

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AUTHORS GUILD, DAVID BALDACCI, MARY BLY, MICHAEL CONNELLY, SYLVIA DAY, JONATHAN FRANZEN, JOHN GRISHAM, ELIN HILDERBRAND, CHRISTINA BAKER KLINE, MAYA SHANBHAG LANG, VICTOR LAVALLE, GEORGE R.R. MARTIN, JODI PICOULT, DOUGLAS PRESTON, ROXANA ROBINSON, GEORGE SAUNDERS, SCOTT TUROW, and RACHEL VAIL, individually and on behalf of others similarly situated,

Plaintiffs,

v.

OPENAI INC., OPENAI LP, OPENAI LLC, OPENAI GP LLC, OPENAI OPCO LLC, OPENAI GLOBAL LLC, OAI CORPORATION LLC, OPENAI HOLDINGS LLC, OPENAI STARTUP FUND I LP, OPENAI STARTUP FUND GP I LLC, and OPENAI STARTUP FUND MANAGEMENT LLC,

Defendants.

JONATHAN ALTER, KAI BIRD, TAYLOR BRANCH, RICH COHEN, EUGENE LINDEN, DANIEL OKRENT, JULIAN SANCTON, HAMPTON SIDES, STACY SCHIFF, JAMES SHAPIRO, JIA TOLENTINO, and SIMON WINCHESTER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

OPENAI, INC., OPENAI GP, LLC, OPENAI, LLC, OPENAI OPCO LLC, OPENAI GLOBAL LCC, OAI CORPORATION, LLC, OPENAI HOLDINGS, LLC, and MICROSOFT CORPORATION,

Defendants.

No. 1:23-cv-08292-SHS

No. 1:23-cv-10211-SHS

**DEFENDANTS’ MOTION FOR LEAVE TO FILE UNDER SEAL AND RESPONSE
TO PLAINTIFFS’ MOTION FOR LEAVE TO FILE UNDER SEAL**

Pursuant to Your Honor’s Individual Rules and Practices 5(B), Defendants seek leave to file under seal certain portions of their response to Plaintiffs’ letter motion to compel the production of documents from the OpenAI Defendants. Additionally, the OpenAI Defendants respond to Plaintiffs’ motion for leave to file under seal, filed in connection with Plaintiffs’ letter motion to compel (*see* ECF No. 105 in Case No. 1:23-cv-08292; ECF No. 81 in Case No. 1:23-cv-10211). For the reasons stated below, and articulated in detail in the supporting declaration, the OpenAI Defendants respectfully request the Court grant both this motion for leave to file under seal and Plaintiffs’ motion for leave to file under seal.

“[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 . . . in connection with dispositive motions.” *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). While the Court “‘must still articulate specific and substantial reasons’ for sealing material filed in connection with a discovery dispute, ‘the reasons usually need not be as compelling as those required to seal’ filings connected to a dispositive motion.” *Rand v. Travelers Indem. Co.*, No. 21-CV-10744 (VB)(VF), 2023 WL 4636614, at *2 (S.D.N.Y. July 19, 2023) (quoting *Brown*, 929 F.3d 41, 50).

Here, Defendants have designated as highly confidential two categories of information routinely deemed confidential and filed under seal by the Courts:

1. Sensitive information related to OpenAI’s business practices, the disclosure of which would harm OpenAI’s competitiveness in a nascent and highly competitive market. *IBM Corp. v. Micro Focus (US), Inc.*, No. 22-CV-9910 (VB)(VR), 2024 WL 495137, at *1 (S.D.N.Y. Feb. 8, 2024) (“Courts in this District routinely

permit parties to seal or redact commercially sensitive information to protect confidential business interests and financial information.”).

2. The identities of private citizens who are not parties to this case. *SEC v. Telegram Grp.* 19-cv-9439 (PKC) (S.D.N.Y. Jun. 17, 2020) (“non-parties have a privacy interest in preventing the public disclosure of their identities and specific identifiable information”).

Notably, Plaintiffs have withdrawn the portions of their motion implicating both categories of confidential information.

OpenAI does not seek to seal the portions of Plaintiffs’ letter related to the ongoing FTC investigation. While certain details of that investigation are highly sensitive, OpenAI agrees with Plaintiffs that the particular information disclosed in their letter can be filed publicly.

A declaration in support of this motion, as well as in response to Plaintiffs’ motion to seal, is concurrently filed with this motion to describe in detail the grounds to seal.

Specifically, OpenAI requests that the following information be sealed:

1. The following redacted portions of Plaintiffs’ letter motion to compel (ECF No. 107 in Case No. 1:23-cv-08292; ECF No. 83 in Case no. 1:23-cv-10211)
 - a. The second and third redactions in the introductory paragraph
 - b. All redactions in the section titled “Identities of Critical Former Employees,” except for the phrase “the FTC materials”
2. Exhibit D to Plaintiffs’ letter motion to compel (ECF No. 108 in Case No. 1:23-cv-08292; ECF No. 84 in Case no. 1:23-cv-10211)
3. The redacted portions of OpenAI’s opposition to Plaintiffs’ letter motion to compel, filed concurrently with this motion.

Accordingly, in order to maintain the confidential nature of this information, OpenAI respectfully requests the Court grant this motion for leave to file under seal, as well as Plaintiffs' motion for leave to file under seal.

Respectfully submitted,

Dated: April 16, 2024

/s/ Allyson R. Bennett

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Dated: April 16, 2024

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