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13
 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION

17 MATTHEW CAMPBELL and MICHAEL
 HURLEY,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC.,

21 Defendant.

Case No. C 13-05996 PJH

**DEFENDANT FACEBOOK, INC.'S
 ADMINISTRATIVE MOTION TO FILE
 DOCUMENTS IN SUPPORT OF ITS
 OPPOSITION TO PLAINTIFFS' MOTION
 FOR CLASS CERTIFICATION UNDER
 SEAL**

HEARING:

Date: March 16, 2016

Time: 9:00 a.m.

Location: Courtroom 3, Third Floor

The Honorable Phyllis J. Hamilton

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5(b)-(d), and the Amended Stipulated Protective
3 Order that was entered by the Court on July 1, 2015 (Dkt. No. 93), Defendant Facebook, Inc.
4 (“Facebook”) files this administrative motion to seal documents submitted in connection with its
5 Opposition to Plaintiffs’ Motion for Class Certification. Facebook has identified the information that
6 is sealable with particularity in the Declaration of Nikki Stitt Sokol (the “Sokol Declaration”), filed
7 herewith. As described in the Sokol Declaration, Facebook respectfully requests an order from the
8 Court to authorize the filing under seal of the following:

9 (1) designated portions of Facebook’s Opposition to Plaintiffs’ Motion for Class Certification;

10 (2) designated portions of the Declaration of Christopher Chorba In Support of Defendant
11 Facebook, Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (“Chorba Declaration”);
12 designated portions of Exhibits R, W, BB, CC, DD, EE, II, JJ to the Chorba Declaration; and Exhibits
13 A, B, C, D, L, M, N, O, P, Q, S, T, U, V, FF, GG, HH, KK, and LL to the Chorba Declaration in their
14 entirety;

15 (3) designated portions of the Declaration of Alex Himel In Support of Defendant Facebook,
16 Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (“Himel Declaration”), and designated
17 portions of Exhibits MM, NN ,and OO to the Himel Declaration;

18 (4) designated portions of the Declaration of Dan Fechete In Support of Defendant Facebook,
19 Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (“Fechete Declaration”), and Exhibits
20 PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, and AAA to the Fechete Declaration in their
21 entirety;

22 (5) designated portions of the Declaration of Michael Adkins In Support of Defendant
23 Facebook, Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (“Adkins Declaration”);

24 (6) designated portions of the Expert Report of Dr. Benjamin Goldberg (“Goldberg Report”);
25 and

26 (7) designated portions of the Expert Report of Dr. Catherine Tucker (“Tucker Report”).

27 Because good cause exists to permit filing this confidential information under seal, as is
28 described with particularity in the Sokol Declaration, the Court should grant this motion.

1 **II. LEGAL STANDARD**

2 Courts have historically recognized the public’s “general right to inspect and copy public
3 records and documents, including judicial records and documents,” which is “premised on the interest
4 of citizens in ‘keep[ing] a watchful eye on the workings of public agencies.’” *Accenture LLP v.*
5 *Sidhu*, No. C10-2977 TEH, 2011 U.S. Dist. LEXIS 140093, at *3 (N.D. Cal. Dec. 6, 2011) (quoting
6 *Nixon v. Commc’ns, Inc.*, 435 U.S. 589, 597-98 (1978)). However, the Ninth Circuit has “carved out
7 an exception to the presumption of access to judicial records. . . [that is] expressly limited to judicial
8 records filed under seal when attached to a *non-dispositive* motion.” *In re Midland Nat. Life Ins. Co.*
9 *Annuity Sales Practices Litigation*, 686 F.3d 1115, 1119 (9th Cir. 2012) (per curiam) (internal
10 quotation marks and citation omitted) (emphasis in original); *Real Action Paintball, Inc. v. Advanced*
11 *Tactical Ordnance Sys., LLC*, No. 14-CV-02435-MEJ, 2015 WL 1534049, at *2 (N.D. Cal. Apr. 2,
12 2015) (the presumption of public access to judicial documents in connection with dispositive motions
13 “does not apply in the same way to non-dispositive motions”).

14 The presumption of access to judicial records does not apply here because the documents at
15 issue are being filed in connection with a non-dispositive motion—and accordingly, “[g]ood cause’
16 is the proper standard.” *Real Action Paintball, Inc.*, 2015 WL 1534049, at *2; *see also In re High-*
17 *Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2013 WL 163779, at *2 (N.D. Cal. Jan. 15,
18 2013) (“Plaintiffs’ Motion for Class Certification is a non-dispositive motion. Therefore, the parties
19 need only demonstrate ‘good cause’ in order to support their requests to seal.”); *id.* at 2 n.1 (“[T]he
20 Court applies a ‘good cause’ standard here in accordance with the vast majority of other courts within
21 this circuit.”) (citing cases).

22 “Under the ‘good cause’ standard, the party seeking protection bears the burden of showing
23 specific prejudice or harm will result if no protective order is granted.” *Real Action Paintball, Inc.*,
24 2015 WL 1534049, at *2; *see also Kamahana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th
25 Cir. 2006) (“[A] ‘particularized showing’ under the ‘good cause’ standard of Rule 26(c) will
26 ‘suffice[] to warrant preserving the secrecy of sealed discovery material attached to non-dispositive
27 motions.’”) (citation omitted); *Pintos v. Pac. Creditors Ass’n*, 565 F.3d 1106, 1115 (9th Cir. 2009)
28 (“In light of the weaker public interest in nondispositive materials, we apply the ‘good cause’

1 standard . . .”). A party shows good cause when, for example, public disclosure of the materials
2 would put the party at a competitive disadvantage. *See, e.g., Oracle USA, Inc. v. SAP AG*, No. 07-cv-
3 01658 PJH, 2009 U.S. Dist. LEXIS 71365, at *4-5 (N.D. Cal. Aug. 12, 2009) (granting motion to
4 seal where moving party “considered and treated the information contained in the subject documents
5 as confidential, commercially sensitive and proprietary” and where “public disclosure of such
6 information would create a risk of significant competitive injury and particularized harm and
7 prejudice”).

8 **III. ARGUMENT**

9 Facebook respectfully submits that it has demonstrated “good cause” to permit filing certain
10 information under seal through the Sokol Declaration. *See* Sokol Declaration ¶¶ 3-15. In the Sokol
11 Declaration, Facebook has identified each piece of confidential information submitted, and explained
12 the specific harm that would come from its disclosure in order to make these issues clear for the
13 Court. *Id.* As set forth in the Sokol Declaration, good cause exists to grant this motion to seal
14 because the information Facebook moves to seal contains non-public, confidential, and proprietary
15 Facebook business information that is protectable as a trade secret or otherwise entitled to protection
16 under the law, including information concerning the processes and functionality of Facebook’s source
17 code, messages technology, social plugin technology, security and anti-abuse products, Facebook’s
18 Recommendations and Activity Feed features, software, and other internal tools; Facebook internal
19 discussions of the business and engineering decisions regarding such technology, products, and tools;
20 and Facebook’s proprietary business metrics and analytics information. The public does not at this
21 time have a meaningful interest in obtaining such information, and public disclosure of this
22 information would cause particularized harm to Facebook by allowing its competitors to access
23 sensitive information, which they could use to gain an unfair advantage against Facebook. Such
24 information could also be used by individuals or companies that might seek to compromise the
25 security of Facebook’s messages and other technology, causing harm to Facebook and the people
26 who use Facebook’s services.

27 Additionally, pursuant to the Amended Stipulated Protective Order in this case, Facebook
28 moves to seal documents reflecting information designated as CONFIDENTIAL or HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY by Plaintiffs, as set forth in the Sokol Declaration.
2 While Facebook is obligated to submit these documents for sealing, Facebook takes no position on
3 whether the information designated by Plaintiffs satisfies the requirements for sealing, and Facebook
4 specifically reserves the right to challenge any CONFIDENTIAL or HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY designation under the Amended Stipulated Protective Order, as well as
6 the sealability of these documents under Civil Local Rule 79-5.

7 **IV. CONCLUSION**

8 Facebook has attempted to narrow its sealing request as much as possible, and it seeks to
9 redact only sensitive information that, if disclosed, would cause harm to Facebook or the individuals
10 who use Facebook if revealed publicly. Facebook is willing to supply any additional information as
11 requested by the Court, including detailed explanations of its sensitive information in a confidential
12 setting. For these reasons, Facebook respectfully requests that the Court grant its administrative
13 motion to seal the aforementioned information from the public record.¹

14 Dated: January 15, 2016

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

16 By: /s/ Christopher Chorba
Christopher Chorba

18 Attorneys for Defendant FACEBOOK, INC.

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21 ¹ Pursuant to Civil Local Rule 79-5(d)(1), the following attachments accompany this motion: (A) a
22 declaration establishing that the documents sought to be filed under seal, or portions thereof, are
23 sealable (the Sokol Declaration); (B) a proposed order that is narrowly tailored to seal only the
24 sealable material identified in the Sokol Declaration, listing in table format each document or portion
25 thereof sought to be sealed; (C) unredacted versions of documents sought to be filed under seal, with
26 the sealable portions identified within the text; and (D) redacted versions of documents sought to be
27 filed under seal. Additionally, Facebook is submitting an Appendix of Evidence that includes all
28 supporting declarations and rebuttal expert reports concurrently with its Opposition to Plaintiffs’
Motion for Class Certification. For the Court’s convenience, in addition to filing unredacted and
redacted versions of each document referenced in this Motion to Seal, Facebook is filing (E) an
unredacted version of the Appendix of Evidence in its entirety, and (F) a redacted version of the
Appendix of Evidence in its entirety. Pursuant to Civil Local Rule 79-5(d)(2), Facebook will provide
a courtesy copy of this filing to the Court.