

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,)	
<i>Plaintiffs,</i>)	Civil Action No.: 1:14-cv-01523-RCL
))	
))	
v.)	
))	
United States of America,)	
<i>Defendant.</i>)	
_____)	

**REPLY IN SUPPORT OF THE UNITED STATES’
MOTION TO SEAL**

The Court should grant the United States’ motion to seal and reject any argument in opposition filed by the Plaintiffs because they have failed to comply with the procedures to unseal records carefully negotiated and agreed upon by the parties and various third-party vendors in the Protective Order. *See* Dkt. No. 114; Dkt. No. 177; Dkt. No. 179. Early in this litigation, Plaintiffs served third-party subpoenas on various vendors, including Accenture and Booz Allen Hamilton. Dkt. No. 102, ¶¶ 2-3. After these vendors objected to the subpoenas, the parties engaged in “substantial negotiations,” lasting from May to October to negotiate a protective order for the requested documents. *Id.*, ¶¶ 8-15. Ultimately, Plaintiffs at the time agreed “that the proposed protective order appropriately balances the need for an open and public proceeding in this case with the protection from inappropriate disclosure of Third-Party confidential and/or proprietary business information.” *Id.*, ¶ 15. In opposition to the United States’ Motion to Seal certain

documents filed in support of its Motion for Summary Judgment, without explanation, Plaintiffs reversed course and disregarded the Protective Order.

Plaintiffs restate that argument here in opposition to the United States' Motion to Seal portions of its Response to Plaintiffs' Statement of Undisputed Material Facts. Dkt. No. 184. Plaintiffs recognize that the proposed sealed portions are subject to the protective order, as they themselves sealed the same portions when filing their Statement of Undisputed Material Facts. Dkt. No. 175-2.

Plaintiffs' restated argument that class members have a "concrete interest in public access to these documents" is a complete about-face. Dkt. No. 179 at 2; Dkt. No. 193 (incorporating the positions advanced in previous filings). When attempting to compel production of these documents, Plaintiffs vehemently argued that any information would be secured by the protective order. Dkt. No. 105 at 5. Specifically, Plaintiffs maintained that the information would not be publicly disclosed, and that "access among the parties and involved third parties [would be] limited." *Id.* Plaintiffs now wish to "unilaterally circumvent [the Protective Order's] requirements because they no longer serve [Plaintiffs'] interests." Dkt. No. 180 at 15.

The Protective Order enumerates specific procedures by which the Plaintiffs were to challenge any CONFIDENTIAL or HIGHLY CONFIDENTIAL designations. Dkt. No. 114, ¶ 13(i)-(iii). Plaintiffs have failed to follow this procedure. Dkt. No. 177; Dkt. No. 179. The documents included in the United States' Motion to Seal are all documents designated CONFIDENTIAL or HIGHLY CONFIDENTIAL under the Protective Order. Dkt. No. 174. The Court has *already ordered* that these documents are to be filed under

seal, and thus, because the United States has followed the procedures outlined in the Protective Order, no further justification is needed to keep these documents sealed. Dkt. No. 114. The United States' motion to seal was in compliance with ECF filing requirements contained in the local rules for handling documents already ordered under seal—not an opportunity for Plaintiffs to file an opposition seeking an end run around the Protective Order.

Importantly, the United States has only designated documents as CONFIDENTIAL or HIGHLY CONFIDENTIAL to respect third party designations as the IRS and third parties often produced duplicate or substantially similar documents. The United States has no objection to lifting these designations, so long as the third parties have no objection. If Plaintiffs would like to lift the seal on these documents, they are required to comply with the terms of the Protective Order entered in this case.

(Signature block on the following page.)

Dated: June 2, 2022

DAVID A. HUBBERT
Deputy Assistant Attorney General

/s/ Emily K. Miller

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing REPLY was filed with the Court's ECF system on June 2, 2022, which system serves electronically all filed documents on the same day of filing to all counsel of record.

/s/ Emily K. Miller _____
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