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LIMITED and Q CYBER TECHNOLOGIES LIMITED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

WHATSAPP INC., a Delaware corporation,  
and FACEBOOK, INC., a Delaware  
corporation,

Plaintiffs,

v.

NSO GROUP TECHNOLOGIES LIMITED  
and Q CYBER TECHNOLOGIES LIMITED,

Defendants.

Case No. 4:19-cv-07123-PJH

**DEFENDANTS NSO GROUP  
TECHNOLOGIES LIMITED AND Q  
CYBER TECHNOLOGIES LIMITED'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL**

Judge: Hon. Phyllis J. Hamilton

Action Filed: 10/29/2019

Pursuant to Civil Local Rules 7-11 and 79-5(d), Defendants NSO Group Technologies Limited and Q Cyber Technologies Limited (collectively, the “Defendants”), by and through their undersigned counsel, hereby submit this Administrative Motion to File Under Seal (the “Motion”): (1) one sentence in the introduction and two additional paragraphs of Defendants’ Opposition to Plaintiffs’ Motion to Compel Discovery (3:6-18, 6:16-7:3); (2) paragraphs 3-8 and 10 of the concurrently filed September 2, 2020 Declaration of Joseph N. Akrotirianakis (“Akro. Decl.”); paragraphs 2-4 of the concurrently filed August 3, 2020 Declaration of Roy Blecher; and paragraph 6 of, and Exhibits A-F to, the concurrently filed August 3, 2020 Declaration of Chaim Gelfand. Exhibits A-F of the Gelfand Declaration are:

1. Exhibit A, a Hebrew-language document;
2. Exhibit B, an English translation of Exhibit A;
3. Exhibit C, a Hebrew-language document;
4. Exhibit D, an English translation of Exhibit C;
5. Exhibit E, a Hebrew-language document; and
6. Exhibit F, an English translation of Exhibit E.

(The unredacted Opposition, the unredacted Akrotirianakis Declaration, the Blecher Declaration, and the Exhibits to the Gelfand Declaration are collectively referenced as the “Sealed Documents.”) The Sealed Documents are submitted to the Court for its consideration in connection with Defendants’ Opposition to Plaintiffs’ motion to compel. (Dkt. No. 116.)

The Motion is based upon the points and authorities set forth herein, as well as those facts attested to in the accompanying Akrotirianakis, Blecher, and Gelfand Declarations.

## **I. BACKGROUND**

The Complaint was filed October 29, 2019. (Dkt. No. 1.) Defendants were served on March 12, 2020, and on April 2, 2020, Defendants moved to dismiss the complaint. (Dkt. No. 45.) The parties’ conducted the Rule 26(f) conference on May 6, 2020. (*See* Dkt. No. 76.) Thereafter, on June 2, 2020, Plaintiffs served Requests for Production of Documents, to which Defendants timely responded on July 6, 2020. (Akro. Decl. ¶ 2.) On June 16, 2020, Defendants moved to stay discovery pending resolution of Defendants’ motion to dismiss. (Dkt. No. 95.) On July 16, 2020,

the Court ruled on Defendants’ motion to dismiss the complaint and denied as moot Defendants’ motion to stay discovery. (Dkt. No. 111.) On August 5, 2020, Plaintiffs filed a motion to compel discovery. (Dkt. No. 116.) On August 20, 2020, this Court extended Defendants’ deadline to oppose the motion to compel until September 2, 2020. (Dkt. No. 126.)

For information about additional matters relevant to this Motion, the Court is respectfully referred to paragraphs 3-7 of the accompanying Akrotirianakis Declaration.

## II. LEGAL STANDARDS

Civil Local Rule 79-5 sets forth the procedural requirements for filing an administrative motion to seal records. The moving party must establish that the request is “narrowly tailored to seek sealing only of sealable material” and attach declarations to that effect. Civil L.R. 79-5(b), Civil L.R. 79-5(d)(1)(A). “Sealable” material includes documents, or portions thereof, that are “privileged, protectable as a trade secret or otherwise entitled to protection under the law.” Civil L.R. 79-5(b).

Although courts recognize a general right to inspect and copy public records, “access to judicial records is not absolute.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). The showing necessary to seal materials depends on how closely related those materials are to the merits of the case. A party seeking to seal materials submitted with a motion that is “more than tangentially related to the merits of the case” must demonstrate that there are compelling reasons to keep the documents under seal. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101–02 (9th Cir. 2016). On the other hand, “[a] party seeking leave to file documents under seal in conjunction with a non-dispositive motion” need only show “good cause exists to file the information under seal.” *Uniloc United States of Am., Inc. v. Apple Inc.*, No. 18-cv-00362-PJH, 2018 WL 2392561, at \*3 (N.D. Cal. May 25, 2018) (Hamilton, J.). Under the “good cause” standard, the relevant inquiry is “whether good cause exists to protect the information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality.” *Wells Fargo & Co. v. ABD Ins. & Fin. Servs.*, No. C 12-3856 PJH, 2013 WL 897914, at \*1 (N.D. Cal. Mar. 8, 2013) (Hamilton, J.).

Here, the documents Defendants seek to file under seal are not being submitted in

1 conjunction with their opposition to Plaintiffs’ motion to compel, which is not a dispositive  
 2 motion. Accordingly, the “good cause” standard applies to this Motion. (Even if the higher  
 3 “compelling reasons” standard applied, that standard is met here.)

### 4 **III. LEGAL ARGUMENT**

5 This Motion is supported by good cause (and to the extent required, by compelling reasons)  
 6 based on the facts attested to in the Blecher, Gelfand, and Akrotirianakis Declarations, and those  
 7 contained in the Exhibits to the Gelfand Declaration. The Sealed Documents contain highly  
 8 sensitive, non-public information, the disclosure of which would prejudice Defendants and other  
 9 parties not before the Court. *See, e.g., Compal Elecs., Inc. v. Apple Inc.*, 2017 WL 11423604, at  
 10 \*3 (S.D. Cal. Sept. 5, 2017); *Omari v. Ras Al Khaimah Free Trade Zone Auth.*, 2017 WL 3896399,  
 11 at \*14 (S.D.N.Y. Aug. 18, 2017); *Strauss v. Credit Lyonnais, S.A.*, 2011 WL 4736359, at \*5  
 12 (E.D.N.Y. Oct. 6, 2011). Therefore, Defendants now seek leave of this Court to file the Sealed  
 13 Documents under seal.

14 Good cause exists to seal each of the Sealed Documents, and Defendants respectfully  
 15 request that the Court grant this Motion and order the Sealed Documents be kept under seal. For  
 16 a full description of that good cause, the Court is respectfully referred to paragraph 10 of the  
 17 accompanying Akrotirianakis Declaration.

### 18 **IV. CONCLUSION**

19 For the reasons set forth above and in the accompanying Blecher, Gelfand, and  
 20 Akrotirianakis Declarations, and those contained in the Exhibits to the Gelfand Declaration,  
 21 Defendants respectfully request that the Court grant this Motion and order the Sealed Documents  
 22 to be kept under seal.

23 DATED: September 2, 2020

KING & SPALDING LLP

24  
 25 By: /s/ Joseph N. Akrotirianakis  
 26 JOSEPH N. AKROTIRIANAKIS  
 27 AARON S. CRAIG  
 28 Attorneys for Defendants NSO GROUP  
 TECHNOLOGIES LIMITED and Q  
 CYBER TECHNOLOGIES LIMITED