

IN THE UNITED STATES COURT DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,
STATE OF MINNESOTA, *et al.*,

Plaintiffs,

v.

AGRI STATS, INC.,

Defendant.

Case No. 0:23-cv-03009-JRT-JFD

**MEMORANDUM IN SUPPORT OF FARMSTAND’S MOTION FOR
FURTHER CONSIDERATION**

FarmSTAND—a nonprofit focused on industrial animal agriculture which would access and review sealed documents in this case if it were able to do so—respectfully moves this Court to further consider its orders granting the parties’ three most recent joint motions regarding continued sealing.

The Local Rules and this Court’s caselaw make clear that a document’s confidential status under a protective order is insufficient as a matter of law to justify sealing. Yet that is the only rationale the parties provided for sealing a large swathe of documents in their three most recent joint motions (relating to cross motions to exclude expert testimony and Agri Stats’s motion for summary judgment). Their proffered reasons for sealing cannot overcome the presumption of public access to judicial records, particularly in a case of such intense public interest and importance. Therefore, this Court should further consider its orders granting sealing and unseal the documents in question.

I. FarmSTAND's Interest In This Case

FarmSTAND is the only legal advocacy organization in the country dedicated solely to taking on all industrial animal agriculture. *See* O'Shea Decl., ¶ 3, filed herewith. One way FarmSTAND does this is by gathering and publicizing information about the activities of large corporations which dominate the meat industry. *See id.*, ¶¶ 4–7. For example, FarmSTAND has created a webpage to publicize documents unsealed in litigation against Hormel Foods Corporation concerning Hormel's alleged misbranding of its "Natural Choice" line of meats. *See id.*, ¶ 7; *see also Deep Dive: Hormel*, FarmSTAND, <https://perma.cc/EF49-88QQ> (last visited Feb. 23, 2026).

FarmSTAND believes in the importance of judicial transparency and regularly uses publicly available information from judicial records in its work. *See* O'Shea Decl., ¶ 6. FarmSTAND is particularly interested in the present case because the alleged wrongdoing is directly related to FarmSTAND's mission to address undue corporate power in the agricultural system. *Id.*, ¶¶ 10–11. Indeed, FarmSTAND regularly advocates for the government and private counsel to employ antitrust and related laws against meat companies' wrongdoing. If FarmSTAND had access to the judicial records at issue in this motion, it would review them and, if appropriate, employ those documents in its work and publicize the documents via social media and other means of communicating with the general public. *Id.* ¶ 12.¹

¹ Under Local Rule 5.6, a person need neither intervene nor be a party to file a motion for further consideration. *See* LR 5.6, advisory committee note to 2017 adoption ("The nonparty may file such a motion without intervening in the case under Fed. R. Civ. P. 24."). Thus, FarmSTAND does not believe it needs to establish Article III standing at

II. Procedural History

A. This Court Rejects Defendant's Effort to Seal the Complaint

The United States brought this case against Agri Stats, Inc. on September 28, 2023. *See* Compl., Dkt. No. 1.² Agri Stats quickly moved for an order requiring the United States “to withdraw the Complaint in this action from the public docket, refile it under seal, and meet and confer with Agri Stats regarding appropriate redactions for a version to be filed on the public docket.” *See* Def.’s Mot. to Seal Compl., at 1, Dkt. No. 17.

This Court denied Agri Stats’s motion to seal. *See* Order Den. Mot. to Seal Compl., Dkt. No. 29. Relying on both the text of the Amended Antitrust Civil Process Act and “the proposition that there is a common-law right of access to judicial records so the public can ‘keep a watchful eye on the workings of public agencies,’” this Court explained that the “presumption of public access is ‘at its apex’ when the government is a party to the litigation” and “is also heightened for documents that are central to the case, such as complaints, answers, and dispositive motion paperwork.” *Id.* at 5 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). This Court further held that “Agri Stats’ Motion is conclusory,” because it “state[d] only that ‘continued public disclosure

this stage. However, if standing were necessary, FarmSTAND would have Article III standing because it seeks to access judicial records for its own use and has a concrete plan to review those records. *See* O’ Shea Decl., ¶ 12; *Reps. Comm. for Freedom of the Press v. United States*, 94 F.4th 746, 751 (8th Cir. 2024).

² Various states later joined the United States as plaintiffs. *See* Second Am. Compl., Dkt. No. 50. FarmSTAND refers to the United States and the state plaintiffs collectively as “Plaintiffs.”

of such confidential business information will cause commercial and competitive harm to Agri Stats,” but provided “[n]o details.” *Id.* (quoting Def.’s Mot. to Seal Compl., ¶ 14) (alteration omitted).

B. Pursuant to Local Rule 5.6 and the Amended Protective Order, the Parties File Joint Motions Regarding Continued Sealing

The parties entered an Amended Stipulated Protective Order on November 18, 2024. *See* Am. Stip. Protective Order, Dkt. No. 162.³ The Protective Order provides, in relevant part:

2. “Confidential Information” means the portions of any Litigation Materials or Pre-Protective Order Materials that contain confidential or proprietary business, personal, product or financial content belonging to the producing party, trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G). . . .

6. “Highly Confidential Information” means any Confidential Information the disclosure of which the Protected Person reasonably believes would cause substantial injury to the Protected Person’s current commercial or financial interests, including current trade secrets; current margin, cost, or pricing information; current non-public contract terms and sales, marketing, and negotiation strategies; projections or plans regarding performance, budgets, production, output, sales, marketing or distribution practices; proprietary software, systems, or processes; and forward-looking financial, marketing, or strategic business planning information, which, if disclosed, could cause current competitive harm or reasonably threaten any party’s current commercial interests. . . .

44. Court Filings. The parties will follow all applicable Federal and Local Rules, including Local Rule 5.6, when filing with the Court materials containing Confidential Information or Highly Confidential Information. Filing a Protected Person’s Confidential Information or Highly Confidential Information under seal does not constitute agreement by the filing Party that

³ The parties entered into their first Stipulated Protective Order on July 1, 2024. *See* Dkt. No. 127. As the two stipulated protective orders do not differ with respect to the paragraphs at issue here, FarmSTAND omits further discussion of the first order in the interest of brevity.

the information is properly designated, and nothing in this paragraph 44 shall be construed to prevent a Party from later challenging the confidentiality designation of information that was previously filed under seal.

Id. at 2, 18.

Pursuant to Local Rule 5.6, the parties have filed twelve Joint Motions Regarding Continued Sealing. The following table summarizes the date and general subject matter of the documents at issue in each joint motion:

ECF No. of Joint Motion	Date Filed	General Subject Matter	Primary Filings at Issue
ECF No. 76	Jan. 3, 2024	Exhibits to Pls.' opposition to Agri Stats's motion to transfer venue	ECF Nos. 68, 69, 70, 71, 72, 73
ECF No. 96	Mar. 1, 2024	Pls.' opposition to Agri Stats's motion to dismiss and exhibits thereto	ECF Nos. 86, 87, 90.
ECF No. 163	Nov. 20, 2024	Pls.' memorandum in support of its motion to compel and exhibits thereto, and Agri Stats's opposition and exhibits thereto	ECF Nos. 143, 144, 146, 151, 152, 154
ECF No. 223	Feb. 20, 2025	Exhibits to Agri Stats's motion to compel and Pls.' opposition and exhibits thereto	ECF Nos. 191, 200, 203
ECF No. 312	Mar. 24, 2025	Exhibit to Agri Stats's opposition to Pls.' motion to compel depositions of company officials.	ECF No. 257
ECF No. 325	Apr. 1, 2025	Exhibits to third-party Hormel's motion to quash a third-party subpoena and Pls.' opposition to motion to quash and exhibits thereto	ECF Nos. 242, 288, 289, 291
ECF No. 326	Apr. 1, 2025	Exhibit to third-party Todd Fawver's motion to quash a third-party subpoena and Pls.' opposition to motion to quash and exhibits thereto	ECF Nos. 269, 288, 289, 291

ECF No. 331	Apr. 9, 2025	Exhibit to Pls.' response to Agri Stats's objection to magistrate judge's decision (ECF No. 222) on Agri Stats's motion to compel (ECF No. 182)	ECF No. 305
ECF No. 368	June 30, 2025	Memorandum in support of Agri Stats's motion to recuse, Pls.' opposition, and Agri Stats's reply	ECF Nos. 339, 343, 362, 363, 365, 366
ECF No. 464	Jan. 9, 2026	Memorandum and exhibits in support of Agri Stats's motion to exclude expert testimony, Pls.' opposition and exhibits thereto, and Agri Stats's reply	ECF Nos. 373, 374, 383, 386, 408
ECF No. 465	Jan. 9, 2026	Memorandum and exhibits supporting Agri Stats's motion for summary judgment, Pls.' opposition and exhibits thereto, and Agri Stats's reply and exhibits thereto	ECF Nos. 394, 396, 427, 430, 442, 444
ECF No. 466	Jan. 9, 206	Memorandum and exhibits supporting Pls.' motion to exclude expert testimony, Agri Stats's opposition and exhibits thereto, Pls.' reply	ECF Nos. 402, 404, 423, 425, 440

C. This Court Grants the Three Most Recent Joint Motions Regarding Continued Sealing

On February 9, 2026, this Court entered Minute Orders granting the three most recent joint motions regarding continued sealing.⁴ *See* Dkt. Nos. 474, 475, 476. The first nine joint motions remain pending. The text entries of this Court's February 9 orders read as follows (color and bolding in original):

ECF No. 474	(Text-Only) ORDER granting 464 Joint Motion Regarding Continued Sealing.
-------------	--

⁴ The parties agreed in these three joint motions that Dkt. Nos. 373, 396-2, and 396-33 could be unsealed, and this Court unsealed them. FarmSTAND does not seek further consideration of the unsealing of those three documents.

	Permanent Sealing GRANTED for Document Number(s): 373-1, 373-2, 373-3, 373-4, 373-5, 373-6, 373-7, 373-8, 373-9, 374, 383, 386, 386-1, 386-2, 386-3, 386-4, 386-5, 386-6, 408. Document Number(s) to be UNSEALED: 373. Order on continued sealing becomes final on 3/2/2026 unless further timely submissions are filed. Ordered by Magistrate Judge John F. Docherty on 2/9/2026. (CRD) (Entered: 02/09/2026)
ECF No. 475	(Text-Only) ORDER granting 465 Joint Motion Regarding Continued Sealing. Permanent Sealing GRANTED for Document Number(s): 394, 396, 396-1, 396-3 through 396-32, 396-34 through 396-43, 427, 430, 430-1 through 430-72, 442, 444, 444-1 through 444-4. Document Number(s) to be UNSEALED: 396-2, 396-33. Order on continued sealing becomes final on 3/2/2026 unless further timely submissions are filed. Ordered by Magistrate Judge John F. Docherty on 2/9/2026. (CRD) (Entered: 02/09/2026)
ECF No. 476	(Text-Only) ORDER granting 466 Joint Motion Regarding Continued Sealing. Permanent Sealing GRANTED for Document Number(s): 402, 404, 404-1 through 404-11, 423, 425, 440. Order on continued sealing becomes final on 3/2/2026 unless further timely submissions are filed. Ordered by Magistrate Judge John F. Docherty on 2/9/2026. (CRD) (Entered: 02/09/2026)

This timely Motion for Further Consideration follows.

III. Legal Standards

A. Local Rule 5.6

This Court adopted Local Rule 5.6 “to reduce the amount of information that is sealed in civil cases and to ensure that no information is sealed without the permission of

a judge.” *See* LR 5.6, advisory committee note to 2017 adoption. The rule sets up a four-part process for determining whether a filing should be sealed.

First, Local Rule 5.6(d) provides that when a party “seek[s] to file a document under seal in connection with a motion under LR 7.1 or an objection under LR 72.2,” it “must first file the document under temporary seal,” and “must contemporaneously and publicly file (A) a version of that document with the information described in LR 5.6(c) redacted; or (B) a statement that the entire document is confidential or that redaction is impracticable.” LR 5.6(d). Local Rule 5.6(c), in turn, provides that “[a] party may file a document under temporary seal only if the document contains information that: (1) the filing party contends is confidential or proprietary; (2) has been designated as confidential or proprietary by another party, by a nonparty, or under a non-disclosure agreement or protective order; or (3) is otherwise entitled to protection from disclosure under a statute, rule, order, or other legal authority.” LR 5.6(c).

Second, “[w]ithin 21 days after a final decision on the underlying LR 7.1 motion is filed, including a decision on any appeals or objections pursuant to LR 72.2, the parties must file a completed Joint Motion Regarding Continued Sealing Form.” LR 5.6(d)(4).⁵

Local Rule 5.6 details what the joint motion must contain:

The joint motion must list by docket number each document filed under temporary seal in connection with the underlying motion or objection and, for each such document: (i) briefly describe the document; (ii) precisely identify: (a) the information that the parties agree should remain sealed;

⁵ At the time the parties filed the joint motions at issue here, the local rules required them to do so 21 days after the final filing in connection with a motion under LR 7.1 or an objection under LR 72.2. *See* LR 5.6, advisory committee note to Feb. 11, 2026 revision.

(b) the information that the parties agree should be unsealed; and (c) the information about which the parties disagree; (iii) explain why the parties agree that the information should remain sealed or be unsealed or, if the parties disagree, briefly explain each party's position; and (iv) identify any nonparty that has designated the document or information in the document as confidential or proprietary.

LR 5.6(d)(4)(A).

Crucially, a document's confidential status under a protective order *cannot* justify permanent sealing. *See* LR 5.6, advisory committee note to 2017 adoption ("Even if such information is covered by a protective order, that information should not be kept under seal unless a judge determines that a party or nonparty's need for confidentiality outweighs the public's right of access."); *see generally infra* at 12–13, 16.

The magistrate judge will then issue a ruling on the joint motion regarding continued sealing. *See* Loc. Civ. R. 5.6(d)(4)(C).

Third, "a party or nonparty that objects to the [magistrate judge's] order [on the joint motion regarding continued sealing] must file a motion for further consideration under LR 5.6(f)." *Id.* Local Rule 5.6(f) provides in relevant part:

Within 21 days after entry of a magistrate judge's order denying continued sealing in response to a motion under LR 5.6(d)(4) . . . , a party or nonparty may file a motion for further consideration by the magistrate judge. If the motion for further consideration relates to information designated as confidential or proprietary by a person or entity that has not entered an appearance in the case, the movant must contemporaneously provide to the nonparty a copy of the motion and all documents filed in support of the motion. The motion for further consideration is a nondispositive motion governed by LR 7.1(b).

See LR 5.6(f).⁶

“A motion for further consideration by the magistrate judge . . . is not a motion for reconsideration.” LR 5.6, advisory committee note to 2017 adoption. Rather, it is the means by which the local rules facilitate nonparties’ participation in the (un)sealing process.

“Although Local Rule 5.6 does not explicitly set forth a standard of proof which parties must meet in order for the Court to change the prior sealing determinations made in the context of a joint motion regarding continued sealing,” courts in this district apply the sealing analysis *de novo* upon a motion for further consideration. *Adams v. U.S. Bancorp*, No. 22-cv-509-NEB-LIB, 2025 WL 2530888, at *2 (D. Minn. May 5, 2025) (conducting sealing analysis on motion for further consideration anew, without any deference to court’s prior determination); *Ahlgren v. Muller*, No. 19-cv-303-JRT-LIB, 2022 WL 22907917, at *2 (D. Minn. Feb. 2, 2022) (similar); *Inline Packaging, LLC v. Graphic Packaging Int’l, Inc.*, No. 15-cv-3183-ADM-LIB, 2018 WL 10440735, at *2–3 (D. Minn. June 20, 2018) (similar). Because a motion for further consideration provides the first opportunity for nonparties to object to improper sealing, a *de novo* standard of review appropriately ensures nonparties need not fight an uphill battle when they take the first opportunity available to them to advocate for public access to judicial records.

⁶ Although subsection (f) specifies a time to file a motion for further consideration of an “order denying continued sealing,” nothing in Local Rule 5.6 forbids a motion for further consideration of an order granting continued sealing. Indeed, the advisory committee’s notes make clear that a motion for further consideration is the appropriate vehicle for a nonparty “who objects to the unsealing (*or sealing*) of information.” See LR 5.6, advisory committee note to 2017 adoption (emphasis added).

Further, a *de novo* standard advances Local Rule 5.6's purpose of reducing the amount of improperly sealed documents.

Fourth, if a party or nonparty disagrees with a magistrate judge's order on a motion for further consideration, they may file an objection to that order. *See* LR 5.6(g).

B. Sealing of Judicial Records

Common law further details the standards for (un)sealing. U.S. courts “recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Warner Commc'ns*, 435 U.S. at 597 (footnotes omitted). “The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies, and in a newspaper publisher's intention to publish information concerning the operation of government.” *Id.* at 597–98 (citations omitted). Generally speaking, “all documents properly filed by a litigant seeking a judicial decision are judicial records” subject to this common law right of access. *Marden's Ark, Inc. v. UnitedHealth Grp., Inc.*, 534 F. Supp. 3d 1038, 1044 (D. Minn. 2021).

A party seeking sealing bears the burden of overcoming the presumption of public access. *United States v. Gray*, 59 F.4th 329, 333 (8th Cir. 2023) (“There is a common law presumption of public access to judicial records. The presumption is based on the need for the federal courts ‘to have a measure of accountability and for the public to have confidence in the administration of justice.’” (citations omitted) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995))); *Flynt v. Lombardi*, 885 F.3d 508, 511 (8th Cir. 2018); *Schedin v. Ortho-McNeil-Janssen Pharms., Inc.*, No. 08-cv-5734-JRT, 2011

WL 1831597, at *1 (D. Minn. May 12, 2011) (“A party seeking to maintain the confidentiality of documents such as those at issue here must overcome a presumption that favors public access.”).

Nonetheless, the common-law right of access to judicial records “is not absolute, but requires a weighing of competing interests.” *Webster Groves Sch. Dist. v. Pulitzer Pub. Co.*, 898 F.2d 1371, 1376 (8th Cir. 1990). “Whether sealing is warranted, the common-law right of access notwithstanding, turns on ‘the relevant facts and circumstances of the particular case.’” *In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig.*, 9 F.4th 768, 791 (8th Cir. 2021) (quoting *Warner Comm’cns*, 438 U.S. at 599). The decision is largely left to the discretion of the district court, *id.*, which “must consider the degree to which sealing a judicial record would interfere with the interests served by the common-law right of access and balance that interference against the salutary interests served by maintaining confidentiality of the information sought to be sealed,” *IDT Corp. v. eBay*, 709 F.3d 1220, 1223 (8th Cir. 2013). However, in weighing competing interests, “only the most compelling reasons can justify non-disclosure of judicial records.” *In re Neal*, 461 F.3d 1048, 1053 (8th Cir. 2006) (quoting *In re Gitto Global Corp.*, 422 F.3d 1, 6 (1st Cir. 2005)).

Importantly, and as noted above, the parties’ designation of a record as “confidential” under a protective order is insufficient as a matter of law to justify sealing. The Advisory Committee’s notes to Local Rule 5.6 provide that “[e]ven if such information is covered by a protective order, that information should not be kept under seal unless a judge determines that a party or nonparty’s need for confidentiality

outweighs the public’s right of access.” LR 5.6, advisory committee note to 2017 adoption.

This District’s caselaw is replete with holdings to the same effect. *See Marden’s Ark*, 534 F. Supp. 3d at 1040, 1050; *Wright v. Capella Educ. Co.*, No. 18-cv-1062-WMW-ECW, 2021 WL 856912, at *1 (D. Minn. Mar. 8, 2021) (“The fact that a document has been designated as confidential under a protective order alone is not a valid basis to keep the document under seal indefinitely for the purposes of Local Rule 5.6(d), which governs motions for further consideration of sealing in this District.” (citation omitted)); *Tile Shop Holdings, Inc. v. Allied World Nat’l Assurance Co.*, No. 17-cv-776-ADM-TNL, 2019 WL 2136146, at *2 (D. Minn. May 16, 2019); *In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig.*, MDL No. 15-2666-JNE-FLN, 2018 WL 2135016, at *1 (D. Minn. May 9, 2018); *Schedin*, 2011 WL 1831597, at *2 (“[C]ourts have found that a prior protective order is not dispositive as to later access to those documents, in large part since a protective order is based largely on the parties’ representations of the confidential nature of the documents.”).

Finally, if a court determines that at least some material contained in judicial records should remain confidential, it has an obligation to consider the extent to which redaction is a feasible alternative to wholesale sealing. *IDT Corp.*, 709 F.3d at 1225 (remanding for district court to consider possibility of redaction rather than sealing).

IV. Argument

The parties’ three most recent joint motions regarding continued sealing cannot overcome the presumption in favor of public access to judicial records. The only

justification for sealing found in those joint motions is that the subject records are confidential or highly confidential under the Amended Protective Order, or contain information designated as such. But as described *supra*, a document's status under a protective order is not enough to justify sealing. Moreover, the parties never once suggest redaction might be a less-restrictive alternative to sealing, even for documents they quote in other publicly available filings.

Rather than giving the parties a mulligan, this Court should simply unseal the records at issue. The parties bore the burden of demonstrating that sealing was appropriate; they did not do so. Moreover, unsealing will deter similarly inadequate joint motions regarding continued sealing in the future and encourage litigants to get their joint motions right the first time. Additionally, this Court should unseal the documents in question because these parties are sophisticated litigants who have demonstrated in earlier filings in this case that they know they must do more to justify sealing than simply point to a protective order. Finally, the parties may argue that this Court should wait until closer to trial to decide what records to unseal, but that position contradicts this District's caselaw and the process set forth in Local Rule 5.6.

A. The Parties Failed to Overcome the Presumption Against Sealing

The parties in this case have not come close to meeting their burden to justify sealing the records at issue in their three most recent joint motions. Because they have not met their burden, this Court should unseal those records.

The public interest in access to the judicial records in question is especially weighty here. To start, this case involves State and Federal executive branches seeking to

enforce Congress’s antitrust policy through the judicial branch. It thus implicates the public’s interests in the activities of every level and every branch of government, so the public interest in disclosure is—as this Court recognized earlier in this case—“at its apex.” *See* Order, Dkt. No. 29 at 5.

Further, although this case is not a class action, it relates to conduct alleged to have harmed the general public by reducing competition and increasing consumer prices. It is thus analogous to “class action suits where members of the public are involved,” which “further heighten[s]” “[t]he presumptive right of access.” *Nagel v. United Food & Com. Workers Union*, No. 18-cv-1053-WMW-ECW, 2020 WL 6145111, at *2 (D. Minn. Oct. 20, 2020) (citation omitted).

Finally, the records in question relate to the admissibility of expert reports which will likely be central to this Court’s ultimate decision on the merits, as well as Agri Stats’s motion for summary judgment. These filings are not some ancillary dispute; they go to the heart of the case, which further enhances the public’s interest in seeing them. *See Maki v. Fed. Rsrv. Bank of Minneapolis*, No. 22-cv-2887-ECT/JFD, 2025 WL 1573156, at *1 (D. Minn. June 4, 2025) (salience of sealed material to dispositive motions weighs in favor of public access).⁷

⁷ This Court denied the cross-motions to exclude expert testimony and Agri Stats’s motion for summary judgment on February 24, 2026. *See* Dkt. No. 477. To the extent the documents at issue here influenced the Court’s decisions on those motions, that further heightens the public interest in access. *See IDT Corp.*, 709 F.3d at 1223–24 (noting that the importance of a document to a court’s exercise of judicial power increases the public interest in access).

Against these weighty interests in public access, the parties' joint motions regarding continued sealing muster only repetitive, cookie-cutter explanations that all the subject records should be sealed because they either are "Confidential" or "Highly Confidential" under the operative protective order, or they quote or contain material designated as such. *See* Dkt. Nos. 464, 465, 466.

This cannot suffice. As explained above, this Court's caselaw and the advisory committee's notes to Local Rule 5.6 make clear that "[t]he fact that a document has been designated as confidential under a protective order alone is not a valid basis to keep the document under seal indefinitely." *Wright*, 2021 WL 856912, at *1. And rightly so. A confidentiality designation under a protective order is essentially the parties' say-so. To bootstrap the sealing standard to a record's status under a protective order would outsource the courts' vital role in guarding the public interest in transparency to the parties, who are often the ones most vehemently opposed to disclosure. *See Schedin*, 2011 WL 1831597, at *2 ("[C]ourts have found that a prior protective order is not dispositive as to later access to those documents, in large part since a protective order is based largely on the parties' representations of the confidential nature of the documents."). Thus, there is simply no plausible argument that the three most recent joint motions regarding continued sealing could possibly meet the parties' burden to justify keeping the subject records from the public eye.

Additionally, the parties' three most recent joint motions regarding continued sealing do not address the possibility of redaction instead of wholesale sealing. That failure is remarkable for two reasons. First, this Court has an obligation to consider

whether redaction is feasible, *IDT Corp.*, 709 F.3d at 1225, and the parties provide no reason to think that redaction is unfeasible with respect to every page of every document at issue.

Second, parts of at least one document which the parties maintain should be sealed in its entirety are quoted or cited in the public portions of documents filed elsewhere. The public redacted version of Plaintiffs' opposition to Agri Stats's motion for summary judgment cites and quotes Plaintiffs' expert's report. *See, e.g.*, Dkt. No. 428 at 28 (quoting Rysman report).

Presumably, the portions of Dr. Rysman's report that can be quoted or discussed in public filings could be disclosed in a redacted filing. But when that expert report appears on the docket, Plaintiffs assert it should be sealed entirely—not just redacted. *See* Dkt. No. 464 at 3 (asserting Plaintiffs' position that "[t]he expert report should remain under seal because it quotes from and references information marked Confidential or Highly Confidential in accord with the Court's [operative protective order]"). If parts of Dr. Rysman's report are sufficiently anodyne that they can be quoted in public filings, why must the entirety of the report be locked from public view, rather than released in redacted form? The parties provide no answer. That failure provides reason for skepticism of all the parties' substantively identical explanations for indiscriminate sealing.

B. This Court Should Unseal the Records at Issue, Rather than Giving the Litigants Another Chance

The parties may request that if this Court agrees they have not met their burden, they be given another bite at the apple. FarmSTAND urges this Court instead to simply unseal the records at issue.⁸

First, the burden was on the parties to overcome the presumption in favor of public access. Because of this presumption, the question is not whether the documents at issue *could* meet the standard for sealing, but whether the parties *showed* that they did. Obviously, they did not. In the face of that failure, allowing the parties repeated chances to justify sealing would defeat the transparency-enhancing point of assigning them a burden in the first place.

Second, unsealing the records at issue here will send a message to litigants that they cannot provide this Court with slapdash joint motions regarding continued sealing and then fix them if someone happens to point out the inadequacy of their filings. It is the parties' obligation to justify continued sealing in all cases, not just those rare instances in

⁸ Of the 161 documents covered by the parties' three most recent joint motions regarding continued sealing, those motions identified 45 documents which 18 nonparties designated as confidential or proprietary. The nonparties identified in those joint motions are Butterball, Cargill, Case Farms, Farbest, Fieldale, Foster Farms, Hormel, JBS, Koch Foods, Mountaire, Peco Foods, Perdue, Pilgrims, Prestage, Sanderson Farms, Seaboard, Smithfield, and Tyson. Additionally, Plaintiffs have informed FarmSTAND that they believe unsealing the expert reports and depositions could expose several other nonparties' confidential or proprietary information contained within documents that are cited in the expert reports or depositions but are not otherwise in the record. Consistent with Local Rule 5.6(f), FarmSTAND will contemporaneously provide these nonparties copies of the motion for further consideration and associated filings, using contact information provided by Plaintiffs. FarmSTAND would have no objection to allowing these nonparties a reasonable time to file any response to this motion.

which someone with the resources to file a motion like this one challenges their failure to meet their burden. Deterring these litigants and other future litigants from filing similarly perfunctory joint motions regarding continued sealing will reduce the workload on this Court by encouraging litigants to get their joint motions regarding continued sealing right the first time, and would protect the public's interest in access to their judicial system.

Third, this Court should unseal the subject records here because these parties know better. Their earlier joint motions regarding continued sealing feature significantly more detail on what the subject documents are and what harms might arise from their disclosure, even where the parties agree that some or all of a document should remain sealed. Consider this explanation from the second joint motion regarding continued sealing, which is far more fulsome than anything in the three most recent joint motions:

Plaintiffs: The information on pages 5–6 is relevant to the disputed motions. Plaintiffs maintain the presumption of public access should prevail with respect to page 5, but do not take a position as to whether the revenue number in the second to last bullet point should remain redacted. Plaintiffs accept Defendant's representation that page 6 contains forward-looking information and do not object to its continued sealing. With respect to the remainder of the document, Plaintiffs take no position on whether it should remain sealed.

Agri Stats: This document should remain sealed because it outlines detailed information regarding Agri Stats budgeting, prices, profits & losses, and forward-looking business initiatives. The pricing information in the presentation identifies specific prices for individual customers that can remain static for years. Some of the business initiatives discussed throughout the presentation are ongoing and the disclosure of them could harm Agri Stats's ability to complete those initiatives.

Dkt. No. 96 at 9–10.

To be clear, for purposes of this motion, FarmSTAND takes no position as to the adequacy of this or any other justification for sealing in the first nine joint motions

regarding continued sealing. Rather, the contrast between the detail and specificity in these earlier motions and the three joint motions at issue here reveals that the parties are clearly *aware* that the law requires them to do more than point to a protective order. This is not a case in which unsealing records will unfairly harm a naïve litigant who lacked notice of the potential consequences. These are sophisticated parties who have already demonstrated they know that more is required than what they offered here. This Court should not reward the parties' most recent failures by giving them another shot.

Fourth, the plaintiffs have indicated to FarmSTAND that they believe the Court should wait until closer to trial before making unsealing decisions. That argument is unavailing. All the documents at issue are “judicial records” to which the common law presumption of public access attaches. *Marden’s Ark*, 534 F. Supp. 3d at 1044. Indeed, they are records particularly worthy of unsealing because of their connection to important pre-trial motions the public has an interest in understanding, an interest that exists wholly independent of the parties’ decisions regarding what will become trial exhibits. Nothing that occurs in the lead-up to or during trial will change that fact.

Moreover, a proposal to wait for trial would be contrary to Local Rule 5.6(d), which ties the timing of joint motions regarding continued sealing not to trial, but to the court’s decision on the underlying motion or objection. LR 5.6(d)(4). Indeed, a practice of waiting to unseal documents until trial—which can often take years—would result in denials of public access to records for unjustifiably long periods. Simply put, FarmSTAND is aware of no authority which would require or justify waiting for trial to stop violating the public’s right to access judicial records.

V. Conclusion

For the foregoing reasons, FarmSTAND requests this Court grant the motion for further consideration and unseal the records at issue.

Dated this March 2nd, 2026.

Respectfully submitted,

/s/ Nathan Leys

Nathan Leys
(D.C. Bar No. 90018987)
nathan@farmstand.org
David Muraskin
(D.C. Bar No. 1012451)
david@farmstand.org
FarmSTAND
712 H Street NE
Suite 2534
Washington, DC 20002
Tel: (202) 595-8816

Counsel for FarmSTAND

NICHOLS KASTER, PLLP

Anna Prakash, MN Bar No. 0351362
4700 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone (612) 256-3200
Fax (612) 215-6870
aprakash@nka.com

CERTIFICATE OF COMPLIANCE

I, Nathan Leys, certify that the memorandum titled MEMORANDUM IN SUPPORT OF MOTION FOR FURTHER CONSIDERATION complies with the word limits of local rule 7.1(f) and the type-size limit of LR 7.1(h).

I further certify that, in preparation of the above document, I used the following word processing program and version: Microsoft Word for Microsoft Office 365 and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count: 5,654 words.

Dated this March 2nd, 2026.

Respectfully submitted,

/s/ Nathan Leys

Nathan Leys (DC Bar No. 90018987)

FarmSTAND

712 H Street NE

Suite 2534

Washington, DC 20002

(202) 595-8816

Email: nathan@farmstand.org

Counsel for FarmSTAND