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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MASIMO CORPORATION,
a Delaware corporation; and
CERCACOR LABORATORIES, INC.,
a Delaware corporation,

Plaintiffs,

v.

APPLE INC.,
a California corporation,

Defendant.

CASE NO. 8:20-cv-00048-JVS (JDEx)

PROTECTIVE ORDER

Based on Plaintiffs’ Motion for Protective Order (Dkt. 61, “Motion”), the Joint Stipulation of the parties (Dkt. 61-1), the evidence submitted in support of and in opposition to the Motion (Dkt. 61-2 to 61-5), including the parties’ respective proposed protective orders (Dkt. 61-2, Exh. 2, and Dkt. 61-5, Exh. A), and the June 23, 2020 Order by the Honorable Judge James V. Selna, United States District Judge (Dkt. 59), and good cause appearing therefor, the Motion is granted, in part, and the Court finds and orders as follows.

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1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than pursuing this litigation may be warranted. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery, including disclosures under Rule 26, and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

2. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such



1 information is justified in this matter, pursuant to Rule 26(c) of the Federal
2 Rules of Civil Procedure or any other applicable authority. It is the intent of the
3 parties that information will not be designated as confidential for tactical
4 reasons and that nothing be so designated without a good faith belief that it has
5 been maintained in a confidential, non-public manner, and there is good cause
6 why it should not be part of the public record of this case.

7 3. ACKNOWLEDGMENT OF UNDER SEAL FILING
8 PROCEDURE

9 The parties further acknowledge, as set forth in Section 14.3, below, that
10 this Protective Order does not entitle them to file confidential information under
11 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
12 the standards that will be applied when a party seeks permission from the court
13 to file material under seal. There is a strong presumption that the public has a
14 right of access to judicial proceedings and records in civil cases. In connection
15 with non-dispositive motions, good cause must be shown to support a filing
16 under seal. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172,
17 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11
18 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577
19 (E.D. Wis. 1999) (even stipulated protective orders require good cause
20 showing), and a specific showing of good cause with proper evidentiary support
21 and legal justification, must be made with respect to Protected Material that a
22 party seeks to file under seal. The parties' mere designation of Disclosure or
23 Discovery Material as CONFIDENTIAL does not—without the submission of
24 competent evidence by declaration, establishing that the material sought to be
25 filed under seal qualifies as confidential, privileged, or otherwise protectable—
26 constitute good cause.

1 Further, if a party requests sealing related to a dispositive motion or trial,
2 then compelling reasons, not only good cause, for the sealing must be shown,
3 and the relief sought shall be narrowly tailored to serve the specific interest to
4 be protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th
5 Cir. 2010). For each item or type of information, document, or thing sought to
6 be filed or introduced under seal in connection with a dispositive motion or trial,
7 the party seeking protection must articulate compelling reasons, supported by
8 specific facts and legal justification, for the requested sealing order. Again,
9 competent evidence supporting the application to file documents under seal
10 must be provided by declaration.

11 Any document that is not confidential, privileged, or otherwise
12 protectable in its entirety will not be filed under seal if the confidential portions
13 can be redacted. If documents can be redacted, then a redacted version for
14 public viewing, omitting only the confidential, privileged, or otherwise
15 protectable portions of the document, shall be filed. Any application that seeks
16 to file documents under seal in their entirety should include an explanation of
17 why redaction is not feasible.

18 4. DEFINITIONS

19 4.1 Action: this pending federal lawsuit.

20 4.2 Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 4.3 “CONFIDENTIAL” Information or Items: information (regardless
23 of how it is generated, stored or maintained) or tangible things that qualify for
24 protection under Federal Rule of Civil Procedure 26, and as specified above in
25 the Good Cause Statement.

26 4.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
27 Information or Items: extremely confidential and/or sensitive “Confidential
28

1 Information or Items,” disclosure of which to another Party or Non-Party is
2 likely to cause harm or significant competitive disadvantage to the Producing
3 Party.

4 4.5 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
5 Items: extremely sensitive “Confidential Information or Items” representing
6 computer code, scripts, assembly, binaries, object code, source code listings
7 (e.g., file names and path structure), source code comments, object code listings,
8 and Hardware Description Language (HDL) or Register Transfer Level (RTL)
9 files that describe the hardware design of any ASIC or other chip, disclosure of
10 which to another Party or Non-Party is likely to cause harm or significant
11 competitive disadvantage to the Producing Party. Other documents that quote
12 source code or internal documents that contain specific descriptions of source
13 code (e.g. descriptions of declarations, functions, and parameters) that describe
14 how the source code operates, to be narrowly applied, may be designated
15 pursuant to this Paragraph, provided that the Producing Party also produces a
16 redacted version designated “HIGHLY CONFIDENTIAL – ATTORNEYS
17 EYES ONLY,” which removes the quoted source code or specific descriptions
18 of source code. Native Computer Aided Design (CAD) files may be designated
19 pursuant to this Paragraph, provided that any printouts of CAD files shall be
20 designated “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” and
21 will not be included in the page limits discussed in Section 11 below.

22 4.6 Counsel: Outside Counsel of Record and House Counsel (as well
23 as their support staff).

24 4.7 Designating Party or Producing Party: a Party or Non-Party that
25 designates information or items that it produces in disclosures or in responses to
26 discovery as “CONFIDENTIAL,” HIGHLY CONFIDENTIAL –
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