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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 UNITED STATES OF AMERICA,
21
22 Plaintiff,

23 v.

24 ADOBE, INC., a corporation,
25 MANINDER SAWHNEY, individually, and
DAVID WADHWANI, individually,

26 Defendants.
27
28

Case No. 5:24-cv-03630-BLF

**RESPONSE TO DEFENDANTS’
LOCAL RULE 79-5(f)(3) STATEMENT**

1 Pursuant to Civil Local Rule 79-5(f)(4), Plaintiff, the United States of America, respectfully
2 submits this Response to Defendants’ Rule 79-5(f)(3) Statement. *See* ECF No. 37.

3 LEGAL STANDARD

4 Members of the public enjoy a “strong presumption in favor of access to court records.” *Foltz v.*
5 *State Farm Mut. Auto. Ins.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to seal such records
6 must therefore articulate “compelling reasons” why sealing is required and must support these reasons
7 with “specific factual findings.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
8 2006) (citation omitted). Sealing is warranted only if the “compelling reasons” offered by a movant
9 “outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178-79. “The
10 mere fact that the [publication] of records may lead to a litigant’s embarrassment, incrimination, or
11 exposure to further litigation” does not constitute a compelling reason to seal. *Id.* at 1179.

12 ARGUMENT

13 **I. Adobe Fails to Demonstrate Any Compelling Reason to Seal the Generalized Statement** 14 **About its Revenue Contained in Paragraph 30 of the Complaint.**

15 Adobe seeks to seal a statement describing, in highly generalized terms, one of its revenue sources.
16 *See* Compl. ¶ 30. This statement does not include exact revenue numbers, specific percentages of total
17 revenue, or any other type of detailed financial information.

18 In support of its request to seal this high-level statement, Adobe emphasizes (ECF No. 37 at 2)
19 that courts in this district have found compelling reasons to seal “detailed product-specific financial
20 information.” *In re Apple Inc. Device Performance Litig.*, No. 17-CV-00220-LHK, 2019 WL 1767158,
21 at *2 (N.D. Cal. Apr. 22, 2019). But Adobe ignores that the statement it seeks to seal is not at all
22 “detailed.” *See* Compl. ¶ 30. Far from it, the statement is a high-level generalization that does not disclose
23 any internal financial projection, revenue estimate, or any other specific number.

24 In ruling on requests to seal, courts distinguish between detailed financial data, such as “exact
25 numbers and statistics derived from internal records,” where sealing may be warranted to avoid
26 competitive harm, and “revenue . . . described in generalized, ballpark numbers,” where sealing is
27 unjustified. *Dangaard v. Instagram, LLC*, No. C 22-01101 WHA, 2023 WL 4869234, at *5 (N.D. Cal.
28 July 31, 2023); *see also Zakinov v. Ripple Labs.*, No. 18-cv-06753-PJH, 2023 WL 5280193, at *4 (N.D.

1 Cal. Aug. 15, 2023) (denying motion to seal a “generalized discussion of a defendant’s sources of
2 income”); *Open Text S.A. v. Box, Inc.*, No. 13-cv-04910-JD, 2014 WL 7368594, at *3 (N.D. Cal. Dec. 26,
3 2014) (finding no compelling reason to seal “aggregate data” related to “historical and future revenues”).

4 The statement that Adobe seeks to seal falls squarely within the latter category of “generalized,
5 ballpark” information that does not give rise to a legitimate concern about competitive harm or unfair
6 competition. *See* Compl. ¶ 30. Tellingly, Adobe’s supporting declaration provides no facts to support its
7 claim of harm, and instead offers only the vague, speculative statement that “Adobe’s competitors could
8 modify their business strategy to unfairly compete.” ECF No. 37-1, ¶ 1. This speculation ignores that
9 Adobe regularly publishes earnings statements that include significantly more detailed financial
10 information than that found in Paragraph 30. *See, e.g.*, “Adobe Reports Record Q4 and Fiscal 2023
11 Revenue,” *available at* [https://s23.q4cdn.com/979560357/files/121323-AdobeReportsRecordQ4FY23](https://s23.q4cdn.com/979560357/files/121323-AdobeReportsRecordQ4FY23Revenue.pdf)
12 *Revenue.pdf*. Indeed, Adobe’s public statements include specific dollar amounts illustrating the outsized
13 impact of Adobe’s subscription revenue on its total revenue. *See, e.g., id.* at 5. Adobe also ignores that
14 the allegedly sensitive sentence it seeks to seal is simply a commonsense statement that follows from
15 observations of publicly available evidence on its subscription offerings and revenues, such as the default
16 plan option. *See FTC v. Qualcomm Inc.*, No. 17-CV-00220-LHK, 2019 WL 95922, at *3 (N.D. Cal. Jan.
17 3, 2019) (recognizing “commonsense” statements should not be sealed).

18 In light of the general nature of the Complaint’s language, Adobe’s failure to offer any factual
19 basis to support its claim of competitive harm, and the public’s right to access court records, the United
20 States respectfully requests that the Court deny Adobe’s request to seal Paragraph 30 of the Complaint.

21 **II. The United States Has Already Removed the Individual Defendants’ Addresses from the**
22 **Public Docket.**

23 The United States filed this lawsuit on June 17, 2024. That same day the United States served on
24 Defendants Sawhney and Wadhvani, by mail, copies of all filings — including the redacted Complaint
25 (ECF No. 1), an Administrative Motion to Seal (ECF No. 2), and a Notice of Appearance (ECF No. 7).
26 On June 18, the United States filed and served three additional Notices of Appearance (ECF Nos. 9-11).
27 Because counsel for Mr. Sawhney and Mr. Wadhvani had not yet entered an appearance, the United States
28 included on each filing a Certificate of Service certifying that it had mailed the filings to these Defendants.

1 This certificate listed the addresses where service was accomplished, which the United States found
 2 through an internet search. *See* L.R. 5-5(a)(2) (certificates of service should “stat[e] the date, place, and
 3 manner of service” and the “street or electronic address of each person served”).

4 On July 1, Adobe informed the United States that it had “security concerns” regarding the fact that
 5 Mr. Sawhney and Mr. Wadhvani’s addresses were included in the Certificates of Service. In light of
 6 Adobe’s concerns, the United States voluntarily docketed replacement versions of these documents. *See*
 7 ECF Nos. 31-36. Because counsel for the Defendants had, by this time, entered an appearance that
 8 permitted service through ECF, these replacement versions omitted the Certificates of Service entirely,
 9 thus removing any address information from the public docket. *See* L.R. 5-5(a) (requiring a certificate of
 10 service “unless [the docket entry] is served by ECF”). These replacement versions are publicly available
 11 at the docket entries below, and the original docket entries have already been administratively sealed by
 12 the clerk’s office.

Original Docket #	Replacement Docket #
ECF No. 1	ECF No. 32
ECF No. 2	ECF No. 33
ECF No. 7	ECF No. 31
ECF No. 9	ECF No. 36
ECF No. 10	ECF No. 35
ECF No. 11	ECF No. 34

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 18 The United States consents to Adobe’s request that the original docket entries (ECF Nos. 1, 2, 7,
 19 9, 10, and 11) remain under seal permanently. Because Defendants’ Proposed Order (ECF No. 37-2)
 20 includes language directing the United States to “re-file the above docket entries . . . within 14 days,”
 21 however, the United States respectfully clarifies that this portion of the Proposed Order is unnecessary
 22 given the replacement versions already filed (ECF Nos. 31-36).¹

23 CONCLUSION

24 For the foregoing reasons, the Court should enter an order permanently sealing ECF Nos. 1, 2, 7,
 25 9, 10, and 11 but should otherwise deny Adobe’s request to seal.

26
 27 ¹ As counsel for the United States has previously confirmed to Defendants’ counsel, should the
 28 United States be directed to file an unredacted or less-redacted version of the Complaint (ECF No. 2-1),
 the United States will serve via ECF and will omit the Certificate of Service consistent with L.R. 5-5(a),
 thereby avoiding publication of any personal addresses.

1 Dated: July 22, 2024

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