STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 8

KHARY PENEBAKER; MARY ARNOLD; and BONNIE JOSEPH,

Plaintiffs,

v.

ANDREW HITT; ROBERT F. SPINDELL, JR.; BILL FEEHAN; KELLY RUH; CAROL BRUNNER; EDWARD SCOTT GRABINS; KATHY KIERNAN, DARRYL CARLSON; PAM TRAVIS; MARY BUESTRIN; JAMES R. TROUPIS; KENNETH CHESEBRO; and ABC DEFENDANTS,

Defendants,

and

STATE FARM FIRE AND CASUALTY COMPANY,

Intervenor.

Case No. 22CV001178

Case Code: 30106; 30701; 30956

PLAINTIFFS' UNREDACTED BRIEF IN OPPOSITION TO TROUPIS'S MOTION TO AFFIRM THE CONFIDENTIALITY OF THE PRIVILEGE LOG AND REQUIRE THAT IT REMAIN UNDER SEAL (Dkt. 400) AND MOTION TO FILE CERTAIN DOCUMENTS UNDER SEAL (Dkt. 405)

INTRODUCTION

"Wisconsin law has a strong presumption in favor of openness for judicial proceedings and records." *Doe 1 v. Madison Metro. Sch. Dist.*, 2022 WI 65, ¶ 19, 403 Wis. 2d 369, 385, 976 N.W.2d 584, 592. Constitutional law, common law, Wisconsin statutes, and court rules all disfavor the sealing of court documents. This strong presumption in favor of transparency of

court records can be overcome only upon a specific showing that the public interest favors secrecy.

Far from justifying secrecy, the public interest strongly favors openness of this proceeding, which concerns matters of the greatest public importance. "The public has a strong interest in the foundational principle of our government that the will of the people, as expressed in the Electoral College vote, determines who will serve as President." *United States v. Trump*, --- F.4th ---, No. 23-3228, 2024 WL 436971, at *17 (D.C. Cir. Feb. 6, 2024). As set forth in the amended complaint, Troupis conspired with others to thwart the will of the Wisconsin voters (Dkt. 107). At this stage of the proceedings, he is seeking to hide his participation in that conspiracy behind spurious claims of attorney-client privilege and work-product protection. The public has an acute interest in litigation dealing with a conspiracy to overturn a presidential election through fraud. (Dkt. 394, Decision and Order Denying James Troupis' Motion for Reconsideration (Reconsideration Order), at 6).

Troupis does not and cannot point to any interest that would satisfy his heavy burden to justify sealing these proceedings. Troupis's argument is premised on the purported confidentiality of his privilege log, which he suggests is itself privileged. That is wrong. A privilege log should provide enough information about documents that are withheld to allow others to determine whether the claim of privilege is valid. By definition, the information on a privilege log is not itself privileged; that would defeat its purpose. And even a cursory review of the vague entries listed on Troupis's privilege log demonstrates that they do not contain privileged or even confidential information. Indeed, the privilege log is so lacking in information that Plaintiffs were forced to file a motion to compel seeking the detailed information that is required to be provided in order to properly support a claim of privilege (Dkt. 370).

Nor can Troupis rely on the parties' stipulation to overcome the presumption of access to court proceedings. Plaintiffs do not agree that the privilege log was properly designated confidential under the terms of that stipulation. Even more significantly, however, an agreement of the parties is not an adequate basis to seal judicial records. The parties understood this from the very beginning, which is why they stipulated that they "recognize that this Court must make an independent assessment" about sealing, and that "the Court is not bound by any party's, or even all parties', designation of information as 'CONFIDENTIAL.'" (Dkt. 263, Stipulated Protective Order § II.G).

Finally, even if Troupis had identified some valid confidentiality interest, the requested relief is overbroad. Any denial of public access to court proceedings must be narrowly tailored to preserve the presumption of openness to the greatest extent possible. *See Press-Enter. Co. v. Super. Ct. of Cal., Riverside Cnty.*, 464 U.S. 501, 510 (1984) ("*Press-Enterprise I*"). Yet Troupis seeks to seal not only a privilege log (Dkt. 400), but also his own motion and brief in support of maintaining the privilege log under seal (Dkt. 405). This stretches far beyond what could conceivably be necessary to protect any compelling privacy interest. Even if the Court were to conclude that Troupis has identified sufficient privacy interests to justify keeping some information on the privilege log confidential, it should carefully limit sealing to only those specific portions of the log.

Troupis's motion to seal is without merit and should be denied.[1]

[1] Troupis apparently has not moved to seal Plaintiffs' Brief in Support of Their Motion to Compel (Dkt. 371), which was placed under temporary seal only and should be immediately unsealed.

ARGUMENT

I. Troupis Bears a Heavy Burden to Overcome the Public's Presumptive Right to Access Court Records.

A. Wisconsin law requires a party seeking to seal court records to meet a heavy burden to justify secrecy.

"[T]he business of courts is public business, and as such is presumed to remain open and available to the public. Openness is the rule; confidentiality is the exception." *Doe 1 v. Madison Metro. Sch. Dist.*, 2022 WI 65, ¶12, 403 Wis. 2d 369, 976 N.W.2d 584 (citations omitted). These are "fundamental concepts in our state's history of transparent government." *J. Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶45, 362 Wis. 2d 577, 866 N.W.2d 563. The presumption of open court records comes from several overlapping sources: the U.S. Constitution, the common law, Wisconsin statutes, and Wisconsin court rules.

First, "[t]he public's right of access to judicial records has been characterized as fundamental to a democratic state" and "is of constitutional magnitude." *Matter of Cont'l Illinois Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984) (quotation marks omitted). This right is grounded in the First Amendment. *Waller v. Georgia*, 467 U.S. 39, 46 (1984); *State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 560, 334 N.W.2d 252, 263 (1983). Overcoming the First Amendment right of access requires "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enter. Co. v. Super. Ct. of Cal., Riverside Cnty.*, 478 U.S. 1, 9 (1986) ("*Press-Enterprise II*")

Second, "courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978) (citations omitted). Wisconsin has long followed "a common law rule that public records are open to public inspection." *State ex rel. Bilder v. Delavan Twp.*, 112

Wis. 2d 539, 552, 334 N.W.2d 252 (1983) (discussing access to court records). Under that common law rule, a court "must balance the harm to the public interest from public examination of the records against the benefit to the public interest from opening these records to examination, giving much weight to the beneficial public interest in open public records." *Id.* at 553.

Third, the Wisconsin legislature has ratified the common law's presumption of access to court records. *Id.* By statute, the legislature has provided that the public has a right to access court records that may be curtailed only in limited circumstances. Wis. Stat. § 19.32(1) (applying public records law to "any court of law"); Wis. Stat. § 59.20(3) (providing that each "clerk of the circuit court . . . shall open to the examination of any person all books and papers required to be kept in his or her office and permit any person so examining to take notes and copies of such books, records, papers, or minutes therefrom"). "To overcome the legislatively mandated policy favoring open records and to persuade the circuit court to exercise its inherent authority, the party seeking to close court records bears the burden of demonstrating, with particularity, that the administration of justice requires that the court records be closed." *Bilder*, 112 Wis. 2d at 556–57.

Finally, Wisconsin court rules reinforce the heavy burden that must be met to justify sealing. An individual seeking to conceal court records must "specify the authority" that justifies restricting the information from the public. Wis. Stat. Ann. § 801.21(2). If the Court determines that there are "sufficient grounds to restrict public access according to applicable constitutional, statutory, and common law," then the Court must "use the least restrictive means that will achieve the purposes of this rule." *Id.* § 801.21(4).

In sum, under all of those standards, the party seeking to close court records must show that sealing "is essential to preserve higher values" than the public's right of access. *Press-Enterprise II*, 478 U.S. at 9; *see Bilder*, 112 Wis. 2d at 556–57. This places on Troupis a "heavy burden to overcome the presumption of disclosure." *Krier v. EOG Env't, Inc.*, 2005 WI App 256, ¶20, 288 Wis. 2d 623, 633, 707 N.W.2d 915. Troupis's motion falls well short of this burden.

B. The interest in public access is particularly strong in this case.

The general presumption in favor of public access to court records reflects a "basic tenet of the democratic system that the people have the right to know about the operations of their government, including the judicial branch." *Bilder*, 112 Wis. 2d at 553. The public also has a special interest in the openness of *this* litigation, which relates to a scheme to overturn the results of the 2020 Presidential Election in Wisconsin and fraudulently interfere with the counting of Wisconsin's electoral votes. As this Court recently noted, Wisconsin voters have an interest in this case, lest they "go to the polls *knowing* that, in the last election, ten individuals have admitted to falsely declaring themselves the duly elected and qualified Electors, *but not knowing* whether there remains a conspiracy to do so again. How could the public possibly trust an election conducted under those circumstances?" (Reconsideration Order at 6).

The scheme to use fake electors in Wisconsin was part of a well-documented larger plot to halt the transfer of power, "an unprecedent assault on the structure of our government." *Trump*, 2024 WL 436971, at *39 (D.C. Cir., Feb. 6, 2024). The still-ongoing efforts to "discover[] and com[e] to terms with the causes underlying the January 6 attack is a matter of unsurpassed public importance." *Trump v. Thompson*, 20 F.4th 10, 23 (D.C. Cir. 2021) (citation omitted).

Unsurprisingly, there has been significant press coverage of developments in this case. *See, e.g.*, Scott Bauer, *Judge says Wisconsin Gov. Tony Evers can be questioned in Trump fake electors*

lawsuit, AP News (Jan. 25, 2024); Neil Vigdor, *Fake Trump Electors in Wisconsin Accept Biden's 2020 Win in Settlement*, NY Times (Dec. 6, 2023). The press and the people have a right to know how the case develops. As this Court noted just this week: "justice cannot survive behind walls of silence." Reconsideration Order at 6 (quoting *State v. Ndina*, 2009 WI 21, ¶42, 315 Wis. 2d 653, 761 N.W.2d 612).

II. Troupis's Motion Fails To Identify any Valid Basis for Overriding the Public's Right of Access to the Proceedings in this Case.

A. Information on a privilege log is neither privileged nor confidential.

Troupis's motion falls well short of meeting his heavy burden to justify keeping the public from knowing about the proceedings in this case. His primary argument for maintaining the privilege log under seal is that releasing information about the privilege log would infringe on the attorney-client privilege and work-product protection.

This argument is without merit. A privilege log's function is to "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, *without revealing information itself privileged or protected*, will enable other parties to assess the claim." Fed. R. Civ. P. 26(b)(5)(A)(iii) (emphasis added); *see also Juneau Cty. Star-Times v. Juneau Cty.*, 2011 WI App 150, ¶38, 337 Wis.2d 710, 807 N.W.2d 655 (recognizing in the context of billing statements that "general descriptions of the nature of the services performed" that "do not reveal the subject of confidential communications with any specificity are *not* privileged" (internal quotation marks and citation omitted)). A privilege log is designed to be provided to opposing counsel and, when subject to a dispute (as here), the Court. It would make no sense to include privileged information on such a log, when its entire function is to provide a party *withholding* information an opportunity to justify that withholding without revealing the information itself.

If Troupis were correct in his baseless suggestion the privilege log itself reveals privileged information, then he has waived the privilege already by intentionally disclosing its contents to Plaintiffs. *E.g.*, Wis. Stat. § 905.11. Troupis does not and cannot point to any argument that a document that he knowingly provided to a third party—Plaintiffs—maintains whatever privilege it might have had.

As the Court can readily confirm for itself (Dkt. 372), the information contained on Troupis's log is not itself privileged or protected by the work-product doctrine. The log contains only a few basic pieces of information:

- The date and time a document was sent or received
- Whether the document was a text or email
- Whether the document was being withheld on the basis of attorney-client privilege or work-product protection
- From whom and to whom the document was sent
- And a "description" of the document.

The attorney-client privilege only protects against disclosure of information that "reveals the *substance* of lawyer-client communications." *Lane v. Sharp Packaging Sys., Inc.*, 2002 WI 28, ¶ 40, 251 Wis. 2d 68, 640 N.W.2d 788 (emphasis added). The fact that an email was sent on a particular day, or to a particular party, does not reveal any substantive information—and Troupis makes no real attempt to argue otherwise.

Indeed, most of the individuals listed on the privilege log are other lawyers, public figures, or otherwise publicly associated with the Trump Campaign. Many of the lawyers entered appearances in litigation, which hardly supports a claim that their role was confidential, much less privileged.[2] But not every participant in these communications was identified on the log. Rather

[2] Plaintiffs disagree that any information in this brief is confidential, privileged, or otherwise should be filed under seal. Nevertheless, based on the sweeping arguments advanced by Troupis, Plaintiffs have redacted information derived from the privilege log or from Troupis's motion to seal from their public filing, and will lodge an unredacted version under seal.

than include names, the log identifies some individuals (presumably non-lawyers) by their first name only, or simply as "Election Volunteer #1" or "Customer Service."

Moreover, the privilege log's "descriptions" contain vague boilerplate such as "Discussion regarding media" and "Discussion of logistics."[3] Indeed, the log was so deficient in providing useful information needed to assess the validity of the privilege claims that Plaintiffs have asked the Court for an order requiring Troupis to provide additional information (Dkt. 370, 371).

Troupis says that he was "unable to find any case where a request to maintain the confidentiality of a privilege log was denied," (Dkt. 400, Troupis Br. at 7), but such cases are not hard to locate. *E.g.*, *Orthopaedic Hosp. v. DJO Glob., Inc.*, No. 319CV00970JLSAHG, 2020 WL 6074110, at *2 (S.D. Cal. Aug. 21, 2020) (rejecting motion to seal privilege log (with narrow exceptions), noting that it would not "be typical for especially sensitive information to appear on a privilege log"); *Novo Nordisk A/S v. Sanofi-Aventis U.S. LLC*, No. CIV.A.07-3206(MLC), 2008 WL 323611, at *2 (D.N.J. Feb. 4, 2008) (rejecting attempt to seal a document because "the Court finds [the document] is a privilege log that lists various documents Defendants believe contained privilege[d] information, but [finds] that the log itself does not reveal the substance of any of the privileged communications and therefore should not be sealed"). In most instances, parties recognize that there is no viable claim of privilege or confidentiality over a privilege log, so courts are rarely confronted with a request to seal the log.

[3] Based on the dates, it appears that several of these entries refer to information that is publicly available, further undercutting any claim of secrecy. For example, an entry entitled "Discussion of logistics" appears to describe a text message from Troupis to Senator Johnson attempting to organize delivery of the fraudulent certificates to the Vice President on January 6, 2021. *See* Plaintiffs' Second Set of Requests to Admit Numbered 87-91 ("We need to get a document on the Wisconsin electors to you for the VP immediately. Is there a staff person I can talk to immediately. Thanks Jim T.").

Because the privilege log does not contain confidential or privileged information, it should not be sealed.

B. The parties did not and could not agree to seal court records.

Troupis also incorrectly relies on two agreements between the parties—a Stipulated Protective Order (Dkt. 263), and a Nondisclosure Agreement (Dkt. 404), the latter which applies to all documents, not just those marked "confidential"—as justifying the sealing of judicial records (Dkt. 400, Troupis Br. 8). But neither agreement purports to allow sealing of judicial records. Nor could they.

To begin, the agreements themselves expressly acknowledge that they do not authorize sealing. The Stipulated Protective Order states: "The parties recognize that this Court must make an independent assessment whether the presumption of public access to court records has been met, and the Court is not bound by any party's, or even all parties', designation of information as 'CONFIDENTIAL.'" Stipulated Protective Order § II(G). The Order further notes, "This Stipulated Protective Order has no effect upon, and shall not apply to . . . Court proceedings at or before trial in this Action." *Id.* at § II(I). A separate nondisclosure agreement between the parties provides that it "in no way prevents the Parties from filing Discovery Documents with the Court, nor does it require that the filing of any such Discovery Documents be done under seal." (Dkt. 404).[4] The agreement continued: "The Parties understand that a Discovery Document filed with the Court, whether at trial or during pre-trial motion practice will be publicly available as part of the Court Record." *Id*. Troupis's argument that the parties have agreed to sealing is belied by the express language of the agreements.

[4] Troupis has sought to file even this nondisclosure agreement under seal (Dkt. No. 405). Out of an abundance of caution, Plaintiffs will redact the text quoted from the nondisclosure agreement in their public filing.

In any event, the privilege log is not the type of document intended to fall under the protective order at all. The parties' stipulated protective order contemplated that each side would designate material as "confidential" *only* when it contains "trade secrets or nonpublic technical, commercial, financial, personal, proprietary or business/political information." Stipulated Protective Order § I(A). If challenged, the designating party "shall have the burden" of supporting that designation. *Id.* at § I(F). A privilege log that simply lists the identity of participants to a communication (and sometimes not even that), the date and time that communication took place, and vague boilerplate descriptions is not the type of "nonpublic" information akin to a trade secret that would justify a "confidential" designation. Plaintiffs therefore properly objected to the designation of the log as confidential. The Stipulated Protective Order contains no deadline for making this objection. *Id.* at § 1(F) ("During the pendency of this action, when any document, testimony or other information is designated 'CONFIDENTIAL,' any party may object to the designation of such material.").

Even more fundamentally, the parties lack the authority to override by agreement the public's interest in access to court records in this proceeding. *E.g.*, *Bilder*, 112 Wis. 2d at 544 (holding that documents placed under seal by stipulation should be unsealed); *C.L. v. Edson*, 140 Wis. 2d 168, 182, 409 N.W.2d 417 (Ct. App. 1987) (same). "Although an agreement of confidentiality may be enforced as between the parties," the Court of Appeals has emphasized that "*once the documents are filed in the court*, they become a judicial record, subject to the access accorded such records." *Krier*, 2005 WI App 256, ¶21. "The parties to a lawsuit are not the only people who have a legitimate interest in the record compiled in a legal proceeding, and therefore [t]he determination of good cause [to seal] cannot be elided by allowing the parties to seal whatever they want." *Citizens First Nat. Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944 (7th

Cir. 1999). Rather, the public has an interest in accessing court records wholly apart from the interests of any party to the litigation. *Id.* Thus, the Court must decide for itself whether Troupis has borne his "burden of demonstrating, with particularity, that the administration of justice requires that the court records be closed." *Bilder*, 112 Wis. 2d at 556–57. He has not met his burden.

C. Troupis's invocation of the "privacy rights" of third parties does not withstand scrutiny

Troupis also makes a vague reference to "the privacy rights of those who communicated with Troupis as counsel for the Trump-Pence Campaign." (Troupis Br. 11). But "the argument that the 'public interest in protecting the privacy of individuals outweighs the need for public disclosure . . . has been rejected in numerous cases.'" *Matter of Ests. of Zimmer,* 151 Wis. 2d 122, 137, 442 N.W.2d 578 (Ct. App. 1989) (quoting *C.L.*, 140 Wis.3d at 185). Something more is needed.

And Troupis has provided very little to support his purported concern for third parties. He does "not sufficiently describe the persons who may be hurt or how these persons may be hurt." *Bilder*, 112 Wis. 2d at 559. He offers "no demonstration of 'particularity' as to the adverse impact disclosure would produce." *Krier*, 2005 WI App 256, ¶19. "Actual, as opposed to hypothetical, factors must be set forth to demonstrate that the administration of justice requires closure." *Bilder*, 112 Wis. 2d at 559.[5]

Even if Troupis had identified specific harm to third parties, that would justify, at most, redacting their identities from public disclosure. It would not "support sealing all the documents in toto." *Bilder*, 112 Wis. 2d at 559.

[5] Troupis's invocation of the NAACP's persecution in 1950s Alabama is most generously described as half-hearted. (Troupis Br. 12 (citing *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 463 (1958)). Members of the NAACP in Alabama faced significant danger to their lives and livelihoods. *NAACP*, 357 U.S. at 462. Troupis points to nothing even arguably analogous for the people listed on his privilege log.

Troupis points only to an unpublished, two-page order in *Eastman v. Thompson* as a potential parallel to this case. There, Attorney John Eastman was resisting efforts to compel production of tens of thousands of documents to the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol (Select Committee) pertaining to his role in formulating the scheme to undermine the 2020 election results. To facilitate the speedy production of documents, the District Court ordered Eastman to provide a privilege log to the Select Committee *each business day* (along with unprivileged documents). *See* Order RE Production and Privilege Log (Dkt. 50), *Eastman v. Thompson*, No. 822CV00099DOCDFM (C.D. Cal. Jan. 25, 2022). Under the circumstances of that case, the district court allowed these daily privilege logs to be filed under seal to protect the privacy of non-parties.

Whether the district court's order in *Eastman* could be sustained under Wisconsin law is doubtful, especially on the anemic showing offered by Troupis. In any event, the situation now before this Court differs greatly. Plaintiffs are seeking the public disclosure of a single, static privilege log that is the subject of ongoing dispute between the parties, rather than a series of daily logs that are prepared in the context of a fast-paced document production process. And most of the third parties referenced on Troupis's privilege log are either other attorneys (including attorneys who publicly appeared in litigation) or public figures.[6] In several instances where a third party contacted Troupis, he masked their identity by, for example, describing them as an "election volunteer." If there is further harm to third parties that would result from disclosure of the privilege log, Troupis has not identified it.

Eastman v. Thompson provides lessons for this lawsuit, but not the lesson Troupis would draw. The *Eastman* court largely rejected the privilege claims on their merits. Of tens of thousands

[6] Indeed, the log includes communications with John Eastman.

of emails Eastman sought to withhold, the District Court sustained the privilege over only a handful. *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1199 (C.D. Cal. 2022). The court found that Eastman and former President Trump "launched a campaign to overturn a democratic election" that was a "coup in search of a legal theory" that "spurred violent attacks on the seat of our nation's government, led to the deaths of several law enforcement officers, and deepened public distrust in our political process," and noted that "if the country does not commit to investigating and pursuing accountability for those responsible, the Court fears January 6 will repeat itself." *Id*. at 1198–99. The court therefore held that the crime-fraud exception abrogated the privilege over documents Eastman sought to withhold. *Eastman v. Thompson*, 636 F. Supp. 3d 1078, 1091 (C.D. Cal. 2022). Troupis, here, seeks to shield information about his own participation in this scheme by attempting to rely on similar claims of privilege; as Plaintiffs argued in their pending motion to compel, that effort should fail.

III. Even if the Court Concludes that Some Information Should be Sealed, Troupis's Motion is Significantly Overbroad

Even if Troupis identified a valid basis for sealing some portions of the privilege log, and he has not, his efforts to seal not only the entire privilege log (Dkt. 400), but also his own motion and brief in support of that sealing (Dkt. 405), as well as exhibits in support of his motion (such as the parties' non-disclosure agreement, Dkt. 404) are wildly overbroad. To overcome the presumption of openness, a court must find not only that "closure is essential to preserve higher values," but also that the remedy is "narrowly tailored to serve that interest." *Press-Enterprise I*, 464 U.S. at 510; *see also Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994). Wisconsin courts have confirmed that "exceptions to the rule of disclosure must be narrowly construed." *In re Estates of Zimmer*, 151 Wis.2d 122, 131, 442 N.W.2d 578 (Ct. App. 1989). And the Wisconsin court rules require that "[i]n restricting access, the court will use the

least restrictive means that will achieve the purposes of [the rule governing sealing] and the needs of the requester." Wis. Stat. § 801.21(4). Any order sealing court documents must therefore be carefully crafted to apply only to those identified portions of the record that meet the high bar for denying the public access.

What Troupis asks for is anything but narrowly tailored. He seeks to seal every word of each of the 4889 entries on the privilege log, including the time and date of the communication, the type of communication, and the basis for his claim of privilege. He further seeks to seal his own motion and brief in support of sealing the privilege log, even though neither document quotes from or cites directly to the log. Troupis does not offer any reason to believe that the vast majority of the privilege log, or the documents he filed in support of his motion to seal, are so sensitive as to necessitate sealing. Indeed, the only parts of the privilege log that he mentions at all are "who contacted the lawyer, when the contact occurred, [and] the general topic of what was discussed." (Troupis Br. at 3; *see also id.* at 10). And he provides no rationale for filing his motion and brief under seal. Such "blanket" sealing undermines the presumption of public access and cannot be allowed. *See Citizens First*, 178 F.3d at 945. Therefore, if this Court were to find that some segment of the privilege log should remain private, it should carefully limit the sealing only to those portions for which there is an articulable basis for departing from the presumption of openness. Troupis's motion and brief, Plaintiffs' Brief in Support of Their Motion to Compel (Dkt. 371), and any future filings that do not directly quote sealed material should be made immediately available to the public.

CONCLUSION

For the reasons set forth above, the Court should deny Troupis's Motion to Affirm the Confidentiality of the Privilege Log and Require That it Remain Under Seal (Dkt. 400) and Troupis's Motion to File Certain Documents Under Seal (Dkt. 405).

Dated February 9, 2024

Respectfully submitted,

Electronically signed by Joseph W. Mead

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