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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE GOOGLE RTB CONSUMER  
PRIVACY LITIGATION

Case No.21-cv-02155-YGR (VKD)

**ORDER GRANTING IN PART  
MOTION TO SEAL MAY 16, 2023  
HEARING**

Re: Dkt. No. 571

United States District Court  
Northern District of California

On August 28, 2023, defendant Google LLC (“Google”) filed an administrative motion to seal portions of the transcript of the Court’s May 16, 2023 discovery hearing. Dkt. No. 571. Plaintiffs oppose this motion, arguing that Google has not established good cause to seal the information in question, that its supporting declaration is improper, and that the motion is untimely. Dkt. No. 574.

This is Google’s second motion to seal the May 16, 2023 hearing transcript. *See* Dkt. No. 561. The Court denied Google’s earlier request without prejudice, noting that the hearing was open to the public, the motion was untimely, and that Google had not established good cause to seal the portions of the transcript it identified. Dkt. No. 564.

There is a strong presumption in favor of access by the public to judicial records and documents accompanying dispositive motions that can be overcome only by a showing of “compelling reasons supported by specific factual findings.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (cleaned up). However, the presumption does not apply equally to a motion addressing matters that are only “tangentially related to the merits of a case.” *Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). A party seeking to seal documents or information in connection with such a motion must meet the

1 lower “good cause” standard of Fed. R. Civ. P. 26(c). *Id.* at 1098-99; *Kamakana*, 447 F.3d at  
2 1179-80. The discovery hearing at issue here does not address the merits of either party’s claims  
3 or defenses, so the Court applies the “good cause” standard of Rule 26(c).

4 Google argues that good cause exists here because “[p]ublic disclosure of [the identified]  
5 information would reveal Google’s internal strategies, system designs, and business practices for  
6 operating and maintaining its important proprietary services.” Dkt. No. 571 at 4. It also claims  
7 that disclosure would “create[] a serious cybersecurity risk as third parties may seek to use this  
8 information to compromise Google’s data sources, including data logs.” *Id.* Google notes that its  
9 current sealing request is narrower than its first sealing request. *Id.* at 1. *See also* Dkt. No. 571-1  
10 ¶ 3; Dkt. No. 561-1 ¶ 3. Google relies on a declaration by its counsel that counsel says is “based  
11 on [his] review, consultation with [his] client, and familiarity with this Court’s prior sealing  
12 orders.” Dkt. No. 571-1 ¶ 3.

13 Plaintiffs argue that much of the information Google seeks to seal is already publicly  
14 available and that Google’s allegations of potential harm are generic. Dkt. No. 574 at 2-3. They  
15 also complain that Google relies on a declaration from its counsel for factual support. *Id.* at 3-4.

16 The Court agrees with Google that good cause exists to seal many of the portions of the  
17 May 16, 2023 hearing transcript it identifies. Its prior order faulted Google for seeking to seal  
18 information that was publicly available elsewhere, like the names of its internal data fields. Dkt.  
19 No. 564 at 3. Google’s revised redactions are more narrowly tailored to protect information  
20 regarding the company’s internal systems and operations. Dkt. No. 571-1 ¶ 3; Dkt. No. 561-1 ¶ 3;  
21 Civil L.R. 79-5(c)(3). The plaintiffs argue that much of the information Google seeks to seal here  
22 was revealed in *Brown v. Google* (No. 20-cv-3664), a related case. *See* Dkt. No. 574-1 ¶ 2. After  
23 reviewing the filings in *Brown* cited by the plaintiffs, the Court concludes they do not reveal all of  
24 the information Google seeks to seal here and do not compel public disclosure of the entire  
25 hearing transcript. However, the Court agrees with plaintiffs that some of Google’s proposed  
26 redactions cover publicly available information or high-level descriptions that are not appropriate  
27 subjects for sealing. *See id.* ¶¶ 1, 4. The Court identifies the portions of the transcript for which it  
28 finds good cause for sealing in the table below.

1 Plaintiffs’ other arguments are not persuasive. While Google’s prior motion contained  
 2 only generic statements that “public disclosure of this information presents serious risk of  
 3 irreparable harm” (Dkt. No. 561-1 ¶ 7), its current submission addresses the “specific prejudice or  
 4 harm” that would result from its disclosure. *In re Volkswagen "Clean Diesel" Mktg., Sales  
 5 Pracs., & Prod. Liab. Litig.*, No. 3:16-CV-2086-CRB, 2019 WL 13268668, at \*3 (N.D. Cal. Sept.  
 6 13, 2019) (quoting *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th  
 7 Cir. 2002)). In particular, Google explains that this information could be used by cybercriminals  
 8 to target its users if publicly disclosed. *See* Dkt. No. 571-1 ¶¶ 7-8. Additionally, the Court notes  
 9 that the District’s Local Rules only require “evidentiary support from declarations *where*  
 10 *necessary.*” Civil L.R. 79-5(c)(2) (emphasis added); Dkt. No. 531 at 3. Declarations from counsel  
 11 may be insufficient to support a sealing request in some instances. *See Waymo LLC v. Uber  
 12 Techs., Inc.*, No. 17-CV-00939-WHA (JSC), 2017 WL 3581171, at \*3 (N.D. Cal. Aug. 18, 2017)  
 13 (“There is no point in having attorneys submit declarations in support of sealing if the Court is  
 14 required to order a document sealed merely because an attorney says he thinks it should be.”);  
 15 *Celgard, LLC v. Targray Tech. Int’l Inc.*, No. 19-CV-02401-VKD, 2019 WL 3841997, at \*2 (N.D.  
 16 Cal. Aug. 15, 2019) (counsel declaration which “briefly and generally asserts” potential for harm  
 17 would “ordinarily . . . be insufficient”). While a declaration of counsel is less compelling than a  
 18 declaration of a knowledgeable party employee, the Court relies principally on the arguments  
 19 Google makes in support of its sealing request, a review of the record in this case regarding what  
 20 has already been publicly disclosed, and a careful examination of the material sought to be sealed.

21 In these circumstances the Court concludes that Google has demonstrated good cause to  
 22 seal the following material and the Court orders that it be sealed:

Document	Portions to be filed Under Seal
May 16, 2023 Hearing Transcript	Portions highlighted at page(s) of Dkt. No. 571-2: 7:5-11; 7:13; 7:18-20; 7:25 – 8:3; 8:8-11; 8:16; 10:1; 10:8-10; 11:2; 12:4-5; 12:12; 16:14-15; 16:20; 19:11-13; 19:16; 20:6-7; 22:22-23; 23:9; 24:10-16; 24:18-21; 27:2-3; 27:9; 28:8; 28:11-13; 28:15; 28:17-20; 28:22 – 29:2; 29:18; 30:2; 30:6; 33:19-20; 33:24-25; 34:2-6; 34:12; 34:20; 34:22 – 35:2; 35:5;

United States District Court  
Northern District of California

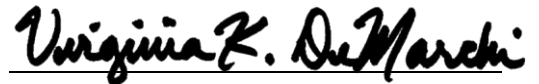
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	36:7-8; 37:5-6; 37:21-22; 37:24; 38:6-8; 38:19; 38:22-23; 39:3-5; 39:8; 39:10; 39:15; 39:20-22; 40:21; 41:11; 41:20; 41:22; 41:24; 43:2; 43:5; 43:11-12; 43:16; 44:7; 44:13-14; 44:16; 45:16; 45:21; 45:25; 47:3; 47:12; 47:17; 47:20; 48:3-4; 49:20; 49:23-24; 50:23 – 51:2; 51:18; 53:8-9; 55:2; 55:21; 55:24; 56:8-12; 56:14-15; 56:17-19; 57:11; 57:21-22; 57:24; 58:9-12; 58:18-19; 58:25; 59:2; 59:15; 59:19; 60:13; 60:15; 60:19-22; 61:7-9; 61:12; 61:15; 62:4; 62:7; 62:10; 62:13; 62:15-16; 62:18-19; 62:21-22; 63:2-3; 63:11-12; 63:20; 63:23-24; 64:24; 65:3; 65:7-8; 65:12; 65:14; 65:21; 66:3-4; 67:10-11; 67:25; 68:9-11; 69:22; 70:14; 70:17-18; 71:1 <sup>1</sup>
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The Clerk of Court is directed to coordinate with the certified transcriber to prepare a redacted transcript as described above. The certified transcriber shall file a redacted transcript on the docket. This order terminates Dkt. No. 571.

**IT IS SO ORDERED.**

Dated: September 11, 2023



VIRGINIA K. DEMARCHI  
United States Magistrate Judge

<sup>1</sup> Google has not established good cause to seal the following portions of the transcript: Dkt. No. 571-2 at 15:15-16; 17:3-4; 40:3 and 40:5.