UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: OPENAI, INC., COPYRIGHT INFRINGEMENT LITIGATION This Document Relates To: News Cases 1:23-cv-11195-SHS-OTW 1:24-cv-01515-SHS-OTW 1:24-cv-03285-SHS-OTW 1:24-cv-04872-SHS-OTW 1:25-cv-04315-SHS-OTW	25-md-3143 (SHS) (OTW)

NEWS PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SEAL PORTIONS OF THEIR OPPOSITION SUMMARY JUDGMENT BRIEFING AND RESPONSIVE RULE 56.1 STATEMENTS

Under paragraph 34 of the Stipulated Protective Order (Dkt. 367), and paragraph 9 of the Amended Stipulated Omnibus Sealing Order (Dkt. 2101), News Plaintiffs respectfully seek to file under seal limited portions of their omnibus opposition brief to Defendants' motions for summary judgment ("Opposition Brief") and supporting Rule 56.1 papers.

I. Legal Standard

"[D]ocuments submitted to a court for its consideration in a summary judgment motion are—as a matter of law—judicial documents to which a strong presumption of access attaches, under both the common law and the First Amendment." *Lugosch III v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120-121 (2d Cir. 2006). "[S]ealing of the[se] documents may be justified only with specific, on-the-record findings that sealing is necessary to preserve higher values and only if the sealing order is narrowly tailored to achieve that aim." *Id.* at 124. The party requesting sealing "bears the burden of overcoming the presumption of public access." *Tyson Foods, Inc. V. Keystone Foods Holdings, Ltd.*, No. 19-cv-010125, 2020 WL 5819864, at *1 (S.D.N.Y. Sept. 30, 2020). Categories of documents that are "commonly sealed [include] those containing trade secrets, confidential research and development information, revenue information, pricing information, and the like." *Tyson Foods, Inc.*, 2020 WL 5819864, at *2; *Spencer-Smith v. Ehrlich*, No. 23-cv-2652, 2025 WL 1115019, at *2 (S.D.N.Y. Apr. 15, 2025) ("Courts have also frequently held that protection of confidential commercial information and trade secrets may overcome the presumption of public access."). "Non-public data of this nature 'is sensitive and potentially damaging if shared with competitors.'" *Id.*

II. The New York Times Company

The New York Times Company ("The Times") respectfully seeks to file under seal the following materials:

- Portions of Paragraphs 62, 86, 87, and 147 of News Plaintiffs' Response to Microsoft's Statements of Undisputed Material Facts.

The Times seeks to seal portions of Paragraphs 62 and 147, as they contain highly sensitive commercial information regarding The Times and Defendants' confidential, non-public licensing negotiations. Indeed, these negotiations are covered by non-disclosure agreements, which forbid The Times from publicly disclosing the contents of the parties' discussions. The Times has only sought to redact portions that discuss pricing and payment terms. *Valassis Commc'ns, Inc. v. News Corp.*, No. 17-cv-7378, 2019 WL 10984156, at *2 (S.D.N.Y. Mar. 11, 2019) (permitting redactions of "specific figures related to profit margins, costs, revenues, pricing, and number of placements of products; and specific contract provisions addressing exclusivity arrangements, profit sharing details, pricing of contracts with retailers of CPGs, payment terms, and retailer commissions").

The Times also seeks to seal portions of Paragraphs 86 and 87, as they contain highly sensitive and confidential business information regarding The Times's financial performance, strategy, and internal metrics, which can be unfairly used by its competitors if made public. Specifically, portions of Paragraph 86 reference an internal board presentation discussing The Times's non-public strategy, and portions of Paragraph 87 discuss a non-public financial spreadsheet which contains confidential commercial information. Such "confidential commercial

information" has regularly been sealed in this district. *Spencer-Smith v. Ehrlich*, 2025 WL 1115019, at *2 (S.D.N.Y. Apr. 15, 2025).

III. The Daily News Plaintiffs

The Daily News Plaintiffs respectfully seek to file under seal the following materials.

- Two statistics on page 7 of News Plaintiffs' Opposition Brief.
- Portions of paragraphs 97, 103, 109, 115, 121, 127, 133, 139, and 146 of News Plaintiffs' Response to Microsoft's Statements of Undisputed Material Facts.

The Daily News Plaintiffs seek to seal two statistics on page 7 of News Plaintiffs' Opposition Brief. These portions discuss the findings of Daily News Plaintiffs' confidential survey conducted among current and former subscribers. *See* Declaration of Robyn Morris in Support of News Plaintiffs' Motion for Leave to File Under Seal and Redact Portions of their Opposition Summary Judgment Briefing and Responsive Rule 56.1 Statements ("Morris Decl."), ¶ 5. Daily News Plaintiffs seek to seal these limited portions of the statistical findings as such statistics bear on the Daily News Plaintiffs' long-term outlook and current performance, which, if revealed, could cause Daily News Plaintiffs substantial business harm vis-à-vis competition.

The Daily News Plaintiffs also seek to seal statements in paragraphs 97, 103, 109, 115, 121, 127, 133, 139, and 146 of News Plaintiffs' Response to Defendant Microsoft Corporation's Rule 56.1 Statement. These paragraphs contain highly sensitive and confidential business information regarding the Daily News Plaintiffs' internal metrics (e.g., search referrals), which could be unfairly used by its competitors if made public. *See* Morris Decl., ¶ 6. Such "confidential

commercial information" has regularly been sealed in this District. *See, e.g.*, *Spencer-Smith*, 2025 WL 1115019, at *2.

Daily News Plaintiffs also seek to clarify that due to typographical errors, the paragraph numbers referenced in Plaintiffs' Motion to Seal (ECF 1687) and in the associated Declaration of Robyn Morris (ECF 1779) do not correspond with the paragraph numbers in News Plaintiffs' Corrected Combined Rule 56.1 Statement of Material Undisputed Facts ("News Plaintiffs' Corrected Rule 56.1 Statement") (ECF 2036). The following are the correct corresponding paragraph numbers:

Paragraphs as Identified in ECF 1687 and 1779	**Corresponding Paragraphs in ECF 2036**
94 and 1308	94 and 1624
1294 through 1307	1610 through 1623
86, 1270, 1289, 1291, and 1292	82, 1586, 1605, 1607, and 1608
1274 through 1279	1590 through 1595
126 and 127	447 and 448

Daily News Plaintiffs' reasoning for sealing these corrected corresponding paragraphs in News Plaintiffs' Corrected Rule 56.1 Statement (ECF 2036) is set forth in Plaintiffs' Motion to Seal (ECF 1687) and in the associated Declaration of Robyn Morris (ECF 1779). *See also* Morris Decl., ¶ 7.

IV. The Center for Investigative Reporting

The Center for Investigative Reporting ("CIR") does not seek to maintain under seal any paragraphs in News Plaintiffs' Opposition Brief, News Plaintiffs' Counterstatement of Material

Facts, Plaintiffs' Response to OpenAI's Statement of Undisputed Material Facts, or News Plaintiffs' Response to Microsoft's Statements of Undisputed Material Facts.

V. The Intercept

The Intercept respectfully seeks to maintain under seal portions of paragraphs 265 and 266 of Plaintiffs' Response to OpenAI's Statement of Undisputed Material Facts, as well as The Intercept's responses thereto, which contain statements from The Intercept's confidential Board materials regarding the company's financial forecasts (i.e., fundraising efforts, donations) that The Intercept does not publicly disclose and treats as highly confidential. The Intercept previously moved to seal these same statements in Defendant OpenAI's 56.1 Statement (Dkt. 1735). *See* Dkt. 1942 (News Plaintiffs' Statement in Support of Maintaining Under Seal Portions of Defendants' Summary Judgment Briefs and Rule 56.1 Statements at 5-6; Dkt. 1963 (Declaration of David Bralow in Support of News Plaintiffs' Statement in Support of Maintaining Under Seal Portions of Defendants' Summary Judgment Briefs and Rule 56.1 Statements) at ¶ 5. If the confidential information in these paragraphs and responses was revealed, it would cause The Intercept substantial business harm in that it would contribute to inaccurate speculation in the public about The Intercept's financial position. *Id*. at ¶ 5. Such "confidential commercial information" has regularly been sealed in this District. *Spencer-Smith*, 2025 WL 1115019, at *2; *Tyson Foods, Inc*., 2020 WL 5819864, at *2.

VI. Ziff Davis Plaintiffs

The Ziff Davis Plaintiffs ("Ziff Davis") respectfully seek to file under seal the following materials.

- Portions of paragraphs 212, 240, 243, 259, 260, 281, 312, 313, and 314 in Plaintiffs' Response to OpenAI's Statement of Undisputed Material Facts.

Ziff Davis seeks to seal portions of these paragraphs as they contain non-public, highly sensitive commercial information regarding the performance of Ziff Davis's business, the disclosure of which would harm Ziff Davis relative to its competitors. *See Tyson Foods, Inc.*, 2020 WL 5819864, at *2, *Valassis Commc'ns, Inc.,* 2019 WL 10984156, at *1. The specific information Ziff Davis seeks to seal concerns traffic to its websites, including traffic trends over time, internal metrics, and the impact of traffic on Ziff Davis's financial performance. *See* Declaration of George Wukoson in Support of News Plaintiffs' Motion to File Under Seal and Redact Portions of their Opposition Summary Judgment Briefing and Responsive Rule 56.1 Statements ("Wukoson Decl."), ¶ 3. Disclosure of this type of non-public information would place Ziff Davis at a competitive disadvantage in the highly competitive market for advertising revenue from search referrals. *See id.*; *see Valassis Commc'ns, Inc.,* 2019 WL 10984156, at *1. Ziff Davis also seeks to seal trade secret information pertaining to its proprietary business methods, such as the manner in which it utilizes and deploys technology across its business. *See* Wukoson Decl. ¶ 4. If Ziff were required to disclose this information, it would provide its competitors with an unfair level of insight into Ziff Davis's operations. *See id.* ¶ 5. Lastly, Ziff Davis seeks to keep under seal portions of its opposition papers that were previously sealed in connection with opening summary judgment

briefing. *See* Dkt. 1942 at 4–5. In sum, sealing is warranted for the limited materials that Ziff Davis seeks to redact in connection with its opposition briefing. *See Tyson Foods, Inc.*, 2020 WL 5819864, at *2, *Valassis Commc'ns, Inc.,* 2019 WL 10984156, at *1.

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