UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: OpenAI, INC., COPYRIGHT INFRINGEMENT LITIGATION This Document Relates To: 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' OPPOSITION TO DEFENDANT MICROSOFT'S REQUESTS TO SEAL CERTAIN MATERIAL IN NEWS PLAINTIFFS' OMNIBUS MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendant Microsoft seeks to seal material on pages 4 and 10 of News Plaintiffs' Omnibus Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. Both pages contain internal characterizations of the extent to which Microsoft's products are substitutive. While Microsoft claims making these statements public would cause it competitive harm, it has failed to make any specific showing of that, as the First Amendment requires to seal the statements from public view, for the same reasons News Plaintiffs provided regarding efforts to seal passages from News Plaintiff's opening brief. ECF 2083, 2084, 2103.

I. Legal Standards

News Plaintiffs have set forth the governing legal standard for sealing court records and the common law and First Amendment right to access court documents in their first sealing opposition, filed at docket entry 2083. Those standards apply equally here.

II. Argument

As explained in News Plaintiffs' first sealing opposition, there can be no dispute that the parties' summary judgment briefs are judicial documents where the presumption of public access is at its highest and the First Amendment right attaches. ECF 2083 at 4; *see, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 123 (2d Cir. 2006) ("documents used by parties moving for, or opposing, summary judgment should not remain under seal ***absent the most compelling reasons***") (internal quotations omitted, emphasis in original). Because the First Amendment right attaches, material in News Plaintiffs' summary judgment opposition may only be sealed if Microsoft "offer[s] specific facts 'demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" *Wells Fargo Bank, N.A. v. Wales LLC*, 993 F. Supp. 2d 409, 413 (S.D.N.Y. 2014) (quoting *Lugosch*, 435 F.3d at 120); ECF 2083 at 4.

Microsoft has failed to do so. Microsoft's redactions on pages 4 and 10 pertain to high-level internal characterizations of the extent to which its products are substitutive. They do not reveal any specific "technical, research, and financial information" as Microsoft claims. ECF 2284 at 6. Further, it is not plausible, let alone self-evident, that these statements would cause Microsoft competitive harm, and Microsoft has not made a sufficient showing that is the case either. *See In re Parmalat Sec. Litig.*, 258 F.R.D. 236, 244 (S.D.N.Y. 2009) (the "fact that business documents are secret or that their disclosure might result in adverse publicity does not automatically warrant" sealing); *Gelb v. Am. Tel. & Tel. Co.*, 813 F. Supp. 1022, 1035 (S.D.N.Y. 1993) ("[i]nternal corporate documents do not automatically merit protective orders" and a party is not "entitled" to "keep documents under seal in order to shield the party from negative publicity"). Microsoft's declarant merely parrots its competitive harm claims without providing any context or meaningfully addressing the specific material. ECF 2284-1 at ¶¶ 5-6; *see TileBar v. Glazzio Tiles*,

723 F. Supp. 3d 164, 209 (E.D.N.Y. 2024) ("conclusory statements that documents contain confidential business information are insufficient to justify sealing").

As News Plaintiffs have explained, when a court is asked to seal portions of a summary judgment filing, the First Amendment presumption of access is at its zenith. ECF 2083 at 9-10. Microsoft offers nothing more than broad and conclusory claims that do not overcome the public's presumptive right to access the material under the First Amendment. *Id.* Like Microsoft's other requests to seal embarrassing material that would not cause legitimate competitive harm, *see* ECF 2103, the Court should reject Microsoft's request to seal this information.

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