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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION

14 In re: Facebook Internet Tracking Litigation

Case No. 5:12-md-02314 EJD

**DEFENDANT FACEBOOK, INC.'S RESPONSE
 TO PLAINTIFFS' ADMINISTRATIVE
 MOTION TO FILE UNDER SEAL**

DATE: April 28, 2016

TIME: 9:00 a.m.

COURTROOM: 4

JUDGE: Hon. Edward J. Davila

21 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Facebook, Inc. ("Facebook")
 22 submits this response ("Response") to Plaintiffs' Administrative Motion to File Portions of their
 23 Memorandum of Points and Authorities in Opposition to Facebook's Motion to Dismiss Under Seal
 24 ("Administrative Motion"), filed on February 18, 2016 (Dkt. No. 104).

25 Plaintiffs' Administrative Motion seeks to seal portions of their Memorandum of Points and
 26 Authorities in Opposition to Facebook's Motion to Dismiss ("Opposition") (Dkt. No. 105) that
 27 contain information that has been designated "Highly Confidential" by Facebook pursuant to the
 28 terms of the parties' Stipulated Protective Order for Litigation Involving Confidential Information

1 and Trade Secrets entered by the Court on April 11, 2014 (Dkt. No. 75) (“Protective Order”). As set
2 forth below, Facebook confirms the confidentiality of certain documents included in Plaintiffs’
3 Administrative Motion.

4 Pursuant to Civil Local Rule 79-5(e), Facebook’s Response is supported by the Declaration
5 of Natalie Naugle (“Naugle Declaration”), filed herewith.

6 **A. Legal Standard**

7 The Ninth Circuit has recognized that the public’s “access to judicial records is not absolute.”
8 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). In defining this right,
9 the Ninth Circuit has applied a “compelling reasons” test for sealing information in a motion that is
10 “more than tangentially related to the merits of a case.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*,
11 809 F.3d 1092, 1098-1101 (9th Cir. 2016). Accordingly, Facebook seeks to redact only information
12 it has compelling reasons to protect from public disclosure.

13 Courts find compelling reasons to seal information where “court files might have become a
14 vehicle for improper purposes, such as the use of records to . . . release trade secrets.” *In re Elec.*
15 *Arts*, 298 F. App’x 568, 569-70 (9th Cir. 2008) (citation omitted). The Ninth Circuit has adopted the
16 Restatement’s definition of “trade secret” for purposes of sealing, such that a “trade secret may
17 consist of any formula, pattern, device or compilation of information which is used in one’s business,
18 and which gives him an opportunity to obtain an advantage over competitors who do not know or
19 use it.” *Id.* (quoting Restatement of Torts § 757, cmt. b). Compelling reasons may also exist if
20 sealing is required to prevent judicial documents from being used “as sources of business
21 information that might harm a litigant’s competitive standing.” *Id.* (citing *Nixon v. Warner*
22 *Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

23 **B. Sealing of Documents Containing Facebook’s Highly Confidential Information.**

24 Plaintiffs ask the Court to seal portions of Plaintiffs’ Opposition containing Facebook’s
25 confidential, proprietary, non-public information and designated “Highly Confidential” by Facebook
26 pursuant to the terms of the parties’ Stipulated Protective Order.

27 Facebook confirms that Exhibit 2 (the Opposition) to the Declaration of David A. Straite in
28 Support of Plaintiffs’ Administrative Motion contains Facebook’s Highly Confidential information.

1 (Naugle Decl. ¶ 2.) Compelling reasons exist to seal Facebook’s Highly Confidential information in
2 the Opposition. For the reasons set forth in the Naugle Declaration, Facebook would suffer
3 competitive harm if this information were publicly disclosed. *See In re Google Inc. Gmail Litig.*, No.
4 13-MD-02430-LHK, 2013 WL 5366963, at *2-3 (N.D. Cal. Sept. 25, 2013) (granting motion to seal
5 documents filed with complaint describing how company’s technology operates); *Elec. Arts*, 298
6 F. App’x at 569-70. Unlike the information in *Dunbar v. Google, Inc.*, the information that Plaintiffs
7 have moved to be sealed is not known to the public and is not available in other public sources.
8 No. 5:12-cv-003305-LHK, 2012 WL 6202719, at *4 (N.D. Cal. Dec. 12, 2012). For all of the
9 reasons set forth herein and in the Naugle Declaration, Facebook respectfully requests that the Court
10 grant Plaintiffs’ Administrative Motion as to Facebook’s Highly Confidential information, the public
11 disclosure of which would cause competitive harm to Facebook, as limited herein.

12 As explained in the Naugle Declaration, Facebook does not seek to seal all of the information
13 that Plaintiffs move to seal in their Administrative Motion.

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16 Dated: February 22, 2016

COOLEY LLP

17
18 /s/ Matthew D. Brown

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