

Bartasi v Perceptive Advisors, LLC

2025 NY Slip Op 34716(U)

December 8, 2025

Supreme Court, New York County

Docket Number: Index No. 653314/2025

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

GINA BARTASI,

Plaintiff,

- v -

PERCEPTIVE ADVISORS, LLC, PERCEPTIVE CREDIT
OPPORTUNITIES FUND IV, LP, KBI SERVICES, INC.,
LINDA MINTZ, ELLEN HUKKELHOVEN, KATHY HARRIS,
THERESA SEXTON, RIVKA FRIEDMAN, and TARA
COMONTE,

Defendants.

INDEX NO. 653314/2025
MOTION DATE --
MOTION SEQ. NO. 001 006 007
008 009 010

ORDER - SEALING

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 30, 31

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 006) 69, 70, 71, 72, 73, 74, 76, 78, 82

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 007) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 118, 170, 171

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 008) 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 305, 306, 307, 308, 310, 337

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 009) 297, 298, 299, 300, 301, 302, 303, 304, 309, 311, 336, 338, 342, 343

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 010) 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 339, 340, 341

were read on this motion to/for SEAL

In motion sequence 001, defendant Perceptive Advisors, LLC (Perceptive) moves by Order to Show Cause [OSC] pursuant to the Uniform Rules of the New York State Trial Courts (22 NYCRR) § 216.1 to seal/redact the following documents (see NYSCEF Doc. No. [NYSCEF] 25):

1. Perceptive's Memorandum of Law (MOL) in Support of Motion to Dismiss (NYSCEF 9¹);
2. Kindbody, Inc. (Kindbody) Secretary's Certificate (NYSCEF 11²);
3. Separation Agreement (NYSCEF 13);
4. Loan Agreement (NYSCEF 15);
5. Notice of Default (NYSCEF 16);
6. Transaction Agreements (NYSCEF 17).

In motion sequence 006, defendants KBI Services, Inc., Linda Mintz, Kathy Harris, Theresa Sexton, Rivka Friedman, and Tara Comonte (collectively, KBI Defendants) move pursuant to 22 NYCRR § 216.1 to seal/redact the following documents (see NYSCEF 76, OSC):

1. Bartasi's MOL in Support of Preliminary Relief (NYSCEF 46³);
2. Gina Bartasi Affirmation (NYSCEF 40⁴);
3. Sealing Chart (NYSCEF 73);
4. KBI Defendants' MOL in Support of Sealing Application (NYSCEF 74).

¹ A publicly redacted version is filed at NYSCEF 22.

² A publicly redacted version is filed at NYSCEF 21.

³ Proposed redactions are filed under seal at NYSCEF 71.

⁴ Proposed redactions are filed under seal at NYSCEF 72.

In motion sequence 007, defendants Perceptive, Perceptive Credit Opportunities Fund IV, LP, and Ellen Hukkelhoven (collectively, Perceptive Defendants) move pursuant to 22 NYCRR § 216.1 to seal/redact the following documents (see NYSCEF 118, OSC):

1. Perceptive Defendants' Verified Complaint in Delaware Action (NYSCEF 49⁵);
2. Series E Preferred Stock and Warrant Purchase Agreement (NYSCEF 50);
3. Eight Amended and Restated Voting Agreement (NYSCEF 51);
4. Separation Agreement (NYSCEF 52);
5. Kindbody Inc.'s (Kindbody's) Amended and Restated Certificate of Incorporation (NYSCEF 53⁶);
6. Seventh Amended and Restated Voting Agreement (NYSCEF 54);
7. Motion for a Preliminary Injunction in Delaware Action (NYSCEF 56⁷);
8. Motion for Expedited Proceedings in Delaware Action (NYSCEF 57⁸);
9. Motion to Intervene in Delaware Action (NYSCEF 60⁹);
10. Perceptive Defendants' MOL in Support of Stay (NYSCEF 61¹⁰);

In motion sequence 008, 009, and 010, all defendants move pursuant to 22 NYCRR § 216.1 to seal/redact the following documents (see NYSCEF 306, OSC [mot.

⁵ A publicly redacted version is filed at NYSCEF 87. Proposed redactions are filed under seal at 92.

⁶ A publicly redacted version is filed at NYSCEF 21.

⁷ A publicly redacted version is filed at NYSCEF 88. Proposed redactions are filed under seal at 93.

⁸ A publicly redacted version is filed at NYSCEF 89. Proposed redactions are filed under seal at 94.

⁹ A publicly redacted version is filed at NYSCEF 90. Proposed redactions are filed under seal at 95.

¹⁰ A publicly redacted version is filed at NYSCEF 86. Proposed redactions are filed under seal at 91.

seq. no. 008]; NYSCEF 309, OSC [mot. seq. no. 009]; NYSCEF 339, OSC [mot. seq. no. 010]):

1. Sam Chawla Affirmation (NYSCEF 119¹¹);
2. First Credit Agreement (NYSCEF 120);
3. Second Amended Credit Agreement (NYSCEF 122);
4. July 2, 2024 Email From Sam Chawla (NYSCEF 123¹²);
5. November 19, 2024 Email From Linda Mintz (NYSCEF 124¹³);
6. Third Amended Credit Agreement (NYSCEF 125);
7. Proposed Board Resolutions Regarding Committees (NYSCEF 126);
8. December 7, 2024 Notice of Default (NYSCEF 127);
9. December 16, 2024 Email From Albert Altro (NYSCEF 128¹⁴);
10. December 31, 2024 Notice of Forbearance (NYSCEF 129¹⁵);
11. Adam Stone Affirmation (NYSCEF 130¹⁶);
12. September 7, 2024 Executed Term Sheet (NYSCEF 132¹⁷);
13. November 12, 2024 Non-Binding IOI (NYSCEF 133¹⁸);
14. November 19, 2024 Email From Gina Bartasi (NYSCEF 134¹⁹);
15. November 21, 2024 Email From Tara Comonte (NYSCEF 135²⁰);

¹¹ A publicly redacted version is filed at NYSCEF 225.

¹² A publicly redacted version is filed at NYSCEF 226.

¹³ A publicly redacted version is filed at NYSCEF 227.

¹⁴ A publicly redacted version is filed at NYSCEF 228.

¹⁵ A publicly redacted version is filed at NYSCEF 229.

¹⁶ A publicly redacted version is filed at NYSCEF 230.

¹⁷ A publicly redacted version is filed at NYSCEF 231.

¹⁸ A publicly redacted version is filed at NYSCEF 232.

¹⁹ A publicly redacted version is filed at NYSCEF 233.

²⁰ A publicly redacted version is filed at NYSCEF 234.

16. December 9, 2024 Email From Gina Bartasi (NYSCEF 136²¹);
17. December 9, 2024 Email from Linda Mintz (NYSCEF 137²²);
18. Ellen Hukkelhoven Affirmation (NYSCEF 138²³);
19. July 5, 2024 Board Meeting Deck (NYSCEF 139);
20. July 19, 2024 Email From Ellen Hukkelhoven (NYSCEF 140²⁴);
21. July 11, 2024 Email From Gina Bartasi (NYSCEF 141²⁵);
22. July 29, 2024 Board Meeting Deck (NYSCEF 142);
23. July 29, 2024 Email From Ellen Hukkelhoven (NYSCEF 143²⁶);
24. August 7, 2024 Proposed Term Sheet (NYSCEF 145²⁷);
25. August 22, 2024 Email from Linda Mintz (NYSCEF 146²⁸);
26. August 30, 2024 Email from Gina Bartasi (NYSCEF 147²⁹);
27. August 27, 2024 Email from Gina Bartasi (NYSCEF 148³⁰);
28. September 3, 2024 Email From Gina Bartasi (NYSCEF 149³¹);
29. September 6, 2024 Email From Linda Mintz (NYSCEF 150³²);
30. November 7, 2024 Email From Ellen Hukkelhoven (NYSCEF 151³³);

²¹ A publicly redacted version is filed at NYSCEF 235.

²² A publicly redacted version is filed at NYSCEF 236.

²³ A publicly redacted version is filed at NYSCEF 237.

²⁴ A publicly redacted version is filed at NYSCEF 238.

²⁵ A publicly redacted version is filed at NYSCEF 239.

²⁶ A publicly redacted version is filed at NYSCEF 240.

²⁷ A publicly redacted version is filed at NYSCEF 241.

²⁸ A publicly redacted version is filed at NYSCEF 242.

²⁹ A publicly redacted version is filed at NYSCEF 243.

³⁰ A publicly redacted version is filed at NYSCEF 244.

³¹ A publicly redacted version is filed at NYSCEF 245.

³² A publicly redacted version is filed at NYSCEF 246.

³³ A publicly redacted version is filed at NYSCEF 247.

31. November 11, 2024 Email From Ellen Hukkelhoven (NYSCEF 152³⁴);
32. November 17, 2024 Email From Gina Bartasi (NYSCEF 153³⁵);
33. November 21, 2024 Term Sheet (NYSCEF 154³⁶);
34. November 13, 2024 Email From Ellen Hukkelhoven (NYSCEF 155³⁷);
35. Executed Side Letter (NYSCEF 156);
36. December 10, 2024 Executed Term Sheet (NYSCEF 157³⁸);
37. December 19, 2024 Email (NYSCEF 161³⁹);
38. Stockholder Consent Form (NYSCEF 162⁴⁰);
39. December 31, 2024 Board Consent (Series E) (NYSCEF 163⁴¹);
40. Rivka Friedman Affirmation (NYSCEF 164⁴²);
41. December 6, 2024 Email From Rivka Friedman (NYSCEF 165⁴³);
42. Linda Mintz Affirmation (NYSCEF 166⁴⁴);
43. Tara Comonte Affirmation (NYSCEF 167⁴⁵);
44. Defendants' MOL in Opposition to Preliminary Injunction (NYSCEF 169⁴⁶);

³⁴ A publicly redacted version is filed at NYSCEF 248.

³⁵ A publicly redacted version is filed at NYSCEF 249.

³⁶ A publicly redacted version is filed at NYSCEF 250.

³⁷ A publicly redacted version is filed at NYSCEF 251.

³⁸ A publicly redacted version is filed at NYSCEF 252.

³⁹ A publicly redacted version is filed at NYSCEF 253.

⁴⁰ A publicly redacted version is filed at NYSCEF 254.

⁴¹ A publicly redacted version is filed at NYSCEF 255.

⁴² A publicly redacted version is filed at NYSCEF 256.

⁴³ A publicly redacted version is filed at NYSCEF 257.

⁴⁴ A publicly redacted version is filed at NYSCEF 258.

⁴⁵ A publicly redacted version is filed at NYSCEF 259.

⁴⁶ A publicly redacted version is filed at NYSCEF 260.

45. Defendants' Reply MOL in Support of Motion to Stay (motion sequence 004)
(NYSCEF 176⁴⁷);
46. Defendants' Reply MOL in Support of Motion to Stay (motion sequence 005)
(NYSCEF 177⁴⁸);
47. Gina Bartasi Affirmation (NYSCEF 179⁴⁹);
48. Summary P&L (NYSCEF 180);
49. Board Meeting Minutes (NYSCEF 181⁵⁰);
50. November 17, 2024 Letter (NYSCEF 182⁵¹);
51. Transcript of August 18, 2025 Call (NYSCEF 184⁵²);
52. December 2024 Text Messages (NYSCEF 189⁵³);
53. November 2024 Text Messages (NYSCEF 190⁵⁴);
54. Transcript of Call (NYSCEF 191⁵⁵);
55. November 12, 2024 Memorandum (NYSCEF 193);

⁴⁷ Proposed redactions are filed under seal at 303.

⁴⁸ Proposed redactions are filed under seal at 304.

⁴⁹ A publicly redacted version is filed at NYSCEF 326. Proposed redactions are filed under seal at 312.

⁵⁰ A publicly redacted version is filed at NYSCEF 327. Proposed redactions are filed under seal at 313.

⁵¹ A publicly redacted version is filed at NYSCEF 328. Proposed redactions are filed under seal at 314.

⁵² A publicly redacted version is filed at NYSCEF 329. Proposed redactions are filed under seal at 315.

⁵³ A publicly redacted version is filed at NYSCEF 330. Proposed redactions are filed under seal at 316.

⁵⁴ A publicly redacted version is filed at NYSCEF 331. Proposed redactions are filed under seal at 317.

⁵⁵ A publicly redacted version is filed at NYSCEF 332. Proposed redactions are filed under seal at 318.

56. Transcript of September 19, 2025 Call (NYSCEF 194⁵⁶);
57. November 2024 Email Exchange (NYSCEF 196);
58. November 19, 2024 Email Exchange (NYSCEF 197);
59. September 3, 2024 Email Exchange (NYSCEF 201);
60. November 19, 2024 Email From Linda Mintz (NYSCEF 202);
61. Proposed Resolution (NYSCEF 203);
62. November 10, 2024 Email Exchange (NYSCEF 204);
63. December 31, 2024 Email From Gina Bartasi (NYSCEF 206⁵⁷);
64. September 4, 2024 Term Sheet (NYSCEF 207);
65. August 7, 2024 Term Sheet (NYSCEF 208);
66. Bartasi Reply MOL in Support of Preliminary Relief (NYSCEF 209⁵⁸).

Each of the motions are unopposed.

Legal Standard

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records.” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010] [citations omitted].) The public’s right to access is, however, not absolute, and under certain circumstances, “public inspection of court records has been limited by numerous statutes.” (*Id.* at 349.) For example, § 216.1(a) of the

⁵⁶ A publicly redacted version is filed at NYSCEF 333. Proposed redactions are filed under seal at 319.

⁵⁷ A publicly redacted version is filed at NYSCEF 334. Proposed redactions are filed under seal at 320.

⁵⁸ A publicly redacted version is filed at NYSCEF 335. Proposed redactions are filed under seal at 321.

Uniform Rules for Trial Courts, empowers courts to seal documents only upon a written finding of good cause. It provides:

“Except 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 of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.” (Uniform Rules for Trial Cts [22 NYCRR] § 216.1 [a].)

The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Mosallem*, 76 AD3d at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotation marks and citation omitted].)

Courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Similarly, courts have found good cause to redact documents that “contains board resolutions, minutes of . . . board meetings, and internal discussions about equity acquisitions” because this is “competitive business information” and “can be exploited to the disadvantage of [the company] with no benefit to the public.” (*Continental Industries Group, Inc. v Ustuntas*, 2018 WL 1901982, *2 [Sup Ct, NY County 2018].)

Additionally, courts have recognized a compelling interest in sealing records that contain financial information and that are of minimal public interest. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992]; *D’Amour v Ohrenstein & Brown*, 17 Misc 3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007]

“[d]efendants ought not to be required to make their private financial information public, merely because they have been named as defendants in a lawsuit, where no substantial public interest would be furthered by public access to that information.”.)

The compelling interest in protecting such information also extends to the financial and private information of nonparties to protect such third parties’ privacy rights. (See *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]; *Linkable Networks, Inc. v Mastercard Inc.*, 81 Misc 3d 1235[A], *7, 2024 NY Slip Op 50077[U], *3 [Sup Ct, NY County 2023] [“the private financial information of a nonparty should be protected”]; see also *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2013 NY Slip Op 30184[U], *12 [Sup Ct, NY County 2013] [“[w]hile there may be a public interest in the disclosure of these documents, this interest is more in the nature of curiosity, since these documents do not concern entities at issue in this case.” (citation omitted)].)

Wholesale sealing of documents is generally disfavored. (See *Applehead Pictures LLC v Perelman*, 80 AD3d 181, 192 [1st Dept 2010] [citation omitted].) The law requires that “any order denying access must be narrowly tailored to serve compelling objectives.” (*Danco Lab, Ltd.*, 274 AD2d at 6.) Accordingly, where parties fail “to propose and justify targeted redactions that satisfy the requirements of 22 NYCRR § 216 [a] and applicable case law,” the sealing motion will be denied. (*Intl. Bus. Machs. Corp. v GlobalFoundries U.S. Inc.*, 2023 NY Slip Op 30203[U], *3 [Sup Ct, NY County 2023] [internal quotation marks and citation omitted]; see also *Danco*, 274 AD2d at 8 [holding that the “failure to target precise areas where redaction should occur violated section 216.1(a)”].)

Discussion

Memoranda of Law: NYSCEF 9, 46, 61, 74, 169, 176, 177, and 209

Defendants seek to seal/redact the memoranda of law filed in this action at NYSCEF 9, 46, 61, 74, 169, 176, 177, and 209. (See NYSCEF 25, OSC [mot. seq. no. 001] ¶ 1; NYSCEF 76, OSC [mot. seq. no. 006] ¶¶ 1(iii), 2; NYSCEF 118, OSC [mot. seq. no. 007] ¶ 2; NYSCEF 306, OSC [mot. seq. no. 008] ¶ 2; NYSCEF 309, OSC [mot. seq. no. 009] ¶ 2; NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2.) Specifically, defendants argue that these memoranda contain (i) confidential and sensitive business information about nonparty Kindbody Inc.'s (Kindbody) valuation, financial state, and internal affairs and board proceedings and (ii) commercially sensitive information about defendant KBI Services Inc.'s (KBI) financial value and planned transactions. (See NYSCEF 23, Sealing Chart [mot. seq. no. 001]; NYSCEF 73, Sealing Chart [mot. seq. no. 006]; NYSCEF 85, Sealing Chart [mot. seq. no. 007]; NYSCEF 224, Sealing Chart [mot. seq. no. 008]; NYSCEF 300, Sealing Chart [mot. seq. no. 009]; NYSCEF 325, Sealing Chart [mot. seq. no. 010].) The proposed redactions are warranted to protect Kindbody and KBI from competitive harm, especially since there is no public interest in these memoranda. (See *Mosallem*, 76 AD3d at 350-351; *Mancheski*, 39 AD3d at 502.) Accordingly, NYSCEF 9, 46, 61, 169, 176⁵⁹, 177⁶⁰, and 209 shall remain sealed.

Further, defendants seek to seal the MOL filed at NYSCEF 74. (See NYSCEF 76, OSC [mot. seq. no. 006] ¶¶ 1(iii).) Defendants fail to allege good cause for sealing. In fact, neither the attached sealing chart nor the MOL include any argument for why the

⁵⁹ Defendants must file a publicly redacted version of NYSCEF 176.

⁶⁰ Defendants must file a publicly redacted version of NYSCEF 177.

information contained in NYSCEF 74 warrants sealings. Accordingly, NYSCEF 74 shall be unsealed.

Kindbody's Board Meeting Decks, Minutes, and Resolutions: NYSCEF 11, 53, 126, 139, 142, 162, 163, 180, 181, and 203

Further, defendants seek to seal/redact Kindbody's board meeting decks, minutes, and resolutions filed at NYSCEF 11, 53, 126, 139, 142, 163, 180, 181, and 203. (See NYSCEF 25, OSC [mot. seq. no. 001] ¶ 2; NYSCEF 118, OSC [mot. seq. no. 007] ¶ 3; NYSCEF 306, OSC [mot. seq. no. 008] ¶¶ 1-2; NYSCEF 339, OSC [mot. seq. no. 010] ¶¶ 1-2.) Defendants argue that these documents contain confidential financial information, details about non-public transactions, and descriptions of business strategy that risks competitive harm to Kindbody and its shareholders if disclosed. (See NYSCEF 11, Sealing Chart [mot. seq. no. 001]; NYSCEF 85, Sealing Chart [mot. seq. no. 007]; NYSCEF 224, Sealing Chart [mot. seq. no. 008]; NYSCEF 325, Sealing Chart [mot. seq. no. 010].) As to NYSCEF 11 and 53, defendants' proposed redactions are not narrowly tailored, and therefore, fails to meet the requirements of 22 NYCRR § 216 and applicable case law. (See *Intl. Bus. Machs. Corp.*, 2023 NY Slip Op 30203[U] at *3; *Danco Lab, Ltd.*, 274 AD2d at 6.) Rather, defendants must propose more targeted redactions and justify how they serve compelling objectives.

To the extent the highlighted portions of NYSCEF 126 and 203 are defendants' proposed redactions, these satisfy the requirements of 22 NYCRR § 216 and applicable case law. (See *Intl. Bus. Machs. Corp.*, 2023 NY Slip Op 30203[U] at *3; *Danco Lab, Ltd.*, 274 AD2d at 6.) Similarly, sealing of the meeting decks filed at NYSCEF 139, 142, and 180 is warranted because these decks exclusively contain charts and graphs with financial information about Kindbody. (See *Mancheski*, 39 AD3d at 502.) Redacting the

board meeting minutes filed at NYSCEF 181 is also warranted to protect Kindbody from competitive harm. (See *Mosallem*, 76 AD3d at 350-351; *Continental Industries Group*, 2018 WL 1901982 at *2.) Accordingly, NYSCEF 126⁶¹, 139, 142, 163, 180, 181, and 203⁶² shall remain sealed.

Agreements: NYSCEF 13, 15, 17, 50, 51, 52, 54, 120, 122, and 125

Further, defendants seek to seal the agreements filed at NYSCEF 13, 15, 17, 50, 51, 52, 54, 120, 122, and 125. (See NYSCEF 25, OSC [mot. seq. no. 001] ¶ 1; NYSCEF 118, OSC [mot. seq. no. 007] ¶ 1; NYSCEF 306, OSC [mot. seq. no. 008] ¶ 1.) Wholesale sealing of these agreements is not warranted. (See *Applehead Pictures*, 80 AD3d at 192.) The agreements are replete with terms that, on their face, are not business sensitive. Defendants fail to establish good cause to seal such non-business sensitive information.

The fact that some of the agreements contain a confidentiality provision does not alter the analysis. First, the parties' "designation of the materials as confidential . . . is not controlling on the court's determination whether there is good cause to seal." (*Eusini v Pioneer Elecs. (USA), Inc.*, 29 AD3d 623, 626 [2d Dept 2006]; see also *In re Will of Hofmann*, 284 AD2d 92, 93-94 [1st Dept 2001] ["[c]onfidentiality is clearly the exception, not the rule, and the court is always required to make an independent determination of good cause."].) Second, "a party's reliance on the parties' confidentiality provision is insufficient to support sealing of a document." (*Abad v iAero Group Holdco 2 LLC*, 2022 NY Slip Op 32982[U], *4 [Sup Ct, NY County 2022]; see

⁶¹ Defendants must file a publicly redacted version of NYSCEF 126.

⁶² Defendants must file a publicly redacted version of NYSCEF 203.

also *Employees Retirement Sys. for the City of Providence v Rohner*, 2025 NY Slip Op 31327[U], *11 [Sup Ct, NY County 2025] “[a] confidentiality agreement entered for purposes of exchanging information does not constitute good cause to seal . . . it demonstrates the steps taken to protect confidential information and can lend support to an argument for redacting.”.) Because the law does not generally recognize good cause for sealing documents, even when they are subject to a confidentiality provision, and defendants have not proposed any redactions nor explained why these documents fall into an exception, defendants have failed to establish good cause to seal NYSCEF 13, 15, 17, 50, 51, 52, 54, 120, 122, and 125.

Notice of Default and Forbearance: NYSCEF 16, 127 and 129

Further, defendants seek to seal the Notice of Default and the Notice of Forbearance filed at NYSCEF 16, 127, and 129. (See NYSCEF 25, OSC [mot. seq. no. 001] ¶ 1; NYSCEF 306, OSC [mot. seq. no. 008] ¶ 1.) Wholesale sealing of the Notice of Default filed at NYSCEF 16 and 127 is not warranted because the notice contains information that is neither confidential, not business sensitive. (See *Applehead Pictures*, 80 AD3d at 192.) Though defendants propose redactions to the Notice of Forbearance filed at NYSCEF 129, these redactions are not narrowly tailored, and therefore, also fail to meet the requirements of 22 NYCRR § 216 and applicable case law. (See *Intl. Bus. Machs. Corp.*, 2023 NY Slip Op 30203[U] at *3; *Danco Lab, Ltd.*, 274 AD2d at 6.) Accordingly, defendants shall propose and justify narrowly tailored and targeted redactions that serve compelling objectives.

Affirmations: NYSCEF 40, 119, 130, 138, 164, 166, 167, and 179

Further, defendants seek to redact the affirmations filed at NYSCEF 40, 119, 130, 138, 164, 166, 167, and 179. (See NYSCEF 76, OSC [mot. seq. no. 006] ¶ 1(ii); NYSCEF 306, OSC [mot. seq. no. 008] ¶ 2; NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2.) Defendants argue that these affirmations contain (i) commercially sensitive information about defendant KBI that if disclosed would harm KBI's operations and clients, and (ii) confidential details about Kindbody's financial standing that risks competitive harm to Kindbody and its shareholders if disclosed. (See NYSCEF 73, Sealing Chart [mot. seq. no. 006]; NYSCEF 224, Sealing Chart [mot. seq. no. 008]; NYSCEF 325, Sealing Chart [mot. seq. no. 010].) The proposed redactions are warranted to protect KBI and Kindbody from competitive harm, especially since there is no public interest in these documents. (See *Mosallem*, 76 AD3d at 350-351; *Mancheski*, 39 AD3d at 502.) Therefore, NYSCEF 40, 119, 130, 138, 164, 166, 167, and 179 shall remain sealed.

Filings in Delaware Action: NYSCEF 49, 56, 57, and 60

Defendants further seek to redact NYSCEF 49, 56, 57, and 60. (See NYSCEF 118, OSC [mot. seq. no. 006] ¶ 2.) Specifically, defendants seek redactions that mirror the redactions made to these filings in the related Delaware action because disclosure of such information risks competitive harm to nonparty Kindbody. (See NYSCEF 85, Proposed Sealing Chart.) Here, the proposed redactions are warranted to protect nonparty Kindbody's private financial information and to ensure they do not suffer competitive harm, especially since there is no public interest in these documents. (See

Mosallem, 76 AD3d at 350-351.) Therefore, NYSCEF 49, 56, 57, and 60 shall remain sealed.

Sealing Chart: NYSCEF 73

Further, defendants seek to seal the Sealing Chart filed at NYSCEF 73. (See NYSCEF 76, OSC [mot. seq. no. 006] ¶ 1(iii).) Defendants fail to assert good cause for the sealing. In fact, neither the sealing chart nor the MOL include any argument for why the information contained in NYSCEF 73 warrants sealings. Accordingly, NYSCEF 73 shall be unsealed.

Emails: NYSCEF 123, 124, 128, 134, 135, 136, 137, 140, 141, 143, 146, 147, 148, 149, 150, 151, 152, 153, 155, 161, 165, and 206

Further, defendants seek to redact emails filed at NYSCEF 123, 124, 128, 134, 135, 136, 137, 140, 141, 143, 146, 147, 148, 149, 150, 151, 152, 153, 155, 161, 165, and 206. (See NYSCEF 306, OSC [mot. seq. no. 008] ¶ 2; NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2.) Defendants argue that the redactions are warranted because the emails contain (i) confidential business strategies, (ii) details about the internal affairs of a non-public company, (iii) personally identifying information of defendants and non-parties, and (iv) confidential information about Kindbody's financial state, that if made publicly available, risks harm to Kindbody and its shareholders' competitive and strategic advantage. (See NYSCEF 224, Sealing Chart [mot. seq. no. 008]; NYSCEF 325, Sealing Chart [mot. seq. no. 010].) The proposed redactions are narrowly tailored to serve these compelling interests. (See *Mosallem*, 76 AD3d at 350-351; *Mancheski*, 39 AD3d at 502.) Accordingly, NYSCEF 123, 124, 128, 134, 135, 136, 137, 140, 141, 143, 146, 147, 148, 149, 150, 151, 152, 153, 155, 161, 165, and 206 shall remain sealed.

Defendants also request in the OSC to file publicly redacted versions of the emails filed at NYSCEF 196, 197, 201, 202, and 204. (NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2.) However, defendants have filed neither proposed redactions, nor publicly available redacted versions of the emails. Wholesale sealing of these emails is not warranted as they contain information that is neither private, confidential, or business sensitive. (See *Applehead Pictures*, 80 AD3d at 192.) Accordingly, defendants will need to propose and justify narrowly tailored and targeted redactions. (See *Danco Lab, Ltd.*, 274 AD2d at 6; *Intl. Bus. Machs. Corp.*, 2023 NY Slip Op 30203[U] at *3.)

Term Sheets: NYSCEF 132, 145, 154, 157, 207, and 208

Further, defendants seek to seal/redact the term sheets filed at NYSCEF 132, 145, 154, 157, 207 and 208. (See NYSCEF 306, OSC [mot. seq. no. 008] ¶ 2; NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2.) Defendants argue that the terms sheet contain sensitive details regarding Kindbody's valuation, which risks competitive harm to Kindbody and its shareholders, if made publicly available. (See NYSCEF 224, Sealing Chart [mot. seq. no. 008]; NYSCEF 325, Sealing Chart [mot. seq. no. 010].) The proposed redactions of NYSCEF 132, 145, 154, and 157 are narrowly tailored to protect Kindbody and its shareholders from competitive harm. (See *Mosalle*, 76 AD3d at 350-351; *Mancheski*, 39 AD3d at 502.) Accordingly, NYSCEF 132, 145, 154, and 157 shall remain sealed.

While defendants request in the OSC to file publicly redacted versions of the term sheets filed at NYSCEF 207 and 208 (NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2), neither proposed redactions, nor publicly available redacted versions of the term sheets have been filed in NYSCEF. Wholesale sealing of the term sheets filed at NYSCEF 207

and 208 is not warranted. (See *Applehead Pictures*, 80 AD3d at 192.) The narrowly tailored redactions of the other term sheets, which contain similar, if not identical terms, reveal that many of the terms contained in NYSCEF 207 and 208 are neither confidential nor business sensitive. Accordingly, defendants shall submit proposed redactions. (See *Danco Lab, Ltd.*, 274 AD2d at 6; *Intl. Bus. Machs. Corp.*, 2023 NY Slip Op 30203[U] at *3.)

Non-Binding Indication of Interest Memorandum: NYSCEF 133 and 193

Defendants seek to redact the non-binding indication of interest memorandum filed at NYSCEF 133 and 193. (See NYSCEF 306, OSC [mot. seq. no. 008] ¶ 2; NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2.) Defendants argue that the memorandum contains confidential proposed transaction terms that could cause competitive harm to Kindbody and its shareholders if made publicly available. (See NYSCEF 224, Sealing Chart [mot. seq. no. 008]; NYSCEF 325, Sealing Chart [mot. seq. no. 010].) The proposed redactions are warranted to protect Kindbody and its shareholders against competitive harm. (See *Mosallem*, 76 AD3d at 350-351.) Accordingly, NYSCEF 133 and 193⁶³ shall remain sealed.

Kindbody Letters: NYSCEF 156 and 182

Defendants seek to seal/redact the letters filed at NYSCEF 156 and 182. (See NYSCEF 306, OSC [mot. seq. no. 008] ¶ 1; NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2.) Defendants argue that the executed side letter filed at NYSCEF 156 contains confidential business strategy, whereas the letter to the board filed at NYSCEF 182 contains confidential details regarding Kindbody's value and term sheets, and public

⁶³ Defendants are directed to file a publicly redacted version of NYSCEF 193.

disclosure of either poses a risk of competitive business harm. (See NYSCEF 224, Sealing Chart [mot. seq. no. 008]; NYSCEF 325, Sealing Chart [mot. seq. no. 010].) Defendants sufficiently demonstrate a compelling interest in sealing/redacting NYSCEF 156 and 182. (See *Mosallem*, 76 AD3d at 350-351; *Dawson*, 184 AD2d at 247 [“permitted sealing where defendants demonstrated an interest “in keeping their financial arrangements private.”].) Accordingly, NYSCEF 156 and 182 shall remain sealed.

Transcribed Calls and Text Messages: NYSCEF 184, 189, 190, 191, and 194

Finally, defendants seek to redact the transcribed phone calls and text messages filed at NYSCEF 184, 189, 190, 191, and 194. (See NYSCEF 339, OSC [mot. seq. no. 010] ¶ 2.) Specifically, defendants argue that the phone calls and text messages contain confidential details about Kindbody’s (i) value, (ii) financial state, and (iii) internal affairs and board proceedings, which, if made publicly available, risk competitive harm to Kindbody and its shareholders. (See NYSCEF 325, Sealing Chart [mot. seq. no. 010].) Defendants’ proposed redactions are warranted to protect Kindbody and its shareholders from competitive harm. (See *Mosallem*, 76 AD3d at 350-351; *Mancheski*, 39 AD3d at 502.) Therefore, NYSCEF 184, 189, 190, 191, and 194 shall remain under seal.

Accordingly, it is

ORDERED that motion sequence 001 is granted in part as to NYSCEF 9, and denied in part as to NYSCEF 11, 13, 15, 16, and 17; and it is further

ORDERED that motion sequence 006 is granted in part as to NYSCEF 40 and 46, and denied in part as to NYSCEF 73, and 74; and it is further

ORDERED that motion sequence 007 is granted in part as to NYSCEF 49, 56, 57, 60, 61, and denied in part as to NYSCEF 50, 51, 52, 53, 54; and it is further

ORDERED that motion sequence 008, 009, and 010 are granted in part as to NYSCEF 119, 123, 124, 126, 128, 130, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 161, 163, 164, 165, 166, 167, 169, 176, 177, 179, 180, 181, 182, 184, 189, 190, 191, 193, 194, 203, 206, and 209, and denied in part as to NYSCEF 120, 122, 125, 127, 129, 196, 197, 201, 202, 204, 207, and 208; and it is further

ORDERED that the County Clerk, upon service of this order, is directed to seal NYSCEF 9, 22, 40, 46, 49, 56, 57, 60, 61, 71, 72, 91, 92, 93, 94, 95, 119, 123, 124, 126, 128, 130, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 161, 163, 164, 165, 166, 167, 169, 176, 177, 179, 180, 181, 182, 184, 189, 190, 191, 193, 194, 203, 206, 209, 303, 304, 313, 314, 316, 317, 318, 319, 320, and 321; and it is further

ORDERED that 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 this 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 the County Clerk is directed to unseal NYSCEF 73 and 74; and it is further

ORDERED that movant shall serve a copy of this order on the County Clerk in accordance with the procedures set forth in the Protocol on Courthouse County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); 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

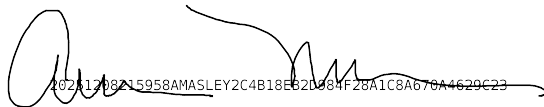
ORDERED that this order does not authorize sealing or redacting for the purposes of trial or other court proceedings on the record, e.g. arguments on motions; and it is further

ORDERED that leave is granted to refile an application within 10 days of the date of this decision to seal portions of documents that contain private, financial, or competitive business information; if further application is not timely made, NYSCEF 11, 13, 15, 16, 17, 50, 51, 52, 53, 54, 120, 122, 125, 127, 129, 196, 197, 201, 202, 204, 207 and 208 will be unsealed. Perceptive shall comply with Part 48 procedures in this regard and any application shall also be accompanied by an affidavit from a person with knowledge explaining why portions of certain documents should be redacted⁶⁴; and it is further

ORDERED that the TROs continue until further order of the court. (NYSCEF 25, OSC [mot. seq. no. 001]; NYSCEF 76, OSC [mot. seq. no. 006]; NYSCEF 118, OSC

⁶⁴ Counsels’ affirmations are insufficient. (See *generally* NYSCEF 20, Sadinsky aff; NYSCEF 70, Foley aff; NYSCEF 84, O’Keefe aff; NYSCEF 223, Baines aff; NYSCEF 299, O’Keefe aff; NYSCEF 324, Foley aff.)

[mot. seq. no. 007]; NYSCEF 306, OSC [mot. seq. no. 008]; NYSCEF 309, OSC [mot. seq. no. 009]; NYSCEF 339, OSC [mot. seq. no. 010].)



12/8/2025

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE