

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WINDY CITY INNOVATIONS, LLC,

Plaintiff,

v.

FACEBOOK, INC., *et al.*,

Defendant,

Case No.: 16-CV-1730 YGR

**ORDER RE: PENDING ADMINISTRATIVE  
MOTIONS TO FILE UNDER SEAL AND  
MOTION TO UNLOCK THE DECLARATION OF  
SHANE O'REILLY**

Dkt. Nos. 127, 130, 132, 151, 154, 159, 161,  
166, 175, 180, 184, 187, 190, 194, 198, 209,  
213

Currently pending before the Court are administrative motions to seal various documents filed in connection with the parties' papers in support of and in opposition to Facebook's Motion to Dismiss and Motion for Summary Judgment and the parties' Daubert motions. (Dkt. Nos. 127, 130, 132, 151, 154, 159, 161, 175, 180, 184, 187, 190, 194, 198, 209, 213.) In addition, Facebook filed an Administrative Motion to Unlock Declaration of Shayne O'Reilly. (Dkt. No. 166.) The Court has reviewed the filings in connection with the pending motions thoroughly, and **ORDERS** as follows:

1. With respect to the motions to seal at Docket Nos. 127, 130, and 132, submitted in connection with Facebook's Motion to Dismiss on standing grounds, that motion to dismiss was withdrawn at the request of Facebook in favor of incorporating its arguments into the motion for summary judgment. (Dkt. No. 149.) Thus, the motion to seal is **DENIED AS MOOT** and the documents filed provisionally under seal in connection with those motions are **STRICKEN**.

2. The filings at Docket Nos. 209 and 213 are Joint Administrative Motions to Seal which narrowed the scope of the sealing sought in the motions filed in connection with the summary judgment and *Daubert* motions and withdrew the original motions. In light of this,

1 the motions filed at Docket Nos. 151, 154, 159, 161, 175, 180, 184, 187, 190, 194, and 198 are  
2 **DENIED AS MOOT.**

3 a. In light of the parties' withdrawal of certain prior sealing requests in connection  
4 summary judgment, replacement versions of the following documents were filed at  
5 Docket No. 211:

- 6 • Facebook's Motion for Summary Judgment;
- 7 • Exhibits 1, 2, 3, 8, 10, 18, 19 and 20 to the Declaration of Phillip E. Morton in  
8 Support of Facebook's Motion for Summary Judgment;
- 9 • Exhibits A, B, M, N, O, S, V, AA, BB, CC, DD, EE and GG to the Declaration  
10 of Warren J. McCarty, III in Support of Windy City's Opposition to Facebook's  
11 Motion for Summary Judgment;
- 12 • Facebook's Reply in Support of Motion for Summary Judgment; and
- 13 • Exhibit 24 to the Declaration of Phillip E. Morton in Support of Facebook's  
14 Reply in Support of Motion for Summary Judgment.

15 b. In light of the parties' withdrawal of certain prior sealing requests in connection  
16 the *Daubert* motions, replacement versions of the following documents were filed at  
17 Docket No. 212:

- 18 • Exhibit 13 to the Declaration of Phillip E. Morton in support of Facebook's  
19 opening brief re: Facebook's *Daubert*;
- 20 • Windy City's *Daubert*, opening brief (Facebook's opposing brief and Windy  
21 City's reply brief were filed publicly);
- 22 • Exhibit B to the Declaration of Warren J. McCarty, III in support of Windy  
23 City's opening brief re: Windy City's *Daubert*;
- 24 • Exhibit C to the Declaration of Warren J. McCarty, III in support of Windy  
25 City's opening brief re: Windy City's *Daubert*; and
- 26 • Exhibit J to the Declaration of Warren J. McCarty, III in support of Windy  
27 City's opening brief re: Windy City's *Daubert*.

28 3. With respect to the motion to unlock the declaration of Shane O'Reilly (Dkt. No.  
166), the motion indicates that the declaration at Dkt. No. 159 was filed inadvertently in  
connection with Facebook's motion for summary judgment but was intended to support  
Facebook's motion to seal at Dkt. No. 159. Facebook requested that the documents be  
unlocked, removed from the summary judgment papers and filed with the administrative  
motion to seal. As the motion to seal has been withdrawn, the motion to unlock is **DENIED AS  
MOOT.**

1           4.       The Joint Administrative Motion to File Under Seal Summary Judgment  
2 Briefing and Associated Documents (Dkt. No. 209) is **GRANTED**. The Court finds that the  
3 parties have offered compelling reasons to seal the documents or portions of documents set  
4 forth below:

5           Facebook's Separate Statement of Undisputed Material Facts at 12: 4-5 (Fact 70)

6           Declaration of Phillip E. Morton In Support of Motion for Summary Judgment:

7               Exhibit 14 at p. 2

8               Exhibit 21 at p. 132:18 and 11; 133: 2, 10, 18 and 21

9               Exhibit 23 (in its entirety)

10          Windy City's Opposition to Facebook's Motion for Summary Judgment at p. 14:10; 19:1-  
21: 2-3; 25:11-12

11          Windy City's Responsive Separate Statement of Facts at 17:24-25 (Fact 70)

12          Declaration of Warren J. McCarty III Declaration In Support of Windy City's Opposition  
13 to Motion for Summary Judgment:

14               Exhibit F at pp. 1-3

15               Exhibit G at pp. 4-15

16               Exhibit H at pp. 1, 2-7

17               Exhibit I at pp. 30 and 173

18               Exhibit J at pp. 1-3

19               Exhibit K at pp. 1-6

20               Exhibit P as indicated in the document

21               Exhibit Q (in its entirety)

22               Exhibit R at p. 46 fn.196 and p. 146:10-11

23               Exhibit T at pp. 124-125

24               Exhibit U at pp. 1-3

25               Exhibit W at pp. 1-2

26               Exhibit X (in its entirety)

27               Exhibit Y (in its entirety)

28               Exhibit Z as indicated in the document

29           5.       The Joint Administrative Motion to File Under Seal Daubert Briefing and  
30 Associated Documents and Exhibits is **GRANTED**. The Court finds that the parties have offered  
31 compelling reasons to seal the documents or portions of documents set forth below:

32          Facebook's Opening Brief in Support of its *Daubert* Motion:

33               pages (i): 9; 14:21; 2: 1-5, 7-8, 10, 12, 14, 17; 3:9-15, 18-20; 4: 4-10, 16, and  
34               21; 5: 5-6, 8-11, 18; 7: 25; 8: 8-9; 11: 12-14, 18-20; 12: 2-3, 11-12; 13:12-13.

Declaration of Phillip E. Morton in Support of Facebook's Opening Brief in Support of  
*Daubert* Motion

Exhibit 1 (Weinstein Expert Report) at:

- p. 15, image
- ¶¶ 49-54 at pp. 23-27
- 29:9-33:10 (including fns. 112-139);
- 34:4-39 (including fns. 143-179);
- 39:9-41:2 (including fns. 183-191);
- 41:8-42:5 5;
- 42:11-43:22; and
- 46 fn. 196;
- 47:10-11, fn. 203;
- 49:16;
- 50:1, fn. 211;
- 51:9-15;
- 53: 10-13;
- 54, image
- 54:14-55:5
- 55:7-56:4;
- 59:7-60:10
- 60:11-63:8;
- 63:10-16, fns. 258, 260
- 64:1-17
- 65:8-11
- 66: 5, 7-11;
- 72: 15-17;
- ¶¶ 162-170 at p.73-76
- 75: 13, 15-16;
- 76: 1-2, 4-5, 7-8;
- 74 at note 292, 293, and 294
- Exhibit 2 at pp. 4-8
- Exhibit 2 at pp. 8-12
- Exhibit 5;
- Exhibit 7 (figures in table);
- Exhibit 9;
- Exhibit 10
- Exhibit 10 (figures in items 10 and 11-14);
- Exhibit 11

Exhibit 2:

- Exhibit 2 at figures in items 10 and 11-14.
- Exhibit 2 at figures 1, 2, 4, 5, 6, 7, 8, 9, 10, 11-14 and note 3.

Exhibit 3 (AOL-Windy City Settlement) in its entirety.

Exhibit 4 (Weinstein deposition transcript excerpts) at

- 63:17-64:19;
- 65:5-8; 65:15-18;
- 85:18-25;
- 86:3-11;
- 86:18-87:2;
- 92:3-6; 92:21-24;
- 94:18-24;
- 97:18—98:3;
- 98:5-21;
- 99:1-19;
- 99:24-100:5;
- 102:1-14;
- 103:1-25;
- 104:10-13;
- 106:5-8; 106:15-20;
- 122:7-17;
- 130:10;
- 132: 18, 22;
- 133: 2, 10, 18, 21
- 140:3-7;
- 145:3-6;
- 147:3-16.

Exhibit 5 (Microsoft-Windy City Settlement) in its entirety

Exhibit 8 (Exhibit 9 to the Weinstein Expert Report) in its entirety

Exhibit 9 (Microsoft data) in its entirety

Exhibit 10 (Microsoft data) in its entirety

Exhibit 11 (Microsoft correspondence) in its entirety

Exhibit 12 (Jones Rebuttal Expert Report) at

- 85, image;
- 86:2-5 (including image), fn. 31
- 87:16-20.

Exhibit 15 (Jones Expert Report) at

- 19:16-21 (image);
- 23:3-8 (including image);
- 23:24-24:2 (including image);
- 24:17-22 (including image); and
- 25:1-2, fn 46
- 30:17-31 line13 (Table);
- 31:14-35:14 (including images and fns. 50-51);

- 36:1-14 (image);
- 36:17-47:7 (including images, deposition transcript excerpts, and fns. 62-63);
- 48:9-55:13 (including images, deposition transcript excerpts, and fns. 76-80, 88-91 );
- 57:23-58:8;
- 61:7-63:4 (including deposition transcript excerpt, and fns. 101, 102);
- 63:12-25;
- 70:17-22;
- 95:17-96:3;
- 100:14-18;
- 103:18-104:3;
- 110:24-111:16;
- 118:13-18;
- 118:21-119:10;
- 124:14-125:2;
- 131:20-133:21 (including deposition transcript excerpts);
- 140:1-141:16 (including deposition transcript excerpts);
- 141:23-25;
- 144:1-145:7 (including images and deposition transcript excerpt);
- 145:16-24;
- 146:4-149:11 (including deposition transcript excerpts, and fn. 190);
- 149:13-153:25 (including images and deposition transcript excerpts);
- 156:1-25 (including images);
- 160:3-165:10 (including images, deposition transcript excerpts, and fn. 208);
- 173:3-26 (Table);
- Appendix SC at p. 1 (Table of contents Description for S. 2.10, 2.11 and 2.15); and
- Appendix X1 at p. 359 (S.3, image at top); and
- Appendix X1 at pp. 360-387 (S. 3, including images)
- Appendix SC at pp. 2-26 (S. 1-S. 2.12);
- Appendix SC at pp. 28-29 (after Source filename-S. 2.13);
- Appendix SC at pp. 30-31 (after Source filename-S. 2.16); and
- Appendix SC at pp. 31- 54 (S. 3.1-S. 3.14)

Windy City's Opposition to Facebook's *Daubert* Motion  
pages 8:25-28; 9:1-2; 12:5-6, 23-24; 13:2-7, 10-11; 14:7; 17:6-8.

McCarty Declaration in Support of Windy City's Opposition to Facebook's  
*Daubert* Motion

Exhibit A (excerpts of Bakewell Expert Report) at

- ¶¶ 15, 118-119, 122-135, 137, 138, 139-48, 150, 152-53, 157, 159, 161, 163-63, 166-68, 169, 174, 176, 177; 178- 180; 183; 186; 187; 208, 215, 249, 255, 268, 269
- footnotes 15, 262, 300, 301, 355, 356
- p. 66 (table)
- p. 82, Table Row 11 under "Comments" column;
- portions of Exhibit 1 tables (terms of licenses and confidential user data).

- Exhibit 1.0 (All figures regarding two Facebook agreements);
- Exhibit 2.0 (Tables);
- Exhibit 2.1 (Tables);
- Exhibit 3.0 (Table and Summary Box);
- Exhibit 3.1 (Table and Summary Box);
- Exhibit 3.2 (Table and Summary Box);
- Exhibit 4.0 (Figures for Facebook Royalty Base, Effective Royalty Rate, and Effective Royalty);
- Exhibit 4.1 (Figures in box at right);
- Exhibit 4.2 (Figures in box at right);
- Exhibit 5.0 (Figures for Facebook Royalty Base, Effective Royalty Rate, and Effective Royalty);
- Exhibit 5.1 (Figures in box at right); and
- Exhibit 5.2 (Figures in box at right)
- Exhibit 6.0 (Figures in rows for Amounts paid by Facebook and Amount Paid Per Year of Operating Freedom; Figures in box at right; fn.2);
- Exhibit 6.1 (Figures in rows for Amounts paid by Facebook and Amount Paid Per Year of Operating Freedom; Figures in box at right; fn.2);
- Exhibit 7.0 (Figures in rows for Amounts paid by Facebook and Amount Paid Per Year of Operating Freedom; Figures in box at right);
- Exhibit 7.1 (Figures in rows for Amounts paid by Facebook and Amount Paid Per Year of Operating Freedom; Figures in box at right);
- Exhibit 9.0 (Table);
- Exhibit 9.1 (Table)

Exhibit B (deposition of Alma Chao) at 23:8-9, 28:20-22, and 30:2-31:1.

Exhibit D (Subpoena to Microsoft, portions consisting of the Windy City and Microsoft confidential agreement attached)

- e. Facebook's Reply in Support of Facebook's *Daubert*  
pages 2:10-11, 16; 3:4; 5:23; 6:6-7, 11-13, 16-19; 7:27; 8:7-8, 11-12; 9:13-15, 18-19, 21.

This order terminates Docket Nos. 127, 130, and 132 (denied as moot and documents stricken); Docket Nos. 151, 154, 159, 161, 175, 180, 184, 187, 190, 194, and 198 (denied as moot); and Docket Nos. 209 and 213 (granted).

**IT IS SO ORDERED.**

Date: September 25, 2019

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE