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18 *Attorneys for Defendant GOOGLE LLC*

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

22 FOUR JAYS MUSIC COMPANY, et al.,

23 Plaintiffs,

24 v.

25 APPLE INC., et al.,

26 Defendants.

Case No. 2:19-cv-07952-FMO-MAA

**DEFENDANT GOOGLE LLC'S
APPLICATION TO FILE UNDER
SEAL PORTIONS OF ITS FED. R.
CIV. P. 12(B)(3) MOTION TO
DISMISS, OR, IN THE
ALTERNATIVE TRANSFER VENUE
TO THE SOUTHERN DISTRICT OF
NEW YORK**

1 Pursuant to Local Rule 79-5.2.2(a), Defendant Google LLC (“Google”) hereby
2 applies to file under seal: (i) Exhibit A to the Declaration of Waleed Diab (the
3 “Diab Declaration”), a content license agreement between Google and the Orchard,
4 its co-defendant in this action, that concerns the distribution of musical works from
5 the Orchard on the Google Play Music service (the “Agreement”); and (ii) portions
6 of the Diab Declaration and Google’s Motion to Dismiss for Improper Venue or, In
7 the Alternative, Transfer Venue to the Southern District of New York (the “Motion
8 to Dismiss”) that reference, describe or quote from the Agreement.

9 Local Rule 79-5.1 provides that no document shall be filed under seal unless the
10 Court has issued an order providing for filing of the document under seal. Pursuant
11 to Federal Rule of Civil Procedure 26(c), the Court has broad discretion to permit
12 sealing of documents for, *inter alia*, the protection of “a trade secret or other
13 confidential research, development, or commercial information.” Fed. R. Civ. P.
14 26(c)(1)(G). “Generally a trade secret relates to the production of goods...It may,
15 however, relate to the sale of goods or to other operations in the business.” *Johnson*
16 *v. Quantum Learning Network, Inc.*, 2016 U.S. Dist. LEXIS 111723, at *4 (N.D.
17 Cal. Aug. 22, 2016) (quoting *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir.
18 1972)). Good cause to seal is generally found where the disclosure of proprietary
19 information could cause a party competitive injury. *Model Drug, Inc. v.*
20 *Amerisourcebergen Drug Corp.*, 2013 U.S. Dist. LEXIS 169496, at *5 (E.D. Cal.
21 Nov. 26, 2013) (granting request to seal agreements between plaintiff and defendant
22 that contained confidentiality clause and proprietary business information).

23 Google seeks leave to file under seal the Agreement and the portions of its
24 Motion to Dismiss and the Diab Declaration that reference, describe or quote from
25 the Agreement because the Agreement contains a Confidentiality Provision that
26 prohibits any party to the agreement from disclosing the terms to anyone except as
27 required by law. Google believes that it may be in breach of the Agreement if the
28

1 Agreement and these portions of its Motion to Dismiss and the Diab Declaration
2 are not filed under seal.

3 In addition, the Agreement contains sensitive commercial information
4 concerning the operation of Google Play Music, including technical specifications
5 and pricing and commercial terms. Accordingly, to protect trade secrets belonging
6 to both Google and the Orchard, Google submits the Agreement and the portions of
7 its Motion to Dismiss and the Diab Declaration that reference, describe or quote
8 from the Agreement to be filed under seal.

9 On February 27, 2020, counsel for Google contacted Plaintiff's counsel via
10 email to inform them of its sealing application and ask if they would oppose such
11 application. Counsel for Plaintiff responded that it needed to review the Agreement
12 before it would consent to Google filing the agreement under seal. Google's
13 counsel explained that the broad confidentiality provision in the Agreement
14 precluded it from being shared with counsel for Plaintiff in the current
15 circumstances, particularly as there is currently no protective order in place in this
16 action. Plaintiff's counsel subsequently stated that it did not consent to Google's
17 application because it was not provided a copy beforehand to assess its
18 confidentiality.

19 In light of the foregoing, Google respectfully requests that the Court grant its
20 application to file under seal (i) the Agreement; and (ii) those portions of the
21 Motion to Dismiss and the Diab Declaration that reference, describe or quote from
22 the Agreement.

1 Dated: March 3, 2020

Respectfully submitted,

2 MAYER BROWN LLP

3 JOHN NADOLENCO

4 A. JOHN P. MANCINI

5 OLENA V. RIPNICK-O'FARRELL

6 By: /s/ John Nadolenco

7 John Nadolenco

8 *Attorneys for Defendant GOOGLE LLC*