

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
FTX TRADING LTD., <i>et al.</i> ,	)	Case No. 22-11068 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	
FTX RECOVERY TRUST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 24-50216 (KBO)
	)	
NEIL PATEL, <i>et al.</i> ,	)	<b>Related to Docket No. 19</b>
	)	
Defendants.	)	
	)	

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**MEMORANDUM ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANTS' MOTION TO SEAL**

Upon consideration of *Defendants' Motion to Seal* (the "Motion")<sup>1</sup> and all briefing and submissions filed in support of and in opposition to the Motion; **IT IS HEREBY FOUND AND ORDERED THAT:**

1. On January 16, 2025, the Defendants filed the Motion seeking entry of an order authorizing the Defendants to seal portions of the *Defendants' Memorandum of Law in Support of Motion to Dismiss the Complaint*<sup>2</sup> (the "Memorandum") and five exhibits (the "Exhibits") attached to the *Declaration of Peter R. Morrison in Support of Defendants' Motion to Dismiss the Complaint*.<sup>3</sup> The Exhibits are service contracts between certain Defendants and FTX Trading Ltd. or related entities. The Defendants assert that the information proposed to be sealed is confidential business terms protected under 11 U.S.C. § 107. Plaintiff opposes the Motion.<sup>4</sup> It argues that the Defendants do not meet the sealing standard under applicable law and claims the Defendants are simply embarrassed of the material sought to be shielded. While the Court concludes that the scope of proposed redactions is too broad, it finds no basis to conclude embarrassment is the motivation behind the Defendants' request.

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<sup>1</sup> Adv. D.I. 19.

<sup>2</sup> Adv. D.I. 16.

<sup>3</sup> Adv. D.I. 17.

<sup>4</sup> Adv. D.I. 23.



2. Under section 107 of the Bankruptcy Code, “[o]n request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to . . . confidential . . . commercial information . . . .”<sup>5</sup> Confidential information is information that is “meant to be kept secret.”<sup>6</sup> “Commercial information is information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the’” movant.<sup>7</sup> The movant must prove there is “a substantial risk that disclosure would detrimentally affect the producing party’s competitive standing . . . .”<sup>8</sup> “[B]ankruptcy courts must evaluate requests to seal through this objective lens and may not simply credit a party’s assertion of competitive injury.”<sup>9</sup>

3. The Defendants submit the *Declaration of Neil Patel in Support of Defendants’ Motion to Seal* (the “Patel Declaration”) to support their claim of competitive injury.<sup>10</sup> The Patel Declaration states that the Exhibits include “confidential business information that, if publicly disclosed, would harm [the Defendants] in the competitive marketplace.”<sup>11</sup> Specifically, the proposed redactions reveal digital marketing strategies and pricing that could be used by competitors to undermine the Defendants in the marketplace<sup>12</sup> and exclusivity provisions that could damage relationships with potential customers.<sup>13</sup>

4. Using the explanations of the Patel Declaration, the Court conducted its own independent review of the proposed redactions to evaluate the Defendants’ sealing request. Based on its review, the Court concludes that some of the requested redactions do not qualify for protection under section 107(b).

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<sup>5</sup> The Third Circuit recently confirmed section 107, not the common law right of access, governs sealing requests in bankruptcy cases. *Mesabi Metallics Co. v. Cleveland-Cliffs, Inc. (In re ESML Holdings Inc)*, 135 F.4th 80, 96 (3d Cir. 2025). Section 107 “‘eliminate[d] the balancing of public and private interests required by the common law rule,’ rendering ‘the strength of the public’s interest in a particular judicial record . . . irrelevant.’” *Id.* (quoting *In re Roman Cath. Archbishop*, 661 F.3d 417, 430–31 (9th Cir. 2011)) (omission in original).

<sup>6</sup> *Mesabi*, 135 F.4th at 97 (quoting *Confidential*, BLACK’S LAW DICTIONARY (12th ed. 2024)); *see also Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (disclosure of some information did not waive confidentiality of entire agreements).

<sup>7</sup> *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *Video Software Dealers Assoc.*, 21 F.3d at 27–28); *see also Mesabi Metallics Co.*, 135 F.4th at 97 (“categories of information protected by § 107(b) entail that their disclosure cause competitive injury”). Although the court in *Alterra* defined commercial information as it relates to debtors, this principle applies to movants broadly. *See Mesabi*, 135 F.4th at 97 (referencing a “producing party’s competitive standing”).

<sup>8</sup> *Mesabi*, 135 F.4th at 97 (risk “must be actual and objective, not speculative or subjective”); *see also In re Altegrity, Inc.*, No. 15-10226, 2015 WL 10963572, at \*3 (Bankr. D. Del. July 6, 2015).

<sup>9</sup> *Mesabi*, 135 F.4th at 97 (explaining that if § 107(b) applies, the court has no discretion to decline sealing).

<sup>10</sup> Adv. D.I. 19, Ex. H.

<sup>11</sup> *Id.* ¶¶ 5–6.

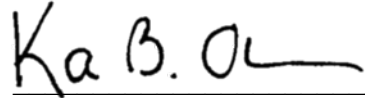
<sup>12</sup> *Id.* at ¶¶ 7, 9.

<sup>13</sup> *Id.* at ¶ 8.



5. Accordingly, the Motion is **GRANTED IN PART AND DENIED IN PART** as set forth in Appendix A. The Defendants are directed to conform the redactions of the Memorandum to the Court's ruling herein and file final publicly available and sealed versions of the Exhibits and the Memorandum within five business days of the issuance of this Order.

Dated: May 21, 2025  
Wilmington, Delaware

  
\_\_\_\_\_  
Karen B. Owens  
United States Bankruptcy Judge



## **Appendix A**

1. The following information contained within the Exhibits has been publicly disclosed, and therefore sealing is **DENIED**:
  - A. The phrase “Scope includes only two domains (FTX.us and FTX.com) and up to five” and the word “languages” in the same sentence.<sup>1</sup>
  - B. The Assumption beginning with “This SOW is non-cancellable” and ending with “a lump-sum payment to NPD.”<sup>2</sup>
  - C. The full first sentence under “Technology Fees”.<sup>3</sup>
  - D. The Assumption beginning with “This SOW is non-cancellable” and ending with “a lump-sum payment to NPD.”<sup>4</sup>
2. The following requested redactions of Exhibit B are **DENIED**:
  - A. All Assumptions on pages 2–25 except:
    - i. The first sentence of the Assumptions for the topic “Data Teamwork Workshop (virtual)”.<sup>5</sup>
    - ii. The Assumptions for “SEO Content Editorial Guidance”.<sup>6</sup>
    - iii. The last sentence of the Assumptions for “Influencer Marketing”.<sup>7</sup>
  - B. The phrase “NPD will deliver up to four (4) Quarterly Business Reviews per year throughout the course of this engagement” in the Scope section for “Quarterly Business Reviews (QBRs)”.<sup>8</sup>
  - C. The first sentence of the Scope for “Internal Link Analysis”.<sup>9</sup>

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<sup>1</sup> Ex. B at 27. This information was disclosed on page 1 of Exhibit B.

<sup>2</sup> *Id.* This information was disclosed in Proof of Claim No. 3248 as amended by Proof of Claim No. 72713.

<sup>3</sup> Ex. C at 11. This information was disclosed in Proof of Claim No. 3248 as amended by Proof of Claim No. 72713.

<sup>4</sup> Ex. E at 17. This information was disclosed in Proof of Claim No. 3393.

<sup>5</sup> Ex. B at 2–3. All Exhibit page references are to internal page numbers.

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Id.* at 14–15.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 8.



- D. The phrase “NPD will review Client’s editorial calendar on a monthly basis” in the Scope section for “SEO Content Editorial Guidance”.<sup>10</sup>
  - E. The entirety of the following Assumptions on pages 26 and 27:
    - i. The Assumption beginning with “If Client requests an addition or modification” and ending with “terms of the Agreement.”<sup>11</sup>
    - ii. The Assumption beginning with “Client agrees to respond” and ending with “will delay implementation and results.”<sup>12</sup>
    - iii. The Assumption beginning with “For SEO engagements” and ending with “shall not be a breach of this Agreement.”<sup>13</sup>
    - iv. The Assumption beginning with “Client agrees they are responsible” and ending with “search engines such as Google, Yahoo, Bing, etc.”<sup>14</sup>
3. The following proposed redactions of Exhibit C are **DENIED**:
- A. All Assumptions on pages 2–9 except:<sup>15</sup>
    - i. The Assumptions for “Media Planning and Spend Management”.<sup>16</sup>
    - ii. The Assumptions for “Paid Media Creative Services”.<sup>17</sup>
  - B. The last sentence of the Scope for “Analytics Tracking & Conversions Audit”.<sup>18</sup>
  - C. The first sentence of the Scope for “Paid Media Strategy and Account/Campaign Structure Development”.<sup>19</sup>
  - D. The first sentence of the Scope for “Keyword Research”.<sup>20</sup>

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<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 26–27.

<sup>12</sup> *Id.* at 27.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> This excludes any Assumptions listed under “Additional Assumptions” on page 9, which are addressed separately below.

<sup>16</sup> Ex. C at 7.

<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.*



- E. The first sentence of the Scope for “Ad Copy, Extension, Ad Format Extension”.<sup>21</sup>
  - F. The Scope for “Ongoing Initiatives”.<sup>22</sup>
  - G. The entirety of the following Assumptions on pages 9 and 10:
    - i. The Assumption beginning with “Services, Ad Networks, or deliverables” and ending with “may incur additional cost.”<sup>23</sup>
    - ii. The Assumption beginning with “Client and NPD will work together” and ending with “may delay project timeline and impact results.”<sup>24</sup>
    - iii. The Assumption beginning with “Changes requested to a Paid Media” and ending with “in writing three (3) days in advance.”<sup>25</sup>
    - iv. The Assumption beginning with “Upon Paid Advertising campaign” and ending with “outside of NPD’s control.”<sup>26</sup>
    - v. The Assumption beginning with “Results are not guaranteed” and ending with “NPD’s control and subject to change.”<sup>27</sup>
4. The following proposed redactions of Exhibit E are **DENIED**:
- A. All Assumptions on pages 2–15 except:
    - i. The Assumptions for “SEO Content Editorial Guidance”.<sup>28</sup>
    - ii. The last sentence of the Assumptions for “Influencer Marketing”.<sup>29</sup>
  - B. The phrase “NPD will deliver up to four (3) Quarterly Business Reviews per year throughout the course of this engagement” in the Scope section for “Quarterly Business Reviews (QBRs)”.<sup>30</sup>
  - C. The first sentence of the Scope for “Internal Link Analysis”.<sup>31</sup>
  - D. The entirety of the following Assumptions on 16 and 17:

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<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> *Id.* at 9–10.

<sup>25</sup> *Id.* at 10.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Ex. E at 11.

<sup>29</sup> *Id.* at 13.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* at 7.



- i. The Assumption beginning with “If Client requests an addition or modification” and ending with “terms of the Agreement.”<sup>32</sup>
- ii. The Assumption beginning with “Client agrees to respond” and ending with “will delay implementation and results.”<sup>33</sup>
- iii. The Assumption beginning with “For SEO engagements” and ending with “shall not be a breach of this Agreement.”<sup>34</sup>
- iv. The Assumption beginning with “Client agrees they are responsible” and ending with “search engines such as Google, Yahoo, Bing, etc.”<sup>35</sup>

5. The following proposed redactions of Exhibit F are **DENIED**:

A. All Assumptions on pages 2–15 and 18–25 except:<sup>36</sup>

- i. The Assumptions for “SEO Content Editorial Guidance”.<sup>37</sup>
- ii. The last sentence of the Assumptions for “Influencer Marketing”.<sup>38</sup>
- iii. The Assumptions for “Media Planning and Spend Management”.<sup>39</sup>
- iv. The Assumptions for “Paid Media Creative Services”.<sup>40</sup>

B. The phrase “NPD will deliver up to four (3) Quarterly Business Reviews per year throughout the course of this engagement” in the Scope section for “Quarterly Business Reviews (QBRs)”.<sup>41</sup>

C. The first sentence of the Scope for “Internal Link Analysis”.<sup>42</sup>

D. The entirety of the following Assumptions on page 16:

- i. The Assumption beginning with “If Client requests an addition or modification” and ending with “terms of the Agreement.”<sup>43</sup>

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<sup>32</sup> *Id.* at 16.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 16–17.

<sup>35</sup> *Id.* at 17.

<sup>36</sup> This excludes any Assumptions listed under “Additional Assumptions” on page 25, which are addressed separately below.

<sup>37</sup> Ex. F at 12.

<sup>38</sup> *Id.* at 14.

<sup>39</sup> *Id.* at 23.

<sup>40</sup> *Id.* at 25.

<sup>41</sup> *Id.* at 5.

<sup>42</sup> *Id.* at 7.

<sup>43</sup> *Id.* at 16.



- ii. The Assumption beginning with “Client agrees to respond” and ending with “will delay implementation and results.”<sup>44</sup>
  - iii. The Assumption beginning with “For SEO engagements” and ending with “shall not be a breach of this Agreement.”<sup>45</sup>
  - iv. The Assumption beginning with “Client agrees they are responsible” and ending with “search engines such as Google, Yahoo, Bing, etc.”<sup>46</sup>
- E. The last sentence of the Scope for “Analytics Tracking & Conversions Audit”.<sup>47</sup>
- F. The first sentence of the Scope for “Paid Media Strategy and Account/Campaign Structure Development”.<sup>48</sup>
- G. The first sentence of the Scope for “Keyword Research”.<sup>49</sup>
- H. The first sentence of the Scope for “Ad Copy, Extension, Ad Format Extension”.<sup>50</sup>
- I. The Scope for “Ongoing Initiatives”.<sup>51</sup>
- J. The entirety of the following Assumptions on pages 25 and 26:
  - i. The Assumption beginning with “Services, Ad Networks, or deliverables” and ending with “may incur additional cost.”<sup>52</sup>
  - ii. The Assumption beginning with “Client and NPD will work together” and ending with “may delay project timeline and impact results.”<sup>53</sup>
  - iii. The Assumption beginning with “Changes requested to a Paid Media” and ending with “in writing three (3) days in advance.”<sup>54</sup>
  - iv. The Assumption beginning with “Upon Paid Advertising campaign” and ending with “outside of NPD’s control.”<sup>55</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 19.

<sup>48</sup> *Id.* at 20.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 21.

<sup>51</sup> *Id.* at 22.

<sup>52</sup> *Id.* at 25.

<sup>53</sup> *Id.* at 26.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*



- K. The Assumption beginning with “Results are not guaranteed” and ending with “NPD's control and subject to change.”<sup>56</sup>
6. Defendants’ request to seal all other information in the Exhibits not otherwise addressed in this Appendix is hereby **APPROVED**.

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<sup>56</sup> *Id.*