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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]**

1 Pursuant to Local Rules 7-11 and 79-5, Defendant Bruce Perens moves the Court for an  
 2 Order sealing the following documents filed in connection with the Court's Order Regarding  
 3 Chart (ECF No. 89, "Order"): (1) Declaration of Melody Drummond Hansen in Support of  
 4 Defendant Bruce Perens's Motion for Attorneys Fees; Provided in Accordance With Court's  
 5 Order Regarding Chart (ECF No. 89); and (2) Exhibit 1 attached thereto. In particular, Mr. Perens  
 6 seeks to seal:

Document	Portion(s) to be Sealed
Declaration of Melody Drummond Hansen	Page 1, lines 20-26 Page 2, lines 5-12, 15-23, 27-28 Page 3, lines 3-9, 12-20, 23-25 Page 4, lines 3-7, 11-19, 21-26 Page 5, lines 3-6, 8-16, 19-27 Page 6, lines 3-4, 6-15
Exhibit 1	Entire Document

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

18 Mr. Perens brings this motion because the documents submitted in support of his motion  
 19 for fees and pursuant to the Court's Order, contain competitively sensitive information of the law  
 20 firm O'Melveny & Myers LLP ("O'Melveny") sealable under the law and local rules. Under  
 21 Civil Local Rule 79-5, a document may be filed under seal if a party establishes that the portions  
 22 sought to be sealed "are privileged, protectable as a trade secret or otherwise entitled to protection  
 23 under the law." Civ. L.R. 79-5(b). However, as the Ninth Circuit has found, the "public policies  
 24 that support the right of access to dispositive motions, and related materials, do not apply with  
 25 equal force to non-dispositive materials." *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172,  
 26 1179 (9th Cir. 2006). Therefore, rather than satisfy the "compelling reasons" standard associated  
 27 with sealing for dispositive motions, parties seeking to file under seal documents related to non-  
 28

1 dispositive motions need only make a “particularized showing” that “good cause” exists to seal  
2 the documents. *Id.* at 1180. That standard is met here.

3 The documents that Mr. Perens seeks to seal in this case contain detailed information  
4 about the particular hourly rates charged by O’Melveny timekeepers and the fee agreements that  
5 the firm reaches with its clients, as well as detailed time entries for work performed by particular  
6 attorneys in this case. This Court has granted previous motions to seal similar fees and detailed  
7 billing entry information. For example, Defendant’s previous motion to seal (ECF No. 63) was  
8 granted by this Court on February 13, 2018 (ECF No. 69); and Plaintiffs administrative motion to  
9 seal (ECF No. 77) was granted on March 12, 2018 (ECF No. 81).

10 This information is not publicly available, and safeguarding its confidentiality is important  
11 for the firm’s ability to maintain a competitive presence in the legal marketplace and avoid  
12 disadvantage in future fee negotiations. *See* Sealing Declaration ¶ 2. California courts have  
13 permitted timekeeper rates to be sealed when filed in conjunction with a motion for attorney’s  
14 fees. *See, e.g., Lightbourne v. Printroom Inc.*, No. SACV13876JLSRNBX, 2015 WL 12732457  
15 (C.D. Cal. Dec. 10, 2015); *Monolithic Power Sys., Inc. v. O2 Micro Int’l Ltd.*, No. 08-04567 CW,  
16 2012 WL 161212, at \*3 (N.D. Cal. Jan. 17, 2012), *aff’d*, 726 F.3d 1359 (Fed. Cir. 2013). Even  
17 our marketing partners do not publicize aggregate data on firm billing rates, and some charge fees  
18 for access to it, recognizing the significant value that billing rate confidentiality has for the  
19 business of law. As one example, PricewaterhouseCoopers (“PwC”), who provides aggregate  
20 survey results data, states in their participation disclaimer that “Law Firm Survey Results” are  
21 “highly confidential” and PwC “does not condone” using their aggregate rate information in court  
22 filings. *See* Surveys: Data Confidentiality, PricewaterhouseCoopers,  
23 <https://www.pwc.com/us/en/industries/law-firms/surveys/data-confidentiality.html> (last visited  
24 February 7, 2018). Courts in the Northern District also permit rate information, including  
25 aggregate rate information, to be filed under seal where necessary. *See Monolithic*, 2012 WL  
26 161212 at \*3 n.3.

27 Mr. Perens seeks to seal those portions of the chart contained in the Declaration of  
28 Melody Drummond Hansen in Support of Defendant Bruce Perens’s Response to Order

1 Regarding Chart (ECF No. 89) which detail the hourly rates charged each timekeeper as well as  
2 information from which those rates could be deduced. Mr. Perens further seeks to seal the  
3 entirety of Exhibit 1, which not only contains information about the hourly rates charged by each  
4 timekeeper and information from which those rates could be deduced but also reveals confidential  
5 strategic information about the specific work performed on each task.

6 O'Melveny stands to suffer significant competitive harm if its rate information and  
7 detailed billing entries are subject to public review, and Mr. Perens likewise has an interest in the  
8 confidentiality of detailed billing entries. We therefore respectfully request that this court grant  
9 Mr. Perens's motion to seal the above documents and portions of documents.

10 Dated: May 29, 2018

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

16 By:           /s/ Melody Drummond Hansen            
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19 Bruce Perens  
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