

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TIMELINES, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 11 CV 6867
	)	
FACEBOOK, INC.	)	Hon. John W. Darrah
	)	
Defendant.	)	

**MEMORANDUM IN SUPPORT OF FACEBOOK’S MOTION *IN LIMINE*  
TO PROTECT FROM PUBLIC DISCLOSURE HIGHLY CONFIDENTIAL DATA  
CONTAINED IN TWO SPREADSHEETS PRODUCED BY FACEBOOK**

**I. INTRODUCTION.**

Defendant Facebook, Inc. (“Facebook”) submits this memorandum in support of its motion (the “Motion”) seeking to protect against the public disclosure at trial of certain granular revenue, click, and impression data contained in two spreadsheets produced by Facebook in response to discovery requests propounded by Plaintiff Timelines, Inc. (“Plaintiff”). In an effort to reach a compromise regarding the protection of the highly sensitive and confidential data contained in the two spreadsheets at issue (collectively, the “Spreadsheets”), Facebook and Plaintiff Timelines, Inc. (“Timelines”) have stipulated to the following narrow protocol regarding the handling of the data at trial (See Exhibit A):

1. Pursuant to an agreement between counsel for the parties<sup>1</sup>, the revenue, click, and impression data relating to specific Facebook ad products and contained in the Spreadsheets will be redacted from any exhibits used at the trial of this matter by either party.

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<sup>1</sup> The parties may enter into further agreements relating to redactions of the Spreadsheets for the purpose of simplifying them for ease of use at trial.

2. At trial, exhibits and demonstrative displays with information from the redacted versions of the Spreadsheets (i.e., revenue, click, and impression data not specific to particular Facebook ad products) may be disclosed to: (a) the Court and its personnel; (b) the jury; (c) Timelines' President and corporate representative; and (d) the parties' respective experts and witnesses as necessary.
3. The Court will not include the redacted exhibits or demonstrative displays, or testimony about the highly confidential revenue, click, and impression data contained in the Spreadsheets, in its publicly available records or otherwise make such data publicly available.
4. After trial, Timelines will continue to treat the revenue, click, and impression data in the Spreadsheets as "Highly Confidential – Outside Counsel Only" pursuant to the terms of the Protective Order and the NDA executed by Timelines' President.

Facebook now respectfully requests that the Court, for the reasons set forth below, memorialize the parties' agreement and enter the parties' stipulation as an Order.

## **II. THE HIGHLY CONFIDENTIAL DATA AT ISSUE.**

In connection with the determination of alleged damages in this case, the parties will likely introduce two exhibits at trial that contain highly sensitive and non-public information.

Specifically, both parties' damages experts intend to rely on data contained in the Spreadsheets:

<b>Exhibit Number</b>	<b>Description</b>
FB_TL_00011912	Monthly account of Facebook's revenue, clicks, and impressions for advertisements dating back to 2010.
FB_TL_00011919	Monthly account of Facebook's revenue, clicks, and impressions for advertisements from January through September 2012.

The Spreadsheets contain very detailed information concerning Facebook’s revenue, clicks, and impressions relating to advertisements, which Facebook has taken great efforts to protect from public disclosure. Facebook would likely suffer serious competitive harm if competitors gained access to this information.

Pursuant to the stipulated Protective Order, Facebook produced the Spreadsheets with a “Highly Confidential—Outside Counsel Only” designation. (*See* Protective Order, Dkt. 55 ¶¶ 3,5.) This designation triggered a duty on the part of Timeline’s counsel to keep the information in the strictest confidence due to its highly sensitive nature. (*Id.* ¶¶ 10,12.) Facebook and Timelines have agreed to maintain at trial the confidentiality of the revenue, click, and impression information contained in the Spreadsheets in order to avoid the undue harm that would befall Facebook if such information were disclosed to the public.

### **III. ARGUMENT**

In this District, the party claiming confidential protection of certain documents bears the burden of showing: (1) a trade secret or confidential business information; and (2) good cause. *Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir. 1999); *Culinary Foods, Inc. v. Raychem Corp.*, 151 F.R.D. 297, 300 (N.D. Ill. 1993). Protectable information includes trade secrets or other “confidential...commercial information.” *Strait v. Belcan Eng’g Group, Inc.*, 2012 U.S. Dist. LEXIS 83727, \*3-4 (N.D. Ill. June 18, 2012) (citing Fed. R. Civ. P. 26(c)(1)(G)). This Court has held that documents relating to financial information constitute protectable information. *See JamSports and Entm’t v. Paradama Prods., Inc., et al.*, 2005 U.S. Dist. LEXIS 59, \*5-12 (N.D. Ill. Jan. 3, 2005).

Facebook keeps the data in the Spreadsheets strictly confidential. The information is considered proprietary to Facebook and is covered by policies that are designed to protect it from

public or other improper disclosure. This information is not in any sense public, and the confidentiality of this information has not been waived.

Facebook derives commercial benefit from the confidentiality of the revenue, clicks, and impressions data and allowing such granular data to be disclosed publicly would competitively harm Facebook. Facebook, like other online service providers, derives much of its revenue from online advertising. Keeping information regarding Facebook's revenues, clicks, and impressions data confidential, especially as it relates to each type of ad product, is of critical importance to maintaining the integrity of Facebook's advertising model.

In a similar case, this Court held that certain documents containing a defendant's sensitive financial information would be admitted at trial only under seal. *JamSports*, 2005 U.S. Dist. LEXIS 59 at \*5-12. The defendant in *JamSports* attested to the fact that disclosure of venue-by-venue cost and revenue information would undermine its negotiating position with customers and allow competitors to undercut its prices. *Id.* at \*8-9. In order to strike a balance between the public's right of access and the defendant's commercial interest in confidentiality, the Court ordered that the documents at issue "[would] be admitted under seal and [would] not become part of the public record." *Id.* at \*11. The Court further ordered that "[c]ounsel and any officer, director, employee, agent, or attorney of a party who is present in the courtroom [would be] barred from disclosing the document or its contents." *Id.* Like the defendant in *JamSports*, disclosure of Facebook's revenue, clicks, and impressions data could diminish its ability to negotiate with advertising customers and allow competitors to undermine Facebook's competitive position in the marketplace. As such, good cause exists for the Court to maintain the confidential nature of these documents during and after trial.

In this case, the public interest in disclosure “does not...trump the property and privacy interests” of Facebook. The parties have entered into a stipulation that would allow for the disclosure of this information at trial to the Court and its personnel, the jury, Timelines’ President and corporate representative, and the parties’ respective experts and witnesses, as necessary. Facebook only requests that the Court not include any exhibits or demonstrative displays, or testimony about the highly confidential revenue, click, and impression data contained in the Spreadsheets, in its publicly available records or otherwise make such data publicly available. *See Citizens First Nat’l Bank*, 178 F.3d at 945; *see also Strait*, 2012 U.S. Dist. LEXIS 83727 at \*4-12 (holding that certain documents containing defendant’s confidential employee pay information would be admitted at trial only under seal because disclosure would cause defendant commercial harm).

#### **IV. CONCLUSION.**

For the foregoing reasons, Facebook respectfully requests that the Court grant its motion and enter the parties’ stipulation, submitted herewith, as an Order.

Dated: February 20, 2013

Respectfully submitted,

**COOLEY LLP**

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that he served the foregoing **MEMORANDUM IN SUPPORT OF FACEBOOK'S MOTION *IN LIMINE* TO PROTECT FROM PUBLIC DISCLOSURE HIGHLY CONFIDENTIAL DATA CONTAINED IN TWO SPREADSHEETS PRODUCED BY FACEBOOK** by means of the Court's CM/ECF System, which causes a true and correct copy of the same to be served electronically on all CM/ECF registered counsel of record, on February 20, 2013.

Dated: February 20, 2013

/s/ Brendan J. Hughes

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