

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Adam Steele, Brittany Montrois, and Joseph
Henchman, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

United States of America,

Defendant.

Case No. 14-cv-01523-RCL

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR LEAVE TO FILE
DOCUMENTS UNDER SEAL [ECF 174]**

On March 23, 2022, Defendant moved to seal certain documents filed in support of its motion for summary judgment. ECF No. 174. Defendant provided no support for its motion and simply stated that the documents should be sealed "because they are designated Confidential and Highly Confidential under the term of the Protective Order." ECF No. 174 at 3 of 4. Defendant's motion should be denied.

There is a "strong presumption in favor of public access," *In re McCormick & Co., Pepper Prods. Mktg. & Sales Pracs. Litig.*, 316 F. Supp. 3d 455, 463 (D.D.C. 2018), and "the designation of any proceeding or filing as 'under seal' is disfavored." ECF 114 ¶ 13. Under the terms of the Protective Order, "[t]he party or third-party asserting confidentiality bears the burden of establishing compliance with Rule 26(c)" and "[t]he party or third-party asserting high confidentiality bears the burden of establishing both compliance with Rule 26(c) and that the material is 'HIGHLY CONFIDENTIAL.'" *Id.* ¶ 3(i)-(ii). "When faced with a motion to seal or unseal, the D.C. Circuit has instructed trial courts to consider [the] six factors" outlined in *United States v. Hubbard*: "(1) the need for public access to the documents at issue; (2) previous public

access to the documents; (3) the fact of an objection to public access and the identity of those objecting to public access; (4) the strength of the generalized property and privacy interests asserted; (5) the possibility of prejudice; and (6) the purpose for which the documents were introduced.” *United States v. ISS Marine Servs. Inc.*, 905 F.Supp.2d 121, 140 (D.D.C. 2012) (citing *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980)). The moving party “must demonstrate that these six factors, in totality, overcome the strong presumption in favor of public access to judicial proceedings.” *Id.* (cleaned up). Defendant has not provided any evidence in support of its motion, and the *Hubbard* factors weigh against sealing the documents.

In this litigation against the government, the class’s one million members have a concrete interest in public access to these documents. *Hyatt v. Lee*, 251 F. Supp. 3d 181, 184 (D.D.C. 2017) (citation omitted) (“The interest of the public and press in access to civil proceedings is at its apex when the government is a party to the litigation.”); *In re McCormick & Co.*, 316 F. Supp. 3d at 464-65 (“[T]he fact that a case is a class action is not irrelevant under *Hubbard*.”). Many of these documents seek to protect information that is several years old, including information about user fees and contracts that are no longer in effect. Defendant has not shown why this information needs to remain sealed in 2022, or what prejudice will result if it is disclosed. *Id.* at 466 (the fourth factor weighs in favor of disclosure because “neither [party] gives any reason why particular redactions . . . are necessary.”); *Vanda Pharms., Inc. v. Food & Drug Admin.*, 539 F. Supp. 3d 44, 57 (D.D.C. 2021) (“the fifth *Hubbard* factor does not move the needle in favor of maintaining the seal” where no prejudice is identified). Because Defendant has failed to overcome the presumption in favor of public access, Plaintiffs request that the Court deny the motion to seal.

Dated: April 6, 2022

Respectfully submitted,

/s/ William H. Narwold

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2022 I electronically filed Plaintiffs' Opposition to Defendant's Motion for Leave to File Documents Under Seal. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Dated: April 6, 2022

/s/ William H. Narwold

William H. Narwold