment

17 ECF or Exh. No.	Document	Result	Reasoning
18 ECF 320	19 Defendant SonicWall, 20 Inc’s Motion for 21 Summary Judgement	22 GRANTED as 23 to highlighted 24 portions at: 25 Page 3: lines 2- 26 7, 9-10, 14-15; 27 Page 7: lines 28 12-13, 19-20, 29 23; 30 Page 11: lines 31 2-3, 5-10, 18; 32 Page 12: lines 33 1-4, 12-16; 34 Page 14: lines 35 16-17; 36 Page 17: lines 37 13-14, 18-20; 38 Page 19: lines	39 The highlighted portions of this 40 document reflect information that 41 SonicWall has designated as 42 “Highly Confidential – Attorneys’ 43 Eyes Only” or “Highly 44 Confidential – Attorney’s Eyes 45 Only – Source Code” pursuant to 46 the Stipulated Protective Order. If 47 filed publicly, this confidential 48 information could be used to 49 SonicWall’s disadvantage by 50 competitors as it concerns the 51 identification, organization, and 52 or operation of SonicWall’s 53 proprietary products. <i>See</i> 54 Declaration of Nicole E. Grigg in 55 Support of Administrative Motion

ECF or Exh. No.	Document	Result	Reasoning
		28; Page 20: lines 1-4, 6-9, 12, 16-23; Page 21: lines 6-8.	("Grigg Declaration"), ¶¶ 2-5.
3 to Gunther Declaration	Excerpts from the September 3, 2020 Expert Report of Dr. Nenad Medvidovic Regarding Infringement by SonicWall, Inc. of Patent Nos. 8,225,408; 7,975,305; and 8,141,154	GRANTED as to entire document.	This document reflects information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorney's Eyes Only – Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products. <i>See Grigg Declaration</i> ¶¶ 2-5.
4 to Gunther Declaration	Excerpts from the September 4, 2020 Expert Report of DeForest McDuff, Ph.D	GRANTED as to entire document.	This document reflects information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns SonicWall's confidential financial and business information. <i>See Grigg Declaration</i> ¶¶ 2-5.
5 to Gunther Declaration	Excerpts from the July 9, 2020 John Gmuender Deposition Transcript	GRANTED as to entire document.	This document reflects testimony that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorney's Eyes Only – Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and

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ECF or Exh. No.	Document	Result	Reasoning
			or operation of SonicWall's proprietary products. <i>See</i> Grigg Declaration ¶¶ 2-5.
6 to Gunther Declaration	Excerpts from the July 16, 2020 Shunhui Zhu Deposition Transcript.	GRANTED as to entire document.	This document reflects testimony that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorney's Eyes Only – Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products. <i>See</i> Grigg Declaration ¶¶ 2-5.
7 to Gunther Declaration	Excerpts from the July 29, 2020 Dmitriy Ayrapetov Deposition Transcript	GRANTED as to entire document.	This document reflects testimony that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorney's Eyes Only – Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products. <i>See</i> Grigg Declaration ¶¶ 2-5.
8 to Gunther Declaration	Excerpts from the July 24, 2020 Matt Neiderman Deposition Transcript	GRANTED as to entire document.	This document reflects testimony that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorney's Eyes Only – Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's

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