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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE: FACEBOOK, INC. INTERNET
TRACKING LITIGATION

No. 5:12-md-02314-EJD

**PLAINTIFFS' ADMINISTRATIVE MOTION
TO FILE PORTIONS OF THIRD AMENDED
CONSOLIDATED COMPLAINT UNDER
SEAL**

N.D. Cal. L.R. 7-11 and 79-5

Judge: The Honorable Edward J. Davila
Ctrm: 4, 5th Floor
Date: n/a
Time: n/a

PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE THIRD AMENDED COMPLAINT UNDER SEAL

No. 5:12-md-02314-EJD

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5(e), Plaintiffs Perrin Davis, Cynthia Quinn, Matthew
3 Vickery, and Brian Lentz (the “Plaintiffs”) respectfully submit this administrative motion to file portions
4 of the Third Amended Consolidated Class Action Complaint (the “TAC” or “Amended Complaint”)
5 under seal. Plaintiffs are lodging the TAC under seal because it contains quotes from (or references to)
6 (1) documents which this Court has previously sealed in its Order Granting Plaintiffs’ Administrative
7 Motion to File Portions of Second Amended Consolidated Complaint Under Seal (the “Sealing Order”)
8 [ECF No. 150]; and (2) additional documents produced in discovery that Defendant Facebook Inc. has
9 designated as “Highly Confidential” pursuant to the Stipulated Protective Order entered by Magistrate
10 Judge Paul S. Grewal in this matter on April 11, 2014 (the “Protective Order”) [ECF No. 75].

11 Pursuant to Civil Local Rule 79-5(d)(1), accompanying this motion is a Declaration of David A.
12 Straite (1) identifying the portions of the Amended Complaint (and attachments thereto) that are the
13 subject of this sealing motion; (2) providing 15 documents sought to be sealed which accompany the
14 Amended Complaint; (3) providing redacted versions of the documents sought to be sealed; (4) providing
15 an unredacted version of the Amended Complaint highlighting the text that reflects discovery material
16 designated by Facebook as “Confidential” or “Highly Confidential;” and (5) providing a redacted version
17 of the Amended Complaint.

18 **II. DISCUSSION**

19 Public policy favors public access to court records. *See Kamakana v. City and Cnty. of Honolulu*,
20 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State Farm Mutual Automobile Insurance Co.*, 331 F.3d
21 1124, 1134-35 (9th Cir. 2003); *see also Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978)
22 (recognizing “a general right to inspect and copy public records and documents, including judicial records
23 and documents”). Furthermore, “a party seeking to seal a judicial record must articulate justifications for
24 sealing that outweigh the public policies favoring disclosure.” *Dunbar v. Google, Inc.*, No. 5:12-cv-
25 003305-LHK, 2012 WL 6202719, at *1 (N.D. Cal. Dec. 12, 2012).

26 Concurrent with this Motion to Seal, Plaintiffs are filing the Amended Complaint. Several pages
27 of the Amended Complaint reflect materials previously sealed by the Court, as well as other discovery
28 material designated “Confidential” or “Highly Confidential” by Facebook. The Amended Complaint also

1 includes several attachments of internal Facebook documents produced in discovery, and designated
2 “Highly Confidential” by Facebook. To comply with the Sealing Order, the Protective Order, and Civil
3 Local Rule 79-5, Plaintiffs have lodged the Amended Complaint under seal. To the best of Plaintiffs’
4 knowledge, the redactions to the Amended Complaint are consistent with Facebook’s designations and
5 the Sealing Order.

6 The parties must show that the information is such that the information sought to be kept
7 confidential would provide “the business entity with a financial or competitive advantage when it is kept
8 secret and [would] result[] in financial or competitive harm when it is released to the public.” *Ohio Valley*
9 *Environmental Coalition v. Elk Run Coal Co., Inc.*, 291 F.R.D. 114, 119 (S.D. W. Va. 2013); *see also*
10 *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 684 (N.D. Cal. 2006); *Diamond State Ins. Co. v. Rebel Oil*
11 *Co., Inc.*, 157 F.R.D. 691, 697 (D. Nev. 1994) (“Confidential commercial information” is “information,
12 which disclosed, would cause substantial economic harm to the competitive position of the entity from
13 whom the information was obtained.”). Plaintiffs take no position as to the designations of confidentiality
14 by Facebook.

15 **III. CONCLUSION**

16 Plaintiffs have filed this motion in compliance with the Sealing Order, the Protective Order, and
17 Civil Local Rule 79-5 to identify portions of the TAC that Facebook has designated “Confidential” or
18 “Highly Confidential” and to redact the TAC in accordance therewith.

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Respectfully submitted,

KAPLAN, FOX & KILSHEIMER LLP

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Interim Co-Lead Counsel

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, David A. Straite, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of August, 2017, at New York, New York.

/s/ David A. Straite
DAVID A. STRAITE