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11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO**

15 OPEN SOURCE SECURITY, INC., and  
16 BRADLEY SPENGLER,

17 Plaintiffs,

18 v.

19 BRUCE PERENS, and Does 1-50,

20 Defendants.

Case No. 3:17-cv-04002-LB

**DEFENDANT BRUCE PERENS'S  
ADMINISTRATIVE MOTION TO  
FILE DOCUMENTS UNDER SEAL**

**[Pursuant to Civil L.R. 7-11 and 79-5]**

Pursuant to Local Rules 7-11 and 79-5, Defendant Bruce Perens moves the Court for an Order sealing the following documents, or portions of documents, filed concurrently with the motion: (1) the Declaration of Melody Drummond Hansen in Support of Mr. Perens's Motion for Fees ("Drummond Hansen Declaration") and (2) Exhibits A–C attached thereto. In particular, Mr. Perens seeks to seal:

Document	Portion(s) to be Sealed
Drummond Hansen Declaration	¶¶ 21–22
Exhibit A	Hourly rates and timekeeper fee subtotals
Exhibit B	Hourly rates and timekeeper fee subtotals
Exhibit C	Entire Document

Pursuant to Civil L.R. 79-5(d) and (e), this Motion is accompanied by the following documents: (1) the Declaration of Cara Gagliano in Support of this Motion ("Gagliano Declaration"); (2) a proposed order; (3) redacted versions of the documents sought to be filed under seal; and (4) unredacted versions of the documents sought to be filed under seal.

Mr. Perens brings this motion because certain exhibits attached to the Drummond Hansen Declaration contain competitively sensitive information of the law firm O'Melveny & Myers LLP ("O'Melveny"). Under Civil Local Rule 79-5, a document may be filed under seal if a party establishes that the portions sought to be sealed "are privileged, protectable as a trade secret or otherwise entitled to protection under the law." Civ. L.R. 79-5(b). However, as the Ninth Circuit has found, the "public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials." *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Therefore, rather than satisfy the "compelling reasons" standard associated with sealing for dispositive motions, parties seeking to file under seal documents related to non-dispositive motions need only make a "particularized showing" that "good cause" exists to seal the documents. *Id.* at 1180. That standard is met here.

1           The documents that Mr. Perens seeks to seal in this case contain detailed information  
2 about the particular hourly rates charged by O'Melveny timekeepers and the fee agreements that  
3 the firm reaches with its clients. This information is not publicly available, and safeguarding its  
4 confidentiality is important for the firm's ability to maintain a competitive presence in the legal  
5 marketplace and avoid disadvantage in future fee negotiations. *See* Gagliano Declaration ¶ 2.  
6 California courts have permitted timekeeper rates to be sealed when filed in conjunction with a  
7 motion for attorney's fees. *See, e.g., Lightbourne v. Printroom Inc.*, No. SACV13876JLSRNBX,  
8 2015 WL 12732457 (C.D. Cal. Dec. 10, 2015); *Monolithic Power Sys., Inc. v. O2 Micro Int'l Ltd.*,  
9 No. 08-04567 CW, 2012 WL 161212, at \*3 (N.D. Cal. Jan. 17, 2012), *aff'd*, 726 F.3d 1359 (Fed.  
10 Cir. 2013). Even our marketing partners do not publicize aggregate data on firm billing rates, and  
11 some charge fees for access to it, recognizing the significant value that billing rate confidentiality  
12 has for the business of law. As one example, PricewaterhouseCoopers ("PwC"), who provides  
13 aggregate survey results data, states in their participation disclaimer that "Law Firm Survey  
14 Results" are "highly confidential" and PwC "does not condone" using their aggregate rate  
15 information in court filings. *See* Surveys: Data Confidentiality, PricewaterhouseCoopers,  
16 <https://www.pwc.com/us/en/industries/law-firms/surveys/data-confidentiality.html> (last visited  
17 February 7, 2018). Courts in the Northern District also permit rate information, including  
18 aggregate rate information, to be filed under seal where necessary. *See Monolithic*, 2012 WL  
19 161212 at \*3 n.3.

20           O'Melveny stands to suffer significant competitive harm if its rate and fee information is  
21 subject to public review, and therefore moves this court to seal the above noted documents.  
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1 Dated: February 7, 2018

2 MELODY DRUMMOND HANSEN  
3 HEATHER J. MEEKER  
4 CARA L. GAGLIANO  
5 O'MELVENY & MYERS LLP

6 By: /s/ Melody Drummond Hansen  
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