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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

EPIC GAMES, INC.

Plaintiff, Counter-defendant

v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR

COUNTERCLAIMANT APPLE INC.'S ADMINISTRATIVE MOTION TO SEAL

The Honorable Yvonne Gonzalez Rogers

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Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Counterclaimant Apple Inc. ("Apple") moves the Court to redact portions of its Motion for Entry of Judgment on its Indemnification Counterclaim (the "Motion"); the declaration of Mark Rollins (the "Rollins Declaration"); the declaration of Carlyn Irwin (the "Irwin Declaration"); and the declaration of Richard M. Pearl (the "Pearl Declaration"). Apple's proposed redactions of that information are highlighted in GRAY in the attached un-redacted versions of each document and itemized in the concurrently filed Declaration of Mark A. Perry (the "Perry Declaration"). Apple respectfully requests that this Court fully seal Exhibit E to the Irwin Declaration.

Apple requests that the Court seal these documents, as they contain information Apple contends is sealable under controlling law and the Civil Local Rules 79-5. Specifically, the Motion and its accompanying declarations and exhibits contain competitively sensitive, non-public information regarding Apple's: (1) internal billing policies, processes, and systems for conducting litigation and managing vendor billing; (2) negotiations with each of Apple's vendors during the *Epic* matter; and/or (3) financial information relating to costs expended by Apple in the *Epic* litigation.

Accordingly, Apple moves to seal portions of the Motion, and its accompanying declarations and exhibits, and respectfully requests that this Court grant Apple's request to seal the sealable information contained within these documents. Apple's request is narrowly tailored, and the bulk of the submissions will be filed publicly.

LEGAL STANDARD

The Court has "broad latitude" "to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or confidential information." *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). When moving to seal documents attached to a dispositive motion, there must be compelling circumstances that outweigh the public policy in favor of disclosure. *See Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *see also Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). Compelling circumstances may exist when documents contain confidential trade secrets or proprietary information. *See* Fed. R. Civ. P. 26(c)(1)(G) (courts have the power to "require[e] that a trade secret, or other confidential research, development, or commercial information not be revealed");

see also Kamakana, 447 F.3d at 1179 (compelling circumstances include potential release of trade secrets) (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)); *PQ Labs, Inc. v. Qi*, 2014 WL 4617216, at *1 (N.D. Cal. Sept. 15, 2014) (granting multiple motions to seal where publication would lead to the disclosure of trade secrets). To seal information appended to non-dispositive motions, such as motions for attorneys' fees, the movant must establish "good cause." *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783 (N.D. Cal. Mar. 16, 2018). Overall, requests to seal information should be narrowly tailored "to remove from public view only the material that is protected." *Ervine v. Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal. 2016); *Vineyard House, LLC v. Constellation Brands U.S. Ops., Inc.*, 619 F. Supp. 3d 970, 972 n.2 (N.D. Cal. 2021) (Gonzalez Rogers, J.) (granting a motion to seal "because the request is narrowly tailored and only includes confidential information").

DISCUSSION

I. THE COURT SHOULD GRANT APPLE'S REQUEST TO SEAL INFORMATION THAT REFLECTS ITS COMPETITIVELY SENSITIVE INTERNAL BILLING POLICIES, PROCESSES, AND SYSTEMS

Apple seeks to seal competitively sensitive business information regarding its internal billing policies, which reflect Apple's strategy and systems for conducting litigation and managing its vendors. The information is competitively sensitive because public access to this information would cause Apple economic harm and put it at a competitive disadvantage by disclosing not only Apple's billing processes, but also how those processes affect Apple's work with its third-party vendors and law firms. Rollins Decl. ¶ 41; Perry Decl. ¶¶ 7–8; *see also Ctr. for Auto Safety*, 809 F.3d at 1097; *Williams v. Apple Inc.*, 2021 WL 2476916, at *2–*3 (N.D. Cal. June 17, 2021) (noting Apple's narrowed sealing requests with "tailored redactions" and finding "most of Apple's sealing requests[ ] appropriate" to the extent the disclosures "would harm Apple's competitive standing").

Sealing is necessary here because public disclosure of this information would risk competitors or others gaining an unfair business advantage by benefitting from Apple's extensive efforts to create proprietary technology tools and processes for managing their billing and vendor relationships, all of which Apple intended to keep confidential. Rollins Decl. ¶¶ 41–42; Perry Decl. ¶¶ 7–8; *see also, e.g.*, *Algarin v. Maybelline, LLC*, 2014 WL 690410, at *3 (S.D. Cal. Feb. 21, 2014) (sealing "confidential business material" where "improper use by business competitors seeking to replicate L'Oréal's business

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