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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games, Inc. v. Google LLC, Case No.
3:20-cv-05671-JD

*In re Google Play Consumer Antitrust
Litigation*, Case No. 3:20-cv-05761-JD

*In re Google Play Developer Antitrust
Litigation*, Case No. 3:20-cv-05792-JD

Utah v. Google LLC, Case No. 3:21-cv-
05227-JD

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Case No. 3:21-md-02981-JD

**ADMINISTRATIVE MOTION IN
RESPONSE TO MOTIONS TO SEAL
PORTIONS OF COMPLAINTS**

Judge James Donato

I. INTRODUCTION

Google is mindful of the Court’s guidance about sealing motions and has taken a targeted approach to this submission to permit necessary access to Court records while protecting highly sensitive information where there is a compelling need to do so. The grounds for sealing are set forth in the accompanying Declaration of Andrew Rope (“Rope Declaration”).

The confidential and highly sensitive information subject to sealing is contained in the four main complaints that comprise this Multi-District Litigation (MDL) proceeding. Defendants Google LLC et al. therefore request that the Court issue an administrative order authorizing the sealing of *limited* portions of the complaints that contain Google’s confidential and commercially sensitive information sourced from internal, non-public Google documents. Google has carefully reviewed the complaints and seeks to seal only specific portions that disclose non-public information that, if made public, would competitively harm Google and/or third parties. Consistent with the Court’s admonition, Google is not contesting the unsealing of close to half of the allegations that the plaintiffs have submitted under seal in redacted form to date.

II. LEGAL STANDARD

Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party “establishes that the documents, or portions thereof, are privileged, protectable as a trade secret, or otherwise entitled to protection under the law.” Civ. L. R. 79-5(b).

While courts apply a “strong presumption in favor of access” to court records, “[i]n 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,’ such as the use of records to ... release trade secrets.” *Kamakana v. City and Cty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). Sealing can be justified to prevent judicial documents from being used as business information that might harm a litigant’s competitive standing. *In re High-Tech Employee Antitrust Litig.*, No. 11–CV–02509–LHK, 2013 WL 163779, at *1 (N.D. Cal. Jan. 15, 2013). Sealing is also warranted “when a court record might be used to ‘gratify private spite or

1 promote public scandal,’ to circulate ‘libelous’ statements, or ‘as sources of business information
2 that might harm a litigant’s competitive standing.’” *Center for Auto Safety v. Chrysler Group,*
3 *LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (*quoting Nixon* at 598-99).

4 The Court further may properly limit disclosure of trade secrets “or other confidential
5 research, development, or commercial information.” Fed. R. Civ. Proc. 26(c)(1)(G); *Nutraceutical,*
6 *Inc. v. Syntech (SSPF) Int’l, Inc.*, 242 F.R.D. 552, 555 n.4 (C.D. Cal. 2007) (customer/supplier
7 lists and sales and revenue information qualify as “confidential commercial information”); *see*
8 *also Apple Inc. v. Psystar Corp.*, 658 F3d 1150, 1162 (9th Cir. 2011) (safeguarding trade secrets
9 overcomes presumption against sealing order).

10 **III. ARGUMENT**

11 Google seeks to maintain under seal only limited and narrow portions of the voluminous
12 allegations in the complaints. Google does not even seek to seal approximately half of the
13 information the plaintiffs have currently redacted.¹ The select information Google seeks to seal is
14 the type that the Ninth Circuit has held to properly be kept under seal. *In re Elec. Arts, Inc.*, 298
15 F. App’x 568 (9th Cir. 2008), held that “commercially sensitive information” such as “pricing
16 terms, royalty rates, and guaranteed minimum payment terms” are sealable even during trial,
17 much less in an unsworn complaint. *Id.* at 569; *see also Apple, Inc. v. Samsung Elecs. Co.*, No.
18 11-CV-01846-LHK, 2013 WL 5693759, at *2 (N.D. Cal. Oct. 15, 2013) (same); *Sun*
19 *Microsystems Inc. v. Network Appliance*, No. C–08–01641–EDL, 2009 WL 5125817, at *9 (N.D.
20 Cal Dec. 21, 2009) (sealing confidential business information, which if disclosed could cause
21 harm to the parties). This information retains independent economic value from not being
22 generally known to, and not being readily ascertainable through proper means to the general
23 public. 18 U.S.C. § 1839(3)(B).

24 If disclosed, the information Google seeks to keep under seal would cause it competitive
25 and commercial harm because it would provide competitors and actual or potential counterparties
26 insights into Google’s business that they would not otherwise have, and could disadvantage

27
28 ¹ Google reserves all rights to seek further sealing of the underlying documents that Plaintiffs selectively quote in
their Complaints and will, if necessary, address such further sealing at the appropriate time.

1 Google in future negotiations with potential counter-parties and customers. *See Nixon*, 435 U.S.
 2 at 598 (“[C]ourts have refused to permit their files to serve as ... sources of business information
 3 that might harm a litigant’s competitive standing”); *In re Elec. Arts, Inc.*, 298 Fed. App’x at 569-
 4 70.

5 As detailed in the attached Rope Declaration, select portions of the complaints are
 6 sealable because they contain information relating to confidential business strategies, confidential
 7 discussions and terms of agreements with third-parties, and exceptionally sensitive commercial
 8 information that might harm Google’s competitive standing. Controlling authorities, the Federal
 9 Rules, and the Local Rules provide that these portions of the complaints should properly be
 10 redacted and sealed.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Google respectfully requests that this Court keep the portions
 13 of the Complaints identified in the Rope Declaration and the accompanying Proposed Order
 14 under seal.

15 Dated: August 5, 2021

MORGAN, LEWIS & BOCKIUS LLP

16 By: /s/ Geoffrey T. Holtz

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