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Electronically FILED by
Superior Court of California,
County of Los Angeles
8/28/2023 5:34 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By V. Sino-Cruz, Deputy Clerk

5 Attorneys for NON-PARTY
6 X CORP.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

11 ALLIANCE OF LOS ANGELES COUNTY
12 PARENTS, an unincorporated association

13 Petitioner and Plaintiff,

14 v.

15 COUNTY OF LOS ANGELES COUNTY
16 DEPARTMENT OF PUBLIC HEALTH;
17 MUNTU DAVIS, in his official capacity as
18 Health Officer for the County of Los Angeles;
19 BARBARA FERRER, in her official capacity
20 as Director of the County of Los Angeles
21 Department of Public Health; and DOES 1
22 through 25, inclusive,

23 Respondents and
24 Defendants.

Case No. 22STCP02772

**NON-PARTY X CORP.'S NOTICE OF
MOTION AND MOTION TO SEAL
EXHIBIT 21 TO THE COMPENDIUM
OF EXHIBITS IN SUPPORT OF
ALLIANCE OF LOS ANGELES
COUNTY PARENTS' OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

[Declaration of J. Jonathan Hawk and
(Proposed) Order Filed Concurrently
Herewith]

Date: September 21, 2023

Time: 9:30 am

Dept.: 69

Judge: William F. Fahey

Reservation ID: 160720520629

Complaint Filed: July 26, 2022

Trial Date: October 16, 2023

1 **TO ALL PARTIES AND ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on September 21, 2023, at 9:30 a.m., or as soon
3 thereafter as this matter may be heard in Department 69 of this Court, located at 111 North Hill
4 Street, Los Angeles, California 90012, non-party X Corp. hereby moves this Court pursuant to
5 California Rules of Court 2.550 and 2.551 for an order to maintain under seal Exhibit 21 of the
6 Compendium of Exhibits in support of Plaintiff and Petitioner Alliance of Los Angeles County
7 Parents' Opposition to Defendants' Motion for Summary Judgment. This motion is made on the
8 grounds that Exhibit 21 contains X Corp.'s confidential business information, which X Corp. has
9 marked as "CONFIDENTIAL," and good cause exists to seal those documents.

10 This motion is based upon this notice, the memorandum of points and authorities, the
11 declaration of J. Jonathan Hawk filed herewith, the papers and records on file herein, and such oral or
12 documentary evidence and argument that may be presented at the hearing of this motion.

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14 Dated: August 28, 2023

WHITE & CASE LLP

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By:  _____

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J. Jonathan Hawk

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Attorneys for Non-Party X Corp.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND FACTUAL BACKGROUND**

3 Non-party X Corp. seeks an order to seal eight documents (the “X Corp. Emails”) that it
4 produced and marked “CONFIDENTIAL” in response to a third-party subpoena (the “Subpoena”) issued by Plaintiff and Petitioner Alliance of Los Angeles County Parents (the “Alliance”). The X
5 Corp. Emails, lodged as Exhibit 21 to the Alliance’s Opposition to Defendants’ Motion for
6 Summary Judgment (the “Opposition”) are non-public emails constituting X Corp.’s internal
7 business records.
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9 The X Corp. Emails were exchanged with former X Corp. personnel and relate to specific
10 content on the X platform that a third party reported. The confidential nature of the X Corp. Emails
11 is clear from their face. They provide explanations from X Corp. as to how it assessed specific
12 content being reported, and X Corp.’s rationales for why that specific content should (or should
13 not) be actioned under the company’s policies in effect at that time. Declaration of J. Jonathan
14 Hawk in Support of X Corp.’s Motion to Seal (“Hawk Decl.”) ¶¶ 19-20.

15 The X Corp. Emails go beyond X Corp.’s general, public explanation of its terms of service
16 and policies. *Id.* ¶ 20. They reflect X Corp.’s contextual analysis of reported, specific user-
17 generated content under the circumstances at the time the reports were submitted. *Id.* X Corp.
18 must be free, in the context of business records, to express its rationales for specific content
19 moderation decisions without concern that unintended third parties will access those
20 communications, and misunderstand the nuances of the particular content that is reported, the
21 circumstances surrounding the content at that time, and the application of then-effective
22 rules. Those unintended third parties could then potentially levy misguided criticisms at X Corp.
23 based on comparisons to separate, incongruous pieces of content, that they mistakenly believe
24 should receive the same treatment as the content being discussed in the X Corp. Emails. *Id.* It is
25 well-known that misguided criticisms of online platforms in the context of content moderation
26 decisions can cause serious competitive harm to a platform provider.

27 X Corp. explained this to the Alliance before the Alliance filed its Opposition, and further
28 explained that good cause exists to seal the X Corp. Emails. *Id.* ¶¶ 10-13.

1 The Alliance has nonetheless disregarded the confidential nature of those internal business
2 records and breached its written agreement with X Corp. that obligated the Alliance to file a motion
3 seeking an order to seal the X Corp. Emails. In an August 15, 2023, email exchange, counsel for
4 X Corp. asked the Alliance’s counsel to agree that the Alliance would move for an order to seal
5 any of X Corp.’s documents marked “CONFIDENTIAL” that the Alliance sought to use in a court
6 filing if X Corp. would not lift the “CONFIDENTIAL” designation:

7 Can we agree that you would only potentially use those documents to file them
8 with the court -- and that if you intend to file any of those documents, you first
9 discuss with me as to whether X Corp. will agree to lift the “confidential” tag on
those specified documents so they can be publicly filed or, if we will not agree to
that, you will request to file them under seal?

10 *Id.* ¶ 10. (emphasis added). The Alliance’s counsel agreed:

11
12 Yes, agreed. Thanks.

13
14 *Id.*

15 Just two days later, on Thursday, August 17, 2023, the Alliance contacted X Corp., and
16 falsely represented that its deadline to file its Opposition was that same day. *Id.* ¶ 12, Ex. E (“I
17 have to file today, so pls provide whatever rationale you have within the next three hours”). The
18 Alliance demanded that X Corp. either provide a declaration the same day to support a request to
19 seal the X Corp. Emails or that X Corp. bring its own motion to request that the Court seal
20 them. *Id.* And when X Corp. told the Alliance it could not be provide a declaration on a few hours’
21 notice and expected the Alliance to honor its August 15, 2023, agreement, the Alliance -- whose
22 counsel already published X Corp.’s response to the Subpoena on her website -- proceeded to file
23 its Opposition, declaring that the Alliance told X Corp. that there is no legal justification for the X
24 Corp. Emails to be sealed. *Id.*; Declaration of Julie Hamill in Support of the Alliance’s Opposition,
25 ¶ 24. The Alliance’s counsel acknowledged the following day, on August 18, 2023, that she would
26 be “traveling all day,” i.e., the day of Alliance’s actual filing deadline for its Opposition. Hawk
27 Decl., ¶ 16, Ex. D.

28 The Alliance’s breach of its agreement with X Corp. is only the latest in a series of conduct

1 that flagrantly ignores the Alliance’s duty to avoid imposing undue burden on non-parties.

2 Even putting aside the Alliance’s multiple, unprofessional accusations directed at X Corp.
3 for merely asserting valid objections to the Subpoena’s improper document requests (Hawk Decl.,
4 ¶¶ 3-4, Exs. B, F), the Alliance refused to meaningfully narrow its discovery requests during the
5 meet and confer process, including requests asking non-party X Corp. for, e.g., “All
6 Communications regarding Brett Morrow from March 1, 2020, through the date of
7 production.” Hawk. Decl., ¶¶ 2, 4, 5. The Alliance demanded instead that X Corp. explain how
8 the Alliance’s requests should be properly tailored. *Id.* ¶ 5. The Alliance later refused to propose
9 initial search terms to enable X Corp. to assess the universe of potentially responsive documents
10 and demanded that X Corp. propose search terms to remedy the Alliance’s facially deficient
11 requests. *Id.* ¶¶ 6-8, Ex. A. The Alliance meanwhile made multiple threats of *ex parte* motion
12 practice during the meet and confer process, despite X Corp.’s repeated confirmations that it was
13 trying to work with the Alliance and was undertaking significant efforts to do so. *Id.* ¶¶ 4, 5, 8, 9,
14 Exs. A, F.

15 The Alliance’s conduct towards X Corp., as a non-party to this litigation, has gone far afield
16 of good faith and has now resulted in X Corp. expending resources to move this Court for an order
17 to seal the X Corp. Emails, when the Alliance agreed it would bring the motion itself.

18 **II. LEGAL STANDARD**

19 Under California law, a court may seal confidential business information. *See, e.g.,*
20 *McGuan v. Endovascular Techs., Inc.*, 182 Cal. App. 4th 974, 988 (2010) (affirming trial court’s
21 ruling sealing records containing trade secrets); *Chraghchian v. Sardarian*, 2023 Cal. Super. LEXIS
22 10572, at *5-6 (L.A. Cnty. Feb. 24, 2023) (“Confidential business details are traditionally afforded
23 under-seal status.”). Upon a party’s application or motion, the Court may order that a record be
24 placed under seal where it finds the facts establish: (1) an overriding interest exists that overcomes
25 the right of public access to the record; (2) the overriding interest supports sealing the records; (3)
26 a substantial probability exists that the overriding interest will be prejudiced if the record is not
27 sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to
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1 achieve the overriding interest. Cal. R. Ct. 2.550(d); *NBC Subsidiary (K-NBC-TV) v. Super. Ct.*,
2 20 Cal. 4th 1178, 1217-18 (1999). These factors have been established here.

3 Additionally, the common law right to access judicial records and proceedings is not
4 absolute and can be overcome by a showing of good cause. In such a determination, “courts engage
5 in a balancing analysis, weighing the presumption of access against a variety of competing
6 interests,” such as the harm of disclosing confidential information. *Overstock.com, Inc. v. Goldman
7 Sachs Grp., Inc.*, 231 Cal. App. 4th 471, 484 (2014). The trial court has “a considerable amount of
8 discretion” in deciding whether to seal a record. *In re Providian Credit Card Cases*, 96 Cal. App.
9 4th 292, 295 (2002).

10 Competitive harm is an example of the type of “overriding interest” that California courts
11 have found eligible for protection for sealing records. In *NBC Subsidiary (KNBC TV), Inc.*, the
12 California Supreme Court listed among other potential justifications for confidential treatment
13 “protection of trade secrets” and “enforcement of binding contractual obligation not to
14 disclose.” 20 Cal. 4th 1178, 1222 n.46 (1999). In *Universal City Studios v. Superior Court*, the
15 court explained that “commercial interests” in the form of financial and accounting data would
16 “ordinarily” justify sealing when the documents contained “confidential business operations”
17 information and matters which if publicly revealed would “interfere with [a company’s] ability to
18 effectively compete in the marketplace.” 110 Cal. App. 4th 1273, 1274, 1285-86
19 (2003). California courts have therefore considered competitive harm as an overriding interest that
20 can outweigh the public’s right to access to confidential business information.

21 **III. GOOD CAUSE EXISTS TO SEAL EXHIBIT 21**

22 The documents that comprise Exhibit 21 are non-public communications between former
23 X Corp. personnel and third parties about Twitter accounts that were reported for potential
24 violations of X Corp.’s policies, and X Corp.’s internal processes and rationales for decisions made
25 with regard to such reported accounts, i.e., whether to action the reported content or not, and
26 why. Hawk Decl., ¶¶ 19-20. This information reflects X Corp.’s internal business workings with
27 respect to reported user violations, which is proprietary and confidential, and should be sealed. *See*
28 *generally Matthews v. Holly*, 2022 Cal. Super. LEXIS 47778, at *3 (L.A. Cnty. Aug. 16, 2023)

1 (granting defendant’s motion to seal deposition testimony of its witness because there was an
2 overriding interest in protecting the defendant’s confidential proprietary business information).

3 An overriding interest exists in sealing the X Corp. Emails. As above, the X Corp. Emails
4 reflect X Corp.’s contextual analysis of specific user-generated content under the circumstances at
5 the time the reports about that content were submitted. Hawk Decl., ¶¶ 19-20. Were those emails
6 made accessible to individuals who were not intended to be recipients of those communications,
7 those unintended recipients could misunderstand (or fail to have full visibility into) the nuances of
8 the particular content that is reported, the circumstances surrounding the content at that time, and
9 the application of then-effective rules. That could, in turn, lead to misguided criticisms by those
10 unintended recipients that are directed at X Corp., based on those individuals’ comparisons to
11 separate, incongruous pieces of content, that they mistakenly believe should receive the same
12 treatment as the content being discussed in the X Corp. Emails. *Id.* This cascade of events -- all
13 of which could stem from disclosure of the non-public X Corp. Emails -- risks causing competitive
14 harm to X Corp., as misguided criticisms of online platforms in the context of content moderation
15 decisions can cause serious competitive harm to a platform provider.

16 **IV. X CORP.’S SEALING REQUEST IS NARROWLY TAILORED AND NO LESS**
17 **RESTRICTIVE MEANS EXIST**

18 X Corp.’s narrowly tailored request asks this Court to seal an exhibit containing confidential
19 and proprietary information properly designated as “CONFIDENTIAL.” No less restrictive means
20 exist to protect this non-party’s confidential information. *See NBC Subsidiary (KNBC-TV)*, 20 Cal.
21 4th at 1223 (affirming that narrowly tailored is a factor determining the merit of a request to seal).

22 X Corp. has identified a narrow set of documents that it produced (and marked
23 “CONFIDENTIAL”) in response to a third-party subpoena, that relate to a discrete issue in this
24 proceeding, and comprise a single exhibit to the Alliance’s Opposition. No less restrictive means
25 exist, and this narrow sealing will not deny the public an understanding of the arguments the
26 Alliance makes in its Opposition.

27 **V. CONCLUSION**

28 For the foregoing reasons, X Corp. respectfully requests that this Court grant this motion to

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seal in its entirety and authorize the sealing of Exhibit 21 to the Compendium of Exhibits in Support of the Alliance's Opposition.

Dated: August 28, 2023

WHITE & CASE LLP

By: 

J. Jonathan Hawk

Attorneys for Non-Party X CORP.



Make a Reservation

ALLIANCE OF LOS ANGELES COUNTY PARENTS, AN UNINCORPORATED ASSOCIATION vs COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH, et al.

Case Number: 22STCP02772 Case Type: Civil Unlimited Category: Writ - Administrative Mandamus
Date Filed: 2022-07-26 Location: Stanley Mosk Courthouse - Department 69

Reservation

Case Name:

ALLIANCE OF LOS ANGELES COUNTY PARENTS, AN UNINCORPORATED ASSOCIATION vs COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH, et al.

Case Number:

22STCP02772

Type:

Motion to Seal (EXHIBIT 21 TO THE COMPENDIUM OF EXHIBITS IN SUPPORT OF ALLIANCE OF LOS ANGELES COUNTY PARENTS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT)

Status:

RESERVED

Filing Party:

X Corp. (Party Role to be determined)

Location:

Stanley Mosk Courthouse - Department 69

Date/Time:

09/21/2023 9:30 AM

Number of Motions:

1

Reservation ID:

160720520629

Confirmation Code:

CR-UZVPSJFK25EFM2GVF

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			\$446.96

Payment

Amount:

\$446.96

Type:

MasterCard

Account Number:

XXXX1760

Authorization:

05589S

[Chat](#)

Payment Date:
1969-12-31

 Print Receipt

[+ Reserve Another Hearing](#)

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 S. Flower Street, Suite 2700, Los Angeles, California 90071-2007. I am employed by a member of the Bar of this Court at whose direction the service was made.

On August 28, 2023, I served the foregoing document(s) described as:

NON-PARTY X CORP’S NOTICE OF MOTION AND MOTION TO SEAL EXHIBIT 21 TO THE COMPENDIUM OF EXHIBITS IN SUPPORT OF ALLIANCE OF LOS ANGELES COUNTY PARENTS’ BRIEF IN OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

on the person(s) below, as follows:

Julie A. Hamill, Esq. HAMILL LAW & CONSULTING 904 Silver Spur Road, #287 Rolling Hills Estates, California 90274 Telephone: (424) 265-0529 Email: julie@juliehamill-law.com	Attorneys for Petitioner and Plaintiff ALLIANCE OF LOS ANGELES COUNTY PARENTS
Kent R. Raygor, Esq. Valerie E. Alter, Esq. Zachary J. Golda, Esq. SHEPPARD MULLIN RICHTER & HAMPTON LLP 1901 Avenue of the Stars, Suite 1600 Los Angeles, California 90067-6055 Telephone: (310) 228-3700 Email: kraygor@sheppardmullin.com valter@sheppardmullin.com zgolda@sheppardmullin.com	Attorneys for Respondents and Defendants COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH, MUNTU DAVIS, M.D., and BARBARA FERRER, PhD

(BY MAIL) I caused the foregoing document(s) to be sent to the addressees named above. The document(s) were placed in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing at White & Case LLP, Los Angeles, California, following our ordinary business practices. I am readily familiar with White & Case LLP’s practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed August 28, 2023, at Los Angeles, California.

/s/ Cindy Lopez de Santa Anna
Cindy Lopez de Santa Anna