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6 Attorneys for Defendants NSO GROUP TECHNOLOGIES  
LIMITED and Q CYBER TECHNOLOGIES LIMITED

7 UNITED STATES DISTRICT COURT  
8  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

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

13 Plaintiffs,

14 v.

15 NSO GROUP TECHNOLOGIES LIMITED  
and Q CYBER TECHNOLOGIES LIMITED,

16 Defendants.  
17

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

**DECLARATION OF JOSEPH N.  
AKROTIRIANAKIS IN SUPPORT OF  
DEFENDANTS NSO GROUP  
TECHNOLOGIES LIMITED AND Q  
CYBER TECHNOLOGIES LIMITED'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL**

Judge: Hon. Phyllis J. Hamilton

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I, Joseph N. Akrotirianakis, declare as follows:

1. I am a member of the California State Bar and the bar of this court and a partner in the law firm of King & Spalding LLP, counsel of record to Defendants NSO Group Technologies Limited and Q Cyber Technologies Limited (collectively, the “Defendants”). I have personal knowledge of the facts set forth herein, except as otherwise stated.

2. The Complaint was filed October 29, 2019. (Dkt. No. 1.) Defendants were served 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. 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.)

3. Defendants seek to file under seal certain documents (the “Sealed Documents”) which are submitted to the Court for its consideration in connection with the Initial Case Management Conference. As described in the Sealed Documents, including paragraph 3-10 and 12 of this Declaration and paragraph 6 of the accompanying Declaration of Chaim Gelfand, actions by the Government of Israel will have direct implications for Defendants’ ability to proceed with discovery and are likely to affect other proceedings in this case. The Sealed Documents contain highly sensitive, traditionally nonpublic government information that the Honorable Tzachi Uziel, Chief Justice of the Magistrate Court in Tel Aviv-Jaffa,<sup>1</sup> has ordered be kept confidential upon a request submitted by the Government of Israel. Accordingly, consistent with principles of international comity, Defendants now seek leave of this Court to file unredacted copies of the Sealed Documents under seal and ask that they be ~~so~~-maintained under seal.

<sup>1</sup> In the Israeli judiciary system, the Magistrate Court is the basic trial court, akin to the United States District Court. Appeals from judgments of the Magistrate Court are heard in the District Court, which also has limited original jurisdiction. There are six districts, and six District Courts, in Israel. Israel’s court of last resort is the Supreme Court, which like the United States Supreme Court, has discretionary appellate and limited original jurisdiction.

1 4. On July 19, 2020, the Government of Israel filed in the Magistrate Court of Tel  
2 Aviv–Jaffa a request titled “Request for the Issuance of a Search Warrant on the Premises, to Seize  
3 Computers (Including Computers of the Companies) and Access to the Computer Materials.”  
4 (Gelfand Decl. Exh. B (“Request”) at \_\_\_.) The Request was presented *ex parte* by Dr. Haim  
5 Vismonski, Director of the Cyber Department of the Israeli State Attorney’s Office, and Moran  
6 Eshol, an attorney in the Cyber Department of the State Attorney’s Office. As set forth in the  
7 accompanying Declaration of Chaim Gelfand, the Request and the resulting Order were neither  
8 announced in advance to, nor expected by, Defendants. (Gelfand Decl. ¶ \_\_\_.) The Request sought  
9 a warrant to search Defendants’ business premises and seize “[a]ny document or object” held by  
10 Defendants. The Request was made “for the purpose of preventing the disclosure of information  
11 that is within [Defendants’] ownership, or is held by [Defendants], by [Defendants’] employees,  
12 or by those who act on [Defendants’] behalf, which is likely to cause ‘grave national security-  
13 foreign relations’ damage to the State of Israel.” (Gelfand Decl. Exh. \_\_\_ at \_\_\_.) Through the  
14 Request, the Government of Israel sought to prohibit Defendants from making “any change,  
15 deletion or transfer to an external person or entity” with respect to “all of the documents and  
16 computer materials which are under the ownership of” Defendants. (Gelfand Decl. Exh. \_\_\_ at \_\_\_.)

17 5. As the Request indicates on its face, the seizure was not sought for purposes of a  
18 criminal investigation or any other investigatory matter. (Gelfand Decl. Exh. B at \_\_\_.) The Israeli  
19 government sought the warrant to seize information from the Defendants for the purpose of  
20 preventing the disclosure of information that would be “likely to cause ‘grave national security-  
21 foreign relations’ damage to the State of Israel.” (Gelfand Decl. Exh. B at \_\_\_.)

22 6. On July 19, 2020, Chief Justice Uziel issued an Order granting the Request.  
23 (Gelfand Decl. (“Order”) Exh. D at \_\_\_.) Chief Justice Uziel found the issuance of the seizure  
24 warrant was necessary “to prevent serious diplomatic and security damage” to Israel. (Gelfand  
25 Decl. Exh. D at 1.) Chief Justice Uziel’s Order prohibits Defendants from “making any changes,  
26 deletion or transfer to any external party that is not an employee of one of the [Defendants], with  
27 regard to any document or computer matters that are owned by the [Defendants] or in their  
28 possession, their employees or anyone on their behalf, that could possibly be found to be related

**Commented [A1]:** Please review a copy of the accompanying Gelfand declaration and of all attached exhibits

**Commented [A2]:** John – you suggested to following sentence marked in green:

“Defendants were not aware of the Government’s request until the Government later informed Defendants about it”

The updated version that was sent to us suggests something similar that was added by NSO:

As set forth in the accompanying Declaration of Chaim Gelfand, the Request and the resulting Order were neither announced in advance to, nor expected by, Defendants.

p.s – any mark up in green – is us adding your comments to this draft.

**Commented [A3]:** The correct translation of the phrase used in all the Hebrew documents is:

“grave damage to the State of Israel’s national security and foreign relations”

Any reference to said phrase and / or interest of the State of Israel which are at the basis of the Order should match the correct translation.

**Commented [A4]:** See above comment regarding correct translation of this phrase

**Commented [A5]:** Perhaps determined af

**Commented [A6]:** The Order includes additional actions, including a warrant to search the Premises and access to the Computer Materials and not only the issuance of a “seizure warrant”. Therefore, the language should be amended to describe the full scope of the order granted by the Court, and then all references should state as “the Order” as defined at the outset of paragraph 6. [and in the accompanying declaration]

**Commented [A7]:** The correct term should be “Foreign Relations”. Please change in all other places as well.

**Commented [A8]:** See above comment regarding correct translation of this phrase. Moreover, the term “diplomatic” is not an accurate description for the interests of the State of Israel.

1 to the issues of the [Defendants].” (Gelfand Decl. Exh. D at 1.) The Order also authorizes the  
2 State of Israel to search Defendants’ premises and seize “[a]ny document or item that may contain  
3 data or content that may possibly cause serious diplomatic-security damage, including computers  
4 (which includes cellular phones), organizational computers, magnetic media, and computer items  
5 of an ‘organization’ . . . that is located on the premises.” (Gelfand Decl. Exh. D at 1-2.) And the  
6 Order also authorizes “continuous penetration and re-penetration” of “computer materials and  
7 anything that embodies computer materials” and “computer material[] that the seized computer  
8 has authorization to access, in any place that such computer materials are located.” (Gelfand Decl.  
9 Exh. D at 3.)

10 7. Since obtaining the Order, as set forth in the Gelfand Declaration, the Government  
11 of Israel has removed from Defendants’ premises a significant portion of the physical documents  
12 previously in Defendants’ possession, custody, and control and has begun seizing Defendants’  
13 electronically-stored information (ESI). (Gelfand Declaration ¶¶ \_\_-\_\_.)

14 8. On July 19, 2020, the Deputy Attorney General for International Law, Dr. Roy  
15 Schondorf, and the Director of the Cyber Department of the Israeli State Attorney’s Office Dr.  
16 Vismonski called Defendants’ Israeli counsel, Adv. Roy Blecher, and requested an immediate  
17 meeting with Defendants’ Chief Executive Officer, Shalev Huliq; Defendants’ General Counsel,  
18 Shmuel Sunray; and Adv. Blecher. Dr. Schondorf and Dr. Vismonski notified Adv. Blecher (and  
19 through him, Defendants) for the first time of the existence of the Order and stated that further  
20 information would be provided at the meeting. At the meeting held a few hours later, Dr.  
21 Vismonski served the Order on Defendants’ Israeli counsel and also delivered to Messrs. Huliq,  
22 Sunray, and Blecher a copy of a letter. (Gelfand Decl. Exh. F (“Vismonski Letter”).) In the  
23 Vismonski Letter, ~~Deputy State Attorney~~ Dr. Vismonski informed Defendants of the seizure  
24 warrant and explained, as is indicated in the letter, that “[t]he purpose of the Courts’ Order is to  
25 prevent disclosure of information, which is likely to cause grave damage to the State of Israel’s  
26 national security and foreign relations.” (Gelfand Decl. Exh. F ¶ 3.) ~~Deputy State Attorney~~  
27 Dr. Vismonski warned Defendants that according to the Order they are “forbidden to make any  
28 disposition of all of the documents and computer materials which are owned or held by the

**Commented [A9]:** Foreign relations – also to be applied to all other references to "diplomatic"

**Commented [A10]:** See above comment regarding correct translation of this phrase

**Commented [A11]:** This is the description in the Order:  
"computer (and included in this a cellular telephone), including a computer that is being used by a company, magnetic media and computer material belonging to a 'company' ... which is located on the premises."

**Commented [A12]:** Moran - Is this information subject to disclosure? Check accuracy as well of the statement. Consider: "The GOI is in the process of executing the Order of the Court."

**Commented [A13]:** ורד – רק צריכה לוודא מול חיים שאכן זה המעצב בשלב זה מבחינת ביצוע הצו. כשחיים יחזור אליי אעדכן אותך וניתן יהיה למחוק הערה זו

**Commented [A14]:** The correct title was added

**Commented [A15]:** Referencing the meeting specifically might open the door to discovery about the meeting. We suggest to re-draft to say that on July 19, 2020 NSO was informed of the issuance of the Order of the Court that day via a letter of ... and a copy of the Order was hand-delivered and served on ...  
**John – we also feel it is unnecessary to mention Roy's name in this request.**

**Commented [A16]:** Haim/Roy - discuss

**Formatted:** Highlight

**Commented [A17]:** See above comment regarding the reference to the Order

**Commented [A18]:** See a suggested change. The Defendants are forbidden not because of Dr. Vismonski's warning - they are forbidden by the Order

1 companies, by their employees or by those who act on their behalf,” including a prohibition on  
2 “making any change, deletion or transfer of these materials to any external person or entity that is  
3 not currently employed in one of the companies.” (Gelfand Decl. Exh. F ¶ 2.) ~~Deputy State~~  
4 ~~Attorney~~ The Director of the Cyber Department of the Israeli State Attorney’s Office, Dr.  
5 Vismonski also informed Defendants that they are prohibited from disclosing “any information  
6 whatsoever with regard to the Order, including information with regard to the very existence of  
7 the Order forbidding publication, to the hands of any person or entity,” with a few specific  
8 exceptions. (Gelfand Decl. Exh. F ¶ 4.)

9 9. At the time Defendants received the Vismonski Letter, a ~~Non-Disclosure Order~~  
10 ~~order~~ barred Defendants from disclosing the existence of the Order to this Court or Plaintiffs.  
11 (Gelfand Decl. Exh. F ¶ 4.) Defendants subsequently sought permission from the Israeli State  
12 Attorney’s office to disclose the Order, and on July 22, 2020, Defendants and the Israeli State  
13 Attorney’s office jointly requested that Chief Justice Uziel issue an order lifting the ~~non-disclosure~~  
14 ~~order~~ for the limited purpose of allowing disclosure of the Request, the Order, and the  
15 Vismonski Letter to this Court and to Plaintiffs’ counsel. Dr. Vismonski conditioned ~~his~~ the State  
16 of Israel’s consent to the joint request to the partial lifting of the ~~non-disclosure order~~ on  
17 Defendants’ written promise to use best efforts to request that this Court (the United States District  
18 Court for the Northern District of California) order that the Sealed Documents and information  
19 related to them not be disseminated further and remain under seal. Chief Justice Uziel granted the  
20 joint request, authorizing Defendants to submit the Sealed Documents to this Court and to  
21 Plaintiffs’ counsel.<sup>2</sup> Although Chief Justice Uziel’s order granting a limited lifting of the ~~non-~~  
22 ~~disclosure~~ ~~order~~ itself remains subject to the same ~~non-disclosure order~~ ~~order~~, Defendants  
23 are presently seeking permission to share that further order of Chief Justice Uziel with the Court  
24 and Plaintiffs.

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28 <sup>2</sup> Chief Justice Uziel’s further order also permits Defendants to seek an order allowing disclosure  
of the Sealed Documents to certain specified members of Plaintiffs’ senior corporate leadership.

**Commented [A19]:** The correct title was added

**Commented [A20]:** In order to clarify that the prohibition on disclosure was ordered by the Court, and not by Dr. Vismonski – a reference to the Non-Disclosure Order should be added beforehand

**Commented [A21]:**

**Commented [A22]:** The consent was not Dr. Vismonski’s personally – it was the State of Israel’s

**Commented [A23]:** John – FYI the updated version changed the sentence so it now reads: **and remain under seal.** You suggested in the previous version: **" and would not be made public kept secret "**

**Commented [A24]:** Footnote 3: Defendants’ or Plaintiffs’ senior leadership?

1 10. Defendants seek to file paragraphs 3-10 and 12 of this Declaration under seal and,  
2 to the extent necessary in the future, permission to file under seal additional matters that make  
3 reference to the content of this Declaration, paragraph 6 and Exhibits A-F of the accompanying  
4 Gelfand Declaration, or the sealed proceedings before the Tel Aviv–Jaffa Magistrate Court.  
5 Exhibits A through F of the Gelfand Declaration comprise:

- 6 A. The Israeli government’s “Request for the Issuance of a Search Warrant on  
7 the Premises, to Seize Computers (Including Computers of the Companies)  
8 and Access to the Computer Materials,” dated July 19, 2020 (Hebrew);
- 9 B. English translation of Exhibit A. (Gelfand Decl. ¶ \_\_.)
- 10 C. The Tel Aviv–Jaffa Magistrate Court’s “Decision - Search Warrant on the  
11 Premises, Seizure and Access to Computer Materials,” dated July 19, 2020  
12 (Hebrew);
- 13 D. English translation of Exhibit C. (Gelfand Decl. ¶ \_\_.)
- 14 E. Dr. Haim Vismonski’s letter to Adv. Roy Blecher, dated July 19, 2020,  
15 which provides information about the search and seizure warrant to  
16 Defendants (Hebrew).
- 17 F. English translation of Exhibit E. (Gelfand Decl. ¶ \_\_.)

18 11. [Insert description of correspondence with opposing counsel (following protective  
19 order) and any explanation of why a stipulation to a sealing order could or could not be obtained.]

20 12. Good cause exists to seal each of the above-listed documents because the Sealed  
21 Documents come from Israeli courts and Israeli officials, and they are therefore entitled to  
22 deference consistent with international comity.

23 a. *First*, the Sealed Documents relate to Israel’s efforts to protect its national  
24 security and foreign relations interests and come directly from an Israeli judicial officer and the  
25 Israeli executive branch. As such, the Sealed Documents contain traditionally nonpublic  
26 government information for which there is no constitutional right of access. *See, e.g., N.Y. Times*  
27 *Co. v. Dep’t of Justice*, 806 F.3d 682, 688 (2d Cir. 2015) (“As a general rule, there is no  
28 constitutional right of access to traditionally nonpublic government information.”) The fact that

**Commented [A25]:** We do not know which translation you mean, but is important to note it is an unofficial translation and not a translation issued by the court

**Commented [A26]:** See above comment regarding the reference to the Order



1 the Sealed Documents be kept confidential in the interests of national security and foreign  
2 relations, international comity supports honoring that requirement and keeping the documents  
3 confidential.

4 c. *Third*, because Israel has prohibited Defendants from publicly disclosing  
5 the Sealed Documents, protection of the documents is warranted. *See Strauss v. Credit Lyonnais*,  
6 S.A., Nos. 06-cv-702 and 07-cv-914, 2011 WL 4736359, at \*5 (E.D.N.Y. Oct. 6, 2011) (sealing a  
7 non-party's banking records because, among other things, French law prohibited the documents'  
8 disclosure).

9 13. Accordingly, good cause (and, if necessary, a compelling reason) exists to seal each  
10 of the above-listed documents, and Defendants respectfully request that the Court grant the  
11 accompanying Administrative Motion to File Under Seal and order the Sealed Documents be kept  
12 under seal.

13 14. The Declarant has carefully sought sealing of only those parts of this Declaration  
14 as are necessary to comply with other court orders binding on Defendants, as described above,  
15 and, on behalf of Defendants, respectfully submits that the good cause and compelling reasons  
16 standards are met with respect to the sealing of paragraphs 3-9 and 11, above, and paragraph 6  
17 and the Exhibits to the accompanying Gelfand Declaration. If the Court disagrees, the Declarant  
18 respectfully requests that the unredacted version of this Declaration and the Exhibits to the  
19 Gelfand Declaration be stricken from the record and not reflected in the docket of this action and  
20 that any copies thereof be destroyed.

21 I declare under the penalty of perjury and the laws of the United States that the foregoing  
22 is true and correct this \_\_\_th day of July 2020, at Altadena, California.

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25 \_\_\_\_\_  
JOSEPH N. AKROTIRIANAKIS

**Commented [A28]:** This is too much disclosure as this paragraph will not be under seal. We suggest to change to "under the circumstances described above" and not to mention "other court orders"

**Commented [A29]:** Due to the changes added, should be changed to match request to seal paragraphs (3-10, 12). That's what the request states in paragraph 3: (3-10, 12)

**Commented [A30]:** What information would be reflected on the Docket?