UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: OPENAI, INC., COPYRIGHT INFRINGEMENT LITIGATION This Document Relates To: 1:23-cv-3285 (SHS) (OTW)	25-md-3143 (SHS) (OTW) **PLAINTIFFS' RESPONSE TO OPENAI'S MOTION TO SEAL**

Under paragraph 34 of the Stipulated Protective Order in this case (Dkt. 367), Plaintiffs, Daily News, LP, et al. ("*Daily News* Plaintiffs"), respectfully submit this response to OpenAI's Motion to Seal (Dkt. 1204) requesting that certain redacted portions of OpenAI's Letter Motion seeking to compel *Daily News* Plaintiffs to Produce Tollbit Data (Dkt. 1207) and Exhibits E and F attached thereto are sealed, and that Exhibits B and C attached thereto are sealed in their entirety. *Daily News* Plaintiffs request that this Court grant OpenAI's Motion to Seal (Dkt. 1204) in part, and that Exhibits B and C remain sealed in their entirety and that the redacted portions of Exhibit E remain sealed. *Daily News* Plaintiffs do not contend that the redactions to the Letter Motion or Exhibit F need to be maintained under seal.

Although "[t]he common law right of public access to judicial documents is firmly rooted in our nation's history," courts "must balance competing considerations against" this presumption of public access. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). "[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied to material introduced at trial, or in connection with dispositive motions . . . ." *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019); *see also Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016) (presumption of public access is lower for documents "passed between the parties in discovery"). "[W]hile a court must still articulate specific and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings." *Maxwell*, 929 F.3d at 50.

This standard applies here because OpenAI's motion to seal addresses material filed in connection with a discovery dispute. Exhibits B and C filed at Docket Entry 1207 are excerpts of deposition testimony from *Daily News* Plaintiffs' witnesses describing non-public and sensitive business information about harm to their business and traffic to their websites. The redacted portions of Exhibit E at Docket Entry 1207 also refer to deposition testimony from *Daily News* Plaintiffs' witnesses describing non-public and sensitive business information about *Daily News* Plaintiffs' business operations, profit and loss statements, corporate relationships, and trends in advertising revenue. *Daily News* Plaintiffs have consistently designated such information and testimony "Highly Confidential – Attorneys' Eyes Only" under the Protective Order, as it includes non-public and competitively sensitive business information.

Daily News Plaintiffs here makes a narrow request, confining sealing to two exhibits with excerpts of deposition testimony and limited portions of an email exchange referencing deposition testimony. And the request targets only "commercially sensitive business information." *FuboTV Inc. v. Walt Disney Co.*, 2024 WL 1884974, at *1 (S.D.N.Y. Apr. 30, 2024). For these reasons, *Daily News* Plaintiffs respectfully requests that the Court grant OpenAI's Motion to Seal in part.

Dated: February 6, 2026

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