

1 Historically, courts have recognized a “general right to inspect and copy public records and
2 documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S.
3 589, 597 & n. 7 (1978). Unless a particular court record is one “traditionally kept secret,” a “strong
4 presumption in favor of access” is the starting point. *Foltz v. State Farm Mutual Auto. Insurance*
5 *Company*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to seal a judicial record then bears
6 the burden of overcoming this strong presumption by meeting the “compelling reasons” standard.
7 *Id.* at 1135. That is, the party must “articulate[] compelling reasons supported by specific factual
8 findings,” *id.* (citing *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1102-03 (9th
9 Cir.1999)), that outweigh the general history of access and the public policies favoring disclosure,
10 such as the “ ‘public interest in understanding the judicial process.’ ” *Hagestad*, 49 F.3d at 1434
11 (quoting *EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th Cir. 1990)).

12 The Ninth Circuit has explained that the “strong presumption of access to judicial records
13 applies fully to dispositive pleadings, including motions for summary judgment and related
14 attachments” because “the resolution of a dispute on the merits, whether by trial or summary
15 judgment, is at the heart of the interest in ensuring the “public’s understanding of the judicial
16 process and of significant public events.” *Kamakana v. City and County of Honolulu*, 447 F.3d
17 1172, 1177 (9th Cir. 2006). The Ninth Circuit has also carved out an exception to the strong
18 presumption of openness for pre-trial, non-dispositive motions. The Ninth Circuit applies a “good
19 cause” showing to keep sealed records attached to non-dispositive motions. *Id.* at 1180. Thus the
20 Court applies a two tiered approach: “judicial records attached to dispositive motions [are treated]
21 differently from records attached to non-dispositive motions. Those who seek to maintain the
22 secrecy of documents attached to dispositive motions must meet the high threshold of showing that
23 ‘compelling reasons’ support secrecy” while a showing of good cause will suffice at earlier stages
24 of litigation. *Id.*

25 As Judge Alsup explained in *Oracle America v. Google, Inc.*, 10-CV-03561-WHA, at ECF
26 No. 540, “The United States district court is a public institution, and the workings of litigation must
27 be open to public view. Pretrial submissions are a part of trial.” Accordingly, Judge Alsup advised
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United States District Court
For the Northern District of California

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counsel that “unless they identify a limited amount of exceptionally sensitive information that truly deserves protection, the motions will be denied outright.” *Id.*

Similarly, this Court explained at the June 29, 2012 case management conference that “the whole trial is going to be open.” Hr’g Tr. at 78. In light of the Ninth Circuit’s admonition in *Kamakana* regarding the presumption of openness and the high burden placed on sealing documents at this late, merits stage of the litigation, it appears that the parties have overdesignated confidential documents and are seeking to seal information that is not truly sealable under the “compelling reasons” standard. As one example, the parties have sought to redact descriptions of trial exhibits that will presumably be used in open court. *See, e.g.* Exhibit A to Samsung’s Objections to Apple’s Exhibit List. Accordingly, the Sealing Motions are DENIED without prejudice.

The parties may file renewed motions to seal within one week of the date of this Order. However, the parties are ORDERED to carefully scrutinize the documents it seeks to seal. At this stage of the proceedings, the presumption of openness will apply to all documents and only documents of exceptionally sensitive information that truly deserve protection will be allowed to be redacted or kept from the public. Nearly all of the documents which met the lower, “good cause” standard do not meet the higher, “compelling reasons” standard for trial.

IT IS SO ORDERED.

Dated: July 17, 2012



LUCY H. KOH
United States District Judge