

United States District Court
For the Northern District of California

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

ORACLE AMERICA, INC.,

Plaintiff,

No. C 10-03561 WHA

v.

GOOGLE INC.,

Defendant.

**ORDER RE
SEALING MOTIONS**

The parties filed dozens of sealing motions. This order resolves those motions without prejudice to whether the same material would be sealable in any further proceedings in this case. The “compelling reasons” standard applies to the bulk of these motions, which relate to materials submitted in connection with motions *in limine* and post-trial motions, which go to the heart of the merits of the case. *See Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092 (9th Cir. 2016), cert. denied sub nom. *FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016). Only “good cause” is necessary for the sealing motion relating to Google’s motion for sanctions and fees (*see* Dkt. No. 2025).

In any future filings, where the parties file a motion supported by materials sought to be filed under seal, they should please file the underlying motion as a separate docket entry from the sealing motion. Many of the sealing motions addressed herein did not follow that procedure, causing confusion in the management of the docket, particularly when cross-referencing docket entries. Similarly, many of the supporting declarations were not identified

1 as such, and failed to identify the motion or motions they supported, or confused the docket
 2 entry for the sealing motions in question with some other document.

3 Additionally, the parties’ practice of overdesignating initially then partially withdrawing
 4 designations when the opposing party files documents under seal meant most motions required
 5 reference to at least two, often three or four separate documents just to discern what excerpts
 6 are sought to be sealed. Civil Local Rule 7-11(a) requires motions for administrative relief,
 7 such as sealing motions, to be accompanied by a stipulation or a declaration explaining why no
 8 stipulation could be obtained. Had our parties met and conferred over possible stipulations for
 9 these sealing motions, they might have been able to mitigate the mess they served up.

Sealing Motion Docket Number	Designating Party’s Supporting Declaration Docket Number	Disposition
1550	1580	GRANTED to the extent stated in Google’s supporting declaration. The documents sought to be filed under seal contain raw data for a survey, which includes the personal identifying information of non-parties who completed the survey.
1551	None.	DENIED. The designating party, Google, filed no supporting declaration.
1553	None.	DENIED. The designating party, Google, filed no supporting declaration.
1554	1580	DENIED. This motion relates only to the figures in the brief, not the underlying reports. There are no compelling reasons for sealing these figures, which are cumulative and do not reveal the underlying data on which they rely.
1556	None.	DENIED. The designating party, Google, filed no supporting declaration.
1560	1560-1, 1577	<p>GRANTED as to the following paragraphs identified by either side, which are internal financial figures or the terms of third-party business negotiations or deals, which, if revealed, could cause competitive harm.</p> <p>Malackowski Rep. (Jan. 8):</p> <ul style="list-style-type: none"> • The data in Figure 3 from 2014 and 2015, and only the overall total from the total column.

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Sealing Motion Docket Number	Designating Party's Supporting Declaration Docket Number	Disposition
		<ul style="list-style-type: none"> • The percentage and dollar amount in ¶ 118. • The identified portions of ¶¶ 153–58, 191, 249–50, 260 (as to the 2015 data only), 263 (as to the 2015 data only), 267, 274–276, 282, 286–94 (2014 and 2015 data only, totals may <i>not</i> be redacted), 316, including the related figures and tables. • The data from 2014 and 2015 in Figures 24–28. • The data from 2014 and 2015 in Exhibits, 7, 7.1, 8, and 8.1. • The data from 2014 and 2015 in Exhibits 12, 12.1, 12.2, 12.4, 12.6, and 12.9. <p>Malackowski Rep. (Feb 29):</p> <ul style="list-style-type: none"> • The dollar amounts in ¶ 94, and footnote 88. • The dollar amounts in ¶ 275. • The 2014 and 2015 data in Exhibits 7–8.1 and 14. • Exhibits 14.1 and 14.2. <p>Jaffe Rep. (Feb. 8):</p> <ul style="list-style-type: none"> • The identified portions in ¶¶ 21, 235, 244 (2014 and 2015 data only), 249, 255, 267, and 301. • The percentages and dollar amounts in ¶¶ 269 and 272. • The identified portions of Figures 30, 39 (2014 and 2015 data only), 43, 48, and Tables 6 and 7. • The identified portions of Exhibits 8, 9 (2014 and 2015 data only), 11–16, and 22.

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Sealing Motion Docket Number	Designating Party's Supporting Declaration Docket Number	Disposition
		Kemerer Rep. (Jan. 8): <ul style="list-style-type: none"> • The identified line-items on pages 216–17. Ringhofer Dep. <ul style="list-style-type: none"> • The dollar amounts on page 69.
1563	1580	GRANTED to the extent stated in Google's supporting declaration.
1574	None.	DENIED. The designating party, Google, filed no supporting declaration.
1582	1582-2, 1596.	GRANTED as described in the respective supporting declarations, except as to requests withdrawn by Google (Dkt. No. 1637).
1583	1583-1, 1640	GRANTED as described in the respective supporting declarations, except as to requests withdrawn by Google (Dkt. No. 1637).
1601	1636	GRANTED as described in Google's supporting declarations, except as to requests withdrawn by Google (Dkt. No. 1637).
1602	1602-2	DENIED. The materials sought to be sealed are experts' calculations of multi-year totals and aggregate ratios and do not reveal any sealable underlying information.
1612	None.	DENIED. The designating party, Google, filed no supporting declaration.
1613	1635	GRANTED only as to the dollar values and percentages in footnote 9 of Oracle's opposition, and the dollar amounts and percentages in Appendix A.
1614	1635	GRANTED only as to the identified portions of the Kolotourous deposition.
1619	None.	DENIED. The designating party, Google, does not seek to seal these materials (<i>see</i> Dkt. No. 1637)

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Sealing Motion Docket Number	Designating Party's Supporting Declaration Docket Number	Disposition
1621	None.	DENIED. This motion relates to materials designated under the protective order by both sides. Oracle did not file a supporting declaration, and Google does not seek to seal these materials (<i>see</i> Dkt. No. 1637).
1622	None.	DENIED. This motion relates to materials designated under the protective order by both sides. Oracle did not file a supporting declaration, and Google does not seek to seal these materials (<i>see</i> Dkt. No. 1637).
1623	1623-3	DENIED. The figures sought to be sealed are an expert's estimates of total damages or total costs incurred in hypothetical situations. There are no compelling reasons to seal these figures.
1625	None.	DENIED. The designating party, Google, does not seek to seal these materials (<i>see</i> Dkt. No. 1637).
1627	None.	DENIED. The designating party, Oracle, filed no supporting declaration.
1629	1629-2	GRANTED to the extent described in Oracle's supporting declaration, which relates to the terms of confidential third-party business deals.
1633	None.	DENIED. The designating party, Oracle, filed no supporting declaration.
1644	None.	DENIED. The designating party, Google, filed no supporting declaration.
1645, 1646	1686	DENIED. The materials sought to be sealed are an expert's calculations of mutli-year totals and aggregated ratios that do not reveal any sealable underlying information.
1654	None.	DENIED. The designating party, Google, filed no supporting declaration.
1655	1686	DENIED. The materials sought to be sealed are an expert's calculations of multi-year totals, some of which occur in alternate-reality scenarios, and do not reveal any sealable underlying information.
1656	1686	DENIED. This figure is an expert's calculation of a multi-year total that does not reveal any sealable underlying information.

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Sealing Motion Docket Number	Designating Party's Supporting Declaration Docket Number	Disposition
1660	1660-5	DENIED. The materials sought to be sealed are an expert's calculations of multi-year totals that do not reveal any sealable underlying information.
1684	None.	DENIED. The designating party, Google, filed no supporting declaration.
1705	None.	DENIED. The designating party, Oracle, filed no supporting declaration.
1727	None.	DENIED. The designating party, Oracle, filed no supporting declaration.
1766	None.	DENIED. Oracle does not seek to seal this document (<i>see</i> Dkt. No. 1842).
1796	None.	DENIED. The designating party, Oracle, filed no supporting declaration.
1958	1985	<p>GRANTED as to the portions of Exhibit A identified in Google's supporting declaration, which reflect Google's internal financial data and the terms of confidential third-party agreements.</p> <p>DENIED as to the generic description of Exhibit A in Oracle's motion.</p>
1995, 2001, 2002	1995-2, 2004	<p>GRANTED as to the materials identified in the parties' supporting declarations, <i>except</i> as to the portions of pages 6 and 9 of Oracle's motion for a new trial identified by Google. The sealed materials relate to internal financial matters and third-party business dealings that could cause the designating party competitive harm if made public.</p> <p>The materials in Oracle's motion that may not be sealed go to the heart of Oracle's argument for a new trial, and Google has not shown that it would suffer harm if its discussions about the business and technical relationship <i>vel non</i> between Android and Chrome OS is made public (to the extent it has not already been made public).</p>
2011	None.	DENIED. Oracle does not seek to seal this document (<i>see</i> Dkt. No. 2016).
2018	2021	DENIED for the same reasons stated regarding Dkt. Nos. 1995, 2001, and 2002.

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Sealing Motion Docket Number	Designating Party's Supporting Declaration Docket Number	Disposition
2025	2030	GRANTED to the extent stated in Google's supporting declaration.
2046	2051	DENIED for the same reasons stated regarding Dkt. Nos. 1995, 2001, and 2002.
2047	2047-2	DENIED as to Anderson's declaration, for the same reasons stated regarding Dkt. Nos. 1995, 2001, and 2002, but otherwise GRANTED .
2054	2060	DENIED for the same reasons stated regarding Dkt. Nos. 1995, 2001, and 2002.
2056	None.	DENIED . Both sides agree the material sought to be sealed can be made public (<i>See</i> Dkt. Nos. 2056-1, 2059).

Any sealing requests not expressly granted above are **DENIED**, either as unsupported by a declaration at all, or as lacking *compelling reasons* for denying the public access to the materials.

This order further notes that the supporting declarations often identified paragraphs that contained no highlighted text (indicating materials sought to be sealed), but failed to identify nearby paragraphs that *did* include highlighted text. This order did not attempt to correct what appear to be numerous errors by counsel. Nor did it speculate about the reasons for sealing information where the supporting declaration offered only a perfunctory statement about a broad swath of materials and the information itself did not appear sealable on its face.

If either side seeks reconsideration based on supplemental supporting declarations, such declarations must be filed by **APRIL 13** and must identify, with specificity, the compelling reason for each and every proposed redaction. Merely asserting the fact that information is kept confidential (especially if the allegedly sealable information has been inextricably mixed, via an expert's estimates, with information that does not warrant sealing) and vaguely contending its disclosure would cause competitive harm is insufficient.

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The parties shall please file new versions of the documents that were the subject of this order in accordance with this order by **APRIL 20**. Please file them so that an ordinary mortal reviewing our docket can understand which redacted document belongs where.


Google’s motion to remove an incorrectly filed exhibit (Dkt. No. 1579) is **GRANTED**.

Google’s motion for sanctions and for civil contempt (Dkt. No. 2014) is **DENIED AS MOOT**, in light of the parties’ settlement of the issues raised therein (*see* Dkt. No. 2067).

Additionally, the motion to withdraw appearances filed on behalf of non-party LG Electronics, Inc., is **GRANTED** (Dkt. No. 1525).

IT IS SO ORDERED.

Dated: March 30, 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE