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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.
 22

Case No. C 13-05996 PJH

**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**

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 Objection to and Request to Strike New Evidence and Misstatements of Fact in Plaintiffs’ Reply in
6 Support Of Their Motion For Class Certification. Facebook has identified the information that is
7 sealable with particularity in the Declaration of Nikki Stitt Sokol (the “Sokol Declaration”), filed
8 herewith. As described in the Sokol Declaration, Facebook respectfully requests an order from the
9 Court to authorize the filing under seal of the following:

- 10 (1) designated portions of Facebook’s Objection to and Request to Strike New Evidence and
11 Misstatements of Fact in Plaintiffs’ Reply in Support Of Their Motion For Class Certification;
12 (2) designated portions of the Declaration of Alex Himel In Support of Defendant Facebook,
13 Inc.’s Objection to and Request to Strike New Evidence and Misstatements of Fact in Plaintiffs’
14 Reply in Support Of Their Motion For Class Certification (“Himel Declaration”); and
15 (3) designated portions of the Declaration of Dale Harrison In Support of Defendant
16 Facebook, Inc.’s Objection to and Request to Strike New Evidence and Misstatements of Fact in
17 Plaintiffs’ Reply in Support Of Their Motion For Class Certification (“Harrison Declaration”).

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

20 **II. LEGAL STANDARD**

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

1 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
14 party at a competitive disadvantage. *See, e.g., Oracle USA, Inc. v. SAP AG*, No. 07-cv-01658 PJH,
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
17 confidential, commercially sensitive and proprietary” and where “public disclosure of such
18 information would create a risk of significant competitive injury and particularized harm and
19 prejudice”).

20 **III. ARGUMENT**

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

