

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

H&R BLOCK, INC.,
2SS HOLDINGS, INC., and
TA IX L.P.

Defendants.

Civil Action No. 1:11-cv-00948 (BAH)
Judge Beryl A. Howell

DEFENDANTS' MOTION TO SEAL JOINT PRE-HEARING STATEMENT

Defendants H&R Block, Inc. (“HRB”), 2SS Holdings, Inc. (“2SS”), and TA IX L.P. (“TA IX”) (collectively, “Defendants”), pursuant to the Protective Order entered by the Court on June 15, 2011, Local Rule 5.1, and Federal Rule of Civil Procedure 5.2(d), respectfully move the Court to seal the Joint Pre-Hearing Statement.

The Joint Pre-Hearing Statement contains competitively-sensitive non-public business information the dissemination of which would reveal essential business strategy and capabilities of third competitors. In other words, the information contained in the Joint Statement is “of a private character, diluting [its] role as public business,” *EEOC v. National Children’s Center, Inc.*, 98 F.3d 1406, 140 (D.C. Cir. 1996), and disclosure would cause great harm to those third parties.

Moreover, the factors enunciated by the District of Columbia Court of Appeals in *Johnson v. Greater Southeastern Community Hospital*, 951 F.2d 1268, 1277 n.14 (D.C. Cir.

1991), weigh in favor of granting Defendants' motion to file the Joint Pre-Hearing Statement under seal. The factors the Court must consider are:

(1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.

Id. All the factors implicated by this motion weigh in favor of sealing the joint filing.

First, the Joint Statement contains third parties' confidential business information. This information has not been disclosed to the public, nor should it ever be. In entering the protective order, the Court has already acknowledged the strong private interests at stake. Public disclosure of third-parties' confidential competitive information discussed in the Joint Pre-Hearing Statement would similarly harm the business objectives of those parties.

The public interest, too, weighs in favor of sealing the Joint Statement. The information relied upon in the Statement was exclusively gleaned produced as part of a government investigation. Publicly disclosing the information would discourage full and frank participation in government investigations, chilling future government investigatory capabilities. Indeed, the public interest in reviewing court proceedings will be amply satisfied by the redacted version of the exhibits, to be filed in the coming days.

Last, the information has not been disclosed to the public and is being disclosed to the Court only because it is necessary to Defendants' defense.

The remaining factors are not at issue as no party has challenged the sealing of the Joint Pre-Hearing Statement in this case. Accordingly, all pertinent factors weigh in favor of

sealing the Joint Statement. The Court should grant Defendants' motion to seal Defendants' Joint Pre-Hearing Statement.

Respectfully Submitted,

Dated: August 19, 2011

A handwritten signature in black ink, appearing to read "Corey W. Roush", is written over a horizontal line.

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