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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION
17

18 MATTHEW CAMPBELL and MICHAEL
19 HURLEY, on behalf of themselves and all
others similarly situated,

20 Plaintiff,

21 v.

22 FACEBOOK, INC.,

23 Defendant.
24

Case No. C 13-05996 PJH (MEJ)

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL RE
PLAINTIFFS' RESPONSE TO
DECLARATION OF DALE HARRISON**

Judge: Honorable Maria-Elena James

1 Pursuant to Civil Local Rule 7-11 and 79-5(c) and (d), Plaintiffs respectfully request an
2 order from the Court authorizing the filing under seal of (1) designated portions of Plaintiffs’
3 Response to Declaration of Dale Harrison on Behalf of Defendant Facebook, Inc. (“Response”),
4 and (2) Exhibits 1 and 2 to the Response.

5 A complete, unredacted version of the Response is attached as Exhibit A to the
6 Declaration of Melissa Gardner (“Gardner Declaration”) submitted herewith, and contains yellow
7 highlighting to indicate where redactions are proposed. A redacted version of the Response is
8 attached as Exhibit B. Exhibits 1 and 2 to the Response are attached as Exhibits C, and D,
9 respectively.

10 Plaintiffs propose to redact the following text within the Response because such text
11 contains information that Defendant (the designating party) has designated HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY:

Page	Text
1	Between “...asserts that only the” and “concerning the incremental increase...”
1	Between “The” and “Plaintiffs seek are essential...”
1	Between “...limit its production to the” and “associated with the Like counter.”
1	Between “...basis for why other” and “beyond those concerning incrementing the Like counter...”
2-3	Between “Facebook’s declarant states that it” and “Declaration at ¶ 19.”
3	Between “Mr. Harrison further states that he” and “Id. Put another way”
3	Between “...he cannot identify or produce...” and “This is simply a restatement....”
3	Between “...his statements are always conditional:” and “Declaration at ¶ 19.”
3	Between “...and the purportedly” and “Plaintiffs are not asking....”
3-4	Between “The Declaration does not” and “Facebook nonetheless...”
4	Between “Further, Facebook’s methodology in identifying” and “Id. at ¶ 19.”

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Page	Text
4	Between "... Mr. Harrison does not say that" and " <i>Id.</i> at ¶ 18."
4	Between "identify and produce" and "In contrast to..."
5	Between "Plaintiffs are entitled to receive the following items of information:" and "Each of the above-described documents..."
5-6	Between "Each of these documents contains content related to how..." and "In response,..."
6	Between "In response, Facebook contends that " and "As Plaintiffs seek injunctive relief..."
6	Between "depth and breadth of" and "Moreover,..."
6	Between "Moreover," and "If other documents purport..."
6	Between "...clear that the content of ..." and "Refusal to produce..."
7	Between "...should be produced" and "...created from private messages."
7	Between "In terms of identifying how" and " <i>Id.</i> at ¶ 20."
7	Between "...purpose of each" and "thus far produced."
7	Between "...allow Plaintiffs to" and " <i>Id.</i> at ¶ 6."
7	Between "Identification of" and "The Declaration makes reference to..."
7-8	Between "The Declaration makes reference to" and "Such clarification..."
7	Between "...burden from identifying" and "it should be compelled..."
3, fn 1	Between "Harrison states that it would be" and the end of the footnote.

Plaintiffs take no position on whether the text designated above satisfies the requirements for sealing, and specifically reserve the right to challenge any "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation under the Amended Stipulated Protective Order, as well as the sealability of these documents under Civil Local Rule 79-5.

Additionally, Plaintiffs request that the Court seal Exhibits 1 and 2 to the Response (Gardner Decl., Exs. C-D) because those documents have been designated by Defendant as

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Amended Stipulated
2 Protective Order (Dkt. No. 93). Except as stated in the following paragraph, Plaintiffs take no
3 position on whether these documents satisfy the requirements for sealing, and specifically reserve
4 the right to challenge any “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
5 designation under the Amended Stipulated Protective Order, or on the sealability of these
6 documents under Civil Local Rule 79-5.

7 Plaintiffs support the sealing of Exhibits 1 and 2 to the Response (Gardner Decl. Exs. C-
8 D) to the extent that these documents contain personally identifiable information related to
9 Plaintiffs and/or third parties. Such personal information is entitled to protection under the law,
10 and compelling reasons exist to keep it confidential to protect Plaintiffs’ and third parties’ privacy
11 interests, and to prevent exposure to harm or identity theft. *See e.g., Brewer v. Gen. Nutrition*
12 *Corp.*, No. 11-3587, 2014 U.S. Dist. LEXIS 159378, *6 (N.D. Cal. Nov. 12, 2014); *Nursing*
13 *Home Pension Fund v. Oracle Corp.*, No. 01-988, 2007 U.S. Dist. LEXIS 84000, *9-10 (N.D.
14 Cal. Oct. 31, 2007). The Ninth Circuit has “carved out an exception to the presumption of access
15 to judicial records for a sealed discovery document [attached] to a nondispositive motion,” where
16 the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos*
17 *& Adler*, No. 06-2231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing
18 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006); *see also Pintos v.*
19 *Pac. Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“In light of the weaker public
20 interest in nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep
21 them under seal.”). As discussed above, Plaintiffs’ and third parties’ privacy interests are
22 implicated by the personally identifiable information contained in these documents, and therefore
23 Plaintiffs have satisfied the “good cause” standard for sealing the personally identifiable
24 information contained within these documents. *See Brewer*, 2014 U.S. Dist. LEXIS 159378, *6;
25 *Nursing Home Pension Fund*, 2007 U.S. Dist. LEXIS 84000, *9-10.

26 Defendant must show good cause for sealing the documents it has placed a confidentiality
27 designation upon by submitting a declaration within four days after the lodging of the designated
28 documents. *See Civil Local Rule 79-5(e)*.

1 Dated: October 8, 2015

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