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11 **FACEBOOK, INC.**

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 WINDY CITY INNOVATIONS, LLC

16 Plaintiff,

17 v.

18 FACEBOOK, INC.,

19 Defendant.

Case No. 4:16-cv-01730-YGR

**FACEBOOK, INC.'S
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL (RE:
FACEBOOK'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT)**

The Honorable Yvonne Gonzalez Rogers

1 **NOTICE OF MOTION AND MOTION TO FILE DOCUMENTS UNDER SEAL**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Facebook, Inc. (“Facebook”) hereby
3 moves this Court for an Order allowing Facebook to file under seal confidential, unredacted versions
4 of the following documents:

- 5 1. Facebook’s Reply In Support of Motion for Summary Judgment (“Reply Brief”);
- 6 2. Exhibit 24 to Declaration of Phillip E. Morton in Support of Facebook’s Reply In
7 Support of Motion for Summary Judgment.

8 Facebook respectfully submits that compelling reasons exist for the filing of these documents
9 under seal. The motion is based on the following Memorandum of Points and Authorities, and the
10 Declaration of Phillip E. Morton in Support of Administrative Motion to File Under Seal.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. LEGAL STANDARD**

13 “[T]he courts of this country recognize a general right to inspect and copy public records and
14 documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S.
15 589, 597 & n.7 (1978). The right, however, “is not absolute and can be overridden given sufficiently
16 compelling reasons for doing so.” *Foltz*, 331 F.3d at 1135. “A narrow range of documents is not
17 subject to the right of public access at all because the records have traditionally been kept secret for
18 important policy reasons.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
19 2006) (internal citations omitted). A party intending to seal document in connection with a dispositive
20 motion “must show that ‘compelling reasons supported by specific factual findings . . . outweigh the
21 general history of access and the public policies favoring disclosure.’” *Pintos v. Pac. Creditors Ass’n*,
22 565 F.3d 1106, 1115-16 (9th Cir. 2009) (citing *Kamakana*, 447 F.3d at 1178-79).

23 **II. ARGUMENT**

24 The following documents contain materials designated by Windy City as “CONFIDENTIAL”
25 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the controlling
26 Protective Order (D.I. 67) in this case: (1) Facebook’s Reply In Support of Motion for Summary
27
28

1 Judgment; and (2) Exhibit 24 to the Declaration of Phillip E Morton In Support of Facebook's Reply
2 In Support of Motion for Summary Judgment.¹

3 Under Civil Local Rule 79-5(e), a party may seek to "file under seal a document designated as
4 confidential [and Highly Confidential – Attorneys' Eyes Only] by the opposing party or a non-party
5 pursuant to a protective order, or a document containing information so designated by an opposing
6 party or a nonparty." Civil L.R. 79-5(e). Facebook does not take a position on whether or not the
7 material designated as confidential by Windy City should properly be withheld, but has filed this
8 motion to comply with the Protective Order and the Civil Local Rules. The relief requested in this
9 motion is necessary and is narrowly tailored to protect confidential information.

10 **III. CONCLUSION**

11 Pursuant to Civil Local Rule 79-5(d), Facebook attaches to this motion: (1) a declaration from
12 Phillip E. Morton in support thereof; (2) a proposed order that is narrowly tailored to seal only the
13 sealable material and lists in table format each document or portion thereof that is sought to be sealed;
14 (3) redacted versions of the documents sought to be sealed; and (4) unredacted versions of the
15 documents. Pursuant to Civil Local Rule 79-5(e), Facebook will serve Phillip E. Morton's declaration
16 supporting this motion on Windy City and will file proof of such service. Accordingly, Facebook
17 respectfully requests that the Court grant its administrative motion to seal the aforementioned
18 information from the public record.

19
20 ¹ Facebook does not contend that any portion of its Reply Brief contains Facebook technical trade
21 secrets or confidential business information requiring sealing. However, Facebook notes that certain
22 of the exhibits *cited* in the Reply Brief are exhibits to Windy City's Opposition to Facebook's Motion
23 for Summary Judgment which Facebook seeks to seal in their entirety, as set forth in Windy City's
24 Administrative Motion to File Opposition to Facebook's Motion for Summary Judgment Under Seal
25 (D.I. 184), Declaration of P. Morton in Support of Windy City's Administrative Motion to Seal (D.I.
26 189), and Declaration of S. O'Reilly in Support of Windy City's Administrative Motion to Seal (D.I.
27 190-1). For example, in its Reply Brief, Facebook refers to testimony of Facebook engineer Hany
28 Barakat regarding testing (*see* Facebook Reply at n.10) and cites to Exhibit T (excerpts from Mr.
Barakat's deposition transcript). While the discussion of this testimony in the Reply Brief is at a high
level and Facebook does not seek to seal it, as set forth in Mr. Morton and Mr. O'Reilly's declarations
(at D.I. 189 and 190-1, respectively), it is Facebook's position that the underlying Exhibit T does
contain confidential Facebook technical trade secret and sensitive business information, and should be
sealed in its entirety. The same is also true for Exhibits U, V, W, X and Y.

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Dated: March 8, 2019

Respectfully submitted,

COOLEY LLP,

/s/ Heidi L. Keefe

Heidi L. Keefe

Attorneys for Defendant
FACEBOOK, INC.