

**IN THE CIRCUIT COURT FOR KNOX COUNTY
SIXTH JUDICIAL DISTRICT AT KNOXVILLE**

STATE OF TENNESSEE *ex rel.*)
HERBERT H. SLATERY III,)
ATTORNEY GENERAL and REPORTER,)
)
Plaintiff,)
)
v.)
)
PURDUE PHARMA L.P.,)
a foreign partnership,)
)
Defendant.)

No. 1-173-18
Judge Kristi M. Davis

PURDUE'S MOTION FOR A PROTECTIVE ORDER

Pursuant to Rule 26.03 of the Tennessee Rules of Civil Procedure and this Court's May 15, 2018 Order, Defendant Purdue Pharma L.P. respectfully moves this Court for a protective order to keep certain confidential, proprietary, and trade secret information in the State's Complaint under seal. To be clear, Purdue does not seek a sealing of the entire Complaint. Rather, Purdue only seeks to keep certain sensitive information redacted from any publicly-filed version.

As explained more fully in the accompanying Memorandum (as well as the Affidavit of Keith Darragh), which are incorporated herein, there is good cause to keep under seal Purdue's proprietary business marketing research, Purdue-specific sales and marketing data, and market research. Redacting select portions of the Complaint will have a minimal impact on the public's access to the case in comparison to the harm Purdue will suffer by giving its competitors unfettered access to its proprietary and confidential information.

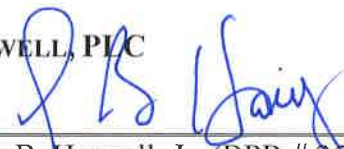
Accordingly, Purdue respectfully requests that this Court enter an Order keeping under seal select portions of the State's Complaint.

Dated: June 6, 2018

Respectfully submitted,

NEAL & HARWELL, PLLC

By:


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CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing has been served by e-mail and first-class mail, postage pre-paid, on the following, this the 6th day of June, 2018:

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HERBERT H. SLATERY III,)
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Plaintiff,)
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v.)
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PURDUE PHARMA L.P.,)
a foreign partnership,)
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Defendant.)

No. 1-173-18
Judge Kristi M. Davis

**PURDUE’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR A PROTECTIVE ORDER**

Purdue Pharma L.P. respectfully submits this Memorandum of Law in Support of its Motion for a Protective Order to seal confidential, proprietary, and trade secret information in the State’s Complaint, pursuant to Tennessee Rule of Civil Procedure 26.03. The State seeks to unseal its Complaint, which contains numerous excerpts from internal documents that Purdue produced to the State in response to the State’s Civil Investigative Demands (“CID”) and that Purdue designated as confidential pursuant to a Confidentiality Agreement with the State. That Confidentiality Agreement provided that the State would maintain the confidentiality of sensitive commercial information that Purdue provided to the State. Instead of filing its Complaint with redactions, or consulting with Purdue in advance to reach an agreement on redactions, the State moved for, and obtained, a temporary seal of the Complaint that would expire if Purdue did not

move for a protective order within ten days.¹ Purdue asked the State if it would agree to an extension of the ten day period, which could have allowed the parties to negotiate and narrow the issues for the Court. The State refused, necessitating this motion. Accordingly, Purdue moves for a protective order pursuant to Rule 26.03 sealing certain portions of the Complaint, as specified below, to protect Purdue's confidential and proprietary commercial information.

FACTUAL BACKGROUND

Before filing this lawsuit, the State served a CID on Purdue requesting certain documents, including call notes,² sales records, and other commercial information. Purdue cooperated with the State and sought and obtained assurances from the Attorney General that the State would maintain the confidentiality of Purdue's commercial information. To this end, the parties signed a Confidentiality Agreement, attached as Exhibit A. Under the agreement, the State agreed to maintain as confidential all documents that contain confidential, proprietary, or trade secret information until the parties agreed otherwise or a court removed the confidentiality protections. In reliance thereon, Purdue produced documents pursuant to the Confidentiality Agreement and marked certain documents as being subject to its protections.

Confidentiality agreements, like protective orders, "serve the vital function of securing the just, speedy, and inexpensive determination of civil disputes by encouraging full disclosure of all evidence that might conceivably be relevant." *S.E.C. v. TheStreet.com*, 273 F.3d 222, 229 (2d Cir. 2001). They "are designed to permit litigants and the courts to examine a party's internal records, which may include . . . valuable business secrets and commercial data, without unnecessarily

¹ Purdue's instant motion is timely. Purdue was served with the Complaint on May 22. Pursuant to Tenn. R. Civ. P. 6.01, which excludes weekends and holidays from the computation of time when the period of time prescribed is less than eleven days, Purdue's deadline is June 6.

² Call notes are short summaries of Purdue sales representatives' visits to health care providers.

exposing them to the public's and competitors' view." *In re Zyprexa Injunction*, 474 F. Supp. 2d 385, 394 (E.D.N.Y. 2007) (Weinstein, J.), *aff'd sub nom. Eli Lilly & Co. v. Gottstein*, 617 F.3d 186 (2d Cir. 2010).³

On May 15, 2018, the State filed a 971-paragraph, 272-page Complaint against Purdue. The State did not attempt to reach any agreement with Purdue about confidentiality issues before filing its Complaint. The Complaint quotes extensively from the confidential and proprietary documents that Purdue was required to produce to the State, such as call notes, revenue and sales data, and details of Purdue's abuse diversion and detection program. Taken together, this information provides minute details of Purdue's sales and marketing efforts, including how frequently its sales representatives visited individual healthcare providers, statewide sales and revenue information, and proprietary marketplace research on which sales tactics proved most effective. *See Darragh Aff.* ¶¶ 6-7, 10.

The law in Tennessee and elsewhere instructs that documents are entitled to be sealed when they contain information that is "confidential in nature," where publicizing the information "would potentially disclose proprietary business information, a trade secret, or other non-public or sensitive commercial or financial information that would not normally be revealed to third parties." *In re NHC–Nashville Fire Litig.*, 293 S.W.3d 547, 561 (Tenn. Ct. App. 2008). Thus, "[d]ocuments falling into categories commonly sealed are those containing trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the

³ "Federal case law interpreting rules similar to our own are persuasive authority for purposes of construing the Tennessee rule." *Harris v. Chern*, 33 S.W.3d 741, 745, n.2 (Tenn. 2000). Fed. R. Civ. P. 26(c), which governs protective orders and is the federal counterpart to Tenn. R. Civ. P. 26.03, is "substantially the same" as Tenn. R. Civ. P. 26.03. *Newsom v. Breon Labs. Inc.*, 709 S.W.2d 559, 560 (Tenn. 1986). Therefore, decisions from federal courts applying Fed. R. Civ. P. 26(c) are persuasive authority.

like.” *Zyprexa*, 474 F. Supp. 2d at 415 (citation omitted). To this end, Rule 26.03 expressly permits the sealing of “trade secret or other confidential research, development, or commercial information.” Purdue’s confidential commercial information qualifies for such protection.

LEGAL STANDARD

Courts have broad discretion to grant, deny, or modify protective orders. *Ballard v. Herzke*, 924 S.W.2d 652, 659 (Tenn. 1996). A court’s “inherent supervisory authority over its own records and files” permits it to protect information from public disclosure “for good cause.” *NHC–Nashville Fire*, 293 S.W.3d at 561. Courts may thus enter protective orders to seal confidential information such as “proprietary business information, a trade secret, or other non-public or sensitive commercial or financial information that would not normally be revealed to third parties.” *Id.*; see Tenn. R. Civ. P. 26.03.

In determining whether to seal court records, courts weight privacy interests against the public’s right to know. *Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 362 n.1 (Tenn. Crim. App. 1998). Privacy interests outweigh the public’s right to know where the information to be sealed is of “little legitimate public interest” or where “disclosure would result in serious embarrassment or other specific harm.” *NHC–Nashville Fire*, 293 S.W.3d at 562-63. In contrast, a motion for a protective order may be denied where “the party benefiting from the protective order is a public entity” or the information to be sealed is of public concern. *Id.* These factors are not weighted in any particular fashion, so that the trial court may “evaluate the competing considerations in light of the facts of each individual case.” *Id.* Although Tennessee courts are public by default, public “access to judicial records is not absolute.” *NHC–Nashville Fire*, 293 S.W.3d at 561 (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “Every court

has supervisory power over its own records and files, and access has been denied where court files might have become vehicles for improper purposes[.]” *Id.*

ARGUMENT

Purdue does not seek a wholesale sealing of the Complaint. Rather, the confidential and proprietary information that is recited in the Complaint can and should be redacted from any publicly-filed version. Purdue seeks a protective order for several categories of information included in the Complaint which together reveal Purdue’s proprietary business and marketing research, as well as Purdue-specific sales and marketing data. Because the Complaint spans nearly 1,000 paragraphs and quotes so extensively from Purdue’s confidential and proprietary business documents, the information Purdue seeks to redact will be discussed in categories (as opposed to a paragraph-by-paragraph basis).

I. SALES, REVENUE, AND OTHER COMMERCIAL INFORMATION

The Complaint is replete with details of Purdue’s sales data, from the number of tablets sold to the revenue generated from individual health care providers. This type of sensitive commercial information merits protection under Tennessee law. Although a party may be compelled to produce confidential commercial information in the course of a government investigation or the discovery process, the law does not require that this information be stripped of its commercial or propriety value via public disclosure in a public court document.

Confidential commercial information may be protected from disclosure for good cause. *Loveall v. Am. Honda Motor Co.*, 694 S.W.2d 937, 939 (Tenn. 1985). Where a party seeks to protect confidential commercial information, “good cause” may be satisfied by showing that “disclosure will result in a clearly defined and very serious injury to the company’s business, or, stated differently, great competitive disadvantage and irreparable harm.” *Id.* (internal citations

omitted). Irreparable harm may be demonstrated by affidavits from company officials. *See id.* at 940. For example, in *Loveall*, the Tennessee Supreme Court upheld entry of a protective order for commercial information that was “highly confidential,” “closely guarded,” had been developed solely by the company seeking the protective order, and “that competitors would benefit greatly from access to [the] information.” *Id.* at 939.

The sales, revenue, and other financial information Purdue seeks to protect merits protection from public disclosure. Pharmaceutical companies “operat[e] in a competitive marketplace.” *Zyprexa*, 474 F. Supp. 2d at 424-25. “In a field as competitive and technical as the pharmaceutical industry, success or failure will turn in large measure on innovation and the members of the industry justifiably hoard their trade secrets as jealously as a miser hoards his gold.” *Serono Labs., Inc. v. Shalala*, 35 F. Supp. 2d 1, 2 (D.D.C. 1999). The detailed and extensive information recited in the Complaint provides “a treasure trove of competitive information,” *Zyprexa*, 474 F. Supp. 2d at 425 (citation omitted), that is both highly confidential and valuable to Purdue’s competitors. *See Darragh Aff.* ¶¶ 6, 9-10. Thus, its disclosure “poses a significant risk of harm” to Purdue. *Id.* at 424-25.

The Complaint contains extensive details of Purdue’s sales, efforts in Tennessee that would be valuable to Purdue’s competitors. For example, paragraphs 144-45 and 894-95 list the total number of tablets and prescriptions for OxyContin sold in Tennessee over a ten-year period, and highlights the percentage of sales stemming from a particular dose. Purdue thus requests that the numbers of tablets, prescriptions, and sales percentages be redacted from these paragraphs.

Similarly, paragraphs 29 and 51 detail the number of sales calls made to providers in Tennessee on an annual basis. Numerous other paragraphs list the number of sales calls made to individual health care providers, sometimes listing out the exact dates of visits during a certain

time period.⁴ Purdue thus requests that the number of visits to providers be redacted in these paragraphs.

Other portions of the Complaint provide similar, granular details on the nuts and bolts of Purdue's sales. For example, paragraphs 133 and 249 break down percentages of Purdue's sales that came from new versus returning patients. Purdue requests that the percentages and sales figures in these paragraphs be redacted. Over a dozen other paragraphs list the number of prescriptions and tablets prescribed by individual health care providers on an annual basis, sometimes including the revenue Purdue generated from these sales.⁵ Purdue requests that the numbers in these paragraphs indicating the number of prescriptions or tablets prescribed by each health care provider be redacted, along with any corresponding revenue figures. Other paragraphs list the number of prescription savings cards given out and redeemed in a sales territory, including the number of prescriptions and tablets redeemed with these cards. Purdue requests that the figures associated with the savings card program be redacted.⁶ The Complaint also includes proprietary information about how the savings card program affects sales.⁷ These paragraphs contain proprietary research about the effectiveness of the savings card program, and Purdue requests that they be redacted in their entirety.

The Complaint also discloses details of Purdue's proprietary marketing practices, including the number of Purdue sales representatives employed in Tennessee, and the total number of sales

⁴ See Compl. ¶¶ 454, 476-77, 510, 527, 541, 578, 610, 621, 630, 637, 655, 661-62, 689, 717, 756, 761, 771, and 777.

⁵ See Compl. ¶¶ 474-75, 533, 545, 560, 575-76, 587, 590, 608-09, 638, 685, 735, 744, 760, 769, 798, 823, 860, 872, and 893.

⁶ See Compl. ¶¶ 534, 536, 643, and 719.

⁷ See Compl. ¶¶ 881-84 and 892.

visits they made statewide.⁸ This information is broken down by year over the course of a decade. *See* Compl. ¶ 51. Purdue requests that the figures, charts, and data in these paragraphs be redacted, specifically: the second sentence of paragraph 13, the last sentence and chart in paragraph 29, all of paragraph 30, the percentage in paragraph 31, and the figures in paragraph 51. The Complaint describes and quotes from proprietary, internal research on what factors impact prescription rates.⁹ This sensitive research should be redacted in its entirety. The Complaint quotes from internal training materials for sales representatives, including an internal strategic sales plan. *See* Compl. ¶¶ 30, 92, 97, 155-56. Information about marketing strategies, including the success of specific tactics, programs, and sales messages, are discussed at length.¹⁰ Purdue requests that quotations from its marketing and training materials in these paragraphs be redacted, along with percentages, revenue information, and sales figures.

Taken together, this information provides Purdue's competitors with an extremely detailed picture of Purdue's marketing efforts in Tennessee. It represents over a decade of investments of time, money, research, and man-hours. *See* Darragh Aff. ¶ 10. This information is closely held within Purdue and is highly valuable to Purdue's competitors. *See* Darragh Aff. ¶¶ 11-12.

Confidential commercial information may be sealed from public view where the privacy interest at stake outweighs the public's right to know. One of the factors courts must consider in balancing these competing considerations is the specific harm that could result from disclosure. *NHC-Nashville Fire*, 293 S.W.3d at 562-63. Here, information about Purdue's sales and marketing efforts for specific products is valuable to Purdue's competitors, in large part because

⁸ *See* Compl. ¶¶ 13, 20, 29-31, 51.

⁹ *See* Compl. ¶ 887.

¹⁰ *See* Compl. ¶¶ 29-32, 45, 97, 155-56, 188, 202, 283-85, 299, 360, 462, 468-69, 879, 887, and 896.

this information is *not generally known* and cannot be purchased, copied, or easily acquired. Although Purdue has voluntarily stopped using sales representatives to promote opioid medications in Tennessee, Purdue continues to sell them and other non-opioid products: they are FDA-approved, on the market, and prescribed by physicians for the care and treatment of their patients in need. As a result, sales strategy information and marketplace intelligence continue to have commercial value. Public disclosure of this information could give Purdue's competitors an advantage. To divulge Purdue's marketing strategies and efforts over the past decade, along with details of Purdue's revenue, prescription data, and a host of other closely-held financial and sales information would permit Purdue's competitors to exploit that information for their own competitive gains at Purdue's expense in the marketplace. Darragh Aff. ¶¶ 8-9, 11.

Countervailing factors do not outweigh this privacy interest. Although this litigation involves issues of public concern, the information Purdue seeks to redact—such as sales figures, the number of visits made to particular providers, and revenue information—is of little interest to the public. Redacting select numbers from the Complaint will have a minimal impact on the public's access to the case. Even where Purdue seeks to redact quotations from internal marketing documents or sales strategies, the impact on the public's access to the case is minimal in comparison to the harm Purdue would suffer by giving its competitors unfettered access to its internal training materials and proprietary research.

This information is valuable to Purdue's competitors because much of the information is not otherwise ascertainable and was obtained or derived at substantial expense by Purdue, including marketplace and business intelligence, strategic plans, and marketing and sales strategies. Darragh Aff. ¶¶ 9-10. Disclosing this information in a public court document would give Purdue's competitors—both those who currently sell similar opioid medications in Tennessee

and elsewhere, as well as those who sell other medications—an unearned advantage in the marketplace, undercutting a decade of Purdue’s market research and sales efforts. Therefore, Purdue respectfully requests that the Court enter a protective order to redact information in the Complaint relating to Purdue’s sales, revenue, marketing efforts, and other sensitive commercial information.

II. CALL NOTES AND ABUSE AND DIVERSION DETECTION PROGRAM NOTES

The Complaint quotes extensively and at length from Purdue sales representatives’ call notes and reports submitted to Purdue’s Abuse and Diversion Detection (“ADD”) program. Purdue’s call notes are trade secrets, which merit protection under Tennessee law. Further, details of Purdue’s ADD program should remain confidential, as disclosure of this information could be misused by those seeking to engage in diversion and avoid detection. Purdue seeks to redact the text of all call notes cited in the Complaint, as well as related ADD reports.¹¹ Purdue also seeks to redact the text or quotes from the following abuse and diversion detection program. These notes reflect confidential, internal notes recorded by sales representatives during on-site visits that merit the same degree of protection as call notes.¹²

Call notes are short summaries of sales representatives’ visits to health care providers. ADD reports are notes about visits to healthcare providers, often written by sales representatives,

¹¹ See Compl. ¶¶ 62-73, 74, 88-92, 103-12, 116-21, 125, 158-67, 169, 176-79, 181-87, 194-200, 203-12, 216-27, 231-35, 238-47, 250, 252-63, 268, 271-80, 292-97, 301-06, 308-12, 314-22, 325, 328-38, 342-42, 346, 350-52, 354-56, 358-59, 368-71, 383-86, 390-98, 406-15, 433-43, 466, 471, 480-83, 485, 487-91, 493, 496-97, 504, 508-09, 511, 513, 515-19, 528, 543, 549, 555, 566, 569, 578, 582, 592, 596, 605-06, 627, 646, 654, 656, 670-71, 680-81, 691-94, 696, 698-99, 702-09, 711, 725-28, 737, 739-40, 752-53, 772, 774, 778-83, 800-03, 816-17, 845, 854, 866, and 891.

¹² See Compl. ¶¶ 458, 472, 495, 500-01, 512, 520, 524-26, 530, 542, 548, 550, 552-54, 579, 581, 584, 647-48, 650-51, 669, 671, 673-75, 723, 731-32, 754, 775, 794, 812, 826, 828, 844, 847, 855, 857, and 861.

which include suspected signs of abuse or diversion detected during sales visits. Both call notes and ADD reports may include summaries of what was discussed with the healthcare provider, any questions the health care provider asked, summaries of the provider's prescription history, notes about the financial health of a practice, or other observations. Taken together, they give a detailed and intimate view of ten years of sales visits to Tennessee health care providers.

Tennessee law recognizes that notes about clients collected during sales visits, such as “customer lists and knowledge of the buying habits and needs of particular clients” may qualify for protection as a trade secret. *Hamilton-Ryker Grp., LLC v. Keymon*, 2010 WL 323057, at *13 (Tenn. Ct. App. Jan. 28, 2010). The summaries of Purdue's sales visits to health care providers provide details of how Purdue's representatives differentiated Purdue's medications from competing opioid medications, how sales representatives addressed common questions and concerns, and the specific messaging strategies they used. Together, this information reflects the sort of confidential commercial information that qualifies as a trade secret under Tennessee law. Customer lists and related information may qualify for protection as a trade secret, taking into account factors such as “the measures taken by the business to guard the secrecy of the information, the value of the information, and the ease with which it could be duplicated or acquired by others.” *Hamilton-Ryker Grp., LLC*, 2010 WL 323057, at *13. Here, each factor weighs in favor of treating this information as a trade secret.

First, Purdue has gone to great lengths to protect this information. Purdue requires all incoming employees to sign confidentiality agreements and maintains a written policy instructing employees on how to treat confidential information. Darragh Aff. ¶ 11. Purdue's Compliance Department conducts annual training on employees' obligations to preserve confidential information and regularly updates key employees on how to maintain the confidentiality of

sensitive and proprietary information. *Id.* Purdue regularly requires confidentiality agreements as a condition of sharing confidential information with external entities. *Id.* In this case, Purdue requested that the State enter into a confidentiality agreement, and the State agreed. *See* Confidentiality Agreement (Ex. A).

Second, details of Purdue's call visits are highly valuable to Purdue's competitors. The notes Purdue seeks to redact include detailed information about Purdue's sales and marketing strategies as well as the content of numerous one-on-one conversations with healthcare providers. Public disclosure would undermine the value of this information that Purdue has taken pains to acquire and maintain. *Darragh Aff.* ¶ 9. In particular, if given access to Purdue's trade secret, proprietary, and confidential information, Purdue's competitors would gain an unfair advantage against Purdue by acquiring information from a public filing that they could not otherwise obtain. *Darragh Aff.* ¶¶ 6-9.

Finally, the Court should consider "the ease with which [the information] could be duplicated or acquired by others." Purdue's call notes were collected at great time and expense over the course of a decade of sales visits in Tennessee. *Darragh Aff.* ¶ 10. As detailed in paragraph 51 of the Complaint, Purdue employed a significant number of full-time sales representatives who visited Tennessee healthcare providers, answered questions about Purdue's prescription medications, and submitted notes on their interactions. This information cannot be duplicated, purchased, or acquired. It is the result of years of training, research, and day-to-day interactions with health care providers.

In sum, the call notes and ADD reports quoted in the Complaint together provide a valuable and detailed summary of ten years of Purdue's work. Tennessee law recognizes that commercial information should not be disclosed to competitors in a public court filing. Protective orders

should be entered where necessary to prevent a company's competitors from profiting "by being able to utilize the work product of the defendants without having invested the time and expense to develop . . . [information] on a competitive level with defendants." *Loveall v. Am. Honda Motor Co.*, 694 S.W.2d at 940. Good cause exists to enter a protective order covering the call notes and ADD reports in the Complaint. Purdue would suffer specific, immediate harm by surrendering its proprietary work product to competitors. Purdue's competitors, in turn, might use this information to undercut Purdue's share of the prescription opioid market in Tennessee. Purdue's confidential documents produced to the State should only be used in the context of the present litigation and not to inflict harm on Purdue in the marketplace.

CONCLUSION

For the foregoing reasons, Purdue respectfully requests that the Court enter a protective order redacting the portions of the Complaint indicated in this Memorandum of Law.

Dated: June 6, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by e-mail and first-class mail, postage pre-paid, on the following, this the 6th day of June, 2018:

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EXHIBIT A

CONFIDENTIALITY AGREEMENT

The purpose of this Confidentiality Agreement ("Agreement") is to respond to the confidentiality concerns raised on behalf of Purdue Pharma L.P., et al. ("Purdue") concerning the handling of materials or information produced by Purdue to the State of Tennessee's Office of the Attorney General and Reporter, Consumer Advocate and Protection Division ("Tennessee" or "Attorney General") pursuant to the Request for Information ("Request"), issued pursuant to Tenn. Code Ann. § 47-18-101 *et seq.* on September 15, 2014, in *In Re Investigation of Purdue Pharma L.P., et al.* The Attorney General and Reporter, by the undersigned Counsel for Tennessee, and Purdue have collectively agreed to the following:

1. Purdue may label materials or information as "Confidential" if they contain confidential, proprietary, or trade secret information. Purdue agrees that it will not designate or mark materials or information as "Confidential" unless Purdue in good faith asserts that the materials or information are proprietary or contain trade secrets and that the material is in fact so treated by Purdue as such at the time of production. The limitations on disclosure of "Confidential" materials or information imposed by this Agreement shall not apply to materials or information that: (a) have been published by Purdue or are otherwise in the public domain; or (b) Tennessee obtains or receives from a source other than Purdue, so long as Tennessee has no reason to believe the source obtained the materials or information improperly. If Purdue inadvertently fails to designate produced materials or information as "Confidential" when they are produced, it may later make such a designation by providing written notification to all parties to whom the material was produced. If Tennessee objects to Purdue's designation of certain materials or information as "Confidential," the parties shall confer in good faith to resolve the objection. The Attorney General's Office shall continue to afford the materials or information in question Confidential treatment until the parties reach a resolution of the objection or a court rules on the issue.
2. If Purdue inadvertently produces materials or information subject to a claim of attorney-client privilege or work-product protection, such production shall not, pursuant to Tenn. R. Evid. 502, operate as a waiver of privilege or protection if the disclosure was inadvertent, Purdue took reasonable steps to prevent disclosure, and Purdue promptly took reasonable steps to rectify the error. If Purdue notifies Tennessee in writing that it inadvertently disclosed privileged information promptly after discovering that error, Tennessee will promptly return or destroy the material. If Tennessee disagrees with Purdue's claim of attorney-client privilege or work-product protection, the parties shall confer in good faith to resolve the disagreement. Tennessee shall continue to treat the produced materials or information as privileged or protected until the parties resolve the disagreement or a court rules on the issue.

3. Tennessee's obligations under this Agreement are subject to the duties of the Attorney General and Reporter pursuant to the applicable public information acts, data practices acts, public records acts, freedom of information acts, similar state laws, or other applicable law, and nothing contained herein shall alter such obligations; provided, however, that Tennessee agrees to comply with Paragraph 5 of this Agreement with respect to any third-party request made by subpoena, court order, a State's data practices act, freedom of information act, public records act, or similar law for "Confidential" materials or information provided by Purdue pursuant to this Agreement.
4. The parties agree that pursuant to Tenn. Code Ann. § 47-18-106(g), no materials or information produced by Purdue in response to this Request, unless otherwise ordered by the court for good cause shown, shall be produced for inspection, copied by, or its contents disclosed to, any person other than an authorized representative of the division or other proper law enforcement official for the purpose of prosecution without Purdue's written consent. The Attorney General may share the materials or information produced by Purdue with proper law enforcement officials, as provided herein, if the proper law enforcement official agrees, in writing, to comply with Tenn. Code Ann. § 47-18-106(g) and this Agreement.
5. In the event Tennessee receives a request, pursuant to a subpoena, court order, a State's data practices act, freedom of information act, public records act, or similar law for Confidential materials or information from any person other than a proper law enforcement official for the purpose of prosecution ("Third-Party Request"), and intends to disclose "Confidential" materials or information pursuant to the Third-Party Request, Tennessee agrees, unless otherwise required by law or court order, to provide Purdue with seven business days advance notice before complying with such Third-Party Request so that Purdue may seek a protective order. Tennessee will take reasonable steps to provide such notice to Purdue's Counsel by electronic mail, as well as by telephone.
6. If the Attorney General's Office decides to disclose materials or information marked "Confidential" by Purdue to the court in a hearing or through materials or information filed with the court in litigation against Purdue or any third party, it will do one of the following:
 - a. resolve any dispute with Purdue regarding the designation of the materials or information as "Confidential"; or
 - b. file the materials or information marked "Confidential" with the court or under seal, or conditionally under seal, redacted as necessary, and provide same-day notice of the filing to Purdue. Following the filing by Tennessee, the confidentiality or non-confidentiality of the materials or information marked "Confidential" attached to or included in the filing will be determined by the terms of a protective order, by other court order, or by the absence of any such

order. If no protective order is entered within 10 days of the filing, the materials or information marked "Confidential" attached to or disclosed in the filing and filed under seal or conditionally under seal will be deemed non-confidential, unless the court orders otherwise; or


- c. notify Purdue at least 10 days in advance that Tennessee intends to file or disclose materials or information marked "Confidential", provided that Tennessee shall not disclose such materials or information marked "Confidential" until either:
 - i. the court rules on Purdue's request for a protective order or in camera treatment in favor of disclosure of the materials or information marked "Confidential"; or
 - ii. the 10-day period of time which the Attorney General provided to Purdue for it to seek such order has expired and Purdue has not sought such order.

- 7. Upon the conclusion of this investigation or subsequent litigation, the Attorney General agrees to maintain the materials or information in a manner consistent with the confidentiality protections afforded by Tenn. Code Ann. § 47-18-106(g) and by the confidentiality obligations set forth herein. The obligations of confidentiality imposed by this statute and this Agreement shall survive the conclusion of this investigation and any litigation (unless modified by the Court in the litigation).

If the above is acceptable, please sign this letter below, return it via facsimile and mail, and retain a copy for your files.


Dated: January 29, 2015

For Purdue Pharma L.P., et al. ("Purdue"):


Sarah G. Reznick
Morgan, Lewis & Bockius
Counsel for Purdue

Dated: January 30, 2015

OFFICE OF THE ATTORNEY GENERAL AND REPORTER
STATE OF TENNESSEE

By: 
Jennifer E. Peacock
Senior Counsel

General”) in connection with a civil investigative demand (“CID”). I further understand that the documents were produced pursuant a Confidentiality Agreement, dated January 2015 and described in Purdue’s Motion for a Protective Order. I understand that the State has used certain excerpts of information in its Complaint taken from documents that Purdue designated as Confidential pursuant to the parties’ Confidentiality Agreements.

5. I have familiarized myself with the categories of documents that the State has excerpted in its Complaint. As a result of my experience at Purdue, I understand the value to Purdue’s competitors of internal Purdue documents, including the excerpts at issue in this case, if they were to be published in a public court document.

6. The excerpts in the Complaint include Purdue confidential commercial information and trade secrets, including information reflecting Purdue’s sales and marketing research, commercial strategies, sales training, internal studies, and information reflecting Purdue’s marketing strategies in action with prescribers.

7. Purdue dedicates a substantial amount of time, money, and resources to research and develop prescription drugs, marketing plans, competitive analyses, market research, and interactions with regulators, health care providers, and others. Purdue recognizes the competitive threats within the pharmaceutical industry and has implemented safety precautions to prevent its confidential information from falling into competitors’ hands.

8. As a result of my experience in the pharmaceutical and life sciences industries, I understand that gathering and analyzing intelligence about competitors in order to increase one’s own competitiveness in the marketplace often requires obtaining information piece by piece, and leveraging newly acquired information against previously gathered data. Gathering more data points about a competitor yields a more complete picture of the competitor. If a competitor gained access to all of the excerpts from confidential Purdue documents in the Complaint, that competitor could gain insight into Purdue’s structure, internal workings, and its marketing and development strategies. If excerpts from Purdue’s internal documents were to be publicly disclosed in the

complaint, every pharmaceutical company in the world, including the direct competitors to Purdue's opioid medications, would gain access to a cache of competitive information.

9. Public disclosure of Purdue's internal documents would result in competitive harm to Purdue and its branded prescription medications.

10. The trade secret, proprietary, and other confidential commercial information described in the paragraphs below is financially and competitively valuable to Purdue, is known only to certain persons within the company, and is the subject of reasonable efforts to maintain its secrecy. For example, Purdue devoted substantial time to developing and refining its commercial strategy and sales training documents, often over many years. The information often required the work of several Purdue departments and sometimes involved hiring of third-party consultants to conduct market and other research that was then incorporated into the documents. Purdue's competitive position relative to other manufacturers in the pharmaceutical industry would be detrimentally affected by the release of this information and the other confidential commercial information described in the paragraphs above into the public record. Specifically:

a. The text of call notes quoted in the following paragraphs should be redacted: 62-73, 74, 88-92, 103-12, 116-21, 125, 158-67, 169, 176-79, 181-87, 194-200, 203-12, 216-27, 231-35, 238-47, 250, 252-63, 268, 271-80, 292-97, 301-06, 308-12, 314-22, 325, 328-38, 342-42, 346, 350-52, 354-56, 358-59, 368-71, 383-86, 390-98, 406-15, 433-43, 466, 471, 480-83, 485, 487-91, 493, 496-97, 504, 508-09, 511, 513, 515-19, 528, 543, 549, 555, 566, 569, 578, 582, 592, 596, 605-06, 627, 646, 654, 656, 670-71, 680-81, 691-94, 696, 698-99, 702-09, 711, 725-28, 737, 739-40, 752-53, 772, 774, 778-83, 800-03, 816-17, 845, 854, 866, and 891. Further, the text of reports to Purdue's Abuse & Diversion Detection program quoted in the following paragraphs should be redacted: 458, 472, 495, 500-01, 512, 520, 524-26, 530, 542, 548, 550, 552-54, 579, 581, 584, 647-48, 650-51, 669, 671, 673-75, 723, 731-32, 754, 775, 794, 812, 826, 828, 844, 847, 855, 857, and 861. The complaint includes over a hundred paragraphs of call notes and ADD reports, quoted word-for-word. Together, these notes and reports provide a detailed picture of which types of providers were visited, when, and what was discussed. They give an indication of how frequently

providers were visited and the specific sales messages Purdue sales representatives tried to promote. These notes provide insights into business strategy information, sales strategy information, and internal Purdue clinical studies and research. These notes summarize years of work conducted by Purdue's sales representatives in the field. Purdue invested significant amounts of time and money to collect this information, and considers each note and report to be trade secret, confidential, and proprietary. This information is closely held within Purdue and is not accessible outside the company, particularly by Purdue's competitors. Releasing this information to Purdue's competitors would give them an unfair strategic advantage, since this information is not otherwise available.

b. Paragraphs 454, 476-77, 510, 527, 541, 578, 610, 621, 630, 637, 655, 661-62, 689, 717, 756, 761, 771, and 777 of the Complaint list the number of sales calls made to individual health care providers, including details such as the exact dates of visits and the total number of visits over a specific time period. Purdue seeks to redact the number of visits from these paragraphs. The frequency of provider visits is trade secret, confidential, and proprietary. Disclosing this information to Purdue's competitors would give them an unfair advantage in the marketplace.

c. Paragraphs 133 and 249 list the percentage of Purdue's sales that stem from new patients as compared to existing patients. Purdue requests that the percentages in these paragraphs be redacted, as this information was collected from internal Purdue sales data and reflects proprietary information that would afford Purdue's competitors an unfair marketplace advantage if disclosed. This information is trade secret, confidential, and proprietary.

d. Paragraphs 474-75, 533, 545, 560, 575-76, 587, 590, 608-09, 638, 685, 735, 744, 760, 769, 798, 823, 860, 872, and 893 list the number of prescriptions and tablets prescribed by individual health care providers on an annual basis. Some of these paragraphs also disclose the revenue Purdue acquired from these sales. Purdue requests that the numbers disclosing the number of tablets and prescriptions be redacted, along with any corresponding revenue figures. This

information is trade secret, confidential, and proprietary. It reflects sales and revenue data that is closely held within Purdue and not generally disclosed to third parties.

e. Paragraphs 534, 536, 643, and 719 disclose details about the number of prescription savings cards redeemed in various territories, along with related information about how much revenue Purdue generated from these sales. Purdue requests that the numbers, percentages, and dollar figures in these paragraphs be redacted. This information is confidential, proprietary, and trade secret. It reflects internal sales data and information about one of Purdue's marketing programs that is closely held and not typically disclosed to third parties.

f. Paragraphs 881, 882, 883, 884, and 892 disclose internal, proprietary research about how the savings card program impacts sales. Purdue requests that these paragraphs be redacted in their entirety. This information was collected from internal Purdue sales data and reflects proprietary information that would afford Purdue's competitors an unfair marketplace advantage if disclosed. This information is trade secret, confidential, and proprietary.

g. Paragraphs 13, 20, 29, 30, 31, and 51 disclose details of Purdue's marketing practices, including the number of sales representatives Purdue employed in Tennessee and the total number of sales visits they made statewide on an annual basis. This information is highly confidential. Purdue would not normally share information on its sales efforts outside of the company, and Purdue's competitors would benefit from learning this information. Purdue requests that the figures, charts, and data in these paragraphs be redacted, specifically: the second sentence of paragraph 13, the last sentence and chart in paragraph 29, all of paragraph 30, the percentage in paragraph 31, the figures in paragraph 51.

h. Paragraph 887 quotes from proprietary, internal research on what factors impact prescription rates. This is recent competitive information that Purdue acquired at significant cost and that, if disclosed, would afford Purdue's competitors an unfair marketplace advantage. This information is trade secret, confidential, and proprietary. Purdue seeks to keep this paragraph redacted in its entirety.

i. Paragraphs 29-32, 45, 97, 155-56, 188, 202, 283-85, 299, 360, 462, 468-69, 879, 887, and 896 disclose details of Purdue's marketing and training materials, including direct quotes from training materials developed and used internally. These paragraphs also disclose sales figures and percentages and revenue figures associated with Purdue's sales and marketing efforts. All of this information is confidential, proprietary, and trade secret, and would grant Purdue's competitors an unfair advantage in the marketplace if publicly disclosed. Accordingly, Purdue requests that the quotations from its marketing and training materials in these paragraphs be redacted, along with percentages, revenue information, and sales figures.

11. Purdue takes significant efforts to maintain the confidentiality of the categories of documents described above, and I am aware of these efforts through the course of my employment at Purdue and have further familiarized myself with these efforts during the course of Purdue's review of the documents. Purdue's efforts to maintain the documents' confidentiality include the following:

a. When an employee joins Purdue, he or she must sign a confidentiality agreement that describes confidential information and how it must be protected.

b. Purdue also provides new employees with an Employee Manual that includes a section on "Data Privacy and Protection of Personal and Confidential Information." That manual makes clear that failure to comply with Purdue's policies relating to personal and confidential information may result in disciplinary action up to and including termination of employment.

c. Purdue maintains a Code of Business Ethics, which includes provisions calling for the protection of confidential and proprietary information. Purdue's Compliance department deploys annual training modules on the Code of Business Ethics, including the provisions regarding confidentiality, that employees are required to complete.

d. The Compliance department also deploys targeted reminders of confidential and proprietary information to certain employees (i) prior to their attending industry conferences, (ii) that handle restricted data sets, and (iii) for certain aspects of sales training.

e. In addition, Purdue's regular practice is to require confidentiality agreements before sharing any confidential information with an external entity, such as a vendor, and Purdue's commercial contracting practices also call for the use of confidentiality provisions.

f. Every Purdue facility employs private security guards and utilizes private security systems. For example, employees and guests must use a company-issued security badge to enter a Purdue facility. Purdue's computer systems are protected by security software. To gain access to Purdue's computer systems, a user must have a Purdue-issued username and password. Within the computer system, each Purdue employee is assigned a personal email account with limited access by other within the company. Purdue also uses a document management system that provides limited employee access to Purdue documents.

12. Purdue has enacted these confidentiality measures because disclosure of information in the categories described in the paragraphs above would both harm Purdue and help its competitors. For example, the public disclosure of information reflecting Purdue's commercial strategies would destroy its value by revealing Purdue's confidential business and marketing strategies, including to Purdue's competitors, who would be able to use the information to compete unfairly with Purdue.

I declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct, to the best of my knowledge.

Signed at Stamford, Connecticut this 6 day of June 2018.

KD
Keith Darragh

DONNA L. AMBROGIO
NOTARY PUBLIC OF CONNECTICUT
My Commission Expires 10/31/2019

Donna L. Ambrogio
Donna L. Ambrogio

