

1 MELODY DRUMMOND HANSEN (S.B. #278786)  
mdrummondhansen@omm.com  
2 HEATHER J. MEEKER (S.B. #172148)  
hmeeker@omm.com  
3 O'MELVENY & MYERS LLP  
2765 Sand Hill Road  
4 Menlo Park, California 94025-7019  
Telephone: +1 650 473 2600  
5 Facsimile: +1 650 473 2601

6 CARA L. GAGLIANO (S.B. #308639)  
cgagliano@omm.com  
7 Two Embarcadero Center  
28th Floor  
8 San Francisco, California 94111-3823  
Telephone: +1 415 984 8700  
9 Facsimile: +1 415 984 8701

10 Attorneys for Defendant  
Bruce Perens

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO**

OPEN SOURCE SECURITY, INC., and  
BRADLEY SPENGLER,

Plaintiffs,

v.

BRUCE PERENS, and Does 1-50,

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]**

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

12  
 13 Pursuant to Civil L.R. 79-5(d) and (e), this Motion is accompanied by the following  
 14 documents: (1) the Declaration of Cara Gagliano in Support of this Motion (“Gagliano  
 15 Declaration”); (2) a proposed order; (3) redacted versions of the documents sought to be filed  
 16 under seal; and (4) unredacted versions of the documents sought to be filed under seal.

17 Mr. Perens brings this motion because certain exhibits attached to the Drummond Hansen  
 18 Declaration contain competitively sensitive information of the law firm O’Melveny & Myers LLP  
 19 (“O’Melveny”). Under Civil Local Rule 79-5, a document may be filed under seal if a party  
 20 establishes that the portions sought to be sealed “are privileged, protectable as a trade secret or  
 21 otherwise entitled to protection under the law.” Civ. L.R. 79-5(b). However, as the Ninth Circuit  
 22 has found, the “public policies that support the right of access to dispositive motions, and related  
 23 materials, do not apply with equal force to non-dispositive materials.” *Kamakana v. City & Cty.*  
 24 *of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Therefore, rather than satisfy the “compelling  
 25 reasons” standard associated with sealing for dispositive motions, parties seeking to file under  
 26 seal documents related to non-dispositive motions need only make a “particularized showing”  
 27 that “good cause” exists to seal the documents. *Id.* at 1180. That standard is met here.  
 28

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.  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: February 7, 2018

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

By:     /s/ Melody Drummond Hansen      
Melody Drummond Hansen  
Attorneys for Defendant  
Bruce Perens