

**Radium2 Capital, LLC v Platinum Asset Funding,  
LLC**

2024 NY Slip Op 30108(U)

January 9, 2024

Supreme Court, New York County

Docket Number: Index No. 652120/2020

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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RADIUM2 CAPITAL, LLC (F/K/A RADIUM2 CAPITAL  
INC.),

Plaintiff,

- v -

PLATINUM ASSET FUNDING, LLC, ARENA PRFG, LLC,  
PRIME MERIDIAN SPECIAL OPPORTUNITIES FUND,  
LP, ARENA INVESTORS, LP, CFG MERCHANT  
SOLUTIONS, LLC, and CETERIS PORTFOLIO  
SERVICES, LLC,

Defendants.

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INDEX NO. 652120/2020

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 014

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 518, 519, 520, 521,  
522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 544, 545, 546, 548

were read on this motion to/for SEAL.

In motion sequence number 014, defendants Platinum Asset Funding, LLC (PAF), Arena Investors, LP (AILP), Arena PRFG, LLC, Prime Meridian Special Opportunities Fund, LP, and Ceteris Portfolio Services, LLC (collectively, defendants) move, pursuant to Section 216.1 of the Uniform Rules of the New York State Trial Courts, to redact NYSCEF 519 through 528.<sup>1</sup> Plaintiff submitted no opposition papers. There is no indication that the press or public have an interest in this matter.

<sup>1</sup> The following pairs are unredacted copies of identical documents: NYSCEF 298 and 519, NYSCEF 302 and 520, NYSCEF 303 and 521, NYSCEF 304 and 522, NYSCEF 305 and 523, NYSCEF 306 and 524, NYSCEF 308 and 525, NYSCEF 309 and 526, NYSCEF 310 and 527, and NYSCEF 312 and 528.

## The Documents and Defendants' Arguments

NYSCEF 298 and 519 is a spreadsheet containing information about over 1,000 merchants, including their names and last payment dates to defendant. (NYSCEF 529, sealing chart [SC] at 1; NYSCEF 518, Dupont<sup>2</sup> aff ¶¶ 7.) Defendants seek to redact (i) merchants' names on pages 1 through 34 because disclosure of their identities would impinge on merchants' privacy rights by revealing their deals with defendants and would put defendants at a competitive disadvantage by revealing their portfolio sources and (ii) certain other nonparties' bank account numbers, bank routing numbers, mailing addresses, and phone numbers on pages 103 through 136. (*Id.*)

NYSCEF 302 and 520 is a spreadsheet that lists merchants' names, projects, and future collections by defendants. (NYSCEF 518, Dupont aff ¶¶ 8.) NYSCEF 303 and 521, NYSCEF 304 and 522, NYSCEF 305 and 523, and NYSCEF 306 and 524 are spreadsheets listing merchants' names, their loan balances, and amounts paid. (*Id.* ¶¶ 9.) NYSCEF 308 and 525 is a spreadsheet that lists merchants' names, their loan balances, and initial payment amounts. (*Id.* ¶¶ 10.) Defendants seek to redact merchants' names on NYSCEF 302-306, 308, and 520-525. They contend that if their names are not redacted, merchants will be tied to entering into merchant cash advance agreements, which would damage them and impinge on their privacy rights. Defendants further contend that disclosure of merchants' names would put defendants at competitive disadvantage by revealing their portfolio sources.

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<sup>2</sup> Victor Dupont is a Managing Director at defendant AILP. (NYSCEF 518, Dupont aff ¶¶ 4)

NYSCEF 309 and 526 is an email, attached to which is an outside consultant's Financial Due Diligence Report prepared to assist defendant AILP in evaluating the potential advance of loan facilities to Platinum Rapid Funding Group, Ltd. (PRFG LTD).<sup>3</sup> (*Id.* ¶ 11; NYSCEF 526, Financial Due Diligence Report at 1.) Defendants' position is that the report details their sensitive underwriting considerations (NYSCEF 518, Dupont aff ¶ 11) and they seek to extensively redact the report's sections discussing PRFG LTD's key performance indicators, collection curves, quality of earnings, working capital, as well as income statements and balance sheets for years 2015 through 2017. Defendants argue that if the redacted information was revealed, competitors could siphon their confidential underwriting strategies, defendants' underwritten shares could devalue, and defendants as well as their partners and merchants' competitive advantage would be harmed.

NYSCEF 310 and 527 is defendant AILP's internal document entitled "[AILP] Investment Memorandum" that discloses its underwriting strategies and considerations, as well as PRFG LTD's financial information and business model. (*Id.* ¶ 12.) Defendants argue that if the such information was revealed, competitors could siphon their confidential underwriting strategies, defendants' underwritten shares could devalue, and merchants seeking to obtain financing could learn defendants' financing terms.

NYSCEF 312 and 528 is an August 17, 2021 email entitled "Platinum July 2021 EOM Report." It contains the identities of defendants' deal participants, their payments

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<sup>3</sup> This action was discontinued without prejudice against PRFG LTD. (NYSCEF 222, March 29, 2021 Order.)

or lack thereof, as well as information about enforcement efforts, settlement negotiation, litigation strategies, and portfolio analyses. (*Id.* ¶ 13.) Defendants contend that disclosure of such information would impinge on nonparty merchants' privacy rights, hamper defendants' case resolutions, future dealings and negotiations, and put defendants at competitive disadvantage, as their portfolio analyses and sources would become public.

### **Legal Standard**

Pursuant to 22 NYCRR § 216.1 (a), courts are empowered to seal documents upon a written finding of good cause. It provides: “[e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.” The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 349 [1st Dept 2010] [citations omitted].) In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Id.* at 350.) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public . . . where no substantial public interest would

be furthered by public access to that information” and “sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.” (*D’Amour v Ohrenstein & Brown*, 17 Misc 3d 1130[A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

## Discussion

Defendants demonstrated good cause to redact nonparty merchants’ names in NYSCEF 298, 302-306, 308, and 519-525. Revealing identities of merchants with whom defendants have business relationships could be competitively harmful to defendants and thus redaction of merchants’ identities is warranted. (*Mosalleem*, 76 AD3d at 350.) Additionally, such narrow redactions effectively balance the merchants’ privacy interests and the interests of the public, if any. (See *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] [there is “compelling interest in sealing the third-party financial information since disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein”].) There has been no showing of public interest in the disclosure of the merchants’ financial information. (*Dawson*, 184 AD2d at 247.)

Good cause exists to redact certain other nonparties’ bank account numbers, bank routing numbers, mailing addresses, and phone numbers in NYSCEF 298 and 519, as these proposed redactions effectively balance the nonparties’ privacy interests and the interests of the public, if any. (See *Mancheski*, 39 AD3d at 502; Uniform Rules for Trial Cts [22 NYCRR] § 202.5 [e] [1] [iv] [permitting redaction of “confidential personal information”].) However, good cause does not exist to redact NYSCEF 298

and 519 to the extent that this document lists “0.00” instead of a bank account number or bank routing number for certain nonparties.

Good cause exists to redact NYSCEF 309 and 526 as proposed. The court disagrees with defendants’ argument that the Financial Due Diligence Report reveals their underwriting strategies. On its face, the report includes an extensive financial analysis of PRFG LTD, but it does not discuss defendants’ underwriting strategies. The court, however, finds that the proposed redactions pertain to PRFG LTD’s key performance indicators, collection curves, quality of earnings, working capital, and income statements and balance sheets for years 2015 through 2017 and thus are necessary to protect PRFG LTD’s interest in keeping its financial information private. Accordingly, the proposed redactions are warranted. (NYSCEF 529, SC at 8 [citing cases]; see *Mancheski*, 39 AD3d at 502.) There has been no showing of public interest in the disclosure of PRFG LTD’s financial information. (*Dawson*, 184 AD2d at 247.)

Good cause exists to redact NYSCEF 310 and 527 as proposed because the proposed redactions concern defendant AILP’s then contemplated transaction with PRFG LTD and its underwriting considerations. Revealing such information could be competitively harmful to defendant AILP and thus its redaction is warranted. (*Mosallem*, 76 AD3d at 350.) Additionally, the proposed redactions of PRFG LTD’s financial information are warranted to protect PRFG LTD’s privacy interests. (NYSCEF 529, SC at 10 [citing cases]; *Mancheski*, 39 AD3d at 502.)

Good cause exists to redact NYSCEF 312 and 528 as proposed. Proposed redactions concerning defendant PAF’s July 2021 collection efforts and results, performance analysis, and litigation strategy are warranted because revealing such

sensitive business information could be competitively harmful to defendant PAF.

(*Mosallem*, 76 AD3d at 350.)

Accordingly, it is

ORDERED that motion is granted to the extent that the County Clerk, upon service of this order, shall permanently seal NYSCEF 302, 303, 304, 305, 306, 308, 309, 310, 312, 520, 521, 522, 523, 524, 525, 526, 527, and 528; and it is further

ORDERED that defendants shall file publicly available redacted copies of NYSCEF 302, 303, 304, 305, 306, 308, 309, 310, 312, 520, 521, 522, 523, 524, 525, 526, 527, and 528; and it is further

ORDERED that motion is granted as to NYSCEF 298 and 519, on condition that defendants file a properly redacted version of NYSCEF 298 and 519; and it is further

ORDERED that defendants shall file a proposed properly redacted copy using yellow highlights (under temporary seal) and publicly available redacted copy of NYSCEF 298 and 519, pursuant to Part 48 Procedures on sealing and/or redacting, in accordance with this decision within 10 days from the date of this order; and it is further

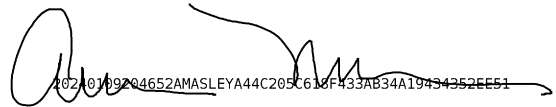
ORDERED that defendants shall email Part 48 (SFC-Part48@nycourts.gov) upon filing the proposed redacted copy and publicly available redacted copy of NYSCEF 298 and 519;

ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of

counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



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1/9/2024  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: