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13 *Attorneys for Plaintiffs and the Proposed Class*

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

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  
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26  
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Case No. C 13-05996 PJH (MEJ)

**DECLARATION OF MELISSA GARDNER  
IN SUPPORT OF DEFENDANT'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL RE DEFENDANT'S  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR CLASS CERTIFICATION**

Hearing: March 16, 2016, 9:00 a.m.

Location: Courtroom 3, 3rd Floor

Judge: Honorable Phyllis J. Hamilton

1 I, Melissa Gardner, declare:

2 1. I am an attorney in the law firm of Lief, Cabraser, Heimann & Bernstein, LLP, a  
3 member of the State Bar of California. I am admitted to practice before this Court. I am one of  
4 the counsel for Plaintiffs in this action. I make this declaration based on my own personal  
5 knowledge. If called upon to testify, I could and would testify competently to the truth of the  
6 matters stated herein.

7 2. I submit this Declaration in support of Defendant, Facebook, Inc.'s Administrative  
8 Motion to File Under Seal (Dkt. Nos. 147; 162) for the following documents: Exhibits A, L-W,  
9 and FF-HH to the Declaration of Christopher Chorba in support of Defendant's Opposition to  
10 Plaintiffs' Motion for Class Certification (Dkt. No 162-3, previously Dkt. No. 149-1; "Chorba  
11 Declaration"); and portions, specified herein, of (1) the Chorba Declaration, (2) Defendant's  
12 Opposition to Plaintiffs' Motion for Class Certification (Dkt. No. 149), (3) the Expert Witness  
13 Report of Catherine Tucker (Dkt. No. 162-7, previously Dkt. No. 149-7), and (4) Defendant's  
14 Appendix of Evidence (Dkt. Nos. 162-9 and 162-10, previously Dkt. Nos. 155-1, and 156-9).

15 3. **Exhibit A** to the Chorba Declaration (Exhibit 21 to Defendant's Motion to Seal) is  
16 a table through which Defendant characterizes the deposition testimony of six individuals:  
17 Plaintiffs Matthew Campbell and Michael Hurley, former Plaintiff David Shadpour, and three  
18 absent Class Members whom Facebook subpoenaed and deposed. Good cause exists to seal the  
19 entirety of Exhibit A. Under the applicable "good cause" standard, the Court may order records  
20 sealed or otherwise protected "to protect a party or person from annoyance, embarrassment,  
21 oppression, or undue burden or expense." *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th  
22 Cir. 2010). Defendant's table poses a significant risk that the out-of-context "Yes/No" statements  
23 attributed to each witness will be interpreted by the public and possibly by the press as their own  
24 affirmative, unqualified statements, resulting in annoyance, embarrassment, or other significant  
25 harm to the witnesses. The public has no meaningful need to access Defendant's characterization  
26 of their testimony. *See Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,  
27 1213 (9th Cir. 2002) (explaining that "good cause" standard requires "balancing the needs for  
28 discovery against the need for confidentiality"). Additionally, the absent Class members deposed

1 by Facebook have never sought to place their identities in the public record; such disclosure could  
 2 generate undue, embarrassing, or otherwise burdensome public attention. Mr. Shadpour has  
 3 dismissed his claims in this case, with prejudice (Dkt. No. 123). These witnesses' testimony, and  
 4 the non-parties' identities, are entitled to protection under the law in order to protect their privacy  
 5 interests. *See O'Connor v. Uber Techs., Inc.*, No. 13-3826, 2015 WL 355496, at \*2 (N.D. Cal.  
 6 Jan. 27, 2015) (quoting *G & C Auto Body Inc. v. Geico Gen. Ins. Co.*, No. 6-4898, 2008 WL  
 7 867372, at \*2 (N.D. Cal. Mar. 11, 2008) (finding that a non-party's privacy interest in  
 8 information with "little or no relevance to the issues raised by [the] summary judgment motions"  
 9 is sufficient to satisfy even the higher "compelling reasons" standard applicable to dispositive  
 10 motions)).

11 4. **Exhibits L and M** to the Chorba Declaration (Exhibits 25 and 26 to Defendant's  
 12 Motion to Seal) are excerpts from the May 9, 2015 deposition of Matthew Campbell, and excerpts  
 13 from the July 9, 2015 deposition of Michael Hurley, respectively. Plaintiffs designated these  
 14 deposition transcripts Confidential under the operative Protective Order. Plaintiffs withdraw that  
 15 designation with respect to Exhibits L and M, *except* as to the following portions, which are  
 16 identified by page and line of the deposition:

17 **Exhibit L (Campbell Deposition Excerpts)**

Sealable Portions	Reason for Confidentiality
19:2-8	Text describes Plaintiff's private conversations with third parties. The privacy interests of Plaintiff and those third parties outweigh any interest of the public in the content of these communications.
44:8-9, 19-21, 24-25; 45:1; 63:8, 22-23; 71:4-5; 72:20; 178:15, 25; 222:13; 223:4-5; 270:15	Text contains identifying information regarding Mr. Campbell's employment and social media activities not relevant to the merits of this case or to class certification. The public has no meaningful interest in this information.
20:19; 62:4-10, 13; 100:2-6; 101:13; 203:13-14; 203:14; 225:5-24; 226:2, 10, 19-20, 24-25; 230:2-4, 18-25; 232:3-6, 13-15, 18-19; 240:2, 8-11; 241:5-6, 12, 17, 20-23; 242:8-13,	Text contains identities and personal information of individuals who are not parties to this case. These non-parties have a privacy interest in protecting their identities and personal information from being made public. The exposure of such information risks subjecting the persons identified to annoyance, embarrassment, or other significant harm, and the public has no meaningful need to obtain the information.

Sealable Portions	Reason for Confidentiality
18, 25; 250:14, 23-25; 251:2, 6-7, 18, 24; 252:6, 14, 19, 24; 254:8, 15, 19; 255:2, 9, 13, 15, 17, 19-20; 256:3, 14, 17; 257:11-19, 25	
105:24; 106:9, 15-16; 217:1	Testimony concerns the contents of Mr. Campbell’s private Facebook messages. Mr. Campbell and other correspondents to such messages have a privacy interest in protecting their correspondence from being made public. The public has no meaningful need to access the information.

**Exhibit M (Hurley Deposition Excerpts)**

Sealable Portions	Reason for Confidentiality
117:2-22; 118:9-24; 120:4-8; 120:14-121:20; 124:13-125:25; 129:5-133:23; 136:6-14, 23-24; 137:1-137:14	Text contains identities and personal information of individuals who are not parties to this case who corresponded via private Facebook message with Mr. Hurley. These non-parties have a privacy interest in protecting their identities and personal information from being made public. The exposure of such information risks subjecting the person identified to annoyance, embarrassment, or other significant harm. The public has no meaningful need to access the information.
92:10-22; 103:3-7 ; 103:10-12; 103:18-19; 106:12-107:12; 111:16-112:2; 115:10-24	Testimony concerns the contents of Mr. Hurley’s private Facebook messages. Mr. Hurley and other correspondents to such messages have a privacy interest in protecting their correspondence from being made public. The public has no meaningful need to access the information.

Good cause exists to seal the testimony designated above in order to protect the privacy interests of the Plaintiffs and third parties. This testimony concerns the Plaintiffs’ private communications and affairs disclosed nowhere else in public filings and not relevant to the merits of the case or class certification, and/or the personally identifiable or confidential information of non-parties to the case. Publishing this information would expose Plaintiffs and/or these non-parties to unnecessary annoyance, embarrassment, or other significant harm, and the public has no meaningful need to access it. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1983) (“Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information.”).

1           5.       **Exhibit N** to the Chorba Declaration (Exhibit 27 to Defendant’s Motion to Seal)  
2 contains excerpts from the October 1, 2015 deposition of former Plaintiff David Shadpour.  
3 Because Mr. Shadpour is no longer a party to this litigation (Dkt. No. 123), good cause exists to  
4 seal his deposition testimony in its entirety. Publishing the testimony risks exposing Mr.  
5 Shadpour to embarrassment, annoyance, or other potential harm. No public interest in such  
6 publication exists, because testimony from a person who is neither a Plaintiff nor entitled to  
7 recovery of damages in this case is not relevant. *C.f., Roberts v. Electrolux Home Prods., Inc.*, No.  
8 12-1644, 2013 WL 4239050, at \*3 (C.D. Cal. Aug. 14, 2013) (declining to condition named  
9 plaintiff’s withdrawal upon sitting for a deposition); *In re Urethane Antitrust Litig.*, No. 04-1616,  
10 2006 WL 8096533, at \*2 (D. Kan. June 9, 2006) (“[t]he information Defendants need regarding  
11 class certification issues may be obtained from the remaining class representatives.”).

12           6.       **Exhibits O and P** to the Chorba Declaration (Exhibits 28-29 to Defendant’s  
13 Motion to Seal) are Plaintiff Matthew Campbell’s Corrected Objections and Responses to  
14 Defendant Facebook, Inc.’s First Set of Interrogatories, and Plaintiff Michael Hurley’s Objections  
15 and Responses to Defendant Facebook, Inc.’s First Set of Interrogatories, respectively. Plaintiffs  
16 designated these discovery responses Confidential under the operative Protective Order.  
17 Plaintiffs withdraw that designation for Exhibits O and P, except for the following portions,  
18 which contain personally identifiable information regarding the Plaintiffs’ e-mail addresses,  
19 telephone numbers, and social media accounts: lines 3:20-24; 6:11-26 of Exhibit O, and lines  
20 3:18-21; 6:9-18 of Exhibit P. Such personal information is entitled to protection under the law,  
21 and good cause exists to keep it confidential to protect Plaintiffs’ privacy interests, and to protect  
22 against exposure to harm or identity theft. *See e.g., Brewer v. Gen. Nutrition Corp.*, No. 11-3587,  
23 2014 WL 5873328, at \*2 (N.D. Cal. Nov. 12, 2014).

24           7.       **Exhibit Q** to the Chorba Declaration (Exhibit 30 to Defendant’s Motion to Seal) is  
25 former Plaintiff David Shadpour’s Corrected Objections and Responses to Defendant Facebook,  
26 Inc.’s First Set of Interrogatories. As discussed above, because Mr. Shadpour is no longer a party  
27 to this litigation, good cause exists to seal his discovery responses in their entirety. Publication of  
28 such information could expose Mr. Shadpour to annoyance, embarrassment, or other potential

1 harm. Information concerning a person who is neither a Plaintiff nor entitled to recovery of  
2 damages in this case is not relevant; thus, no public interest in access to such testimony exists.

3 8. **Exhibit R** to the Chorba Declaration (Exhibit 5 to Defendant’s Motion to Seal) is  
4 a letter from Plaintiffs’ counsel David Rudolph to Defendant’s counsel Joshua Jessen, dated April  
5 10, 2015. Good cause exists to seal the information on page 1 of Exhibit R (the text between  
6 “contained,” and “detailed”), which reflects data obtained from private correspondence that Mr.  
7 Campbell produced in discovery. Mr. Campbell has a right to privacy in his private  
8 correspondence; the public has no meaningful need to access it. Plaintiffs withdraw the  
9 confidentiality designation for Plaintiffs’ Supplemental Interrogatory responses (on page 2 of  
10 Exhibit R).

11 9. **Exhibits S, T, and U** to the Chorba Declaration (Exhibits 31-33 to Defendant’s  
12 Motion to Seal) contain the partially redacted private Facebook messages of Plaintiff Matthew  
13 Campbell, and show the names, dates, and URLs associated with each private message.

14 **Exhibit V** (Exhibit 34 to Defendant’s Motion to Seal) is a partially redacted version of Plaintiff  
15 Michael Hurley’s private Facebook messages, showing the same information. The exposure of  
16 such information risks subjecting Plaintiffs and their non-party correspondents to annoyance,  
17 embarrassment, or other significant harm, and the public has no meaningful need to view these  
18 private messages. For the same reasons, good cause exists to seal the designated text in  
19 **Exhibit W** to the Chorba Declaration (Exhibit 7 to Defendant’s Motion to Seal); it is a subset of  
20 the information contained in Exhibits S and T (correspondent’s name, date and time, and URL  
21 contained in private messages), organized into table format.

22 10. **Exhibit FF, GG, and HH** to the Chorba Declaration (Exhibits 35-37 to  
23 Defendant’s Motion to Seal) are excerpts from third party depositions taken by Facebook of  
24 individuals who sent or received private messages from Plaintiffs. These depositions were taken  
25 on August 7, 2015 (Ex. FF), August 10, 2015 (Ex. GG), and August 11, 2015 (Ex. HH). These  
26 individuals have not sought to put their identities in the public domain, nor does the public have a  
27 substantial interest in their deposition testimony, even as it regards the subject of this litigation.  
28 Information regarding how absent class members use Facebook is easily obtainable from other

1 sources without subjecting these individuals to the annoyance, embarrassment, and other  
 2 significant potential harm of having their identities and testimony put into the public domain and  
 3 subject to public dissemination and critique. *See Uber Techs.*, 2015 WL 355496, at \*2; *Chavez v.*  
 4 *Petrissans*, No. 8-122, 2008 WL 4177797, at \*6 (E.D. Cal. Sept. 5, 2008) (ordering that records  
 5 containing contact information for potential class members be sealed); *c.f.*, *In re High-Tech*  
 6 *Employee Antitrust Litig.*, No. 11-2509, 2013 WL 163779, at \*8 (N.D. Cal. Jan. 15, 2013)  
 7 (granting motion to seal documents containing “the identities of associated non-parties such as  
 8 individuals who acted as Plaintiffs’ references” for job applications in employment wage-fixing  
 9 case).

10 11. Good cause exists to seal the following portions of the **Chorba Declaration**  
 11 (Exhibit 3 to Defendant’s Motion to Seal):

Sealable Portions	Reason for Confidentiality
2:12	Text contains data obtained from private correspondence produced by Mr. Campbell in discovery. Mr. Campbell has a right to privacy in his private correspondence. The public has no meaningful need to access it.
2:17	Text contains data obtained from private correspondence produced by Mr. Hurley in discovery. Mr. Hurley has a right to privacy in his private correspondence. The public has no meaningful need to access it.
2:22	Text contains data obtained from private correspondence produced by former Plaintiff in discovery. The former Plaintiff’s discovery responses are irrelevant to this litigation. He has a right to privacy in his private correspondence. The public has no meaningful need to access it.
3:18-19; 3:20-21; 4:1-2; 4:3-7	Text describes and quotes from Mr. Campbell’s private conversations which were disclosed to Facebook in discovery subject to objections, and provides information concerning Mr. Campbell’s online activities. Mr. Campbell has a right to privacy in his private communications. The public has no meaningful need to access the content of such communications.
5:16-20; 5:23-25	Text contains dates and contents of private Facebook messages between Plaintiffs and third parties, and the names of such third parties. The exposure of such information risks subjecting the persons identified in these documents to annoyance, embarrassment, or other significant harm, and the public has no meaningful need to obtain the information.
12:14, 16, 18	Text contains identification of non-parties to this litigation, which should be sealed to protect their privacy interests.

12 13. Plaintiffs withdraw the confidentiality designation applicable to the following text  
 14 within the Chorba Declaration: 3:2-11, 3:17-18.  
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1 13. Good cause exists to seal the following portions of **Defendant’s Opposition to**  
 2 **Plaintiffs’ Motion for Class Certification** (Exhibit 1 to Defendant’s Motion to Seal):

Sealable Portions	Reason for Confidentiality
2:17-18	Text is characterization of testimony from the deposition of a former party to the case. The public has no meaningful need to view Defendant’s characterization of such testimony, and such publication risks causing annoyance, embarrassment, or other potential harm to the witness.
2:24-26	Excerpts of testimony from the deposition of former party to the case. The public has no meaningful need to access the testimony, which is not relevant due to former Plaintiff’s dismissal of his claims, with prejudice. Such publication risks causing annoyance, embarrassment, or other potential harm to the witness.
4:12-13 (to “Counsel”)	Text contains quotes from Mr. Campbell’s private Facebook message, which has not been publicly disclosed. Plaintiff has a privacy interest in the contents of his private correspondence. The public has no meaningful need to access it.
7:22	Text contains identification of non-parties to this litigation, which should be sealed to protect their privacy interests.
11:19-22; 20:12-13, 17-20; 29:3-14	Text contains characterizations of testimony from the depositions of Plaintiffs and non-parties, as well as names of non-parties, risking annoyance, embarrassment, and other potential harm to the witnesses. Witnesses have a privacy interest in their testimony, and non-parties have a privacy interest in publication of their identities. The public has no meaningful need to access Defendant’s characterization of the witnesses’ testimony, or the identities of non-parties.
16:3-4, 14-24, 26	Excerpts of testimony from the deposition of a former party. The public has no meaningful need to access the testimony, which is not relevant due to the former Plaintiff’s dismissal of his claims, with prejudice.
21:15-19	Text contains characterizations of testimony from the depositions of Plaintiffs and non-parties, risking annoyance, embarrassment, and other potential harm to the witnesses. Witnesses have a privacy interest in their testimony. The public has no meaningful need to access Defendant’s characterization of the witnesses’ testimony.
23:7-10 (figure)	Figure represents a private message belonging to Matthew Campbell showing the name of a non-party, date, time, and URL contained within the message. Mr. Campbell and the non-party have a privacy interest in the content of such messages. The public has no meaningful need to access it.
26:10-12	Text contains data obtained from Plaintiffs’ private messages produced in discovery. Plaintiffs have a privacy interest in the content of such messages. The public has no meaningful need to access it.

14. Plaintiffs withdraw the confidentiality designation applicable to the following text  
 within Defendant’s Opposition to Plaintiffs’ Motion for Class Certification: 3:16-17; 4:9-11; 4:13



(from “Counsel”)-17; 7:20-21; 11:8-9; 12:18-22; 14:21-23; 15:15-16, 24-25; 16:1-2; 21: 7-9; and 30:2-3, 5-6.

15. Good cause exists to seal the following portions of the **Expert Witness Report of Catherine Tucker** (Exhibit 66 to Defendant’s Motion to Seal):

Sealable Portions	Reason for Confidentiality
11, ¶ 32; 12 (figure); 12, ¶ 33; 13 (figure); 14, ¶ 34, lines 3-6; 14, n.25, 14, n.27; 16, n.32; 20, ¶ 48-21, line 4; 21, n.43; 22, ¶ 52, 22, ¶ 53; 23, ¶ 54 ;23, figure; 29, ¶ 70; 30, figure; 31, figure; 31, n.63; 32, ¶ 72; 32, n.64; 32, n.6545, lines 6-10, n.119; 52, ¶ 121; 45	Text and figures are depictions of, discussions of, or representations of data contained within messages produced by Plaintiffs in discovery. Plaintiffs have a privacy interest in the content of such messages. The public has no meaningful need to access it.  Insofar as the text and figures identify nonparties to the litigation they should be sealed for the additional reason that such non-parties have a privacy interest in publication of their identities and in their private correspondence.
18, ¶ 45-19, line 2; 19, line 4; 19, n.39; 19, n.40	Text specifically identifies online activities of Mr. Campbell. Mr. Campbell’s right to privacy in that information outweighs any public interest in access to it.
24, ¶ 56	Excerpts of testimony from deposition of former Plaintiff. The public has no meaningful need to access the testimony, which is not relevant due to the former Plaintiff’s dismissal of his claims, with prejudice.
23, n.46; 24, ¶ 57, 24, n.54-56	Text contains characterizations of testimony from depositions of Plaintiffs and non-parties, risking annoyance, embarrassment, and other potential harm to the witnesses. Witnesses have a privacy interest in their testimony. The public has no meaningful need to access Defendant’s characterization of the witnesses’ testimony. Non-parties, additionally, have a privacy interest in publication of their identities.

16. Plaintiffs withdraw the confidentiality designation applicable to the following text within the Expert Witness Report of Catherine Tucker: 29, ¶ 71; 25, ¶ 59.

17. Good cause exists to seal the following portions of Defendant’s Appendix of Evidence: App. 2079 (Dkt. No. 162-9) at lines 8, 11, and 15, and Index 2:16-19 (Dkt. 162-10),

1 because those portions identify by name absent class members in this litigation, who, as discussed  
2 above, have a privacy interest in preventing the publication of their identities.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is  
4 true and correct.

5 Executed this 22<sup>nd</sup> day of January, 2016, in San Francisco, California.

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LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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By:           /s/Melissa Gardner            
          Melissa Gardner

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