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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 PROOFPOINT, INC.; CLOUDMARK LLC

18 Plaintiffs,

19 v.
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21 VADE SECURE, INCORPORATED; VADE
22 SECURE SASU; OLIVIER LEMARIÉ

23 Defendants.
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CASE NO. 3:19-cv-04238-MMC (RMI)

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

Hearing

Date: N/A (General Order 72-6)

Judge: Hon. Robert M. Illman

Pursuant to the Northern District of California’s Civil Local Rules 7-11 and 79-5, Proofpoint, Inc. and Cloudmark LLC (collectively, “Plaintiffs”) respectfully move for an order permitting them to file under seal the following portions of Exhibit 1 to the Declaration of Jodie Cheng (“Cheng Declaration”) in support of Plaintiffs’ Written Request Regarding the Procedure for Discovery Letter-Briefs (“Plaintiffs’ Request”), which contain, discuss, or relate to information that Defendants Vade Secure, Incorporated and Vade Secure SASU (“Vade Defendants”) designated as “Confidential,” “Highly Confidential – Source Code,” or “Highly Confidential – Attorneys’ Eyes Only.”

The reasons and specific bases for sealing the documents and excerpts identified below are set forth in the Declaration of Iman Lordgooei in Support of Plaintiffs’ Administrative Motion to File under Seal filed herewith (“Lordgooei Decl.”) ¶ 4:

| <u>Location of Confidential Material</u> | <u>Contains Confidential Information Of:</u> |
|---|--|
| <p><i>Exhibit 1 to the Declaration of Jodie W. Cheng In Support of Plaintiffs’ Request</i></p> <p>Highly Confidential – Attorneys’ Eyes Only and Highly Confidential – Source Code information redacted at pp. 6–8, 10–12.</p> | Defendants |

I. LEGAL STANDARD

Records attached to non-dispositive motions, such as here, are not subject to the strong presumption of public access to judicial records and documents. *See, e.g., Finjan, Inc. v. Proofpoint, Inc.*, No. 13-cv-5808-HSG, 2015 WL 9023164, at *1 (N.D. Cal. Dec. 16, 2015). Because the documents attached to non-dispositive motions “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving to seal must meet the lower “good cause” standard of FED. R. CIV. P. 26(c). *Id.* The “good cause” standard requires a “particularized showing” that “specific prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (internal quotation marks omitted). Sealing is therefore appropriate where the requesting

party “establishes that the document, or portions thereof is privileged or protectable as a trade secret or otherwise entitled to protection under the law,” and “narrowly tailor[s]” the request to sealable material only. N.D. Cal. Civil L.R. 79-5(a).

II. ARGUMENT

Plaintiffs hereby move to seal documents or portions thereof, as set forth fully in the accompanying declaration in support of its Administrative Motion to Seal. (Lordgooei Decl. ¶¶ 1–5.) These documents contain information that has been designated “Highly Confidential – Attorneys’ Eyes Only,” “Highly Confidential – Source Code,” or “Confidential” by Vade under the Protective Order. (*Id.*)

Plaintiffs’ request is narrowly tailored and only seeks to seal the portions of Plaintiffs’ Request that Plaintiffs consider to be confidential and could create a substantial risk of serious harm if publicly disclosed. *See, e.g., Kowalsky v. Hewlett-Packard Co.*, 2012 WL 892427, at *2 (N.D. Cal. Mar. 14, 2012) (finding sealing appropriate where “[t]he proposed redactions contain . . . confidential product development information, the disclosure of which could harm [movant’s] competitive advantage in the marketplace”).

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Administrative Motion to File Under Seal.

DATED: October 26, 2020

Respectfully Submitted,

By /s/ Jodie W. Cheng

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