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) **HON. SIDNEY H. STEIN** **HON. ONA T. WANG**

NEWS PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SEAL PORTIONS OF THEIR REPLY SUMMARY JUDGMENT BRIEFING AND REPLY RULE 56.1 STATEMENT

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 Reply Memorandum of Law in Support of their Motion for Summary Judgment ("Reply Brief") and their Reply to Defendants' Response to News Plaintiffs' Rule 56.1 Statement ("56.1 Reply").

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 respectfully seeks to file under seal the following materials.

- A reference to a Times confidential internal presentation (pp. 24-25) and a single statistic (p. 20) in News Plaintiffs' Reply Brief.

The Times seeks to seal a single reference to a Times confidential, internal presentation. The referenced material contains highly sensitive and confidential business information regarding The Times's financial projections and internal metrics, which can be unfairly used by its competitors if made public. 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).

The Times also seeks to seal a single statistic in News Plaintiffs' Reply Brief. This material contains highly sensitive and confidential business information regarding The Times's traffic data, which can be unfairly used by its competitors if made public. The Times has only sought to redact the confidential statistic and has otherwise left the remainder of the description unredacted.

III. The Daily News Plaintiffs

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

- Three statistics on page 24 of News Plaintiffs' Reply Brief

The Daily News Plaintiffs seek to seal three statistics on page 24 of News Plaintiffs' Reply Brief. The first two statistics relate to 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 to Seal Portions of their Reply Summary Judgment Briefing and Reply Rule 56.1 Statements ("Morris Decl."), ¶ 5. The third statistic relates to highly sensitive and confidential business information regarding the Daily News Plaintiffs' internal metrics (e.g., pageviews), which could be unfairly used by its competitors if made public. *Id.* 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. Such "confidential commercial information" has regularly been sealed in this District. *See, e.g., Spencer-Smith*, 2025 WL 1115019, at *2.

IV. The Remaining News Plaintiffs

The remaining News Plaintiffs – The Center for Investigative Reporting, The Intercept, and the Ziff Davis Plaintiffs – do not seek to file under seal any portions of their Reply Brief or 56.1 Reply.

Dated: November 20, 2026

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