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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re: Facebook Internet Tracking Litigation

Case No. 12-md-02314 EJD

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

JUDGE: Edward J. Davila
COURTROOM: 4
TRIAL DATE: Not Yet Set

1 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Facebook, Inc. (“Facebook”)
2 submits this response (“Response”) to Plaintiffs’ Administrative Motion to File Portions of Third
3 Amended Consolidated Complaint Under Seal, filed on August 25, 2017 (Dkt. No. 156-157)
4 (“Plaintiffs’ Administrative Motion”).

5 Plaintiffs’ Administrative Motion seeks to seal various documents submitted in
6 connection with their Third Amended Consolidated Class Action Complaint (Dkt. No. 156-157)
7 (“Amended Complaint”) and portions of the Amended Complaint itself that contain information
8 that has been designated “Highly Confidential” by Facebook pursuant to the terms of the parties’
9 Stipulated Protective Order for Litigation Involving Confidential Information and Trade Secrets
10 entered by the Court on April 11, 2014 (Dkt. 75) (the “Protective Order”). As set forth below,
11 Facebook confirms the confidentiality of certain documents included in Plaintiffs’ Administrative
12 Motion.

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

15 **A. Legal Standard**

16 The Ninth Circuit has recognized that the public’s “access to judicial records is not
17 absolute.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). In
18 defining this right, courts in the Northern District have applied a “compelling reasons” test for
19 sealing information filed in or with a complaint. *In re Google Inc. Gmail Litig.*, No. 13-MD-
20 02430-LHK, 2013 WL 5366963, at *2 (N.D. Cal. Sept. 25, 2013). Accordingly, Facebook seeks
21 to redact only information it has compelling reasons to protect from public disclosure.

22 Courts find compelling reasons to seal information where “court files might have become
23 a vehicle for improper purposes, such as the use of records to . . . release trade secrets.” *In re*
24 *Elec. Arts*, 298 F. App’x 568, 569-70 (9th Cir. 2008). The Ninth Circuit has adopted the
25 Restatement’s definition of “trade secret” for purposes of sealing, such that a “trade secret may
26 consist of any formula, pattern, device or compilation of information which is used in one’s
27 business, and which gives him an opportunity to obtain an advantage over competitors who do
28 not know or use it.” *Id.* (quoting Restatement of Torts § 757, cmt. B)). Compelling reasons may

1 also exist if sealing is required “to prevent judicial documents from being used ‘as sources of
2 business information that might harm a litigant’s competitive standing.” *Id.* (citing *Nixon v.*
3 *Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

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

6 Plaintiffs ask the Court to seal various documents and portions of the Amended Complaint
7 containing Facebook’s confidential, proprietary, non-public information and designated “Highly
8 Confidential” by Facebook pursuant to the terms of the parties’ Stipulated Protective Order.

9 Facebook confirms that Exhibit 2 (which consists of Exhibits U through DD, FF through
10 II, and LL to the Amended Complaint) and Exhibit 4 (the Amended Complaint) to the
11 Declaration of David A. Straite in Support of Plaintiffs’ Administrative Motion (“Straite
12 Declaration”) contain Facebook’s Highly Confidential information. (Naugle Decl. ¶¶ 2-5.)
13 Compelling reasons exist to seal Facebook’s Highly Confidential information in the Amended
14 Complaint and in Exhibits U through DD, FF through II, and LL thereto because, for the reasons
15 set forth in the Naugle Declaration, Facebook would suffer competitive harm if this information
16 were publicly disclosed. *See In re Google Inc.*, 2013 WL 5366963, at *2-3 (granting motion to
17 seal documents filed with complaint describing how company’s technology operates); *Elec. Arts*,
18 298 F. App’x at 569-70.

19 The majority of the exhibits sought to be sealed here (Exhibits U through DD) are
20 identical to exhibits attached to Plaintiffs’ Second Amended Complaint, for which the Court
21 agreed that compelling reasons justified sealing. (*See* Dkt. No. 150 (granting Plaintiffs’
22 Administrative Motion to File Portions of the Second Amended Consolidated Complaint Under
23 Seal).)

24 For all of the reasons set forth herein and in the Naugle Declaration, Facebook
25 respectfully requests that the Court grant Plaintiffs’ Administrative Motion as to Facebook’s
26 Highly Confidential information, the public disclosure of which would cause competitive harm to
27 Facebook, as stated herein.

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Dated: August 29, 2017

COOLEY LLP

/s/ Matthew D. Brown

Matthew D. Brown
Attorneys for Defendant Facebook, Inc.