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UNITED STATES DISTRICT COURT
Northern District of California
San Francisco Division

IN RE HULU PRIVACY LITIGATION

No. C 11-03764 LB

ORDER DENYING ADMINISTRATIVE
MOTION TO FILE UNDER SEAL

[RE: ECF NO. 125]

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The parties in this putative class action are in the process of briefing their summary judgment and class certification motions. *See* Scheduling Order, ECF No. 122. On October 1, 2013, Hulu filed a summary judgment motion regarding Plaintiffs’ “Comscore” and “Facebook ‘Like’ Button” theories of liability along with several supporting exhibits. *See* ECF No. 125-3 to 125-10. A portion of Hulu’s motion and one of the supporting exhibits contain information that Plaintiffs marked Confidential under the parties’ stipulated protective order. *See* Schwartz Decl., ECF No. 125-1. Accordingly, Hulu also filed an administrative motion to file under seal. ECF No. 125. Hulu explains that it seeks to file its summary judgment motion under seal “because it references plaintiffs-designated Confidential documents and information.” Schwartz Decl., ECF No. 125-1 at 2. Plaintiffs’ confidentiality designation is the only reason Hulu gives for filing under seal.

A party seeking to seal a judicial record or an attached exhibit must show “compelling reasons” if the record is a dispositive pleading or “good cause” if the record is a non-dispositive pleading. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). “In general,

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1 'compelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing
2 court records exist when such 'court files might have become a vehicle for improper purposes,' such
3 as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or
4 release trade secrets." *Id.* at 1179 (quoting *Nixon v. Warner Commcationns, Inc.*, 435 U.S. 589, 597
5 (1978)).

6 In this district, a party that seeks to file documents under seal must also comply with the
7 procedures established by Civil Local Rule 79-5. Under Local Rule 79-5(e), where a party seeks to
8 "file under seal a document designated as confidential by the opposing party . . . pursuant to a
9 protective order," within four days, "the Designating Party must file a declaration . . . establishing
10 that all of the designated material is sealable."

11 Here, because Hulu's summary judgment is dispositive, the public's right to access prevails in
12 the absence of compelling reasons. Plaintiffs have not filed a declaration establishing that all (or
13 any) of the designated material is sealable. *See generally* Docket. Possibly this is because the
14 information is benign. Accordingly, the court DENIES Hulu's administrative motion to file under
15 seal. Unless Plaintiffs show good cause and the court intervenes to delay the public docketing as
16 permitted by Local Rule 79-5(e)(2), Hulu may publicly file its summary judgment motion and the
17 attached exhibits no earlier than 4 days and no later than 10 days from the date of this order.

18 This disposes of ECF No. 125.

19 **IT IS SO ORDERED.**

20 Dated: October 18, 2013



21 LAUREL BEELER
22 United States Magistrate Judge
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