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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUMBLE, INC.,
Plaintiff,
v.
GOOGLE LLC,
Defendant.

Case No. [21-cv-00229-HSG](#)

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. No. 134

United States District Court
Northern District of California

Before the Court is Defendant’s motion for summary judgment, Dkt. No. 134. The Court held a hearing on the motion, Dkt. No. 206, and now GRANTS it.

I. BACKGROUND

Plaintiff Rumble, Inc. operates an online video platform (“the Rumble platform”) that launched in 2013. Dkt. No. 21 (“FAC”) ¶ 14. Video content creators can upload their videos to the Rumble platform, and Plaintiff makes these videos available for a fee to other companies’ websites or to social media websites to generate advertising revenue. *Id.* ¶ 15. Plaintiff shares a portion of this revenue with the content creators in the form of royalty payments. *Id.* ¶ 19.

In January 2021, Plaintiff filed a complaint against Defendant Google, LLC, alleging that 1) Defendant maintained unlawful tying arrangements in violation of 15 U.S.C. § 1; and 2) Defendant maintained a monopoly in the market for online video-sharing platforms in violation of 15 U.S.C. § 2. *See* Dkt. No. 1 ¶¶ 87–105. After Defendant moved to dismiss the Section 1 claim, *see* Dkt. No. 16, Plaintiff filed an amended complaint in April 2021 that removed that claim and added new allegations to support the Section 2 claim. *See generally* FAC.

The amended complaint asserts a single claim alleging monopolization and attempted monopolization in violation of Section 2. *See* FAC ¶¶ 191–200. Plaintiff alleges that Defendant

1 has maintained a monopoly in the online video-sharing platform market by engaging in two forms
2 of anticompetitive conduct. First, Plaintiff alleges that Defendant manipulates the algorithms and
3 other mechanisms by which it displays videos in Google search results to ensure that videos
4 hosted on YouTube, Defendant’s video platform, are listed first. *Id.* ¶ 27. Plaintiff calls this
5 conduct “self-preferencing.” *Id.* ¶ 29. Second, Plaintiff alleges that Defendant enters into
6 exclusionary agreements with manufacturers of mobile devices that use Android, an operating
7 system developed by Defendant, to ensure that the YouTube app is preinstalled on mobile smart
8 devices as the first “page” or home screen of such devices, to the exclusion of competitor video
9 platforms like Rumble. *Id.* ¶ 76. Specifically, Plaintiff contends that Defendant uses three types
10 of exclusionary agreements: 1) “anti-forking” or antifragmentation agreements that forbid
11 manufacturers of Android-based devices from developing or distributing versions of Android that
12 do not comply with Defendant’s technical standards; 2) pre-installation agreements that condition
13 manufacturers’ installation of Defendant’s other apps (such as Google Play) on Android devices
14 on the installation and preferred placement of YouTube and other Google apps; and 3) agreements
15 in which various entities agree to make Google search the preset default general search engine on
16 Android devices in exchange for a portion of Defendant’s search advertising revenue. *See id.*
17 ¶¶ 84–86, 105, 151, 161. According to Plaintiff, these agreements are designed to foreclose
18 distribution to and use of Defendant’s competitors for search and online video platform services.
19 *Id.* ¶ 89.

20 Plaintiff maintains that Defendant’s alleged self-preferencing and use of exclusionary
21 agreements has allowed it to unfairly and wrongfully direct a large amount of search traffic to
22 YouTube, and thereby “secure for itself monopoly profits from ad revenue generated by views of
23 video contents on the YouTube platform.” FAC ¶ 176. As to the impact of this conduct on the
24 Rumble platform specifically, Plaintiff alleges that but for Defendant’s monopolistic conduct
25 beginning in April 2014, potentially as many as 9.3 billion users would have been directed through
26 a Google search to videos on the Rumble platform instead of YouTube. *See id.* ¶¶ 177, 178, 186.
27 Plaintiff contends that in turn, those 9.3 billion video views would have generated millions of
28 additional video uploads and billions more video views on the Rumble platform, resulting in

1 “massive amounts of additional revenue” for Plaintiff. *Id.* ¶ 188. Plaintiff seeks more than \$2
2 billion in damages to compensate for this lost revenue. *Id.* ¶ 190.

3 In June 2021, Defendant moved to dismiss certain theories of liability alleged in the
4 amended complaint and to strike Plaintiff’s new allegations. Dkt. No. 32. The Court denied the
5 motion in July 2022. Dkt. No. 57. Defendant now moves for summary judgment. Dkt. No. 134.

6 **II. LEGAL STANDARD**

7 Summary judgment is proper when a “movant shows that there is no genuine dispute as to
8 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).
9 A fact is “material” if it “might affect the outcome of the suit under the governing law.” *Anderson*
10 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a dispute is “genuine” if there is evidence
11 in the record sufficient for a reasonable trier of fact to decide in favor of the nonmoving party. *Id.*
12 But in deciding if a dispute is genuine, the court must view the inferences reasonably drawn from
13 the materials in the record in the light most favorable to the nonmoving party, *Matsushita Elec.*
14 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587–88 (1986), and “may not weigh the evidence
15 or make credibility determinations,” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997),
16 *overruled on other grounds by Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008).

17 The moving party bears the initial burden of identifying those portions of the record that
18 demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477
19 U.S. 317, 322–23 (1986). The burden then shifts to the nonmoving party to “go beyond the
20 pleadings and by [his] own affidavits, or by the ‘depositions, answers to interrogatories, and
21 admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *See*
22 *id.* at 324 (quoting Fed. R. Civ. P. 56(e) (amended 2010)). The nonmoving party must show more
23 than “the mere existence of a scintilla of evidence.” *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376,
24 387 (9th Cir. 2010) (citing *Liberty Lobby*, 477 U.S. at 252). “In fact, the non-moving party must
25 come forth with evidence from which a jury could reasonably render a verdict in the non-moving
26 party’s favor.” *Id.* (citing *Liberty Lobby*, 477 U.S. at 252). If the nonmoving party fails to make
27 this showing, “the moving party is entitled to judgment as a matter of law.” *Celotex Corp.*, 477
28 U.S. at 323. If a court finds that there is no genuine dispute of material fact as to only a single

1 claim or defense or as to part of a claim or defense, it may enter partial summary judgment. Fed.
2 R. Civ. P. 56(a).

3 **III. DISCUSSION**

4 Defendant moves for summary judgment on several grounds, but as a threshold matter,
5 Defendant argues that the applicable statute of limitations bars Plaintiff’s antitrust claim. Dkt. No.
6 143 (“Mot.”) at 37.¹ In its opposition, Plaintiff maintains that because Defendant did not raise this
7 argument in its motions to dismiss, it “has no basis at the summary judgment stage.” Dkt. No. 176
8 (“Opp.”) at 34. However, the Ninth Circuit has held that a statute of limitations defense “may be
9 raised by a motion for dismissal or by summary judgment motion.” *Jablon v. Dean Witter & Co.*,
10 614 F.2d 677, 682 (9th Cir. 1980). Plaintiff fails to cite any authority in its opposition suggesting
11 that Defendant waived this argument, and did not identify any at the hearing. In addition,
12 Defendant included a statute of limitations defense in its answer to the operative complaint. *See*
13 Dkt. No. 63 at 37. Accordingly, the Court finds that the statute of limitations issue is properly
14 before it.

15 Defendant argues that Plaintiff’s complaint is barred by the four-year statute of limitations
16 for antitrust claims. Mot. at 38 (citing 15 U.S.C. § 15b). Defendant contends that because
17 Plaintiff seeks damages for its injuries resulting from purported anticompetitive conduct that
18 occurred starting in April 2014, its claim accrued then. Mot. at 38. Consequently, according to
19 Defendant, Plaintiff was required to bring this action by April 2018 at the latest, but failed to do
20 so. *Id.*

21 In opposition, Plaintiff responds that to succeed on its statute of limitations argument,
22 Defendant must prove that Plaintiff had actual or constructive knowledge of Defendant’s
23 anticompetitive conduct before the four-year statutory period began. *See* Opp. at 34–35. On
24

25 ¹ The parties filed their summary judgment briefing under seal, seeking to redact various portions
26 of their memoranda and supporting exhibits. *See* Dkt. Nos. 134, 166-1, 191. Accordingly, when
27 referring to the parties’ arguments, the Court cites the publicly-filed, redacted versions of their
28 moving papers. *See* Dkt. Nos. 143 (Defendant’s Motion for Summary Judgment), 176 (Plaintiff’s
Opposition to Defendant’s Motion for Summary Judgment), 201 (Defendant’s Reply). But the
Court notes that in deciding this motion, it considered the full, unredacted versions of the parties’
briefs.

1 reply, Defendant correctly points out that antitrust claims are not subject to the discovery rule,
2 meaning that Plaintiff’s knowledge of Defendant’s conduct generally is not relevant to the statute
3 of limitations analysis. *See* Dkt. No. 201 (“Reply”) at 23; *see also Beneficial Standard Life*
4 *Insurance Co. v. Madariaga*, 851 F.2d 271, 274-75 (9th Cir. 1988) (“In [antitrust] actions
5 governed by 15 U.S.C. § 15b, the plaintiff’s knowledge is generally irrelevant to accrual, which is
6 determined according to the date on which injury occurs.”). Plaintiff then stated at the hearing that
7 it did not intend to argue for the application of the discovery rule, but instead contends that the
8 statute of limitations should be tolled on the basis of fraudulent concealment. *See* Dkt. No. 209,
9 Hearing Transcript (“Tr.”) at 5:11–17. In the alternative, Plaintiff also argues that Defendant’s
10 “continuing self-preferencing of YouTube and continued monopolization via the Android
11 Agreements over a number of years constitute continuing violations” that tolled the statute of
12 limitations. *See* Opp. at 35.

13 Defendant responds that Plaintiff cannot establish that the limitations period should be
14 tolled on the basis of fraudulent concealment because it failed to plead any such theory. Mot.
15 at 38; Reply at 23. Defendant also argues that the continuing violations doctrine does not apply
16 because Plaintiff has not shown any new and independent act committed by Defendant within the
17 limitations period. Mot. at 38–39; Reply at 24.

18 As the moving party, Defendant bears the burden of showing that there is no genuine
19 dispute of material fact as to whether Plaintiff’s claims accrued more than four years ago. *See*
20 *Celotex Corp.*, 477 U.S. at 322–23. Once Defendant has made this initial showing, the burden
21 shifts to Plaintiff to identify evidence on which a reasonable jury could find that an exception to
22 the applicable statute of limitations applies. *See In re Oracle*, 627 F.3d at 387; *Hexcel Corp. v.*
23 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (“To put at issue a defendant’s evidence
24 . . . sufficient to trigger the running of the statute of limitations, the plaintiff must produce at least
25 some significant, probative evidence tending to support the complaint to create a genuine issue of
26 material fact.”) (internal citation and quotation omitted); *see also Hennegan v. Pacifico Creative*
27 *Serv., Inc.*, 787 F.2d 1299, 1302 (9th Cir. 1986) (plaintiffs seeking to recover damages prior to the
28 limitations period had the burden on summary judgment to “alleg[e] specific facts showing” the

1 elements of fraudulent concealment doctrine); *O'Connor v. Boeing N. Am., Inc.*, 311 F.3d 1139,
 2 1150 (9th Cir. 2002) (“Because Plaintiffs have the burden of proof at trial to establish that they are
 3 entitled to the benefit of the discovery rule, to defeat summary judgment they were required to
 4 come forward with evidence establishing a triable issue of fact with regard to whether the
 5 discovery rule applies.”).

6 The Court finds that Defendant has met its initial burden. A Sherman Act claim must be
 7 brought within four years after the cause of action accrued. *See* 15 U.S.C. § 15b. The claim
 8 “accrues and the statute begins to run when a defendant commits an act that injures a plaintiff’s
 9 business.” *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 338 (1971). Here, Plaintiff
 10 alleges that Defendant’s conduct caused Plaintiff to suffer anticompetitive harm as early as April
 11 2014, and seeks damages for that harm. *See* FAC ¶¶ 177–190. Plaintiff’s antitrust claim therefore
 12 began to accrue in April 2014, when it alleges it was first injured by Defendant’s purported
 13 misconduct. *See Zenith*, 401 U.S. at 338. As a result, Plaintiff’s 2021 complaint was untimely
 14 unless Plaintiff can demonstrate that an exception to the statute of limitations applies. *See Hexcel*,
 15 681 F.3d at 1063.

16 **A. Fraudulent Concealment**

17 Defendant argues that because Plaintiff failed to plead that the statute of limitations is
 18 tolled based on the doctrine of fraudulent concealment, it cannot rely on that theory now. Mot.
 19 at 23–24.

20 The Court agrees with Defendant. The Ninth Circuit has held that “plaintiffs seeking to
 21 toll the statute of limitations on various grounds must have included the allegation in their
 22 pleadings,” and has clarified that “this rule applies even where the tolling argument is raised in
 23 opposition to summary judgment.” *Wasco Prods., Inc. v. Southwall Techs., Inc.*, 435 F.3d 989,
 24 991 (9th Cir. 2006). *See id.* at 992 (holding that plaintiff could not toll the statute of limitations
 25 based on allegations that “appear[ed] for the first time in its response to [a] summary judgment
 26 motion” because “summary judgment is not a procedural second chance to flesh out inadequate
 27 pleadings”) (internal quotation and citation omitted); *see also Hexcel Corp.*, 681 F.3d at 1060
 28 (plaintiff arguing for the application of the fraudulent concealment doctrine “carries the burden of

1 pleading and proving fraudulent concealment”) (internal citation and quotation marks omitted);
2 *Grimmett v. Brown*, 75 F.3d 506, 514 (9th Cir. 1996) (holding in affirming grant of summary
3 judgment that “[f]ailure to plead [fraudulent concealment] waives this tolling defense”).

4 At the hearing on Defendant’s motion, Plaintiff conceded that it did not plead fraudulent
5 concealment, but argued that it was not required to do so, citing *Staley v. Gilead Sciences*, No. 19-
6 CV-02573-EMC, 2021 WL 4972628 (N.D. Cal. Mar. 12, 2021), and *Rivera v. Peri & Sons Farms,*
7 *Inc.*, 735 F.3d 892 (9th Cir. 2013). See Tr. 5:18–6:18. Neither case is directly applicable here,
8 given that they both addressed motions to dismiss rather than motions for summary judgment.
9 Further, the principles they articulate undermine Plaintiff’s position that it was not required to
10 plead any fraudulent concealment theory. In *Rivera*, the Ninth Circuit held that while plaintiffs
11 “ordinarily need not plead on the subject of an anticipated affirmative defense” such as a statute of
12 limitations defense, they may be subject to an attack on the pleadings “when the statute of
13 limitations issues are apparent on the face of the complaint.” 735 F.3d at 902 (internal citations
14 and quotations omitted). *Staley*, applying this principle from *Rivera*, granted the defendant’s
15 motion to dismiss on statute of limitations grounds because plaintiffs’ complaint had an “obvious
16 limitations problem,” and plaintiffs had failed to adequately plead a tolling theory “to get around”
17 it. See *Staley*, 2021 WL 4972628, at *14, *17. Cf. *Zenith*, 401 U.S. at 334 (“where . . . plaintiff
18 has no reason to anticipate that a claim of limitations will be raised against him, he need not set
19 forth his claim of tolling until the limitations claim is raised”).

20 Here, Plaintiff’s statute of limitations problem is obvious on the face of the operative
21 complaint because Plaintiff seeks damages going back to April 2014, see FAC ¶ 177, a date that is
22 “well beyond” the four-year limitations period for an antitrust claim brought in 2021. See *Staley*,
23 2021 WL 4972628, at *14. Accordingly, Plaintiff reasonably “[had a] reason to anticipate that a
24 claim of limitations [would] be raised against [it].” See *Zenith*, 401 U.S. at 334. Plaintiff was
25 therefore required to include a tolling theory in its complaint. See *Wasco Prods., Inc.*, 435 F.3d at
26 991; *Grimmett*, 75 F.3d at 514. At the hearing, however, Plaintiff admitted that it never actually
27 pled any fraudulent concealment theory. See Tr. 5:18–24. As such, Plaintiff may not assert this
28 theory now as an exception to the applicable statute of limitations.

1 Moreover, even if Plaintiff was not required to plead fraudulent concealment, the Court
2 finds that it has not met its burden to establish a genuine issue of fact as to whether the doctrine
3 should apply. To prove fraudulent concealment, a plaintiff must show 1) that the defendant
4 “affirmatively misled it,” and 2) that the plaintiff “had neither actual nor constructive knowledge
5 of the facts giving rise to its claim despite its diligence in trying to uncover those facts.” *Conmar*
6 *Corp. v. Mitsui & Co. (U.S.A.)*, 858 F.2d 499, 502 (9th Cir. 1988). Both elements are “critical
7 component[s]” of a fraudulent concealment claim, and failure to establish a genuine issue of fact
8 as to either element is fatal to the claim as a matter of law on summary judgment. *See Thorman v.*
9 *Am. Seafoods Co.*, 421 F.3d 1090, 1096 (9th Cir. 2005).

10 The Court finds that Plaintiff has not proffered evidence sufficient to raise a genuine issue
11 for trial as to the first element (i.e., that Defendant affirmatively misled it). Plaintiff must
12 “establish that its failure to have notice of its claim was the result of [Defendant’s] affirmative
13 conduct.” *See Conmar*, 858 F.2d at 505. “Passive concealment of information is not enough to
14 toll the statute of limitations, unless the defendant had a fiduciary duty to disclose information to
15 the plaintiff. An affirmative act of denial, however, is enough if the circumstances make the
16 plaintiff’s reliance on the denial reasonable.” *Id.* (internal citations omitted).

17 In its summary judgment opposition, Plaintiff contends that Defendant “has always
18 claimed publicly that its search results were intended to provide the most responsive, relevant, and
19 high-quality results, thereby concealing its conduct from the public.” *See Opp.* at 35. However,
20 even viewing the evidence in the light most favorable to Plaintiff, the Court finds that it fails to
21 show an affirmative act of denial. First, Plaintiff cites Defendant’s “Honest Results” Policy,
22 which Plaintiff describes as a “public misrepresentation of no favoritism in Google Search” that
23 “effectively concealed from the public the true operation of [Defendant’s] search mechanisms.”
24 *See id.* But the statements in the document indicate that it is an internal document summarizing an
25 internal policy: it appears to be available at an internal Google web address (“go/honest-results”),
26 not a public web address, *see Dkt. No. 43-17* at 2; it includes instructions and information directed
27 at Google employees, not the public, *see id.* at 4–9; and it even refers to a separate “Public Honest
28 Results site” that is not linked in the document or cited by Plaintiff, *see id.* at 4 (“To share an

1 external overview on the policy, refer to Google’s Public Honest Results site[.]”). Plaintiff does
 2 not explain how it reasonably relied on one of Defendant’s internal documents that is not publicly
 3 available in delaying its claim.

4 Further, even assuming that the policy was publicly available, the statements are too
 5 general to reasonably constitute an “affirmative act of denying wrongdoing.” *See Rutledge v. Bos.*
 6 *Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir. 1978). The policy states that the Google
 7 Search team will “not act upon reports of flawed search results for which a reasonable person
 8 might perceive an ulterior motivation, such as . . . [p]resenting Google products in a more
 9 favorable light.” *See* Dkt. No. 43-17 at 3. It also advises that the team “should avoid fixing
 10 [search issues] only for Google properties, or prioritizing a fix for Google properties over non-
 11 Google properties.” *Id.* at 6. None of these statements directly deny the allegation that
 12 Defendant’s search mechanisms prioritize YouTube over other video platforms. *See Conmar*, 858
 13 F.2d at 505 (affirmative act of denial may be reasonable if it amounts to a “direct public denial of
 14 any wrongdoing”); *see also Garrison v. Oracle Corp.*, 159 F. Supp. 3d 1044, 1078 (N.D. Cal.
 15 2016) (holding that defendant’s public statements that it “obey[ed] antitrust laws and participate[d]
 16 in a competitive market alone [did not] suffice to show fraudulent concealment, absent other
 17 evidence that the defendant attempted to conceal its alleged antitrust behavior”).

18 Second, Plaintiff cites excerpts of reports by Defendant’s expert economist, Dr. Murphy, in
 19 which, according to Plaintiff, Dr. Murphy “stresses the image of Google Search that the company
 20 has promulgated.” *Opp.* at 35. None of the cited statements refer to or discuss Defendant’s public
 21 representations about Google Search, and none reference any public affirmative denial of self-
 22 preferencing made by Defendant. *See* Dkt. No. 176-28 ¶¶ 135–37 (stating opinion that Defendant
 23 lacks the ability or incentive to favor YouTube results in search); *id.* ¶¶ 177–181 (discussing
 24 Defendant’s YouTube growth strategy, not Google Search or its public image); Dkt. No. 176-29
 25 ¶¶ 176–187 (critiquing economic analyses of Plaintiff’s experts and stating opinion that YouTube
 26 is a higher quality platform than Rumble).

27 Third, Plaintiff does not cite any record evidence of affirmative denials or other acts of
 28 affirmative concealment relevant to its claim regarding Defendant’s allegedly exclusionary

1 contracts. *See Opp.* at 35.

2 Finally, Plaintiff’s opposition improperly cites allegations in the operative complaint to
 3 support its fraudulent concealment argument. *See Opp.* at 35. A plaintiff may not rely on
 4 unsupported allegations alone to avoid summary judgment. *See Liberty Lobby*, 477 U.S. at 256
 5 (“Rule 56(e) itself provides that a party opposing a properly supported motion for summary
 6 judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific
 7 facts showing that there is a genuine issue for trial.”). And Plaintiff does not establish that any of
 8 the cited allegations have since been backed up with facts identified in the summary judgment
 9 record. *See In re Oracle*, 627 F.3d at 387 (“[T]he non-moving party must come forth *with*
 10 *evidence* from which a jury could reasonably render a verdict in the non-moving party’s favor.”)
 11 (emphasis added).²

12 The Court accordingly finds that Plaintiff both (1) failed to plead fraudulent concealment
 13 as required; and (2) failed to identify evidence on which a reasonable jury could rely to find that
 14 Defendant affirmatively misled it regarding the alleged self-preferencing or allegedly exclusionary
 15 contracts, such that it was reasonably delayed in bringing an antitrust suit based on either theory.
 16 “Having failed to satisfy this critical component of [its] claim, [Plaintiff] has not established

17
 18 ² Even if Plaintiff had presented record evidence to support the cited allegations, the Court notes
 19 that several of the facts asserted would not provide a basis for a reasonable jury to find that
 20 Defendant committed any affirmative acts of concealment. For example, Plaintiff’s opposition
 21 references an allegation that cites a September 2019 public blog post in which Defendant
 22 purportedly “emphasiz[ed] that original sourced reporting and content will always receive
 23 preferential treatment by its search engine algorithms.” *See Opp.* at 35 (citing FAC ¶ 72(f)). This
 24 general statement cannot reasonably be construed as a “direct public denial” of the purportedly
 25 illegal self-preferencing of YouTube sufficient to trigger Plaintiff’s reliance in delaying its case.
 26 *See Conmar*, 858 F.2d at 505. Similarly, Plaintiff cites portions of the complaint generally
 27 alleging that Defendant markets the Android operating system as “open-source,” but Android
 28 manufacturers must still enter into exclusionary contracts with Defendant because it has made it
 impossible for them to rely solely on the open-source code to manufacture Android devices
 independently. *See Opp.* at 35 (citing FAC ¶¶ 77, 109–110). Even if true, these assertions do not
 sufficiently describe the details of any public representations Defendant made to Plaintiff or the
 public about its Android code or contracts, including the specific statements that were made, when
 they were made, and to whom. *See Conmar*, 858 F.2d at 502 (holding that “[c]onclusory
 statements are not enough” to prove fraudulent concealment because a plaintiff must show “with
 particularity the circumstances of the concealment”); *see also Hexcel Corp.*, 681 F.3d at 1063
 (“conclusory” evidence “lacking detailed facts” is insufficient to create a genuine issue of material
 fact as to the application of fraudulent concealment).

1 fraudulent concealment as a matter of law.” *See Thorman*, 421 F.3d at 1096. For that reason, the
 2 Court does not need to address the issue of Plaintiff’s actual or constructive knowledge. *See id.*

3 **B. Continuing Violations**

4 There is an exception to the standard four-year time limit for Sherman Act claims for
 5 continuing violations. *See Samsung Elecs. Co. v. Panasonic Corp.*, 747 F.3d 1199, 1202 (9th Cir.
 6 2014). “To state a continuing violation of the antitrust laws in the Ninth Circuit, a plaintiff must
 7 allege that a defendant completed an overt act during the limitations period that meets two criteria:
 8 ‘1) It must be a new and independent act that is not merely a reaffirmation of a previous act; and
 9 2) it must inflict new and accumulating injury on the plaintiff.’” *Id.* (quoting *Pace Industries, Inc.*
 10 *v. Three Phoenix Co.*, 813 F.2d 234, 238 (9th Cir. 1987)). Put another way, for the continuing
 11 violations doctrine to apply, “an overt act by the defendant is required to restart the statute of
 12 limitations and the statute runs from the last overt act.” *Pace*, 813 F.2d at 237.³

13 In its opposition to Defendant’s motion for summary judgment, Plaintiff’s argument that
 14 the continuing violations exception applies totals one cursory sentence. Plaintiff simply states that
 15 Defendant’s “continuing self-preferencing of YouTube and continued monopolization via the
 16 Android Agreements over a number of years constitute continuing violations that, as a matter of
 17 law, restart the limitations period.” *Opp.* at 35. Plaintiff does not identify any specific facts that
 18 flesh out this general assertion in any detail, and does not identify any evidence in the record to
 19 support it. *See id.* Instead, the only facts and record evidence cited are tied to Plaintiff’s
 20 fraudulent concealment theory, but none of that material is relevant to the continuing violations
 21 issue. *See id.* (identifying facts to support theory that Defendant allegedly concealed its conduct
 22 from the public).

23 As a matter of law, this showing is inadequate to preclude summary judgment. To
 24 demonstrate a genuine issue for trial, Plaintiff must go beyond the pleadings and identify specific
 25 facts in the record from which a jury could reasonably find in its favor. *See In re Oracle*, 627 F.3d
 26

27 _____
 28 ³ The Court notes that because the continuing violations doctrine simply restarts the limitations
 period, if it applied here, Plaintiff could seek damages only for injuries dating back to 2017 (four
 years before Plaintiff filed its complaint) and not earlier. *See Pace*, 813 F.2d at 237.

1 at 387; *Liberty Lobby*, 477 U.S. at 256. As relevant here, Plaintiff must identify specific facts in
2 the record from which a jury could reasonably conclude that during the applicable statutory period
3 (2017 to 2021), Defendant committed a new and independent act that inflicted a new injury on
4 Plaintiff, thus restarting the statute of limitations. *See Samsung* 747 F.3d at 1202 (quoting *Pace*,
5 813 F.2d at 238). Further, it is Plaintiff’s burden to “designate” the particular evidence that
6 supports its argument opposing summary judgment. *See Celotex Corp.*, 477 U.S. at 324. The
7 Court is not required to comb through the record or Plaintiff’s briefing to find it. *See Fed. R. Civ.*
8 *P.* 56(c)(1), (3) (on summary judgment, “[a] party asserting that a fact cannot be or is genuinely
9 disputed must support the assertion by . . . citing to particular parts of materials in the record,” and
10 a court “need consider only the cited materials”); *Carmen v. San Francisco Unified School Dist.*,
11 237 F.3d 1026, 1029 (9th Cir. 2001) (explaining that the court is “not required to comb the record
12 to find some reason to deny a motion for summary judgment”); *see also Voyager Indem. Ins. Co.*
13 *v. Miller*, 674 F. Supp. 3d 765, 770 (N.D. Cal. 2023) (“[T]he party seeking to establish a genuine
14 issue of material fact must take care to adequately point a court to the evidence precluding
15 summary judgment.”). And although the Court must view the underlying facts in the record in the
16 light most favorable to Plaintiff, Plaintiff has the burden to identify for the Court the underlying
17 facts that support its position. *See Matsushita*, 475 U.S. at 586; *Fed. R. Civ. P.* 56(c)(1).

18 Here, the Court finds that as presented in the opposition brief, Plaintiff’s attempt to avoid
19 summary judgment is fatally vague and conclusory. Plaintiff’s single-sentence opposition does
20 not address the required elements of the continuing violations doctrine and the “overt act” test, or
21 articulate how Defendant’s alleged “continuing self-preferencing of YouTube and continued
22 monopolization via the Android Agreements,” *Opp.* at 35, amounted to new and independent acts
23 committed during the limitations period that inflicted new injury on Plaintiff. *See Samsung*, 747
24 F.3d at 1202; *Pace*, 813 F.2d at 238. Moreover, Plaintiff wholly fails to identify any record
25 evidence to support its argument. *See Opp.* at 35. Plaintiff’s failure to support its conclusory
26 theory with specific facts and “at least some significant, probative evidence” in the record is fatal
27 on summary judgment as a matter of law. *See Hexcel Corp.*, 681 F.3d at 1063.

28 At oral argument, Plaintiff’s counsel attempted to supplement its opposition by arguing for

1 the first time that its claim is timely under the Ninth Circuit’s decision in *Samsung v. Panasonic*.
2 *See* Tr. 7:13–8:3. According to counsel, *Samsung* holds that “where the defendant takes
3 subsequent unlawful action, even pursuant to a preexisting policy agreement or decision, [the
4 action] restarts the statute of limitations” as long as the defendant “had the ability not to take the
5 challenged action at later junctions.” *See* Tr. 9:7–11. Counsel maintained that, applying this
6 principle, Defendant’s alleged self-preferencing in Google search and its allegedly exclusionary
7 contracts were new overt acts because Defendant changed its anticompetitive search mechanisms
8 and entered into new exclusionary contracts during the limitations period, which it was not bound
9 to do. *See* Tr. 10:11–22.

10 When asked to explain why Plaintiff did not cite *Samsung* or include the above argument
11 in its written opposition, Plaintiff’s counsel blamed Defendant, claiming that “the continuing
12 violation point was raised by [Defendant] in its reply brief,” and that the argument that the alleged
13 conduct constituted reaffirmations as opposed to continuing violations only “came up on reply.”
14 *See* Tr. 7:7–9, 18–21. That claim is inaccurate: Defendant’s opening brief explicitly argued that
15 the continuing violations doctrine did not apply because Plaintiff had not pointed to any “new and
16 independent act that [was] not merely a reaffirmation of a previous act.” *See* Mot. at 38 (citing
17 *Pace*, 813 F.2d at 237); *see also* Mot. at 37 (analogizing to a case in which a court held that
18 “product releases involving the same practices as prior releases were simply reaffirmations of a
19 previous act”) (internal citation omitted). Yet in its opposition to Defendant’s brief, Plaintiff did
20 not respond to the argument that it had not identified any overt act that was not a reaffirmation,
21 and did not cite or apply the principle from *Samsung*. *See* Opp. at 35. Plaintiff’s attempt to raise
22 *Samsung* and assert a new version of its continuing violations theory for the first time at the
23 motion hearing was questionable at best. *See Johnson v. Gruma Corp.*, 614 F.3d 1062, 1069 (9th
24 Cir. 2010) (deeming contentions raised for the first time at oral argument to be waived).

25 At any rate, even if Plaintiff had properly asserted its *Samsung* argument, it still cannot
26 meet its burden to avert summary judgment. Importantly, *Samsung* and the other Ninth Circuit
27 case Plaintiff cited at the hearing, *Oliver v. SD-3C LLC*, 751 F.3d 1081 (9th Cir. 2014), are of
28 limited application here. Both cases addressed whether plaintiffs had sufficiently *alleged*

1 continuing antitrust violations, not whether they had *identified evidence* of continuing violations
2 sufficient to overcome summary judgment on statute of limitations grounds. *See Samsung*, 747
3 F.3d at 1204; *Oliver*, 751 F.3d at 1087.⁴ As discussed above, at the summary judgment stage
4 Plaintiff may not rely on its allegations, and instead must point to specific facts in the summary
5 judgment record from which a reasonable jury could conclude that Defendant committed
6 continuing violations during the statutory period. *See Liberty Lobby*, 477 U.S. at 256; *Hexcel*
7 *Corp.*, 681 F.3d at 1063. Like Plaintiff’s written opposition, its showing at the hearing cannot
8 meet this burden because it amounts to bare attorney argument lacking any evidentiary support.

9 First, counsel failed to identify at oral argument, and Plaintiff’s summary judgment
10 briefing similarly does not point to, any facts in the record to support the assertion that Defendant
11 committed overt acts by changing its purportedly anticompetitive search mechanisms during the
12 limitations period. *See* Tr. 10:11–17. Plaintiff has not identified any evidence describing the
13 changes Defendant supposedly made, or showing how such changes inflicted “new and
14 accumulating injury.”⁵ *See Samsung*, 747 F.3d at 1202. The Court questions whether the vague
15 allegation that Defendant’s search technology “changes” “over time and over the years,” *see*
16 Tr. 10:13–15, would be sufficient even to *plead* a continuing violation. *See, e.g., SaurikIT, LLC v.*

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19 ⁴ Additionally, in *Oliver*, the court relied on Supreme Court authority that specifically applies to
20 price-fixing claims, and Plaintiff does not allege such a claim here. *See Oliver*, 751 F.3d at 1086
21 (recognizing that under Supreme Court precedent, the statute of limitations for price-fixing
claims restarts “each time a defendant sells its price-fixed product.”) (citing *Klehr v. A.O. Smith*
Corp., 521 U.S. 179 (1997)).

22 ⁵ The Court is not required to hunt through Plaintiff’s papers and the record to find evidence
23 relevant to its continuing violations theory when Plaintiff itself did not identify any. *See Fed. R.*
24 *Civ. P.* 56(c)(3); *Carmen*, 237 F.3d at 1029. However, even giving Plaintiff the benefit of the
25 doubt and considering the facts and evidence it identified to support its arguments on issues other
26 than the statute of limitations, Plaintiff still fails to proffer any evidence that could support
27 counsel’s allegations regarding modifications to Defendant’s search mechanisms. As it happens,
28 the only specific fact contained in the parties’ summary judgment briefing that addresses such
modifications is Defendant’s own acknowledgment that it “performs thousands of tests and makes
thousands of changes to its algorithms every year.” Mot. at 10. But a reasonable jury could not
conclude on that basis alone that Plaintiff’s claim is timely, because the simple fact that Defendant
frequently changes its search algorithms does not explain how those changes amount to “new and
independent” anticompetitive acts that caused Plaintiff to suffer a “new and accumulating injury.”
See Samsung, 747 F.3d at 1202.

1 *Apple, Inc.*, No. 22-16527, 2023 WL 8946200, at *1 (9th Cir. Dec. 28, 2023)⁶ (affirming district
2 court’s dismissal of complaint that “offer[ed] only conclusory allegations” that allegedly
3 anticompetitive contracts were “modified” during the limitations period); *Ryan v. Microsoft Corp.*,
4 No. 14-CV-04634-LHK, 2015 WL 1738352, at *13–14 (N.D. Cal. Apr. 10, 2015) (holding that
5 “bare allegation” failed to plead an overt act because plaintiffs failed to provide “any dates or
6 details with regards to [defendant’s] specific conduct”); *Yelp Inc. v. Google LLC*, No. 24-CV-
7 06101-SVK, 2025 WL 1168900, at *11 (N.D. Cal. Apr. 22, 2025) (rejecting as insufficient to
8 adequately plead overt acts allegations that defendant had “taken actions” and “tweaked its
9 algorithms,” when allegations were “bereft of any dates or details” about the alleged changes).
10 But regardless, an entirely unsupported assertion certainly is insufficient as a matter of law to meet
11 Plaintiff’s summary judgment burden. *See Hexcel Corp.*, 681 F.3d at 1064 (entering summary
12 judgment for defendant because plaintiff “failed to proffer evidence sufficient to create any
13 genuine issues of material fact” regarding timeliness of claim); *see also CSX Transportation, Inc.*
14 *v. Norfolk S. Ry. Co.*, 648 F. Supp. 3d 679, 721 (E.D. Va. 2023), *aff’d*, 114 F.4th 280 (4th Cir.
15 2024) (finding that plaintiff’s “efforts to demonstrate an overt act . . . through speculation” were
16 insufficient as a matter of law on summary judgment).

17 Second, Plaintiff similarly fails to point to any evidence showing that Defendant
18 committed overt acts by entering into “new exclusionary contracts . . . throughout the [statutory]
19 timeframe.” *See* Tr. 10:18–22. Plaintiff does not identify a single fact supported by record
20 evidence that describes Defendant’s actual conduct during the limitations period regarding its
21 contracts, including when and with whom Defendant entered into them, their actual terms, or how
22 Defendant’s use of them inflicted new and accumulating harm on Plaintiff. *See Samsung*, 747
23 F.3d at 1202. As such, there is no basis for a reasonable jury to find that Defendant entered into
24 any exclusionary agreements within the statutory period that constituted overt acts. *See Eichman*
25 *v. Fotomat Corp.*, 880 F.2d 149, 160 (9th Cir. 1989) (affirming grant of summary judgment on
26

27 ⁶ As an unpublished Ninth Circuit decision, this case is not precedent, but may be considered for
28 its persuasive value. *See* Fed. R. App. P. 32.1; CTA9 Rule 36-3.

1 statute of limitations grounds because plaintiff failed to show that defendant “actually did enforce”
2 allegedly unlawful agreement during the limitations period). *Cf. Samsung*, 747 F.3d at 1204
3 (complaint specifically alleged that defendant inflicted new injury on plaintiffs by enforcing its
4 challenged license agreements against plaintiffs within the statutory period); *Oliver*, 751 F.3d at
5 1086–87 (complaint specifically alleged that plaintiffs suffered new injury during statutory period
6 because they had purchased the price-fixed SD cards from defendant during that time).

7 Accordingly, Plaintiff simply fails as a matter of law to demonstrate a genuine dispute of
8 fact as to whether Defendant committed continuing violations during the statutory period such that
9 Plaintiff’s claim is timely. Plaintiff had ample opportunity to support its conclusory arguments
10 with specific facts and record evidence, but it did not.

11 * * *

12 In sum, the Court finds that Defendant has met its initial burden of showing that there is no
13 genuine dispute of material fact as to whether Plaintiff’s claims accrued more than four years ago,
14 and Plaintiff has failed to identify any evidence on which a reasonable jury could rely to find that
15 an exception to the statute of limitations applies. Summary judgment is therefore **GRANTED** in
16 Defendant’s favor on the ground that Plaintiff’s claim is time-barred. *See* Fed. R. Civ. P. 56(e).
17 Because this ruling disposes of Plaintiff’s entire claim, the Court declines to address Defendant’s
18 additional summary judgment arguments. For the same reason, the Court need not address the
19 parties’ *Daubert* motions.

20 **IV. MOTIONS TO SEAL**

21 **A. Legal Standard**

22 Courts generally apply a “compelling reasons” standard when considering motions to seal
23 documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*
24 *v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “This standard derives from the
25 common law right ‘to inspect and copy public records and documents, including judicial records
26 and documents.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1178). “[A] strong presumption in favor of
27 access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotations omitted). To overcome this
28 strong presumption, the party seeking to seal a judicial record attached to a dispositive motion

1 must “articulate compelling reasons supported by specific factual findings that outweigh the
2 general history of access and the public policies favoring disclosure, such as the public interest in
3 understanding the judicial process” and “significant public events.” *Id.* at 1178–79 (quotations
4 omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in
5 disclosure and justify sealing court records exist when such ‘court files might have become a
6 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
7 scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon v.*
8 *Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the production of records
9 may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not,
10 without more, compel the court to seal its records.” *Id.*

11 The Court must “balance[] the competing interests of the public and the party who seeks to
12 keep certain judicial records secret. After considering these interests, if the court decides to seal
13 certain judicial records, it must base its decision on a compelling reason and articulate the factual
14 basis for its ruling, without relying on hypothesis or conjecture.” *Id.* Civil Local Rule 79-5
15 supplements the compelling reasons standard set forth in *Kamakana*: the party seeking to file a
16 document or portions of it under seal “must explore all reasonable alternatives to filing documents
17 under seal, minimize the number of documents filed under seal, and avoid wherever possible
18 sealing entire documents” Civil L.R. 79-5(a). The party must further explain the interests
19 that warrant sealing, the injury that will result if sealing is declined, and why a less restrictive
20 alternative to sealing is not sufficient. *See* Civil L.R. 79-5(c).

21 **B. Discussion**

22 The parties have filed numerous administrative motions to seal information related to their
23 summary judgment motion and *Daubert* motion briefing. *See* Dkt. Nos. 125, 127–131, 150, 153,
24 155, 157, 159, 161, 162, 165, 178, 180, 182, 184, 186, 188, 190. At the Court’s direction, the
25 parties filed three joint omnibus motions that encompass all of their requests. *See* Dkt. Nos. 141
26 (filed October 25, 2025); 168 (filed December 4, 2024); 194 (filed January 10, 2025).

27 Beginning with Defendant’s requests, Defendant seeks to seal information in four
28 categories: 1) trade secrets; 2) confidential and commercially sensitive information related to the

1 terms of Defendant’s agreements with third parties; 3) other confidential business information
2 related to Defendant’s proprietary product information and business strategy; and 4) personally
3 identifiable information (“PII”), including email addresses and phone numbers, of Defendant’s
4 employees and third parties. *See* Dkt. Nos. 141 at 4–7; 168 at 2–3; 194 at 2. Defendant’s requests
5 include mostly targeted (but voluminous) redactions and a few requests to seal entire documents.
6 *See* Dkt. Nos. 141 at 7–97; 168 at 3–37; 194 at 3–15. Defendant provides lengthy declarations
7 supporting each request that describe the competitive harm Defendant would suffer if the
8 information it seeks to seal were to be disclosed to the public. *See, e.g.*, Dkt. Nos. 141-1, 168-1,
9 191-1.

10 Plaintiff requests far fewer redactions than Defendant. *See* Dkt. Nos. 141 at 97–99; 168 at
11 37–38; 194 at 16. On the whole, Plaintiff seeks to redact and seal its non-public financial and
12 business information. *See, e.g.*, Dkt. No. 141 at 97–99. However, some of its requests describe
13 the information to be redacted simply as “confidential material.” *See, e.g.*, Dkt. No. 168 at 37.
14 Plaintiff supports its requests in two of the three joint omnibus motions to seal with detailed
15 declarations. *See* Dkt. Nos. 142, 169. In the third motion, Plaintiff requests two redactions and
16 cites a supporting declaration without providing a corresponding docket number, and the Court
17 could not locate any such declaration on the docket. *See* Dkt. No. 194 at 16.

18 The Court **GRANTS IN PART AND DENIES IN PART** the motions to seal. The Court
19 first denies Plaintiff’s request to redact part of footnote in Defendant’s summary judgment reply
20 brief that quotes the deposition testimony of Rumble’s CEO. *See* Dkt. No. 194 at 16. In the
21 applicable motion to seal, Plaintiff argues that the material should be sealed simply because the
22 deposition is “confidential” and “has not been made public.” *See id.* The motion refers to a
23 declaration that ostensibly provides additional support for the request, but as noted, Plaintiff failed
24 to identify the declaration by docket number, *see id.*, and the Court could not locate it.

25 Accordingly, Plaintiff only provides a cursory justification for its request, which is insufficient to
26 warrant sealing. Local Rule 97-5 requires any sealing request to be supported with “a specific
27 statement of the applicable legal standard and the reasons for keeping [information] under seal,”
28 which must include an explanation of “the legitimate private or public interests that warrant

1 sealing” and “the injury that will result if sealing is denied.” *See* Civil L.R. 79-5(c). Asserting
 2 that the information sought to be redacted is “confidential” does not satisfy this requirement or the
 3 compelling reasons standard. *See id.*; *Kamakana*, 447 F.3d at 1184 (holding that “simply
 4 mentioning a general category of privilege, without any further elaboration or any specific linkage
 5 with the documents, does not satisfy the burden”).⁷

6 The parties’ remaining requests, however, are sufficiently supported, and seek to redact
 7 commercially sensitive and confidential business information and other information that satisfies
 8 the compelling reasons standard and outweighs the public’s interest in viewing the information.
 9 *See Baird v. BlackRock Institutional Tr., N.A.*, 403 F.Supp.3d 765, 792 (N.D. Cal. 2019)
 10 (“[C]onfidential business information in the form of license agreements, financial terms, details of
 11 confidential licensing negotiations, and business strategies satisfies the compelling reasons
 12 standard.”); *Finisar Corp. v. Nistica, Inc.*, No. 13-cv-03345-BLF (JSC), 2015 WL 3988132, at *5
 13 (N.D. Cal. June 30, 2015) (sealing “confidential product and business information which is not
 14 intended for public disclosure”); *Nursing Home Pension Fund v. Oracle Corp.*, No. C01-00988
 15 MJJ, 2007 WL 3232267, at *2 (N.D. Cal. Nov. 1, 2007) (“The Ninth Circuit has found that
 16 compelling reasons exist to keep personal information confidential to protect an individual’s
 17 privacy interest and to prevent exposure to harm or identity theft.”).

18 In addition, many of the requests relate to materials cited in the parties’ *Daubert* motions,
 19 which the Court never substantively considered. The public’s interest in the disclosure of these
 20 materials is therefore minimal as they do not aid the public’s understanding of the judicial
 21 proceedings here. *See In re iPhone Application Litig.*, No. 11-MD-02250-LHK, 2013 WL
 22 12335013, at *2 (N.D. Cal. Nov. 25, 2013) (“The public’s interest in accessing these documents is
 23 even further diminished in light of the fact that the Court will not have occasion to rule on [the
 24 relevant motion.]”); *see also Economus v. City & Cty. of San Francisco*, No. 18-CV-01071-HSG,
 25 2019 WL 1483804, at *9 (N.D. Cal. Apr. 3, 2019) (finding compelling reason to seal because the
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27 _____
 28 ⁷ The material itself also does not reflect any apparent compelling reason requiring sealing: the
 testimony cited does not obviously pertain to Plaintiff’s commercially sensitive business
 information or other potentially sealable material.

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1 sealing request divulges sensitive information no longer related to the case); *Doe v. City of San*
2 *Diego*, No. 12-CV-689-MMA-DHB, 2014 WL 1921742, at *4 (S.D. Cal. May 14, 2014) (exhibit’s
3 disclosure of personal information and irrelevance to the matter are compelling reasons to seal the
4 exhibit). As such, the Court finds the parties have met the compelling reasons standard to file the
5 requested redactions and exhibits under seal, other than Plaintiff’s redaction request that the Court
6 has denied.

7 **V. CONCLUSION**

8 The Court **GRANTS** Defendant’s motion for summary judgment, Dkt. No. 134. The
9 Court **GRANTS IN PART AND DENIES IN PART** the joint omnibus administrative motions to
10 file under seal, Dkt. Nos. 141, 168, and 194. Pursuant to Civil Local Rule 79-5(g)(1), documents
11 filed under seal as to which the administrative motions are granted will remain under seal. The
12 Court **DIRECTS** the parties to meet and confer and file public versions and revised redactions as
13 needed of documents for which the proposed sealing has been denied, or file a new motion to seal,
14 within seven days of this order. This order terminates all remaining pending administrative
15 motions to seal, Dkt. Nos. 125, 127 through 131, 150, 153, 155, 157, 159, 161, 162, 165, 178, 180,
16 182, 184, 186, 188, and 190. The pending *Daubert* motions, Dkt. Nos. 135 through 140, are
17 terminated as moot. The Clerk is **DIRECTED** to enter judgment in Defendant’s favor and to
18 close the case.

19 **IT IS SO ORDERED.**

20 Dated: 5/21/2025

21 
22 HAYWOOD S. GILLIAM, JR.
23 United States District Judge
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28