

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
and)	
)	
DR. RACHEL TUDOR,)	
)	
Plaintiff/Intervenor,)	
)	
v.)	Case No. 5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY,)	
)	
and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
)	
Defendants.)	

**PLAINTIFF/INTERVENOR DR. RACHEL TUDOR'S
MOTION TO UNSEAL DOCUMENTS
AND INCORPORATED BRIEF**

Dr. Tudor respectfully moves the Court to unseal certain briefs and exhibits filed in this case (ECF Nos. 205-28, 180, 180-1, 174, 174-1, 174-2, 173, and 173-1).

BACKGROUND

1. On August 30, 2017 Defendants moved the Court for a protective order (ECF No. 156) seeking among other things to shield a Compromise

Agreement struck between Defendants and the United States from public disclosure. Later that same day, Defendants moved for an interrelated temporary restraining order to shield the Agreement until the Court resolved the motion for protective order (ECF No. 157).

2. On August 31, 2017, the Court granted the TRO. In its Order, the Court held that the Compromise Agreement would be temporarily protected against disclosure to third parties “until the Court’s determination of the Defendants’ request for a protective order, or the Court is notified of resolution of the matter, whichever comes first” (ECF No. 158 at 2).
3. On September 5, 2017, Dr. Tudor requested clarification from the Court as to whether she could, file as an exhibit on the public docket a copy of the Compromise Agreement and/or otherwise discuss the terms of the Compromise Agreement in her briefing in opposition to Defendants’ motion for protective order (ECF No. 160).
4. On September 6, 2017, the Court clarified the TRO, directing Tudor that the Compromise Agreement and briefing related to its terms should be filed under seal (ECF No. 161 at 2).
5. On September 18, 2017, both Tudor (ECF No. 169) and the United States (ECF No. 168) sought leave to file briefs and exhibits, in

response to Defendants' motion for protective order, *ex parte* and under seal.

6. On September 19, 2017 the Court granted Tudor's (ECF No. 170) and the United States' (ECF No. 171) motion to file their responses and exhibits under seal. As part of its Order on Tudor's motion, the Court held, "The outcome of Defendants' Motion for Protective Order will determine whether Tudor's brief and exhibits should remain under seal at that time" (ECF No. 170 at 1–2). As part of its Order on the United States' motion, the Court held, "The outcome of Defendants' Motion for a Protective Order will determine whether the United States' brief and exhibits should remain under seal at that time" (ECF No. 171 at 1–2).
7. On September 20, 2017, both Tudor (ECF No. 174) and the United States (ECF No. 173) filed briefs and exhibits *ex parte* and under seal in response to Defendants' motion for protective order.
8. On September 22, 2017, Defendants moved for summary judgment against Tudor on one of her two sex discrimination claims, her hostile work environment claim, and her retaliation claim (ECF No. 177).
9. On September 27, 2017, Defendants filed a motion to file their reply and exhibits to Tudor's and the United States' responses connected to their motion for protective order *ex parte* and under seal (ECF No. 178).

10. On September 28, 2017, the Court granted Defendants' motion to file their reply to Tudor's and the United States' responses to the motion for protective order *ex parte* and under seal (ECF No. 179).
11. On September 29, 2017, Defendants filed their combined reply along with an exhibit to Tudor's and the United States' opposition to Defendants' motion for protective order *ex parte* and under seal (ECF No. 180).
12. On October 13, 2017, Tudor filed her response in opposition to Defendants' motion for summary judgment (ECF No. 205). In support of her opposition, Tudor proffered 68 (sixty-eight) exhibits. Exhibit 28 (ECF No. 205-28), a copy of the Compromise Agreement, was filed *ex parte* and under seal pursuant to the Court's previous instructions because at the time of filing the TRO was still in effect.
13. On October 17, 2017, the Court issued an order resolving several outstanding motions, including Defendants' motion for protective order (ECF No. 206). In its Order, the Court denied Defendants' motion for protective order (ECF No. 206 at 3). At this time, the temporary protection afforded to the Compromise Agreement and interrelated briefings and exhibits expired. *See* TRO Order, ECF No. 158 at 2 ("The terms of this order will stay in effect until the Court's determination of

the Defendants’ request for a protective order, or the Court is notified of resolution of the matter, whichever comes first.”).

CONFERRAL PURSUANT TO LOCAL RULE 7.1(k)

Pursuant to Local Rule 7.1(k), Dr. Tudor’s counsel conferred with counsel for Defendants and the United States. Defendants did not respond to Tudor’s request for their position on this motion. The United States does not oppose this motion.

RELIEF REQUESTED

Dr. Tudor respectfully requests that the following briefings and exhibits be unsealed:

ECF No.	Document Description
205-28	Exhibit (Compromise Agreement)
180	Defendants’ Reply to Responses to Defendants’ Motion for Protective Order (ECF No. 156)
180-1	Exhibit (unprivileged email)
174	Tudor Response to Defendants’ Motion for Protective Order (ECF No. 156)
174-1	Exhibit (Compromise Agreement)
174-2	Exhibit (unprivileged email)
173	United States Response to Defendants’ Motion for Protective Order (ECF No. 156)
173-1	Exhibit (Compromise Agreement)

ARGUMENT AND AUTHORITIES

In light of the Court's denial (ECF No. 206 at 3) of Defendants' Motion for Protective Order (ECF No. 156) and the express terms of the TRO Order which indicates its protection expires upon disposition of Defendants' Motion for Protective Order (ECF No. 158 at 2), the Court should unseal all briefings and exhibits attached thereto filed under seal with the Court related to the Compromise Agreement: ECF Nos. 205-28, 180, 180-1, 174, 174-1, 174-2, 173, and 173-1. Unsealing the aforementioned briefings and related exhibits is appropriate.

Reasons for sealing are no longer relevant. The only grounds for sealing the aforementioned briefings and exhibits in the first place was the pendency of Defendants' motion for protective order (ECF No. 156) and the protections temporarily afforded vis-à-vis the interrelated TRO (ECF No. 158) and clarification on the TRO directing filings related to the Compromise Agreement to be filed under seal until the Court resolved Defendants' motion (ECF No. 161 at 2). These reasons are no longer relevant as of the Court's denial of the Defendants' motion for protective order (ECF No. 206 at 3).¹ Indeed, as the Court noted in connection with orders granting leave to file many of the briefings and exhibits under seal, the sealed status of such

¹ In an excess of caution, Tudor will point out but not state in this Motion that both she and the United States, in their briefings filed under seal, apprised the Court of important reasons why the Compromise Agreement itself should be publicly available. These rationales can similarly support unsealing the briefings and exhibits at issue in this Motion. *See generally* Tudor's Opposition Brief (ECF No. 174) and the United States' Opposition Brief (ECF No. 173).

briefings and exhibits would be resolved by its forthcoming decision on Defendants' motion for protective order. *See, e.g.*, ECF No. 170 at 1–2 (“The outcome of Defendants’ Motion for Protective Order will determine whether Tudor’s brief and exhibits should remain under seal at that time.”); ECF No. 171 at 1–2 (“The outcome of Defendants’ Motion for a Protective Order will determine whether the United States’ brief and exhibits should remain under seal at that time.”).

Presumption of public access to court filings. There is a presumption that documents filed in civil litigations are publicly accessible. *See, e.g., U.S. v. McVeigh*, 119 F.3d 806 (10th Cir. 1997) (“It is clearly established that court documents are covered by a common law right of access. Under that doctrine, judicial documents are presumptively available to the public.”) (*citing Nixon v. Warner Communications*, 435 U.S. 1306, 1312–14)) (cleaned up).

The briefings and exhibits at issue were filed in this case, but temporarily sealed so that the Court could resolve Defendants’ motion for protective order. Now that the Court has denied Defendants’ motion, the presumption of public access should be restored and the briefings and exhibits should be unsealed. *See, e.g., Granny Goose Foods, Inc. v. Brotherhood of Teamsters and Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974) (Under federal law, TROs “should be

restricted to serving the underlying purpose of preserving the status quo and preventing irreparable harm just so long as necessary to hold a hearing, and no longer”). *Cf. In re Application to Unseal 98 Cr. 1101(ILG)*, 891 F.Supp.2d 296, 299 (E.D.N.Y. 2012) (parties seeking to maintain sealing bear the burden of establishing that continued sealing is warranted).

Moreover, because the Compromise Agreement was presumptively public² and, upon dissolution of the TRO, is once again publicly available, no reason supports keeping the briefings and exhibits under seal. *Cf. Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 (2d Cir. 2004) (“[H]owever confidential it may have been beforehand, subsequent to publication it was confidential no longer. . . . We simply do not have the power, even were we of the mind to use it if we had, to make what has thus become public private again. The genie is out of the bottle. . . . We have not the means to put the genie back.”).

Special circumstances of this case. The public also has a strong interest in being timely apprised of key developments in civil rights cases involving transgender Americans. (Defendants’ themselves concede this interest. ECF No. 156 at 6). The plight of transgender Americans is clearly a matter of public concern that grows in intensity by the day. The public has an interest in knowing about the progression of Dr. Tudor’s case and accessing

² Order, ECF No. 206 at 3 (“Defendants have failed to overcome the presumption attached to the openness of court filings.”).

key documents pertinent to it, such as the briefings and exhibits at issue here. Unfettered access to documents arising in important civil rights cases—such as this one—ensures that the public remains confident in the legitimacy of our courts and the strength of our nation’s civil rights laws. *See, e.g., Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 592 (1980) (quotations omitted) (“public access to court proceedings is one of the numerous checks and balances of our system”); *United States v. Nixon*, 418 U.S. 683, 709 (1974) (“The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence”).

CONCLUSION

For all of the foregoing reasons, Dr. Tudor respectfully requests that the Court unseal ECF Nos. 205-28, 180, 180-1, 174, 174-1, 174-2, 173, and 173-1.

Dated: October 26, 2017

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)
Law Office of Ezra Young
30 Devoe, 1a
Brooklyn, NY 11211
P: 949-291-3185
F: 917-398-1849
ezraiyong@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2017, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)