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5/9/2022
NO
Far too broad a request

VIA ECF

The Honorable Colleen McMahon, U.S.D.J.
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Room 2550
New York, NY 10007-1312

Re: *García De León v. New York University*, Case No. 1:21-cv-5005-CM
Request to File Under Seal

MEMO ENDORSED

Dear Judge McMahon:

We represent defendant New York University ("NYU") in the above referenced matter. Pursuant to Section 6 of the Southern District of New York's Electronic Case Filing Rules & Instructions, NYU seeks permission to file its opposition to the plaintiff's Motion for Class Certification and Appointment of Class Representative and Class Counsel under seal, along with certain of the accompanying declarations and exhibits. NYU will also publicly file a redacted version of these documents, with all information that the parties agree is non-confidential unredacted.

The reason for this request is that the motion papers and certain of the accompanying declarations and exhibits thereto contain: (1) the plaintiff's personal identifying information contained in NYU's records; (2) the plaintiff's protected health information; and/or (3) sensitive commercial information subject to designation as Confidential under the Confidentiality Agreement and Stipulated Protective Order (Dkt. No. 38). While NYU recognizes that there is a "strong and well-established presumption of public access to judicial documents and proceedings," the public's right of access is not absolute. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20, 124 (2d Cir. 2006); *see also In re New York Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987). All three categories of information listed above are appropriate for sealing.

First, courts have found "clear and compelling reasons to seal" documents that contain certain educational and student personal information protected by the Family Educational Rights and Privacy Act ("FERPA"). *See, e.g., Sweeney v. Enfield Bd. of Educ.*, 2016 WL 4435331, at *10 (D. Conn. Aug. 18, 2016) (sealing documents containing confidential educational information protected by FERPA); *Chapman v. Ouellette*, 200 F. Supp. 3d 303, 311 (D. Conn. 2016) (same).

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Second, courts have found it appropriate to seal medical records and the information contained therein, including health information protected from disclosure by the Health Insurance Portability and Accountability Act ("HIPAA"), which "covers, among other things, past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual." *Valentini v. Grp. Health Inc.*, 2020 WL 7646892, at *2 (S.D.N.Y. Dec. 23, 2020) (quotation omitted) (granting motion to seal plaintiff's health records on the basis "that Plaintiffs' privacy interests and Defendants' legal obligations [under HIPAA] outweigh the presumption of public access").

Finally, an entity's confidential "commercial information" likewise has been recognized as a proper subject for sealing. *See Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (redactions of "confidential business information," including "internal business documents," "investigative reports," and "information about [ ] business operations" held "justified").

Disclosure of the confidential information described above would be harmful to the parties by, among other things, causing them to disclose non-public, commercially sensitive, and/or private information.

The plaintiff's counsel has consented to this request.

NYU respectfully requests that the Court grant this request to file the above-mentioned documents under seal. Thank you in advance for your consideration.

Respectfully submitted,

/s/ Keara M. Gordon
Keara M. Gordon

cc: All Counsel of Record