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14	UNITED STATES DISTRICT COURT	
15	NORTHERN DISTRICT OF CALIFORNIA	
16	OAKLAND DIVISION	
17	MATTHEW CAMPBELL and MICHAEL HURLEY,	Case No. C 13-05996 PJH
18	Plaintiffs,	DEFENDANT FACEBOOK, INC.'S ADMINISTRATIVE MOTION TO FILE
19	V.	DOCUMENTS IN SUPPORT OF ITS OBJECTION TO AND REQUEST TO
20	FACEBOOK, INC.,	STRIKE NEW EVIDENCE AND MISSTATEMENTS OF FACT
21	Defendant.	CONTAINED IN PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR
22		CLASS CERTIFICATION UNDER SEAL
23		HEARING: Date: March 16, 2016
24		Time: 9:00 a.m.
25		Location: Courtroom 3, Third Floor The Honorable Phyllis J. Hamilton
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Gibson, Dunn & Crutcher LLP		ION TO FILE DOCUMENTS IN SUPPORT OF ITS OBJECTION STATEMENTS OF FACT CONTAINED IN PLAINTIFFS' REPLY ION UNDER SEAL- Case No. C 13-05996 PJH Dockets.Justia.

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5(b)-(d), and the Amended Stipulated Protective Order that was entered by the Court on July 1, 2015 (Dkt. No. 93), Defendant Facebook, Inc. ("Facebook") files this administrative motion to seal documents submitted in connection with its Objection to and Request to Strike New Evidence and Misstatements of Fact in Plaintiffs' Reply in Support Of Their Motion For Class Certification. Facebook has identified the information that is sealable with particularity in the Declaration of Nikki Stitt Sokol (the "Sokol Declaration"), filed herewith. As described in the Sokol Declaration, Facebook respectfully requests an order from the Court to authorize the filing under seal of the following:

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(1) designated portions of Facebook's Objection to and Request to Strike New Evidence andMisstatements of Fact in Plaintiffs' Reply in Support Of Their Motion For Class Certification;

(2) designated portions of the Declaration of Alex Himel In Support of Defendant Facebook,
 Inc.'s Objection to and Request to Strike New Evidence and Misstatements of Fact in Plaintiffs'
 Reply in Support Of Their Motion For Class Certification ("Himel Declaration"); and

(3) designated portions of the Declaration of Dale Harrison In Support of Defendant
 Facebook, Inc.'s Objection to and Request to Strike New Evidence and Misstatements of Fact in
 Plaintiffs' Reply in Support Of Their Motion For Class Certification ("Harrison Declaration").

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

II. LEGAL STANDARD

Courts have historically recognized the public's "general right to inspect and copy public records and documents, including judicial records and documents," which is "premised on the interest of citizens in 'keep[ing] a watchful eye on the workings of public agencies." *Accenture LLP v. Sidhu*, No. C10-2977 TEH, 2011 U.S. Dist. LEXIS 140093, at *3 (N.D. Cal. Dec. 6, 2011) (quoting *Nixon v. Commc'ns, Inc.*, 435 U.S. 589, 597-98 (1978)). However, the Ninth Circuit has "carved out an exception to the presumption of access to judicial records . . . [that is] expressly limited to judicial records filed under seal when attached to a *non-dispositive* motion." *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litigation,* 686 F.3d 1115, 1119 (9th Cir. 2012) (per curiam) (internal

DEFENDANT FACEBOOK, INC.'S ADMINISTRATIVE MOTION TO FILE DOCUMENTS IN SUPPORT OF ITS OBJECTION TO AND REQUEST TO STRIKE NEW EVIDENCE AND MISSTATEMENTS OF FACT CONTAINED IN PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION UNDER SEAL- Case No. C 13-05996 PJH

quotation marks and citation omitted) (emphasis in original); Real Action Paintball, Inc. v. Advanced 2 Tactical Ordnance Sys., LLC, No. 14-CV-02435-MEJ, 2015 WL 1534049, at *2 (N.D. Cal. Apr. 2, 3 2015) (the presumption of public access to judicial documents in connection with dispositive motions 4 "does not apply in the same way to non-dispositive motions"). Because the documents at issue are 5 being filed in connection with a non-dispositive motion, "[g]ood cause' is the proper standard." 6 Real Action Paintball, Inc., 2015 WL 1534049, at *2; see also Kamakana v. City & Cty. of Honolulu, 7 447 F.3d 1172, 1180 (9th Cir. 2006) ("A 'good cause' showing under Rule 26(c) will suffice to keep 8 sealed records attached to non-dispositive motions.").

9 "Under the 'good cause' standard, the party seeking protection bears the burden of showing 10 specific prejudice or harm will result if no protective order is granted." Real Action Paintball, Inc., 11 2015 WL 1534049, at *2; Pintos v. Pac. Creditors Ass'n, 565 F.3d 1106, 1115 (9th Cir. 2009) ("In 12 light of the weaker public interest in nondispositive materials, we apply the 'good cause' standard ... 13 ."). A party shows good cause when, for example, public disclosure of the materials would put the party at a competitive disadvantage. See, e.g., Oracle USA, Inc. v. SAP AG, No. 07-cv-01658 PJH, 14 15 2009 U.S. Dist. LEXIS 71365, at *4-5 (N.D. Cal. Aug. 12, 2009) (granting motion to seal where 16 moving party "considered and treated the information contained in the subject documents as confidential, commercially sensitive and proprietary" and where "public disclosure of such 17 18 information would create a risk of significant competitive injury and particularized harm and 19 prejudice").

III. ARGUMENT

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21 Facebook respectfully submits that it has demonstrated "good cause" to permit filing certain 22 information under seal through the Sokol Declaration. See Sokol Declaration ¶¶ 3-5. In the Sokol 23 Declaration, Facebook has identified each piece of confidential information submitted, and explained 24 the specific harm that would come from its disclosure in order to make these issues clear for the 25 Court. Id. As set forth in the Sokol Declaration, good cause exists to grant this motion to seal 26 because the information Facebook moves to seal contains non-public, confidential, and proprietary 27 Facebook business information that is protectable as a trade secret or otherwise entitled to protection 28 under the law, including information concerning the processes and functionality of Facebook's source

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code and messages technology and Facebook's software and other internal tools. The public does not
at this time have a meaningful interest in obtaining such information, and public disclosure of this
information would cause particularized harm to Facebook by allowing its competitors to access
sensitive information, which they could use to gain an unfair advantage against Facebook. Such
information could also be used by individuals or companies that might seek to compromise the
security of Facebook's messages and other technology, causing harm to Facebook and the people
who use Facebook's services.

IV. CONCLUSION

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

15	Dated: February 26, 2016	Respectfully submitted,
16		GIBSON, DUNN & CRUTCHER LLP
17		By: <u>/s/ Christopher Chorba</u> Christopher Chorba
18		Attorneys for Defendant FACEBOOK, INC.
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24		i(d)(1), the following attachments accompany this motion: (a cuments sought to be filed under seal, or portions thereof, are

¹ Pursuant to Civil Local Rule 79-5(d)(1), the following attachments accompany this motion: (A) a declaration establishing that the documents sought to be filed under seal, or portions thereof, are sealable (the Sokol Declaration); (B) a proposed order that is narrowly tailored to seal only the sealable material identified in the Sokol Declaration, listing in table format each document or portion thereof sought to be sealed; (C) unredacted versions of documents sought to be filed under seal, with the sealable portions identified within the text; and (D) redacted versions of documents sought to be filed under sought to be filed under seal. Pursuant to Civil Local Rule 79-5(d)(2), Facebook will provide a courtesy copy of this filing to the Court.

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