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APPLE INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

18 FIRSTFACE CO., LTD.,
19 Plaintiff,
20 v.
21 APPLE INC.,
22 Defendant.

Case No. 3:18-cv-02245-JD

**JOINT COMBINED
ADMINISTRATIVE MOTION TO
SEAL PURSUANT TO
PARAGRAPH 31 OF STANDING
ORDER FOR CIVIL CASES**

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1 Pursuant to Civil Local Rules 7-11 and 79-5, the Court's December 28, 2022 Order
2 regarding Pending Motions to Seal (D.I. 234), and Paragraph 31 of the Standing Order for Civil
3 Cases Before Judge Donato, Plaintiff Firstface Co., Ltd.'s ("Firstface") and Defendant Apple
4 Inc.'s ("Apple") (collectively, the "Parties") submit this Joint Combined Administrative Motion
5 to Seal ("Combined Motion").

6 This Combined Motion supersedes and combines the following motions filed by the
7 Parties:

- 8 • Parties' Joint Omnibus Motion to File Under Seal, filed on January 13, 2023
9 (D.I. 246);
- 10 • Apple's Administrative Motion to File Under Seal Apple's Opposition to
11 Firstface's Motion for Partial Summary Judgment, filed on January 31, 2023
12 (D.I. 252); and
- 13 • Firstface's Administrative Motion to File Under Seal Pursuant to Civil L.R. 79-
14 5(F), filed on January 31, 2023 (D.I. 256).¹

15 Collectively, the above-referenced motions covered sealing requests made in connection
16 with the following 11 motions (collectively, "the Motions"):

- 17 1. Firstface's Motion to Strike Apple's Second Amended Invalidity
18 Contentions;
- 19 2. Firstface's Motion to Strike Portions of Apple's Post-Discovery Disclosure
20 of New Knowledge of Mr. Chris Thomas;
- 21 3. Apple's Motion for Summary Judgment;
- 22 4. Apple's *Daubert* Motion to Exclude Testimony of Nigel A. Jones
23 ("Apple's Motion to Exclude Jones");
- 24 5. Apple's *Daubert* Motion to Exclude Testimony of Kevin C. Almeroth

25
26 ¹ As to D.I. 256, Apple only seeks to file under seal the material contained herewith. In addition,
27 while Firstface filed an Administrative Motion to File Under Seal Pursuant to Civil L.R. 79-5(F)
28 on February 24, 2023 (D.I. 265), Apple does not seek to file under seal the material that is the
subject of that motion.

1 (“Apple’s Motion to Exclude Almeroth”);

2 6. Apple’s *Daubert* Motion to Exclude Testimony of Jim Bergman (“Apple’s
3 Motion to Exclude Bergman”);

4 7. Firstface’s Motion for Partial Summary Judgment;

5 8. Apple’s Opposition to Firstface’s Motion for Partial Summary Judgment;

6 9. Firstface’s Opposition to Apple’s *Daubert* Motion to Exclude Testimony
7 of Jim Bergman (“Firstface’s Bergman Opposition”);²

8 10. Firstface’s Opposition to Apple’s *Daubert* Motion to Exclude Testimony
9 of Nigel A. Jones (“Firstface’s Jones Opposition”); and

10 11. Firstface’s Opposition to Apple’s Motion for Summary Judgment
11 (“Firstface’s Summary Judgment Opposition”).

12 Specifically, the Parties request the Court order the materials identified in Tables 1 to 6 of
13 this Combined Motion be sealed for the reasons described below and in the Declaration of
14 Nicholas Fung in Support of the Parties’ Joint Combined Administrative Motion to Seal Pursuant
15 to Paragraph 31 of Standing Order for Civil Cases (“Fung Decl.”). Petr Kostka, a Software
16 Engineering Manager at Apple, Catherine Spevak, Finance Manager at Apple, Chris Thomas, a
17 software engineer at Apple, and Heather Mewes, Head of Licensing at Apple, previously
18 submitted declarations in support of sealing Apple’s proprietary information. Those declarations
19 have been filed herewith. Apple submits that each of these documents identified in Tables 1 to 6
20 contains Apple’s highly confidential and proprietary information. More specifically, Apple
21 submits that these documents contain non-public information relating to Apple’s source code,
22 technical strategy, technical design, license agreement payment terms, and financial data that
23

24 ² In the parties’ Joint Omnibus Motion to File Under Seal, filed on January 13, 2023 (D.I. 246),
25 the parties indicated that non-party Global IP Law Group LLP (“Global IP”) requested that
26 certain information on page 2 of Apple’s *Daubert* Motion to Exclude Testimony of Jim Bergman
27 (the sealed version of which is filed at D.I. 214-3) and in paragraph 317 of Exhibit 2 to Apple’s
28 *Daubert* Motion to Exclude Testimony of Jim Bergman (the sealed version of which is filed at
D.I. 214-4) be sealed. Global IP did not submit any supporting statement under Local Rule 79-5.
Since that time, Firstface has confirmed that Global IP no longer seeks to have that information
sealed, and it is thus not part of this Combined Motion.

1 would cause competitive harm if disclosed. The Parties seek to file under seal narrowly tailored
2 portions of the Motions, as discussed below.

3 For some of the confidential information that is the subject of the Combined Motion,
4 Motorola is the “Designating Party,” as the information was produced and designated confidential
5 by Motorola in response to a third-party subpoena served in this case. Motorola requests that the
6 Court administratively seal those portions of Firstface’s Motion to Strike Apple’s Second
7 Amended Invalidity Contentions (D.I. 124) that contain information Motorola designated as
8 confidential. Motorola’s sealing request, identified in Table 7 of this motion, is supported by the
9 declaration of Scott Anderson (“Motorola Decl.”), originally filed on January 13, 2023 (D.I.
10 246-47) and filed herewith.

11 The Parties understood the Court’s December 28, 2022 Order to require the parties to
12 include in the joint motion charts identifying the parties’ sealing requests, which has impacted the
13 page count of this motion.

14 **I. LEGAL STANDARD**

15 Pursuant to the Court’s December 28, 2022 Order, the “compelling reasons” standard
16 applies.³ Courts find that trade secrets and “sources of business information that might harm a
17 litigant’s competitive standing” meet the “compelling reasons” standard. *See Ctr. for Auto Safety*
18 *v. Chrysler Group, LLC*, 809 F.3d 1092, 1097-98 (9th Cir. 2016) (quoting *Nixon v. Warner*
19 *Communications*, 435 U.S. 589, 598-99 (1978)); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th
20 Cir. 2008) (“the common-law right of inspection has bowed before the power of a court to insure
21 that its records are not used . . . as sources of business information that might harm a litigant's
22 competitive standing.”) (quoting *Nixon v. Warner Communications*, at 598).

23
24 ³ The parties note that two of the motions subject to this sealing request are Firstface’s discovery
25 motions—Firstface’s Motion to Strike Portions of Apple’s Second Amended Invalidity
26 Contentions (D.I. 124) and Firstface’s Motion to Strike Apple’s Post-Discovery Disclosure of
27 New Knowledge of Mr. Chris Thomas (D.I. 198). Although the “good cause” standard applies
28 for requests to seal materials associated with a non-dispositive motion, *see Kamakana v. City &*
County of Honolulu, 447 F.3d 1172, 1180 (9th Cir. 2006), Apple submits that its requests to seal
its proprietary information in these two discovery motions also meet the higher “compelling
reasons” standard.

1 **A. Technical Information and Source Code Satisfy the Compelling Reasons**
2 **Standard**

3 Courts in this district have found that trade secrets related to technical information,
4 including descriptions of technical operation and software-related functionality and source code,
5 meet the compelling reasons standard. *See generally Network Appliance, Inc. v. Sun*
6 *Microsystems Inc.*, No. C-07-06053 EDL, 2010 WL 841274 (N.D. Cal. Mar. 10, 2010) (granting
7 motion to seal portions of documents that contain confidential technical information and source
8 code); *see also FTC v. DIRECTV, Inc.*, No. 15-cv-01129-HSG, 2017 WL 840379, at *2 (N.D.
9 Cal. Mar. 3, 2017) (“Confidential source code clearly meets the definition of a trade secret and
10 therefore meets the compelling reasons standard”) (quoting *Apple, Inc. v. Samsung Elecs. Co.*,
11 No. 11-CV-01846-LHK, 2012 WL 6115623, at *2 (N.D. Cal. Dec. 10, 2012)) (citations omitted);
12 *Theranos, Inc. v. Fuisz Pharma LLC*, No. 5:11-cv-05236-PSG, 2013 WL 5770317, at *2 (N.D.
13 Cal. Oct. 24, 2013) (granting motion to seal technical information that remains confidential);
14 *Snapkeys, Ltd. v. Google LLC*, No. 19-CV-02658-LHK, 2021 WL 1951250, at *2-3 (N.D. Cal.
15 May 14, 2021) (compelling reasons exist to seal “proprietary literature describing the structure,
16 configuration, and operation of [...] technology”) (quoting *U.S. Ethernet Innovations, LLC v.*
17 *Acer, Inc.*, 2014 WL 6664621, at *1 (N.D. Cal. Nov. 24, 2014)); *Finjan, Inc. v. Proofpoint, Inc.*,
18 No. 13-cv-05808-HSG, 2016 WL 7429304, at *2 (N.D. Cal. Feb. 9, 2016) (sealing portions of
19 exhibits containing information about the technical operation of products); *MasterObjects, Inc. v.*
20 *Amazon.com, Inc.*, No. C 20-08103 WHA, 2022 WL 4074653, at *3 (N.D. Cal. Sept. 5, 2022)
21 (granting party’s request to seal “information from a deposition of its engineer related to ‘the
22 structure of its source code’ and ‘descriptive file names of specific source code files’”).

23 **B. Confidential Financial, Revenue, Profit, and Sales Data Satisfy the**
24 **Compelling Reasons Standard**

25 Courts in this district have found that financial information and revenue data related to a
26 specific product are sealable under the compelling reasons standard. *Lathrop v. Uber Techs.,*
27 *Inc.*, No. 14-cv-05678, 2016 WL 9185002, at *2 (N.D. Cal. June 17, 2016) (“[U]nder Ninth
28 Circuit law, detailed product-specific financial information...[is] appropriately sealable”);

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