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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 299, 314, 331**

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 to Strike (at ECF 300). For the reasons stated below, (1) SonicWall’s Administrative Motion to File Under Seal at ECF 299 is GRANTED, (2) Finjan’s Administrative Motion to File Under Seal at ECF 314 is GRANTED, and (3) SonicWall’s Administrative Motion to File Under Seal at ECF 331 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 presumption with “compelling reasons” that outweigh the general history of access and the public

1 2016); *Kamakana*, 447 F.3d at 1178–79.

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

23 In addition to making particularized showings of good cause, parties moving to seal
24 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
25 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
26 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
27 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and must
28 conform with Civil L.R. 79-5(d).” *Civ. L.R. 79-5(d)*. In part, *Civ. L.R. 79-5(d)* requires the

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

8 II. DISCUSSION

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

14 A. ECF 299, Sealing Motion Related to SonicWall’s Motion to Strike

16 ECF or Exh. No.	Document	Ruling	Reasoning
17 ECF 300	18 Defendant SonicWall Inc.’s Motion to Strike 19 New Theories in Finjan’s Expert Reports	20 GRANTED as to highlighted portions at: 21 Page 2, lines 3-9, 11-12, 14-15; 22 Page 3, lines 16-18, 20- 24, 26; 23 Page 4, lines 11, 18-20; 24 Page 5, lines 13-14, 20- 24; 25 Page 6, lines 20-26; 26 Page 10, lines 21-23.	27 The highlighted portions of this document reflect 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,

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			operation of SonicWall's proprietary products. <i>See</i> Declaration of Nicole E. Grigg in Support of Administrative Motion to File Documents Under Seal ("Grigg Declaration") ¶¶ 2-5.
Ex. A	Excerpts from Finjan's Third Supplemental Infringement Contentions – Appendix G-2	GRANTED as to entire document.	This document reflects information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" and "Highly Confidential – Attorneys' 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, including its source code. <i>See</i> Grigg Declaration ¶¶ 2-5.
Ex. B	Excerpts from Finjan's Third Supplemental Infringement Contentions – Appendix G-3	GRANTED as to entire document.	This document reflects information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" and "Highly Confidential – Attorneys' 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

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			identification, organization, and or operation of SonicWall’s proprietary products, including its source code. <i>See</i> Grigg Declaration ¶¶ 2-5.
Ex. C	Excerpts from Finjan’s Third Supplemental Infringement Contentions – Appendix G-4	GRANTED as to entire document.	This document reflects information that SonicWall has designated as “Highly Confidential – Attorneys’ Eyes Only” and “Highly Confidential – Attorneys’ 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, including its source code. <i>See</i> Grigg Declaration ¶¶ 2-5.
Ex. D	10-2-2020 Email from J. Wolff to R. McGrath	GRANTED as to entire document.	The highlighted portions of this document reflect 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 the identification, organization, and or operation of

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