UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: OPENAI, INC. COPYRIGHT INFRINGEMENT LITIGATION This Document Relates To: News Cases	Case No. 1:25-md-3143-SHS-OTW

DEFENDANT MICROSOFT CORPORATION'S RESPONSE TO PLAINTIFFS' MOTION TO SEAL

Pursuant to Paragraph 34 of the Stipulated Protective Order (ECF 367), Defendant Microsoft Corporation ("Microsoft") submits this response to News Plaintiffs' Motion to Seal (ECF 1931) requesting that the redacted portion of News Plaintiffs' Reply to Microsoft Corporation's Memorandum of Law in Opposition to News Plaintiffs' Motion for Sanctions Against OpenAI ("Reply Brief") (ECF 1932) is sealed, as well as Exhibit 68 is sealed in its entirety.

Although "[t]he common law right of public access to judicial documents is firmly rooted in our nation's history," this right is not absolute and courts "must balance competing considerations against" the presumption of access. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). "The proponent of sealing 'must demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)). "[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). "[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." *Id.*

Exhibit 68 is deposition testimony that has been exchanged during the course of discovery that is highly confidential, the disclosure of which would unfairly prejudice Microsoft. This exhibit, which has been designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the Protective Order, contains highly confidential information about the terms of an agreement between Microsoft and OpenAI. *See* Ex. A (Declaration of Lucky Vidmar). Similarly, the requested redaction describes Exhibit 68 and likewise includes highly confidential information about the terms of an agreement between Microsoft and OpenAI. *See* Ex. A.

The information Microsoft seeks to seal and redact is the type of information commonly found to warrant sealing. *See* ECF 1926 (granting motion to seal similar information and documents in this case); 931 (same); *New York Times*, ECF 378 (same); *see Regeneron Pharms., Inc. v. Novartis Pharma AG*, No. 1:20-CV-05502, 2021 WL 243943 (S.D.N.Y. Jan. 25, 2021) (finding that requested redactions were "narrowly tailored to protect competitive business information, including the non-public terms of [various agreements]" and concluding "that the sensitivity of this information outweighs the presumption of access"); *also Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were "generally limited to specific business information and strategies, which, if revealed, 'may provide valuable insights into a company's current business practices that a competitor would seek to exploit.'").

For the reasons stated above, and those set forth in the Declaration of Lucky Vidmar, Microsoft supports News Plaintiffs' Motion to Seal (ECF 1931) requesting that the redacted

portion of News Plaintiffs' Reply to Microsoft Corporation's Memorandum of Law in Opposition to News Plaintiffs' Motion for Sanctions Against OpenAI (ECF 1932) is sealed, as well as Exhibit 68 is sealed in its entirety

Dated: September 16, 2026

Respectfully submitted,

/s/ Jared B. Briant

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