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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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UNITED STATES OF AMERICA,)	
)	
	<i>Plaintiff,</i>)	
)	
v.)	
)	Civil Action No. 1:11-cv-00948 (BAH)
H&R BLOCK, INC.,)	Judge Beryl A. Howell
2SS HOLDINGS, INC., and)	
TA IX L.P.)	
)	
	<i>Defendants.</i>)	
)	
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**DEFENDANTS’ MOTION TO SEAL DEFENDANTS’ POST-TRIAL MEMORANDUM
OF POINTS AND AUTHORITIES IN OPPOSITION TO PERMANENT INJUNCTION**

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 Defendants’ Post-Trial Memorandum of Points and Authorities in Opposition to Plaintiff’s Motion for Permanent Injunction (“Post-Trial Memorandum”).

Defendants’ Post-Trial Memorandum contains and discusses documents that have

been designated “Confidential” and “Highly Confidential” pursuant to the Protective Order. The Post-Trial Memorandum also contains competitively-sensitive non-public business information the dissemination of which would reveal Defendants’ essential business strategy, cost structure, and competitive forecasts. In other words, the information contained in the Post-Trial Memorandum 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 Defendants.

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 exhibits 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 Defendants’ filing.

First, the material submitted in the Post-Trial Memorandum is Defendants’ and third parties’ confidential business information. This information has not been disclosed to the public, nor should it ever be. Much of it was revealed during trial *in camera*. In entering the protective order and sealing the courtroom, the Court has already acknowledged the strong private interests at stake—the business of tax preparation services is highly competitive, and disclosure of Defendants’ advertising, discounting, and client acquisition strategies to another

competitor would harm Defendants' business prospects and competitive viability. Harm is not limited to Defendants, however. Public disclosure of third-parties' confidential competitive information discussed in the Post-Trial Memorandum would similarly harm the business objectives of those parties.

The public interest, too, weighs in favor of sealing the filing. The documents relied upon in the Post-Trial Memorandum were almost exclusively 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 Post-Trial Memorandum have not been disclosed to the public and are being disclosed to the Court only because they are necessary to Defendants' defense— Defendants have not brought their confidential business strategies, financial records, or emails into contention by choice, but Defendants now have no choice but to rely on their confidential information to prepare an adequate defense.

The remaining factors are not at issue, as no party has challenged the sealing of the exhibits in this case. Accordingly, all pertinent factors weigh in favor of sealing Defendants' Post-Trial Memorandum. The Court should grant Defendants' motion to seal Defendants' Post-Trial Memorandum.

Respectfully Submitted,

Dated: September 28, 2011

s/Corey W. Roush

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