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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 (SK)

**DEFENDANT FACEBOOK, INC.'S
 ADMINISTRATIVE MOTION TO FILE
 DOCUMENTS IN SUPPORT OF ITS
 OPPOSITIONS TO PLAINTIFFS'
 MOTIONS TO COMPEL UNDER SEAL**

No Hearing Unless Requested By Court (Dkt.
 203)

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. 93), Defendant Facebook, Inc.
4 (“Facebook”) files this administrative motion to seal documents submitted in connection with its
5 Oppositions to Plaintiffs’ Motions to Compel (Dkt. 206, 207, and 208). Facebook has identified the
6 information that is sealable with particularity in the Declaration of Nikki Stitt Sokol (the “Sokol
7 Declaration”), filed herewith. As described in the Sokol Declaration, Facebook respectfully requests
8 an order from the Court to authorize the filing under seal of the following:

9 (1) designated portions of Facebook’s Opposition to Plaintiffs’ Motion to Compel Production
10 of Source Code;

11 (2) designated portions of Facebook’s Opposition to Plaintiffs’ Motion to Compel Production
12 of “Configuration Tables”;

13 (3) designated portions of the Declaration of Neal Poole in Support of Defendant Facebook,
14 Inc.’s Opposition to Plaintiffs’ Motion to Compel Production of “Configuration Tables” (“Poole
15 Declaration”);

16 (4) designated portions of Facebook’s Opposition to Plaintiffs’ Motion to Compel Production
17 of Documents; and

18 (5) designated portions of the Declaration of Jeana Bisnar Maute in Support of Defendant
19 Facebook, Inc.’s Opposition to Plaintiffs’ Motion to Compel Production of Documents (“Maute
20 Declaration”).

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

23 **II. LEGAL STANDARD**

24 Courts have historically recognized the public’s “general right to inspect and copy public
25 records and documents, including judicial records and documents,” which is “premised on the interest
26 of citizens in ‘keep[ing] a watchful eye on the workings of public agencies.’” *Accenture LLP v.*
27 *Sidhu*, No. C10-2977 TEH, 2011 U.S. Dist. LEXIS 140093, at *3 (N.D. Cal. Dec. 6, 2011) (quoting
28 *Nixon v. Commc’ns, Inc.*, 435 U.S. 589, 597-98 (1978)). However, the Ninth Circuit has “carved out

1 an exception to the presumption of access to judicial records . . . [that is] expressly limited to judicial
2 records filed under seal when attached to a *non-dispositive* motion.” *In re Midland Nat. Life Ins. Co.*
3 *Annuity Sales Practices Litigation*, 686 F.3d 1115, 1119 (9th Cir. 2012) (per curiam) (internal
4 quotation marks and citation omitted) (emphasis in original); *Real Action Paintball, Inc. v. Advanced*
5 *Tactical Ordnance Sys., LLC*, No. 14-CV-02435-MEJ, 2015 WL 1534049, at *2 (N.D. Cal. Apr. 2,
6 2015) (the presumption of public access to judicial documents in connection with dispositive motions
7 “does not apply in the same way to non-dispositive motions”).

8 The presumption of access to judicial records does not apply here because the documents at
9 issue are being filed in connection with non-dispositive discovery motions—and accordingly,
10 “[g]ood cause’ is the proper standard.” *Real Action Paintball, Inc.*, 2015 WL 1534049, at *2; *Pintos*
11 *v. Pac. Creditors Ass’n*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“In light of the weaker public interest
12 in nondispositive materials, we apply the ‘good cause’ standard”); *Kamakana v. City and County*
13 *of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (“A ‘good cause’ showing will suffice to seal
14 documents produced in discovery. Fed. R. Civ. P. 26(c) (stating that if ‘good cause’ is shown in
15 discovery, a district court may issue ‘any order which justice requires to protect a party or person from
16 annoyance, embarrassment, oppression, or undue burden or expense’).”).

17 “Under the ‘good cause’ standard, the party seeking protection bears the burden of showing
18 specific prejudice or harm will result if no protective order is granted.” *Real Action Paintball, Inc.*,
19 2015 WL 1534049, at *2; *see also Kamakana*, 447 F.3d at 1180 (“[A] ‘particularized showing’ under
20 the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of sealed
21 discovery material attached to non-dispositive motions.’”) (citation omitted). A party shows good
22 cause when, for example, public disclosure of the materials would put the party at a competitive
23 disadvantage. *See, e.g., Oracle USA, Inc. v. SAP AG*, No. 07-cv-01658 PJH, 2009 U.S. Dist. LEXIS
24 71365, at *4-5 (N.D. Cal. Aug. 12, 2009) (granting motion to seal where moving party “considered
25 and treated the information contained in the subject documents as confidential, commercially
26 sensitive and proprietary” and where “public disclosure of such information would create a risk of
27 significant competitive injury and particularized harm and prejudice”).

1 **III. ARGUMENT**

2 Facebook respectfully submits that it has demonstrated “good cause” to permit filing certain
3 information under seal through the Sokol Declaration. *See* Sokol Declaration ¶¶ 4-8. In the Sokol
4 Declaration, Facebook has identified each piece of confidential information submitted, and explained
5 the specific harm that would come from its disclosure in order to make these issues clear for the
6 Court. *Id.* As set forth in the Sokol Declaration, good cause exists to grant this motion to seal
7 because the information Facebook moves to seal contains non-public, confidential, and proprietary
8 Facebook business information that is protectable as a trade secret or otherwise entitled to protection
9 under the law, including information concerning the names of and the nature of the content stored in
10 Facebook’s internal databases and the internal tables in those databases; the name of one of
11 Facebook’s confidential security and anti-abuse systems; and the names and operations of
12 Facebook’s internal document repositories, which demonstrate how Facebook’s systems and tools
13 work. The public does not at this time have a meaningful interest in obtaining such information, and
14 public disclosure of this information would cause particularized harm to Facebook by allowing its
15 competitors to access sensitive information, which they could use to gain an unfair advantage against
16 Facebook. Such information could also be used by individuals or companies that might seek to
17 compromise the security of Facebook’s messages and other technology, causing harm to Facebook
18 and the people who use Facebook’s services.

19 **IV. CONCLUSION**

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

26 _____
27 ¹ Pursuant to Civil Local Rule 79-5(d)(1), the following attachments accompany this motion: (A) a
28 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
[Footnote continued on next page]

1 Dated: August 19, 2016

Respectfully submitted,

2 GIBSON, DUNN & CRUTCHER LLP

3 By: /s/ Joshua A. Jessen
4 Joshua A. Jessen

5 Attorneys for Defendant FACEBOOK, INC.

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[Footnote continued from previous page]

25 sealable material identified in the Sokol Declaration, listing in table format each document or portion
26 thereof sought to be sealed; (C) unredacted versions of documents sought to be filed under seal, with
27 the sealable portions identified within the text; and (D) redacted versions of documents sought to be
28 filed under seal. Pursuant to Civil Local Rule 79-5(d)(2), Facebook will provide a courtesy copy of
this filing to the Court.