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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.
 22

Case No. C 13-05996 PJH

**JOINT ADMINISTRATIVE MOTION TO
 SEAL DOCUMENTS ACCOMPANYING
 CLASS CERTIFICATION BRIEFS AND
 EVIDENTIARY OBJECTIONS**

1 **I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF**

2 Pursuant to the Court’s instructions at the hearing on Plaintiffs' Motion for Class Certification
3 held on March 16, 2016, the Minute Order dated March 16, 2016 (Dkt. 174), Civil Local Rules 7-11
4 and 79-5(b)-(d), and the Amended Stipulated Protective Order that was entered by the Court on July
5 1, 2015 (Dkt. 93), Plaintiffs and Defendant Facebook, Inc. jointly file this administrative motion to
6 seal documents to replace their previous motions (Dkt. 137, 147, 166, 169, and 171).

7 In its Minute Order, this Court ordered that “all of the administrative motions to seal (Dkt.
8 137, 147, 166, 169 and 171) are denied without prejudice to filing a limited, narrowly tailored request
9 for sealing as stated on the record.” (Dkt. 174.) The Court also ordered that “[t]he briefs shall be
10 filed unredacted in the public record by Monday 3/21/16,” and that while a new motion to seal must
11 be filed “for any request to seal trade secrets,” the Court would “allow redactions of source code,
12 names, addresses and phone numbers without a Court order.” (*Id.*) There are three filings to comply
13 with the Court’s Minute Order:

14 (1) Briefing: On March 21, 2016, the parties filed a joint notice containing replacement
15 versions of their class certification briefs and evidentiary objections that contained corrected
16 redactions consistent with the Court’s Minute Order (i.e., redactions the Court authorized to be made
17 without a Court Order). (*See* Dkt. 178.) In that joint notice, the parties notified the Court in their
18 filing that they were in the process of conferring about filing a joint administrative motion to seal
19 limited portions of the documents accompanying their class certification briefs and evidentiary
20 objections that would be consistent with the Court’s Order, and that they would file that motion by
21 March 28, 2016. (*Id.*)

22 (2) Evidence with Approved Redactions: Concurrently with the filing of this joint
23 administrative motion to seal, the parties have filed a joint notice containing replacement versions of
24 the documents accompanying the parties’ class certification briefs and evidentiary objections that
25 contain corrected redactions (if any) consistent with the Court’s Minute Order (i.e., redactions the
26 Court authorized to be made without a Court Order).

27 (3) Evidence with New Motion to Seal: This joint administrative motion to seal seeks the
28 sealing of limited portions of documents accompanying the parties’ briefs reflecting redactions that

1 require the Court's approval (i.e., not fully in the categories mentioned in the Court's Minute Order).¹
2 The parties have reduced their requests to seal by over 75% percent from the previous requests, and
3 the requested material falls into the following categories:

4 1. Plaintiffs seek an order authorizing the sealing of limited information in order to protect
5 the privacy interests of the Plaintiffs and third parties. The portions of the record highlighted by
6 Plaintiffs represent or specifically describe the Plaintiffs' and non-parties' private communications,
7 and/or their private affairs disclosed nowhere else in public filings and not relevant to the merits of
8 the case or class certification. As described in the Gardner Declaration filed concurrently with this
9 joint administrative motion, Plaintiffs respectfully request that the Court authorize the filing under
10 seal of such limited information, contained within the following documents:

11 (a) designated portions of Exhibits 4, 20, and 35 to the Declaration of Melissa Gardner in
12 support of Plaintiffs' Motion for Class Certification;

13 (b) designated portions of the Declaration of Christopher Chorba In Support of Defendant
14 Facebook, Inc.'s Opposition to Plaintiffs' Motion for Class Certification;

15 (c) designated portions of Exhibits M, O, P, Q, S, T, V, W, GG and HH to the Declaration of
16 Christopher Chorba In Support of Defendant Facebook, Inc.'s Opposition to Plaintiffs' Motion for
17 Class Certification; and

18 (d) designated portions of the Expert Report of Dr. Catherine Tucker.

19 2. Facebook has identified the limited additional information that it seeks to seal with
20 particularity in the Declaration of Nikki Stitt Sokol filed concurrently with this joint administrative
21 motion. As described in that Declaration, Facebook respectfully requests that the Court authorize the
22 sealing of the following limited information:

23 (a) designated portions of Exhibits 2 and 5 to the Declaration of Melissa Gardner in support of
24 Plaintiffs' Motion for Class Certification ("Gardner Cert. Declaration");

25 _____
26 ¹ Certain documents accompanying this motion to seal also include redactions of source code or
27 other information by Facebook and Plaintiffs that are consistent with the Court's Order. (Dkt. 174.)
28 For the Court's convenience, to avoid overlap, the parties did not include these documents in the joint
notice of refiling of documents filed concurrently with this motion. Instead, the parties have
highlighted such references to source code in the unredacted versions of the documents and reference
such redactions (if any) in their respective Declarations.

1 (b) designated portions of Exhibits C, D, EE, and JJ to the Declaration of Christopher Chorba
2 In Support of Defendant Facebook, Inc.’s Opposition to Plaintiffs’ Motion for Class Certification
3 (“Chorba Declaration”);

4 (c) designated portions of the Declaration of Alex Himel In Support of Defendant Facebook,
5 Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (“Himel Declaration”);

6 (d) designated portions of Exhibits MM and OO to the Himel Declaration;

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

9 (f) designated portions of the Expert Report of Dr. Benjamin Goldberg, submitted in
10 connection with Facebook, Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (“Goldberg
11 Report”);

12 (g) designated portions of the Declaration of Dan Fehete In Support of Defendant Facebook,
13 Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (“Fehete Declaration”);

14 (h) designated portions of Exhibit PP to the Fehete Declaration;

15 (i) Exhibits QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, and AAA to the Fehete
16 Declaration;

17 (j) designated portions of Exhibits 1 and 12 to the Declaration of David Slade in Support of
18 Plaintiffs’ Motion for Class Certification (“Slade Declaration”); and

19 (k) designated portions of the Declaration of Alex Himel In Support of Defendant Facebook,
20 Inc.’s Objection to and Request to Strike New Evidence and Misstatements of Fact in Plaintiffs’
21 Reply in Support Of Their Motion For Class Certification (“Himel Declaration II”).

22 **II. LEGAL STANDARD**

23 Courts have historically recognized the public’s “general right to inspect and copy public
24 records and documents, including judicial records and documents,” which is “premised on the interest
25 of citizens in ‘keep[ing] a watchful eye on the workings of public agencies.’” *Accenture LLP v.*
26 *Sidhu*, No. 10-2977 TEH, 2011 U.S. Dist. LEXIS 140093, at *3 (N.D. Cal. Dec. 6, 2011) (quoting
27 *Nixon v. Commc’ns, Inc.*, 435 U.S. 589, 597-98 (1978)). To overcome this presumption, a party
28 seeking to seal a judicial record must articulate “compelling reasons supported by specific factual

1 findings that outweigh the general history of access and the public policies favoring disclosure.”
2 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

3 “In general, ‘compelling reasons’ . . . exist when such ‘court files might have become a
4 vehicle for improper purposes,’ such as the use of records to . . . promote public scandal, circulate
5 libelous statements, or release trade secrets.” *Id.* “The Ninth Circuit has adopted the Restatement’s
6 definition of ‘trade secret’ for purposes of sealing.” *Dunbar v. Google, Inc.*, No. 12-003305-LHK,
7 2012 WL 6202719, at *2 (N.D. Cal. Dec. 12, 2012). Accordingly, trade secrets that are sealable
8 “may consist of any formula, pattern, device or compilation of information which is used in one’s
9 business, and which gives him an opportunity to obtain an advantage over competitors who do not
10 know or use it.” *In re Electronic Arts*, 298 F. App’x 568, 569-70 (9th Cir. 2008) (quoting
11 *Restatement of Torts* § 757, cmt. b). “Additionally, ‘compelling reasons’ may exist if sealing is
12 required to prevent judicial documents from being used ‘as sources of business information that
13 might harm a litigant’s competitive standing.’” *In re Hewlett-Packard Co. S’holder Derivative Litig.*,
14 No. 12-6003, 2015 WL 8570883, at *2 (N.D. Cal. Nov. 18, 2015) *report and recommendation*
15 *adopted*, No. 12-6003-CRB, 2015 WL 8479543 (N.D. Cal. Dec. 10, 2015) (quoting *In Electronic*
16 *Arts*, 298 F. App’x at 569).²

17 Further, under the applicable Civil Local Rules, sealing is appropriate where the requesting
18 party “establishes that the document, or portions thereof, is privileged or protectable as a trade secret
19 or otherwise entitled to protection under the law” and where the request is “narrowly tailored to seek
20 sealing only of sealable material.” Civ. L.R. 79-5(a).

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25 ² See also *In re Google Inc. Gmail Litig.*, No. 13-02430-LHK, 2013 WL 5366963, at *3 (N.D. Cal.
26 Sept. 25, 2013) (applying “compelling reasons” standard; granting motion to seal information relating
27 to Google’s Gmail technology, including “specific descriptions of how Gmail operates” and
28 “information that if made public . . . could lead to a breach in the security of the Gmail system”);
Transperfect Glob., Inc. v. Motionpoint Corp., No. 10-2590 CW, 2013 WL 209678, at *1 (N.D. Cal.
Jan. 17, 2013) (applying “compelling reasons” standard; granting motion to seal document that
contained “proprietary information about [the defendant’s] business operations and technology”).

1 **III. ARGUMENT**

2 **A. Plaintiffs' Request**

3 Compelling reasons warrant the filing under seal of the information submitted by Plaintiffs,
4 which consists of: (1) representations of the specific content of the Plaintiffs' private correspondence
5 with third parties; and (2) information concerning third parties' private affairs disclosed nowhere else
6 in public filings and not relevant to the merits or class certification. Protecting privacy is a
7 compelling reason to maintain the confidentiality of private information, particularly where, as here,
8 the points made by each party concerning class certification can be made without reference to the
9 specific content of the Plaintiffs' private messages, or the private details of non-parties' personal
10 lives. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 679 & n. 6 (9th Cir. 2010) (under "compelling
11 reasons" standard, the Court must weigh the "public interest in understanding the judicial process"
12 against potential improper use of materials if disclosed). *See also Music Grp. Macao Commercial*
13 *Offshore Ltd. v. Foote*, No. 14-3078, 2015 WL 3993147, at *2 (N.D. Cal. June 30, 2015) (Corley, J.)
14 ("Disclosure of this information would infringe the privacy rights of those two individuals, which
15 constitutes a compelling reason for sealing . . . Moreover, the public interest in this information is
16 minimal."); *see also O'Connor v. Uber Techs., Inc.*, No. 13-3826, 2015 WL 355496, at *2 (N.D. Cal.
17 Jan. 27, 2015) (Chen, J.) (quoting *G & C Auto Body Inc. v. Geico Gen. Ins. Co.*, No. 6-4898, 2008
18 WL 867372, at *2 (N.D. Cal. Mar. 11, 2008) (finding that a non-party's privacy interest in
19 information with "little or no relevance to the issues raised by [the] summary judgment motions" is
20 sufficient to satisfy even the "compelling reasons" standard applicable to dispositive motions));
21 *Network Appliance, Inc. v. Sun Microsystems Inc.*, No. 7-06053, 2010 WL 841274, at *2 (N.D. Cal.
22 Mar. 10, 2010) (LaPorte, J.) ("[A]lthough the documents in question are attached to a dispositive
23 motion, they had no bearing on the resolution of the dispute on the merits and are therefore more akin
24 to the 'unrelated,' non-dispositive motion documents the Ninth Circuit contemplated in *Kamakana*");
25 *Richardson v. Mylan Inc.*, No. 9-1041, 2011 WL 837148, at *2 (S.D. Cal. Mar. 9, 2011) (finding that
26 privacy interests outweighed public interest in redacted information in trial transcript where portions
27 of transcript were "of comparatively little value to the general public in terms of enhancing its
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1 ‘understanding [of] the judicial process’” because they did “not include any information vital to
2 understanding the nature of the underlying proceedings.”).

3 As stated in greater detail in the Declaration of Melissa Gardner filed herewith, because
4 publication of such information poses a threat to Plaintiffs’ and third parties’ privacy interests not
5 outweighed by any public interest in the information, Plaintiffs respectfully request that the court
6 authorize the maintenance of the designated portions under seal.

7 **B. Facebook’s Request**

8 Facebook respectfully submits that it has demonstrated “compelling reasons” to permit the
9 filing of certain, “narrowly tailored” information under seal through the Sokol Declaration. In that
10 Declaration, Facebook has identified each piece of confidential information submitted, and explained
11 the specific harm that would arise from disclosure.³ (Sokol Decl. ¶¶ 3-5.) As set forth in greater
12 detail in the Sokol Declaration, “compelling reasons” exist to grant this motion to seal because the
13 more limited information Facebook moves to seal (approximately an **80%** reduction in its previous
14 request) deserves protection. This information falls into three primary categories:

15 *First*, Facebook seeks to seal non-public, confidential, proprietary and trade secret
16 information regarding the processes and functionality of Facebook’s confidential security and anti-
17 abuse products and systems. (Sokol Decl. ¶ 3.) Facebook’s main priority is ensuring that the people
18 who use Facebook are protected and that their accounts are secure. (*Id.*) The information that
19 Facebook seeks to seal could be used by individuals or companies that might seek to compromise the
20 security of Facebook’s messages and other technology, causing harm to Facebook and the people
21 who use Facebook’s services. (*Id.*) Facebook and its user base present an attractive target for
22 hackers and other criminals. *See, e.g.*, Ellis Hamburger, “Inside Facebook Security: Defending
23 Users from Spammers, Hackers, and ‘Likejackers,’” *The Verge* (May 25, 2012), *available at*
24 <http://www.theverge.com/2012/5/25/2996321/inside-facebook-likejackers-spammers-hackers>. As
25 Facebook has previously explained in public-facing materials, Facebook does not (and cannot) share
26 all of the specific details of how its security, spam, and abuse prevention systems operate, because

27 _____
28 ³ For the Court’s convenience, Facebook’s proposed redactions are highlighted in blue.

1 this information could help provide a roadmap to hackers and others who seek to harm Facebook and
2 people who use the service. (Sokol Decl. ¶ 3.) This information could help wrongdoers build and
3 implement “workarounds” designed to thwart safety mechanisms. (*Id.*)

4 *Second*, Facebook seeks to seal its source code, which this Court already approved for sealing,
5 as well as Facebook internal documentation of changes to source code that effectively demonstrates
6 Facebook’s source code functionality. (*Id.* ¶ 4.) Facebook treats this information in these documents
7 as a valuable trade secret, given that it has invested millions of dollars in conjunction with the
8 development of this code, including by providing it with the highest level of protection and security
9 within Facebook. (*Id.*) This information relates to code that could be used by individuals or
10 companies that might seek to compromise the security of that information and technology, causing
11 harm to Facebook and the people who use Facebook’s services. (*Id.*)

12 *Third*, and finally, Facebook seeks to seal the names of internal tables in Facebook’s
13 proprietary databases. (*Id.* ¶ 5.) This information could be used by individuals or companies that
14 might seek to compromise the security of Facebook’s messages and other technology, causing harm
15 to Facebook and the people who use Facebook’s services. (*Id.*) The internal table names—and the
16 databases in which they exist—are referenced within Facebook’s proprietary source code and
17 indicate both the schema for Facebook’s internal databases (i.e., how they are structured) and—more
18 importantly—where particular data or types of data are or were stored. (*Id.*) As noted, Facebook and
19 its user base present an attractive target for criminals and others with malicious intentions. (*Id.*)

20 Accordingly, revealing the table names could provide a roadmap that would assist an unauthorized
21 individual who illicitly obtained access to Facebook’s internal systems in determining where
22 sensitive data—including user information—is (or was) stored, how it is (or was) stored, and how to
23 access it. (*Id.*) Limiting access to user data and respecting the privacy and sensitivity of such data
24 are extremely important and of paramount importance within Facebook as well as to the public. (*Id.*)

25 By contrast, the public does not have a meaningful interest in obtaining any of this
26 information, and public disclosure of it would also cause particularized harm to Facebook by
27 allowing its competitors to access the specifics of Facebook’s business, which they could use to gain
28 an unfair advantage against Facebook. (*Id.* ¶¶ 3-5.)

1 IV. CONCLUSION

2 For these reasons, the parties respectfully request that the Court grant their administrative
3 motion to seal the aforementioned information from the public record.⁴

4 Dated: March 28, 2016

Respectfully submitted,
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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6 By: _____
Michael W. Sobol

7 Attorneys for Plaintiffs

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9 GIBSON, DUNN & CRUTCHER LLP

10 By: _____
Christopher Chorba

11 Attorneys for Defendant FACEBOOK, INC.

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23 ⁴ Pursuant to Civil Local Rule 79-5(d)(1), the following attachments accompany this motion: (A) a
24 declaration on behalf of Facebook establishing that the documents sought to be filed under seal, or
25 portions thereof, are sealable (the Sokol Declaration); (B) a declaration on behalf of Plaintiffs
26 establishing that the portions of documents sought to be filed under seal are sealable (the Gardner
27 Declaration); (C) a proposed order that is narrowly tailored to seal only the sealable material
28 identified in the Sokol Declaration, listing in table format each document or portion thereof sought to
be sealed; (D) unredacted versions of documents sought to be filed under seal, with the sealable
portions identified within the text; and (E) redacted versions of documents 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.