

1 John V. Picone III, Bar No. 187226
2 jpicon@hopkinscarley.com
3 Jeffrey M. Ratinoff, Bar No. 197241
4 jratinoff@hopkinscarley.com
5 HOPKINS & CARLEY
6 A Law Corporation
7 The Letitia Building
8 70 South First Street
9 San Jose, CA 95113-2406

mailing address:

6 P.O. Box 1469
7 San Jose, CA 95109-1469
Telephone: (408) 286-9800
7 Facsimile: (408) 998-4790

8 Attorneys for Plaintiffs and Counter-Defendants
9 NEO4J, INC. and NEO4J SWEDEN AB

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 NEO4J, INC., a Delaware corporation, and
13 NEO4J SWEDEN AB, a Swedish
corporation,

14 Plaintiffs,

15 v.

16 PURETHINK LLC, a Delaware limited
17 liability company, IGOV INC., a Virginia
corporation, and JOHN MARK SUHY, an
individual,

18 Defendants.

19 AND RELATED COUNTERCLAIM.

21 NEO4J, INC., a Delaware corporation, and
22 NEO4J SWEDEN AB, a Swedish
corporation,

23 Plaintiffs,

24 v.

25 GRAPH FOUNDATION, INC., an Ohio
26 corporation, GRAPHGRID, INC., an Ohio
corporation, and ATOMRAIN INC., a
27 Nevada corporation,

28 Defendants.

CASE NO. 5:18-CV-07182-EJD

**PLAINTIFFS' ADMINISTRATIVE MOTION
TO FILE PORTIONS OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AND EXHIBITS TO SUPPORTING
DECLARATIONS UNDER SEAL**

[CIVIL L.R. 7-11 and 79-5]

CASE NO. 5:19-CV-06226-EJD

1 Plaintiffs Neo4j, Inc. and Neo4j Sweden AB (collectively “Plaintiffs”) hereby move the
 2 Court pursuant to Civil Local Rules 7-11 and 79-5 for an Order to file certain exhibits, and
 3 portions of the papers supporting Plaintiffs’ Consolidation Motion for Summary Judgment under
 4 seal. Northern District of California Civil Local Rule 79-5(b) permits parties to seal documents,
 5 or portions thereof, that are shown to be “privileged, protectable as a trade secret or otherwise
 6 entitled to protection under the law.” *Id.* The request to seal “must be narrowly tailored to seek
 7 sealing only of sealable material.”

8 There is a presumption of public access to judicial records and documents. *Nixon v.*
 9 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978). However,
 10 that presumption can be overcome if a party can demonstrate “compelling reasons” to seal
 11 judicial records. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).
 12 Examples of compelling reasons to seal records include potential release of business information
 13 that might harm a party’s competitive strategy, pricing, profits, and customer usage information
 14 kept confidential by a company that could be used to the company’s competitive disadvantage.
 15 See *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214 (Fed. Cir. 2013).

16 Plaintiffs seeking to file two classes of documents under seal. The first are documents and
 17 excerpts therefrom that (a) contain Neo4j, Inc.’s highly confidential and proprietary business
 18 information; or (b) constitute third party confidential information that Neo4j, Inc. is contractually
 19 required to not publicly distribute. The second class of documents are those that Defendants
 20 Purethink LLC, iGov Inc. and John Mark Suhy (collectively the “PT Defendants”) have
 21 designated as “Confidential” under the Protective Order (PT Dkt. No. 34) entered in *Neo4j, Inc.*,
 22 *et al. v. PureThink LLC., et al.*, Civil Case No. 5:18-cv-07182-EJD.

23 **Request to File Neo4j USA’s Confidential and Proprietary Information Under Seal**

24 Neo4j USA is seeking to file **Exhibits 6, 7, 27 and 126** to the Declaration of Jeffrey M.
 25 Ratinoff in support of Plaintiffs’ Motion for Summary Judgment (“Ratinoff MSJ Declaration”)
 26 under seal and redact the following portions of Plaintiffs’ Consolidated Motion for Summary
 27 Judgment that pull from these documents from the public filings: (a) **Page 6, Lines 9-11** (citing
 28 Exhibit 6) and (b) **Page 6, Lines 14-15** (citing Exhibit 7). As detailed in the Declaration of Philip

1 Rathle Declaration support this Motion to Seal (“Rathle Sealing Decl.”), these materials reveal
 2 Plaintiffs’ highly confidential and commercially sensitive information regarding Neo4j USA’s
 3 pricing, business model and strategy for securing customer contracts and confidential details of
 4 customer relationships and preferences. Rathle Sealing Decl., ¶¶ 3(a)-(d). The disclosure of this
 5 confidential information would substantially harm Neo4j USA’s competitive standing in the
 6 marketplace, provide competitors with information that could be used to obtain a competitive
 7 advantage over Neo4j USA and damage its customer relationships. *Id.*

8 Neo4j USA is also seeking to file **Exhibits 12 and 13** to the Declaration of John Broad in
 9 support of Plaintiffs’ Motion for Summary Judgment (“Broad MSJ Declaration”) under seal.
 10 These exhibits contain commercially sensitive and highly confidential information regarding the
 11 structure and amount of licensing and subscription fees for Neo4j® Enterprise Edition, as well as
 12 pricing and discount information. Rathle Sealing Decl., ¶¶ 4(a)-(c). They also reveal specific and
 13 detailed information concerning Plaintiffs’ software features, subscription models, professional
 14 service offerings, and marketing strategy. *Id.* Plaintiffs consider this information to be highly
 15 confidential, competitively sensitive, and takes significant precautions to ensure that this type of
 16 information is not publicly disclosed. *Id.*, ¶ 5. The disclosure of this information would expose
 17 Neo4j USA to substantial competitive harm by providing competitors, including the Defendants
 18 in the two pending lawsuits, with information that could be used by them to obtain a competitive
 19 advantage over Neo4j USA and potentially damage its actual and potential customer
 20 relationships. *Id.*, ¶¶ 4(a)-(c).

21 In addition, Neo4j USA seeks to seal **Exhibit 3** to the Broad MSJ Declaration. This
 22 exhibit is subject to a copyright held by a third party, Forrester, and has imposed restrictions on
 23 the use and distribution of this report. As a result, Neo4j USA is subject to contractual
 24 obligations that prevent that preclude the unrestricted public distribution of the report. Rathle
 25 Sealing Decl., ¶ 4(a). Thus, if this report were filed in public record, it could potentially violate
 26 such contractual obligations.

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1 Finally, Plaintiffs have taken steps to minimize the evidence supporting their Motion for
 2 Summary Judgment that it seeks to file under seal in the least restrictive way, and is only seeking
 3 to seal a small fraction of that evidence. Declaration of Jeffrey M. Ratinoff in Support of Motion
 4 to Seal (“Ratinoff Sealing Decl.”), *Id.*, ¶ 4. As a result, Plaintiffs’ request is narrowly tailored to
 5 seek sealing only of sealable material, and is the least restrictive means of preserving the
 6 confidentiality of the foregoing and preventing substantial competitive harm to Neo4j USA, while
 7 balancing the public’s right of access to the Court’s records. For these reasons, Plaintiffs
 8 respectfully request that the Court grant this motion to seal.

9 **Request to Preliminarily Lodge the PT Defendants’ Documents Under Seal**

10 Plaintiffs request to preliminarily lodge **Exhibit 55**, **Exhibit 126** and **Exhibits 130-135** to
 11 the Declaration of Jeffrey M. Ratinoff in support of Plaintiffs’ Motion for Summary Judgment
 12 under seal because the PT Defendants have designated those documents as “Confidential” under
 13 the Stipulated Protective Order. *See* Ratinoff Sealing Decl., ¶¶ 5(a)-(h). Plaintiffs also request to
 14 preliminarily redacted **Page 12, Lines 9-12** in their Motion for Summary Judgment, which that
 15 contains information quoted from the aforementioned **Exhibit 55** to the Ratinoff MSJ
 16 Declaration. *Id.*, ¶ 6. Without concurring with or conceding the appropriateness of the
 17 aforementioned designation, Neo4j USA is filing Defendants’ designated materials in a manner
 18 that is narrowly tailored to protect them, while minimizing the infringement of the public’s right
 19 of access to documents filed with the Court.

20 Plaintiffs request to preliminarily lodge **Exhibit 3** to the Declaration of Jeffrey M.
 21 Ratinoff in support of Plaintiffs’ Motion for Summary Judgment under seal in the interest of
 22 caution. Exhibit 3 constitutes excerpts from the deposition transcription from the October 22,
 23 2020 Rule 30(b)(6) deposition of Defendant iGov Inc. Ratinoff Sealing Decl., ¶ 8. During the
 24 deposition, PT Defendants conditionally designated this transcript under Section 5.2 of the
 25 Protective Order pending their review and specific designation of the portions of the transcript
 26 they believed warranted protection under the Protective Order. *Id.*, ¶ 8. The transcript was
 27 provided to counsel for the PT Defendants on November 13, 2020, and thus the deadline to
 28 provide specific designations was December 4. *Id.*, ¶ 9. Despite Plaintiffs’ repeated requests –

1 both before and after the expiration of the deadline – the PT Defendants failed to provide their
 2 specific designations. *Id.*, ¶ 10. As a result, the PT Defendants waived their right to designate
 3 any of the transcript under the Protective Order. *Id.*, ¶ 11. Plaintiffs further contend there is
 4 nothing in the excerpts being submitted that warrant any designation of confidentiality under the
 5 Protective Order. *Id.*, ¶ 11. Nonetheless, Plaintiffs are conditionally lodging these excerpts under
 6 seal in the interest of caution. *Id.*, ¶ 11.

7 Finally, Plaintiffs are herewith providing notice to the PT Defendants of their obligation
 8 under Civil L.R. 79-5(e) to file a declaration in support of sealing these documents if they wish to
 9 avoid their disclosure to the public by separately serving this Motion to Seal on the PT
 10 Defendants.

11 Dated: December 11, 2020

HOPKINS & CARLEY
 12 A Law Corporation

13 By: /s/ Jeffrey M. Ratinoff

14 Jeffrey M. Ratinoff
 15 Attorneys for Plaintiffs and Counter-
 16 Defendants NEO4J, INC. and NEO4J
 17 SWEDEN AB