

Caroline Van Ness (Bar No. 281675)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue
Palo Alto, California 94301
Telephone: (650) 470-4660
Facsimile: (213) 621-5430
Email: caroline.vanness@skadden.com

Steven C. Sunshine (admitted *pro hac vice*)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
Telephone: (202) 371-7000
Facsimile: (202) 393-5760
Email: steven.sunshine@skadden.com

Evan R. Kreiner (admitted *pro hac vice*)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
One Manhattan West
New York, NY 10001
Telephone: (212) 735-3000
Facsimile: (212) 735-2000
Email: evan.kreiner@skadden.com

Counsel for Non-Party Apple Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC., et al.,

Defendants.

CASE NO. 5:22-cv-04325-EJD (SVK)

**NON-PARTY APPLE INC.'S STATEMENT
RE: DEFENDANT META PLATFORMS,
INC.'S ADMINISTRATIVE MOTION TO
CONSIDER WHETHER ANOTHER
PARTY'S MATERIAL SHOULD BE
SEALED**

Location: Courtroom 2 – 5th Floor
District Judge: Hon. Edward J. Davila
Magistrate Judge: Hon. Virginia K. DeMarchi

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Non-Party Apple Inc. (“Apple”) respectfully seeks to seal certain portions of Apple’s and Defendant Meta Platforms, Inc.’s (“Meta”) “Joint Statement Regarding Dispute on Subpoena to Non-Party Apple, Inc.” (Dkt. 139) (“Joint Discovery Letter”) and Exhibit 2 thereto (Dkt. 139-2) (“Ex. 2”), which contain the following non-public, highly sensitive, and confidential business information that could affect Apple’s competitive standing, as further described below and in the concurrently filed Declaration of Brendan McNamara (“McNamara Decl.”):

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Joint Discovery Letter	Page 1, lines 20-21	Apple
Joint Discovery Letter	Page 1, lines 23-27	Apple
Joint Discovery Letter	Page 2, lines 5-7	Apple
Joint Discovery Letter	Page 2, line 8	Apple
Joint Discovery Letter	Page 2, lines 9-14	Apple
Joint Discovery Letter	Page 2, lines 15-18	Apple
Joint Discovery Letter	Page 3, lines 6-13	Apple
Joint Discovery Letter	Page 3, lines 21-23	Apple
Joint Discovery Letter	Pages 3, line 27 through page 4, line 5	Apple
Joint Discovery Letter	Page 4, line 7	Apple
Joint Discovery Letter	Page 4, lines 20-22	Apple
Joint Discovery Letter	Page 4, lines 24-28	Apple
Joint Discovery Letter	Page 5, lines 5-9	Apple
Joint Discovery Letter	Page 5, lines 10-11	Apple
Joint Discovery Letter	Page 5, lines 13-14	Apple
Joint Discovery Letter	Page 5, lines 18-21	Apple
Joint Discovery Letter	Page 5, lines 27-28	Apple
Ex. 2, RFP No. 2	Meta’s Proposal at Page 1	Apple
Ex. 2, RFP No. 2	Meta’s Proposal re Requested Custodians at Pages 1-2	Apple
Ex. 2, RFP No. 2	Meta’s Proposal re Requested Search Terms at Page 2	Apple
Ex. 2, RFP No. 2	Apple’s Proposal at Page 1	Apple
Ex. 2, RFP No. 5	Meta’s Proposal at Page 3	Apple
Ex. 2, RFP No. 5	Meta’s Proposal re Requested Custodians at Page 3	Apple
Ex. 2, RFP No. 5	Meta’s Proposal re Requested Search Terms at Page 4	Apple
Ex. 2, RFP No. 5	Meta’s Proposal re Requested Custodian at Page 4	Apple
Ex. 2, RFP No. 5	Meta’s Proposal re Requested Search Term at Page 4	Apple
Ex. 2, RFP No. 5	Apple’s Proposal at Page 3	Apple
Ex. 2, RFP No. 5	Apple’s Proposal at Page 3	Apple

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Ex. 2, RFP No. 6	Meta's Proposal at Page 4	Apple
Ex. 2, RFP No. 6	Meta's Proposal at Page 5	Apple
Ex. 2, RFP No. 6	Meta's Proposal re Requested Custodian at Page 5	Apple
Ex. 2, RFP No. 6	Meta's Proposal re Requested Search Term at Page 5	Apple
Ex. 2, RFP No. 6	Apple's Proposal at Page 4	Apple
Ex. 2, RFP No. 6	Apple's Proposal at Page 5	Apple
Ex. 2, RFP No. 9	Meta's Proposal at Page 6	Apple
Ex. 2, RFP No. 9	Meta's Proposal at Page 6	Apple
Ex. 2, RFP No. 9	Meta's Proposal re Requested Custodian at Page 6	Apple
Ex. 2, RFP No. 9	Meta's Proposal re Requested Search Term at Pages 6-7	Apple
Ex. 2, RFP No. 9	Apple's Proposal at Page 6	Apple
Ex. 2, RFP No. 9	Apple's Proposal at Page 6	Apple
Ex. 2, RFP No. 10	Meta's Proposal at Page 7	Apple
Ex. 2, RFP No. 10	Meta's Proposal at Page 8	Apple
Ex. 2, RFP No. 10	Meta's Proposal re Requested Custodian at Page 8	Apple
Ex. 2, RFP No. 10	Meta's Proposal re Requested Search Term at Page 8	Apple
Ex. 2, RFP No. 10	Apple's Proposal at Page 7	Apple
Ex. 2, RFP No. 10	Apple's Proposal at Page 8	Apple
Ex. 2, RFP No. 10	Apple's Proposal at Page 8	Apple
Ex. 2, RFP No. 10	Apple's Proposal at Page 8	Apple
Ex. 2, RFP No. 11	Meta's Proposal at Pages 8-9	Apple
Ex. 2, RFP No. 11	Meta's Proposal at Page 9	Apple
Ex. 2, RFP No. 11	Meta's Proposal re Requested Custodian at Page 9	Apple
Ex. 2, RFP No. 11	Meta's Proposal re Requested Search Term at Page 9	Apple
Ex. 2, RFP No. 11	Apple's Proposal at Pages 8-9	Apple
Ex. 2, RFP No. 11	Apple's Proposal at Page 9	Apple

II. LEGAL STANDARD

“[A]ccess to judicial records is not absolute.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Courts have broad discretion to protect documents that reflect “a trade secret or other confidential research, development, or commercial information,” Fed. R. Civ. P. 26(c)(1)(G). “[T]he common-law right of inspection has bowed before the power of a court to insure that its records are not used . . . as sources of business information that might harm a litigant’s competitive standing.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (alteration in original) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

Where, as here, a non-party seeks to seal information in a non-dispositive motion like Meta’s motion to compel, the non-party must only show “good cause” for sealing. *Kamakana*, 447 F.3d at

1179-80. The “good cause” standard is satisfied with a “particularized showing” that “specific prejudice or harm will result” should the information be disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002). Courts have found “good cause” to seal information which “contains non-public, sensitive confidential business information” that “could affect [the movant’s] competitive standing” where “competitors may alter their . . . practices relating to competing products, time strategic litigation, or otherwise unfairly compete with [the movant].” *Brown v. Google LLC*, 2022 WL 816078, at *1 (N.D. Cal. Mar. 17, 2022). Indeed, sealing is warranted under the higher “compelling reasons” standard where revealing “confidential business material, marketing strategies, [and] product development plans could result in improper use by business competitors seeking to replicate [the company’s] business practices and circumvent the time and resources necessary in developing their own practices and strategies.” *Roley v. Google LLC*, 2020 WL 13517498, at *1 (N.D. Cal. Apr. 28, 2020) (alteration in original).

13 **III. GOOD CAUSE EXISTS TO SEAL APPLE’S INFORMATION**

14 The Joint Discovery Letter and its appended Exhibit 2 contain confidential and proprietary
15 information regarding Apple’s highly sensitive and top-secret VR plans and strategy. Specifically,
16 this information provides details that could disclose the presence, absence, and/or contours of any
17 plans Apple may have related to: (1) offering its Fitness+ product (a video on demand guided
18 workout and mindfulness streaming service) in the VR/AR/MR space and (2) Apple’s development
19 of VR/AR/MR hardware products.

20 Public disclosure of this information would significantly harm Apple’s competitive standing.
21 (McNamara Decl. ¶¶ 7, 11.) Apple has limited any public disclosure—and even disclosure within
22 Apple—of any VR plans, including whether or not it plans to release a VR device, when it might
23 release such a device, what features and apps such a device might include, and how much such a
24 device might cost. (*Id.* ¶¶ 5-6, 9-10.) For well over a decade, Apple has closely guarded any plans
25 it has or does not have to release new products. Apple has kept these plans top-secret in order to,
26 among other reasons, avoid informing companies that offer or may offer VR devices—including
27 Meta—about whether Apple intends to offer a VR device, any differentiating features of any VR
28 device Apple might offer, as well as Apple’s sales and marketing strategies. (*Id.* ¶¶ 8-9.)

1 The public and Apple’s potential VR competitors have been keenly interested in details about
 2 Apple’s potential VR plans: public speculation around Apple’s VR plans has been rampant and
 3 unconfirmed for years. *See* Shara Tibken, *Apple’s working on a powerful, wireless headset for both*
 4 *AR, VR*, CNET (Apr. 27, 2018) (claiming release slated for 2020),
 5 [https://www.cnet.com/tech/mobile/apple-is-working-on-an-ar-augmented-reality-vr-virtual-reality-](https://www.cnet.com/tech/mobile/apple-is-working-on-an-ar-augmented-reality-vr-virtual-reality-headset-powered-by-a-wireless-wigig-hub/?ftag=COS-05-10aaa0b&linkId=51043864)
 6 [headset-powered-by-a-wireless-wigig-hub/?ftag=COS-05-10aaa0b&linkId=51043864](https://www.cnet.com/tech/mobile/apple-is-working-on-an-ar-augmented-reality-vr-virtual-reality-headset-powered-by-a-wireless-wigig-hub/?ftag=COS-05-10aaa0b&linkId=51043864). As for
 7 Apple’s competitors, just as one example, Meta’s CEO, Mark Zuckerberg, has given recent
 8 interviews focused on his guesswork about Apple’s VR plans, in which Mr. Zuckerberg has noted
 9 that it will be “interesting” to see Apple’s VR plans once revealed, and that it has “been very hard
 10 for [Meta] to have any sense of what [Apple is] doing” with respect to VR.¹ Disclosure of the
 11 information Apple seeks to seal thus would dampen the effect of any potential announcement by
 12 Apple related to a VR device, empower Apple’s potential competitors (including Meta) to adjust
 13 their own strategies, and significantly harm Apple’s competitive standing that it has zealously
 14 protected by keeping its VR plans top-secret. (Decl. ¶ 11.)

15 The information Apple seeks to seal is narrowly tailored. The redactions are limited to
 16 statements concerning—or which might support inferences concerning—Apple’s plans for VR,
 17 which must be withheld from the general public and Apple’s competitors to prevent any competitive
 18 harm to Apple. (*Id.* ¶ 3.) Additionally, neither Defendants nor the FTC intends to oppose Apple’s
 19 request to keep these materials under seal.

20 **IV. CONCLUSION**

21 For the foregoing reasons, and as further set forth in the McNamara Declaration, the Court
 22 should seal the identified portions of the Joint Discovery Letter and Exhibit 2 thereto.

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 27 ¹ Alex Heath & Nilay Patel, *Mark Zuckerberg on the Quest Pro, building the metaverse, and more*,
 28 THE VERGE (Oct. 11, 2022), <https://www.theverge.com/23397187/mark-zuckerberg-quest-pro-metaverse-interview-decoder>.

1 DATED: November 2, 2022

By: /s/ Caroline Van Ness

2
3 Caroline Van Ness (Bar No. 281675)
4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
5 525 University Avenue
6 Palo Alto, CA 94301
7 Telephone: (650) 470-4686
8 caroline.vanness@skadden.com

9
10 Steven C. Sunshine (admitted *pro hac vice*)
11 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
12 1440 New York Avenue, NW
13 Washington, DC 20005
14 Telephone: (202) 371-7860
15 steve.sunshine@skadden.com

16
17 Evan R. Kreiner (admitted *pro hac vice*)
18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
19 One Manhattan West
20 New York, NY 10001
21 Telephone: (212) 735-2491
22 evan.kreiner@skadden.com

23
24 *Counsel for Non-Party Apple Inc.*
25
26
27
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