

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARENDI S.A.R.L.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 13-919-JLH
)	
GOOGLE LLC,)	
)	
Defendant.)	
)	

**LETTER TO THE HONORABLE JENNIFER L. HALL
FROM NEAL BELGAM REGARDING RESPONSE TO THE MOTION FOR
SANCTIONS FILED BY NON-PARTY APPLE INC.**

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Dated: May 7, 2023

Dear Judge Hall:

Plaintiff Arendi S.A.R.L. and its counsel (collectively, “Arendi”) write in response to the Motion for Sanctions filed by non-party Apple Inc. (“Apple”) at D.I. 538. Arendi respectfully requests that the Court deny the motion and will file a full response on or before May 18, 2023, per Local Rule 7.1.2(b). Although Arendi intends to file a timely response to the motion, the inflammatory and meritless accusations against Plaintiff’s law firm warranted an immediate response.

Throughout trial, Arendi repeatedly requested to seal the courtroom whenever it anticipated that details of the settlement agreement between Arendi and Apple might be discussed. *E.g.*, Trial Tr. (4/26) at 575:21-576:3; 588:23-589:8. Arendi even distributed demonstratives to the jury during opening and closing that would obviate the need to discuss in open Court the license agreement at issue. Arendi took special precautions to avoid disclosing details of the agreement in open court, and twice made requests to seal the courtroom during the examination of Mr. Weinstein alone, which is the only examination at issue in Apple’s motion. *Id.* Apple’s motion points to an occasion on April 26, 2023, when—during spontaneous redirect examination—the witness mentioned a license amount and damages demand amount at a moment when the courtroom was unsealed, in response to a question that did not seek to elicit that information.¹ The inadvertent disclosure was quickly cured through conditional sealing of the exchange. *Id.* 655:11-14.

Apple’s motion is about something else: the allegation that Arendi and its counsel intentionally disclosed this information in bad faith in order to further their litigation goals in other cases. Its contention that the disclosure was intentional and deliberate is unsupported, extremely troublesome, and not a proper basis for this motion. It is also belied by the record, in which Arendi repeatedly asked for sealing every other time the license arose.

Apple first alerted the Court to this issue during a break in Mr. Weinstein’s testimony, saying that it would file a motion that “evening” to seal the record. Trial Tr. (4/26) 654-55. Apple asked that such disclosure not “happen again,” and it never did. *Id.* The Court asked Plaintiff and Defendant whether they had any objection, and both said “no.” *Id.* **The Court then “conditionally sealed” the transcript, and it has been under seal ever since.** *Id.* The Court invited Apple to file its motion to seal the testimony at issue, and further asked Apple to submit an application explaining the basis for sealing this and other information presented at trial. The full colloquy is below:

Apple’s Counsel: During the last examination, there was some disclosure of Apple’s confidential information in both the agreement between Apple and Arendi, as well as information produced in the previous litigation. So we will be filing something, this evening, to seal that portion of the transcript. But if we could make sure that we’re protecting that information and sealing the courtroom when it’s presented, so that that doesn’t happen again.

¹ The question on redirect did not ask for any confidential information. *See id.* at 641:17-19. Apple also points to a follow-up question, which referred to the expert’s own opinion on the total amount of damages in the two cases, but that question also did not refer to the Apple license amount.

THE COURT: Any objection from the plaintiff?

Arendi's Counsel: No objection.

THE COURT: Any objection from the defendant?

Google's Counsel: No, Your Honor.

THE COURT: All right. That portion is conditionally sealed. We'll have you file your motion, and then you'll have an opportunity to make your application for redacting the transcript.

Apple's Counsel: Thank you.

Trial Tr. (4/26) 654:23-655:14.

That appeared to resolve the issue. Arendi is unaware of *any* members of the public not associated with the case who were present in the courtroom at the time of the disclosure. Apple's counsel, who was in the courtroom at the same time, has also not identified any such members of the public. *Cf.* Trial Tr. (4/26) at 512:17-513:11 (The Court: "So based on what I've seen so far here, we've had no one from the public that is not associated with this case in some way that's been excluded from the courtroom. . . . I'll put on the record that when we've sealed the courtroom, my understanding is that there were only a couple of people excluded that were related to in-house people who weren't permitted to see confidential information . . .").

Apple nevertheless filed its motion for sanctions out of the blue. Apple did not meet and confer with Arendi prior to filing its motion and did not inform Arendi of its intent to seek sanctions in advance of filing.

Apple claims it filed its sanctions motion "reluctantly" largely because Arendi "did not seek any corrective measures after the fact to mitigate the harm to Apple even after being asked to do so by Apple's counsel." D.I. 538 at 2. This statement is contradicted by the record. The transcript has been "**conditionally sealed**" from the moment Apple first raised the issue. Trial Tr. (4/26) 654:23-655:14. Arendi immediately agreed to that protective action. Apple has never identified any other corrective measure it believes could be appropriate. From the moment the transcript was conditionally sealed, there has been nothing else to do other than adjudicate the broader issue of whether any of the pertinent information should be sealed from public view in the first place given the law's strong preference for open proceedings.

Apple now complains that Arendi did not *join* its original motion for sealing, but in the original motion to seal, Apple *agreed* that the parties had properly met and conferred on this issue and noted that Arendi did not oppose the request.² Apple also leaves out other important

² See D.I. 491 ("Apple alerted the Court to this request during trial on April 26, 2023, and pursuant to D. Del. L.R. 7.1.1, Apple conferred with Plaintiff and Defendant regarding whether they

background. On the evening of Mr. Weinstein's testimony, Apple asked Arendi to join its motion for sealing, but did not send a draft of its intended motion. While Arendi had already agreed not to oppose the request for conditional sealing, Arendi could not agree to *join* a motion it had not seen. Accordingly, Arendi responded to Apple that night, writing "thanks for reaching out. Please send us a draft of the motion you'd like us to join." Apple did not respond, did not further meet and confer, and simply filed its motion. That is not remotely close to an instance of failing to take "corrective measures," as Apple's motion improperly intimates.

Apple's position in its sanctions motion is also at odds with its litigation behavior in this case: Apple agreed that the full terms of Apple's license with Arendi could be shared with Google, its competitor. *See* Trial Tr. (5/2) at 1490:8-12 (Google's Counsel: "So I do believe both sides are going to end up talking about the settlement terms from those various agreements ... [W]e do have the permission from Apple that our corporate representative, Mr. Choc, can stay in the courtroom for the closings regardless of whether they are sealed or not.").

The attacks on Plaintiff's counsel are absolutely unfounded for other reasons too. As Apple is aware, Plaintiff's counsel sought to *exclude* from this trial the very damages number that Apple now says Arendi intentionally disclosed. Only Google wanted Arendi's damages demand as to Apple to be raised in this case, and Apple *willingly gave* Google's counsel access to that number. Arendi had moved in *limine* to preclude any reference to the number at trial. D.I. 460, Ex. 8P. Apple's suggestion that Plaintiff's counsel would intentionally disclose information at trial that Plaintiff sought to exclude in the first instance defies logic.

Many of these issues could have been resolved amicably. Unfortunately, that is not the course Apple chose. In its forthcoming response, Arendi will explain further why the motion for sanctions is meritless. Regardless, to the extent Apple is concerned that Arendi has not "done enough" to remedy the issue, Arendi reiterates that it agrees to the continued, conditional sealing of the relevant record, as it has all along.

Respectfully,

/s/ Neal C. Belgam

Neal C. Belgam (No. 2721)

cc: Clerk of Court (via CM/ECF)
All Counsel of Record (via CM/ECF)

opposed this request to seal. (See 4/26 PM Transcript at 7:4-21.) Both parties indicated that they did not. (Id.).")