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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TACTION TECHNOLOGY, INC.,
Plaintiff,
v.
APPLE INC.,
Defendant.

AND RELATED COUNTERCLAIM.

Case No.: 21-cv-00812-TWR-JLB
**ORDER DENYING WITHOUT
PREJUDICE MOTIONS TO FILE
DOCUMENTS UNDER SEAL**
[ECF Nos. 180, 194, 197, 207, 210, 213]

Before the Court are six motions to file documents under seal filed by Plaintiff Taction Technology, Inc. (“Plaintiff”), Defendant Apple Inc. (“Defendant”), and non-parties Kenosha Investments LP (“Kenosha”) and Gronostaj Investments LLC (“Gronostaj”). (See ECF Nos. 180, 194, 197, 207, 210, 213.)

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ECF No.	Filing Party	Request to Seal Portions of:		Designating Party
		Lodged ECF No.	Description	
181	Defendant	181	Portions of Defendant's Ex Parte Motion	Plaintiff
		181-1, -2, -3	Plaintiff's Privilege Logs	
		181-4	Transcript of Dr. James Bigg's Deposition Testimony	
194	Plaintiff	195	Portions of Plaintiff's Response to Defendant's Ex Parte Motion	Plaintiff
		195-1	Portions of Gavin Snyder's Declaration	
		195-2	Transcript of Dr. Bigg's Deposition Testimony	
197	Defendant	198	Portions of Defendant's Supplemental Brief	Kenosha and Gronostaj
207	Defendant	208	Portions of Defendant's Motion to Compel	Plaintiff
		208-1	Transcript of Dr. Bigg's Deposition Testimony	
		208-2, -3, -4, -5	Plaintiff's Privilege Logs	
		208-6	Plaintiff's Objections and Responses to Defendant's Notice of Deposition	
210	Kenosha and Gronostaj	211	Portions of Kenosha and Gronostaj's Supplemental Brief	Kenosha and Gronostaj; Plaintiff
213	Plaintiff	214	Portions of Plaintiff's Supplemental Brief	Kenosha and Gronostaj

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I. Background

A. Motions to Seal Defendant's Ex Parte Motion and Plaintiff's Response

On February 10, 2023, Defendant filed a motion to file under seal portions of its Ex Parte Motion Regarding Discovery Dispute of Plaintiff's Clawed-Back Documents (ECF

1 No. 181), along with the entirety of Exhibits B through E¹ (ECF Nos. 181-1, -2, -3, -4).
2 (ECF No. 180.) As the Motion seeks to protect, *inter alia*, Plaintiff's privilege logs, the
3 Court directed Plaintiff to file a response addressing the legal basis for filing under seal.
4 (ECF No. 191.) On February 15, 2023, Plaintiff filed its Response in Support of
5 Defendant's Motion to File Documents Under Seal. (ECF No. 193.)

6 On the same day, Plaintiff also filed a renewed motion to file under seal portions of
7 Plaintiff's Response to Defendant's Ex Parte Motion (ECF No. 195), portions of Gavin
8 Snyder's Declaration (ECF No. 195-1), and all of Exhibit A² (ECF No. 195-2). (ECF No.
9 194.) Plaintiff's 194 Motion seeks to protect the Plaintiff's privilege logs and similar
10 deposition testimony as Defendant's 180 Motion. (*Compare* ECF Nos. 180, 181 *with* ECF
11 Nos. 194, 195.)

12 **B. Motions to Seal All Parties' Supplemental Briefs**

13 On February 10, 2023, the Court issued a supplemental briefing schedule regarding
14 Kenosha and Gronostaj's Motion to Quash Defendant's Subpoenas (ECF No. 149). (ECF
15 No. 183.) Pursuant to the Court's Order, on February 17, 2023, Defendant filed a motion
16 to file under seal portions of its Supplemental Brief (ECF No. 198). (ECF No. 197.) On
17 February 24, 2023, Kenosha and Gronostaj filed a motion to file under seal portions of
18 their Response to Defendant's Supplemental Brief (ECF No. 211). (ECF No. 210.) On
19 the same day, Plaintiff filed a motion to file under seal portions of its Response to
20 Defendant's Supplemental Brief (ECF No. 214). (ECF No. 213.)

21 All three Motions seek to protect information the parties assert contain Kenosha and
22 Gronostaj's "sensitive" and "confidential" business information. (ECF Nos. 197 at 2; 210
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26 ¹ ECF Nos. 181-1 through 181-3 are Plaintiff's privilege logs. ECF No. 181-4 is a
27 transcript of the deposition testimony taken from Dr. James Biggs, Plaintiff's Founder and
28 Chief Technology Officer, on February 9, 2023.

² ECF No. 195-2 is a transcript of Dr. Biggs' deposition testimony from February 10,
2023.

1 at 2; 213 at 2.) Additionally, Kenosha and Gronostaj seek to seal information regarding
2 Plaintiff's privilege logs. (ECF Nos. 210 at 2; 211 at 2, 4.)

3 C. Motion to Seal Defendant's Motion to Compel

4 On February 21, 2023, Defendant filed a motion to file under seal portions of its
5 Motion to Compel (ECF No. 208) and the entirety of Exhibits B through F (ECF Nos. 208-
6 1, -2, -3, -4, -5) and Exhibit H³ (ECF No. 208-6). (ECF No. 207.)

7 II. Legal Standard

8 "Historically, courts have recognized a 'general right to inspect and copy public
9 records and documents, including judicial records and documents,'" which is "justified by
10 the interest of citizens in 'keep[ing] a watchful eye on the workings of public agencies.'" *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting
11 *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597, 598 (1978)). As such, a party seeking
12 to seal a judicial record attached to a dispositive motion must "articulate[] compelling
13 reasons supported by specific factual findings" that can surmount the "strong presumption
14 in favor of access to court records." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d
15 1122, 1135 (9th Cir. 2003).

17 However, a different standard applies to non-dispositive motions. *Kamakana*, 447
18 F.3d at 1179. "Non[-]dispositive motions 'are often unrelated, or only tangentially related,
19 to the underlying cause of action,' and, as a result, the public's interest in accessing
20 dispositive materials does 'not apply with equal force' to non-dispositive materials."
21 *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*, 447
22 F.3d at 1179). "In light of the weaker public interest in non[-]dispositive materials, we
23 apply the 'good cause' standard when parties wish to keep them under seal." *Pintos*, 605
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26 ³ ECF No. 208-1 is a transcript of Dr. Biggs' deposition testimony from February 9
27 and 10, 2023. ECF Nos. 208-2 through 208-5 are Plaintiff's privilege logs. ECF No. 208-
28 6 is Plaintiff's Objections and Responses to Defendant's Notice of Deposition for Dr.
Biggs.

1 F.3d at 678. “There may be ‘good cause’ to seal records that are privileged, contain trade
2 secrets, contain confidential research, development or commercial information, or if
3 disclosure of the information might harm a litigant’s competitive standing.” *Mezzadri v.*
4 *Med. Depot, Inc.*, No. 14-CV-2330-AJB-DHB, 2015 WL 12564223, at *2 (S.D. Cal. Dec.
5 18, 2015).

6 **III. Discussion**

7 **A. Noncompliance with the Court’s Stipulated Protective Order**

8 As an initial matter, the moving parties in ECF Nos. 180, 197, 207, 210, and 213 are
9 seeking to file under seal information designated as confidential by a nonmoving party.

10 Where a motion to file documents under seal seeks to protect the confidential
11 information of another party, the non-designating party may not have sufficient knowledge
12 to inform the Court why the material warrants protection. As such, the Court’s Order
13 Entering Protective Order (“Protective Order”) sets forth a procedure where parties seeking
14 a motion to file documents under seal must confer prior to filing the motion. Specifically,
15 pursuant to Paragraph 22(e), “[i]f the application to file a document designated as
16 confidential under seal is being made by the non-designating party, then, upon request, the
17 designating party must promptly provide the applicant with a legal basis for the confidential
18 designation and the non-designating party must include the basis in the application.” (*See*
19 *ECF No. 37 at ¶ 22(e).*)

20 Here, in ECF Nos. 180, 197, 207, 210, and 213, the moving party is not the
21 designating party. Yet, the moving parties failed to seek and include a legal basis from the
22 designating party as required by the Protective Order. For all future motions to file under
23 seal, all parties are directed to read and comply with the procedures set forth in the
24 Protective Order. (*See ECF No. 37 at ¶ 22(e).*)

25 **B. Failure to Set Forth Good Cause**

26 Not only do five of the Motions fail to comply with Judge Burkhardt’s Civil
27 Chambers Rules (*see ECF Nos. 180, 197, 207, 210, and 213*), but all six also fail to make
28 the requisite showing of good cause.

1 1. *Specificity Required*

2 ECF Nos. 180, 197, 207, and 210 rely solely on blanket claims that the
3 redacted information contains “sensitive [and] confidential business information” or
4 information “designated as Confidential – Attorneys’ Eyes Only.” (*See* ECF Nos. 180 at
5 2; 197 at 2; 207 at 2; 210 at 2.) No other legal analysis is provided, much less analysis
6 specifically addressing the particular portions of each document the parties seek to redact,
7 as the Court expects. Accordingly, these Motions fail to demonstrate good cause. *See*,
8 *e.g.*, *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (“Broad
9 allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not
10 satisfy the Rule 26(c) test.”) (quoting *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108,
11 1121 (3rd Cir. 1986)).⁴

12 Further, a cursory review of the proposed redactions in all filings reveal that few, if
13 any, of the proposed redacted portions are likely to warrant filing under seal. For example,
14 in ECF No. 210, Kenosha and Gronostaj seek to seal *the number of documents* on their
15 privilege logs (ECF No. 211 at 2). Similarly, in ECF Nos. 180, 194, and 207, Plaintiff and
16 Defendant seek to seal the entirety of Dr. Biggs’ deposition testimony (ECF Nos. 181-4,
17 195-2, 208-1), many portions of which contain only publicly available information. (*See*,
18 *e.g.*, ECF No. 181-4 at 1–7, 18.)

19 2. *Sealing Plaintiff’s Privilege Logs*

20 In ECF Nos. 180 and 207, Defendant seeks to seal in their entirety exhibits
21 comprised of Plaintiff’s privilege logs (ECF Nos. 181-1, -2, -3; 208-2, -3, -4, -5). (ECF
22 Nos. 180 at 2; 207 at 2.) Additionally, in ECF No. 210, Kenosha and Gronostaj seek to
23 seal information regarding the content of Plaintiff’s privilege logs (ECF No. 211 at 2).
24 (ECF No. 210 at 2.)

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27 ⁴ Plaintiff’s 213 Motion is more specific in that it only seeks to seal the numbers of
28 certain subsets of documents in privilege logs and does include some analysis. However,
the Motion fails to set forth good cause for sealing the proposed redacted information.

1 All parties argue there are “[c]ompelling reasons” to seal the privilege logs but
2 support their allegations with only cursory references to “sensitive” and “confidential
3 business information” or designations as “Confidential,” “Confidential – Outside
4 Attorneys’ Eyes Only,” or “Confidential – Attorneys’ Eyes Only.” (ECF Nos. 180 at 2;
5 193 at 2; 207 at 2; 210 at 2.) In its Response in Support of Defendant’s 180 Motion,
6 Plaintiff expounds that the privilege logs “contain details of [Plaintiff’s] confidential
7 business and professional relationships” protected by the professional conduct code and
8 “sensitive internal communications reflecting how [Plaintiff] has prepared for this
9 litigation and continues to manage this litigation.” (ECF No. 193 at 2.)

10 However, no party provides any authority to support the argument that general
11 information provided on privilege logs merits protection.⁵

12 In conclusion, the parties may have good cause to file under seal some subset of the
13 material they seek to redact in these six Motions; however, the current pleadings do not
14 provide enough specificity and authority for the Court to reach such a conclusion.

15 **IV. CONCLUSION**

16 For the aforementioned reasons, the Court hereby rules as follows:

- 17 • The Court **DENIES WITHOUT PREJUDICE** Defendant’s Motion to File Under
18 Seal its Ex Parte Discovery Motion (ECF No. 180). Defendant **MAY FILE** a
19 renewed motion to file under seal any information for which good cause exists
20 within fourteen (14) days of the electronic docketing of this Order. Should
21 Defendant choose not to file a renewed motion, Defendant **SHALL PUBLICLY**
22 **FILE** ECF No. 181 in its entirety, subject to the redaction of Dr. Bigg’s address,
23 within twenty-one (21) days of the electronic docketing of this Order.

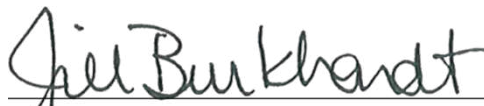
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27 ⁵ The Court acknowledges that it previously sealed Plaintiff’s privilege logs based on
28 agreement of the parties. This decision was reached through an informal conference and
without legal analysis. (See ECF No. 92.)

- 1 • The Court **DENIES WITHOUT PREJUDICE** Plaintiff's Motion to File Under
2 Seal its Response (ECF No. 194). Plaintiff **MAY FILE** a renewed motion to file
3 under seal any information for which good cause exists within fourteen (14) days of
4 the electronic docketing of this Order. Should Plaintiff choose not to file a renewed
5 motion, Plaintiff **SHALL PUBLICLY FILE** ECF No. 195 in its entirety within
6 twenty-one (21) days of the electronic docketing of this Order.
- 7 • The Court **DENIES WITHOUT PREJUDICE** Defendant's Motion to File Under
8 Seal its Supplemental Brief (ECF No. 197). Defendant **MAY FILE** a renewed
9 motion to file under seal any information for which good cause exists within fourteen
10 (14) days of the electronic docketing of this Order. Should Defendant choose not to
11 file a renewed motion, Defendant **SHALL PUBLICLY FILE** ECF No. 198 in its
12 entirety within twenty-one (21) days of the electronic docketing of this Order.
- 13 • The Court **DENIES WITHOUT PREJUDICE** Defendant's Motion to File Under
14 Seal its Motion to Compel (ECF No. 207). Defendant **MAY FILE** a renewed
15 motion to file under seal any information for which good cause exists within fourteen
16 (14) days of the electronic docketing of this Order. Should Defendant choose not to
17 file a renewed motion, Defendant **SHALL PUBLICLY FILE** ECF No. 208 in its
18 entirety within twenty-one (21) days of the electronic docketing of this Order.
- 19 • The Court **DENIES WITHOUT PREJUDICE** Kenosha and Gronostaj's Motion
20 to File Under Seal their Supplemental Brief (ECF No. 210). Kenosha and Gronostaj
21 **MAY FILE** a renewed motion to file under seal any information for which good
22 cause exists within fourteen (14) days of the electronic docketing of this Order.
23 Should Kenosha and Gronostaj choose not to file a renewed motion, Kenosha and
24 Gronostaj **SHALL PUBLICLY FILE** ECF No. 211 in its entirety within twenty-
25 one (21) days of the electronic docketing of this Order.
- 26 • The Court **DENIES WITHOUT PREJUDICE** Plaintiff's Motion to File Under
27 Seal its Supplemental Brief (ECF No. 213). Plaintiff **MAY FILE** a renewed motion
28 to file under seal any information for which good cause exists within fourteen (14)

1 days of the electronic docketing of this Order. Should Plaintiff choose not to file a
2 renewed motion, Plaintiff **SHALL PUBLICLY FILE** ECF No. 214 in its entirety
3 within twenty-one (21) days of the electronic docketing of this Order.

4 **IT IS SO ORDERED.**

5 Dated: March 8, 2023

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7 Hon. Jill L. Burkhardt
8 United States Magistrate Judge
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