

1 Michael Burshteyn (SBN 295320)  
Michael.Burshteyn@gtlaw.com  
2 Kristin O'Carroll (SBN 312902)  
kristin.ocarroll@gtlaw.com  
3 GREENBERG TRAURIG, LLP  
101 Second Street, Suite 2200  
4 San Francisco, CA 94105  
Telephone: 415.655.1300  
5 Facsimile: 415.707.2010

6 Arda Goker (*pro hac vice*)  
Arda.Goker@gtlaw.com  
7 GREENBERG TRAURIG, P.A.  
450 South Orange Avenue, Suite 650  
8 Orlando, FL 32801  
Telephone: 407.420.1000  
9 Facsimile: 407.420.5909

10  
11 Attorneys for Plaintiff  
NIBI, INC.  
12

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15

16 NIBI, INC.,  
17 Plaintiff,  
18 v.  
19 JOHN DOE, ET AL.,  
20 Defendants.  
21

**CASE NO. 5:24-cv-06184-EKL**

**ADMINISTRATIVE MOTION TO SEAL  
DOCUMENTS FILED IN SUPPORT OF  
PLAINTIFF'S MOTION TO EXPEDITE  
DISCOVERY AND TO AUTHORIZE  
ALTERNATIVE SERVICE OF PROCESS**

**DATE: 12/18/24**  
**JUDGE: Eumi K Lee**

**TO THE COURT, THE PARTIES, AND ALL COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that, pursuant to Civil Local Rule 79-5, Judge Lee's August 16, 2024 Standing Order for Civil Cases Before Judge Eumi K. Lee, and the Court's December 10, 2024 Order to Supplement (ECF No. 14), Plaintiff respectfully moves this Court to consider whether to seal certain documents filed in support of Plaintiff's Motion to Expedite Discovery and to Authorize Alternative Service of Process (the "Motion"), including (i) subpoenas to be served upon entities that may possess information necessary to identify and locate Doe Defendants, and (ii) a privileged report prepared in anticipation of litigation.

Pursuant to Civil Local Rule 79-5(c), the following attachments accompany this motion:

1. The Declaration of Michael Burshteyn in Support of this Motion; and
2. A Proposed Order that lists all material requesting this Court's consideration.


**Materials to Be Filed Under Seal**

The documents Plaintiff seeks to seal are listed below and attached to the Declaration of Michael Burshteyn in Support of Plaintiff's Administrative Motion to Consider Whether to Seal Documents Filed In Support of its Motion to Expedite Discovery and to Authorize Alternative Service of Process ("Burshteyn Declaration").

Exhibit No.	Document	Portion to Seal	Reason for Sealing
A	Subpoena - [REDACTED] [REDACTED]	Entirety	Contains information that can be used for an improper purpose because it may alert Doe Defendants to the relevant wallet addresses, encouraging Doe Defendants to abandon the wallets identified therein, which, in turn may allow Doe Defendants to avoid being identified and further dissipate Plaintiff's stolen assets. Burshteyn Decl. ¶4.

B	Subpoena - [REDACTED] [REDACTED]	Entirety	Contains information that can be used for an improper purpose because it may alert Doe Defendants to the relevant wallet addresses, encouraging Doe Defendants to abandon the wallets identified therein, which, in turn may allow Doe Defendants to avoid being identified and further dissipate Plaintiff's stolen assets. Burshteyn Decl. ¶4.
C	Subpoena - [REDACTED] [REDACTED]	Entirety	Contains information that can be used for an improper purpose because it may alert Doe Defendants to the relevant wallet addresses, encouraging Doe Defendants to abandon the wallets identified therein, which, in turn may allow Doe Defendants to avoid being identified and further dissipate Plaintiff's stolen assets. Burshteyn Decl. ¶4.
D	Subpoena - [REDACTED] [REDACTED]	Entirety	Contains information that can be used for an improper purpose because it may alert Doe Defendants to the relevant wallet addresses, encouraging Doe Defendants to abandon the wallets identified therein, which, in turn may allow Doe Defendants to avoid being identified and further dissipate Plaintiff's stolen assets. Burshteyn Decl. ¶4.
E	Subpoena - [REDACTED] [REDACTED]	Entirety	Contains information that can be used for an improper purpose because it may alert Doe Defendants to the relevant wallet addresses,

			encouraging Doe Defendants to abandon the wallets identified therein, which, in turn may allow Doe Defendants to avoid being identified and further dissipate Plaintiff's stolen assets. Burshteyn Decl. ¶4.
F	Subpoena - [REDACTED] [REDACTED]	Entirety	Contains information that can be used for an improper purpose because it may alert Doe Defendants to the relevant wallet addresses, encouraging Doe Defendants to abandon the wallets identified therein, which, in turn may allow Doe Defendants to avoid being identified and further dissipate Plaintiff's stolen assets. Burshteyn Decl. ¶4.
G	Subpoena - [REDACTED] [REDACTED]	Entirety	Contains information that can be used for an improper purpose because it may alert Doe Defendants to the relevant wallet addresses, encouraging Doe Defendants to abandon the wallets identified therein, which, in turn may allow Doe Defendants to avoid being identified and further dissipate Plaintiff's stolen assets. Burshteyn Decl. ¶4.
H	Subpoena - [REDACTED] [REDACTED]	Entirety	Contains information that can be used for an improper purpose because it may alert Doe Defendants to the relevant wallet addresses, encouraging Doe Defendants to abandon the wallets identified therein, which, in turn may allow Doe Defendants to avoid being

			identified and further dissipate Plaintiff's stolen assets. Burshteyn Decl. ¶4.
I		Entirety	Contains privileged information that requires in-camera review to maintain privilege. Burshteyn Decl. ¶5.

Fed. R. Civ. P. 26(c) provides that the Court may issue an order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including an order “requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.” Each of the documents identified above is entitled to such protection.

### **Subpoenas**

On December 10, 2024, the Court issued an order requiring Plaintiff to supplement its Motion by filing proposed subpoenas and identifying all proposed subpoena recipients by no later than December 13, 2024 (the “Order”). (ECF No. 14.) The Order further provides that Plaintiff “may file the proposed subpoenas under seal as appropriate, consistent with Civil Local Rule 79-5 and applicable law.” Sealing the subpoenas is justified here.

Despite the strong presumption in favor of public access to court records (*see Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002)), “access to judicial records is not absolute.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). It is well-settled in the Ninth Circuit that a party may overcome this common law presumption by demonstrating “compelling reasons” justifying why the confidential information should be sealed. *See id.* at 1178-1180. In general, “compelling reasons” sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such “court files might have become a vehicle for improper purposes[.]” *Id.* at 1179(citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)); *Roberts v. Bloom Energy Corp.*, No 19-CV-02935-HSG, 2020 WL 6162117, at \*4 (N.D. Cal. Oct. 21, 2020); *ASUS Computer Int’l v. Round Rock Research, LLC*, No. 12- cv-02099 JST-NC, 2014 WL 2810193, at \*1 (N.D. Cal., June 20, 2014) (recognizing the presumption can be overcome if the party presents “compelling reasons supported by

1 factual findings that outweigh the general history of access and the public policies favoring disclosure”)  
 2 (internal quotations omitted).

3 Further, when the confidential information is non-dispositive, or otherwise unnecessary for the  
 4 public to understand the proceedings, the bar for overcoming the presumption in favor of access is lower.  
 5 Indeed, where the information in question is attached to a non-dispositive motion, courts apply a lower  
 6 “good cause” standard from Rule 26(c) noting that “the public has less of a need for access to court records  
 7 attached only to non-dispositive motions because those documents are often unrelated or only tangentially  
 8 related to the underlying cause of action.” *Kamakana*, 447 F.3d at 1179(cleaned up).

9 Good cause exists to seal the records here because the subpoenas each disclose details of Plaintiff’s  
 10 investigation, including on-chain addresses that Doe Defendants used to launder stolen funds. Public  
 11 disclosure of these addresses may alert Doe Defendants to the current status of the ongoing investigation,  
 12 causing them to abandon the wallets in question, thereby evading detection and facilitating the dissipation  
 13 of stolen funds. Further, the recipients may wish to enter into a protective order whereby the questions to  
 14 them and their responses are deemed confidential. Because the recipients have not yet been contacted, this  
 15 further supports sealing.

16 [REDACTED]  
 17 In addition to the subpoenas, Plaintiff is seeking to file under seal the “[REDACTED],” which  
 18 was created at the direction of and with input from counsel in order to assist in identifying the source and  
 19 path of the stolen funds in anticipation of litigation. Burshteyn Decl. ¶5. Courts have found that protecting  
 20 privileged information constitutes a compelling reason to seal certain documents. *Ervine v. Warden*, 214  
 21 F. Supp. 3d 917, 921 (E.D. Cal. 2016). The privilege applies to “information generated by a request for  
 22 legal advice,” including documents created “with the intention of communicating with their attorneys.”  
 23 *Doehne v. EmpRes Healthcare Mgmt., LLC*, 190 Wash. App. 274, 281(2015). This includes “reports and  
 24 other documents generated at the request of in-house counsel or risk management if done for the purpose  
 25 of assisting to address issues of liability or to avoid or prepare for litigation.” *In re Blue Cross Customer*  
 26 *Data Sec. Breach litig.*, 329 F.R.D. 656, 661 (2019). Documents may also be protected by the work-product  
 27 doctrine when they “can be fairly said to have been prepared or obtained because of the prospect of  
 28 litigation.” *In re Grand Jury Subpoena, Mark Torf/Torf Envtl. Mgmt. (Torf)*, 357 F.3d 900, 907 (2004).

1 Here, the [REDACTED] is protected by both the privilege and attorney work product doctrine  
2 because it was created at the direction of counsel in anticipation of litigation. Although the document is  
3 privileged, this Court may review the privileged report in camera because the decision of whether to  
4 conduct in camera review is within the sound discretion of the Court and does not waive any privileges. *In*  
5 *re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1096 (9th Cir. 2007).

6 The Court should find that there is a compelling reason to seal, and grant Plaintiff's motion in its  
7 entirety.

8 **Conclusion**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court issue an order granting the  
10 Motion and Sealing Exhibits A-I of the Burshteyn Declaration.

11  
12  
13 DATED: December 13, 2024

GREENBERG TRAURIG, LLP

14  
15 By /s/ Michael Burshteyn

16 Michael Burshteyn  
17 Attorneys for Plaintiff  
18 NIBI, INC.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Michael Burshteyn (SBN 295320)  
Michael.Burshteyn@gtlaw.com  
Kristin O'Carroll (SBN 312902)  
kristin.ocarroll@gtlaw.com  
GREENBERG TRAURIG, LLP  
101 Second Street, Suite 2200  
San Francisco, CA 94105  
Telephone: 415.655.1300  
Facsimile: 415.707.2010

Arda Goker (*pro hac vice*)  
Arda.Goker@gtlaw.com  
GREENBERG TRAURIG, P.A.  
450 South Orange Avenue, Suite 650  
Orlando, FL 32801  
Telephone: 407.420.1000  
Facsimile: 407.420.5909

Attorneys for Plaintiff  
NIBI, INC.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

NIBI, INC.,  
  
Plaintiff,  
  
v.  
  
JOHN DOE, ET AL.,  
  
Defendants.

CASE NO. 5:24-cv-06184-EKL

**DECLARATION OF MICHAEL  
BURSHTEYN IN SUPPORT OF  
ADMINISTRATIVE MOTION TO SEAL  
DOCUMENTS FILED IN SUPPORT OF  
PLAINTIFF'S MOTION TO EXPEDITE  
DISCOVERY AND TO AUTHORIZE  
ALTERNATIVE SERVICE OF PROCESS**



I, Michael Burshteyn, declare as follows:

1. I am an attorney at the law firm of Greenberg Traurig LLP, counsel for Plaintiff Nibi, Inc. I am a member of the State Bar of California and am admitted to practice before this Court. I have personal knowledge of the facts herein, if called upon to testify to those facts, I could and would do so competently.

2. I submit this declaration, as required by Civil Local Rule 79-5, in support of Plaintiff's Administrative Motion to Seal.

3. Plaintiff is seeking to seal certain documents including (i) subpoenas that it intends to serve on entities that may have information regarding the identities and location of Doe Defendants, and (ii) a report that was prepared in anticipation of litigation.

4. Plaintiff is seeking to file subpoenas under seal because they identify wallet addresses used by Doe Defendants to launder the stolen funds. Plaintiff intends to use these addresses to (i) trace the stolen funds, (ii) obtain information related to Doe Defendants, and (iii) serve Doe Defendants if the Court authorizes alternative service. If the addresses are published, this could alert Doe Defendants to the progress in the investigation, and may cause them to abandon these wallet addresses, which will negatively impact Plaintiff's investigation and recovery efforts.

5. Plaintiff is also seeking to file under seal the [REDACTED] because it is protected from disclosure by the attorney-client privilege and work product doctrine. This report was prepared at the direction of Plaintiff's in-house counsel and with participation of legal counsel in anticipation of litigation. Accordingly, Plaintiff is seeking to file the document under seal to prevent waiver and limit it to in-camera review.

6. Below is a list of the documents that Plaintiff is seeking to seal:

Exhibit No.	Document	Portion to Seal
A	Subpoena - [REDACTED] [REDACTED]	Entirety
B	Subpoena - [REDACTED] [REDACTED]	Entirety
C	Subpoena - [REDACTED]	Entirety

D	Subpoena - [REDACTED]	Entirety
E	Subpoena - [REDACTED]	Entirety
F	Subpoena - [REDACTED]	Entirety
G	Subpoena - [REDACTED]	Entirety
H	Subpoena - [REDACTED]	Entirety
I	[REDACTED]	Entirety

7. I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13<sup>th</sup> Day of December in Orinda, California.

DATED: December 13, 2024.

GREENBERG TRAURIG, LLP

By /s/ Michael Burshteyn  
Michael Burshteyn  
Attorneys for Plaintiff  
NIBI, INC.

1 Michael Burshteyn (SBN 295320)  
Michael.Burshteyn@gtlaw.com  
2 Kristin O'Carroll (SBN 312902)  
kristin.ocarroll@gtlaw.com  
3 GREENBERG TRAURIG, LLP  
101 Second Street, Suite 2200  
4 San Francisco, CA 94105  
Telephone: 415.655.1300  
5 Facsimile: 415.707.2010

6 Arda Goker (*pro hac vice*)  
Arda.Goker@gtlaw.com  
7 GREENBERG TRAURIG, P.A.  
450 South Orange Avenue, Suite 650  
8 Orlando, FL 32801  
Telephone: 407.420.1000  
9 Facsimile: 407.420.5909

10  
11 Attorneys for Plaintiff  
12 NIBI, INC.  
13

14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 NIBI, INC.,

17 Plaintiff,

18 v.  
19

20 JOHN DOE, ET AL.,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

**CASE NO. 5:24-cv-06184-EKL**

**[PROPOSED] ORDER ON PLAINTIFF'S  
ADMINISTRATIVE MOTION TO SEAL**

Having considered Plaintiff's Administrative Motion to Seal, and any statements or declarations submitted in support and in response, this Court hereby rules as follows:

Exhibit No.	Document	Portion to Seal	Granted/Denied
A	Subpoena - [REDACTED] [REDACTED]	Entirety	
B	Subpoena - [REDACTED] [REDACTED]	Entirety	
C	Subpoena - [REDACTED]	Entirety	
D	Subpoena - [REDACTED] [REDACTED]	Entirety	
E	Subpoena - [REDACTED]	Entirety	
F	Subpoena - [REDACTED] [REDACTED]	Entirety	
G	Subpoena - [REDACTED]	Entirety	
H	Subpoena - [REDACTED]	Entirety	
I	[REDACTED]	Entirety	

DATED: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
United States District Court Judge

# **Exhibit A**

CONDITIONALLY FILED  
UNDER SEAL

**EXHIBIT B**  
**CONDITIONALLY FILED**  
**UNDER SEAL**

# **Exhibit C**

CONDITIONALLY FILED  
UNDER SEAL

## **Exhibit D**

CONDITIONALLY FILED  
UNDER SEAL



# **Exhibit E**

CONDITIONALLY FILED  
UNDER SEAL

# **Exhibit F**

CONDITIONALLY FILED  
UNDER SEAL

# **Exhibit G**

CONDITIONALLY FILED  
UNDER SEAL

# **Exhibit H**

CONDITIONALLY FILED  
UNDER SEAL

# **Exhibit I**

CONDITIONALLY FILED  
UNDER SEAL