IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE, ***ex rel.* HERBERT H. SLATERY III,** **ATTORNEY GENERAL and REPORTER** **Plaintiff** **vs.** **PURDUE PHARMA L.P.** **Defendant** **and** **DEBORAH W. FISHER, individually, and as Executive Director of the TENNESSEE COALITION FOR OPEN GOVERNMENT, and JACK McELROY, individually, and as Executive Editor of the KNOXVILLE NEWS SENTINEL, a Part of USA TODAY NETWORK - TENNESSEE** **Intervenors**	)	**No. 1-173-18**

RESPONSE OF INTERVENORS IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER OF DEFENDANT

Come now your Intervenors, Deborah W. Fisher, individually, and as Executive Director of the Tennessee Coalition for Open Government, and Jack McElroy, individually, and as Executive Editor of the Knoxville News Sentinel, a Part of USA Today Network - Tennessee ("Intervenors"), and file this their Response in Opposition to the Motion for Protective Order filed by Defendant ("Purdue") and in support of this opposition state and aver as follows:

The Plaintiff instituted this cause of action in the Circuit Court for Knox County, Tennessee, in May of 2018. The cause of action asserts, among other things, that Purdue violated the terms, conditions and agreements contained in an Agreed Final Judgment entered in litigation between Purdue and various states, including the Plaintiff, on the 8th of May, 2007. In addition, it is alleged that Purdue engaged in conduct violating the Tennessee Consumer Protection Act. The Consumer Protection Act is codified in Tenn. Code Ann. § 47-18-102, et seq.

The provisions of the Act are to be liberally construed to promote various policies.[1] Among those policies is the intent of the State of Tennessee to protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in part or wholly within this state. Additionally, the Act seeks to provide civil legal means for maintaining ethical standards of dealing between persons engaged in business and the consuming public to the end that good faith dealings between buyers and sellers at all levels of commerce be had in this state and to further encourage and promote the development of fair consumer practices.[2]

Prior to 2007, the Attorneys General of 26 states filed suit against Purdue alleging various wrongful acts which caused or contributed to the widespread abuse of synthetic opioid products resulting in dependency, addiction and death. The litigation was negotiated and settled among the parties prior to the 8th of May, 2007. Of the 26 states which originally joined the litigation, one

[1] Tenn. Code Ann. § 47-18-102.
[2] Tenn. Code Ann. § 47-18-102(2)(3)(4).

state, Kentucky, opted out of the settlement. By the terms of the settlement, which were incorporated in an Agreed Final Judgment entered on the 8th of May, 2007, a copy of which is appended hereto as EXHIBIT 1, the Defendant was to pay $19,500,000 to the Oregon Department of Justice which then had the responsibility to divide and distribute the fund created by the payment of $19,500,000 to the various states in their proportionate shares. The State of Tennessee was to receive $719,500 as its portion of the judgment. Purdue, in addition to the payment of the money aforesaid, agreed to certain compliance provisions contained in the Agreed Final Judgment.[3] The 22 paragraphs of compliance provisions agreed to by Purdue cover four pages. Among the compliance assurances given by Purdue was that in its promotion and marketing of OxyContin, it would not make any written or oral claim that is false, misleading or deceptive.[4] Additionally, Purdue agreed that in the promotion and marketing of its product, OxyContin, it would not do so in a manner that was directly or indirectly inconsistent with the contents of the package insert which had been approved by the F.D.A.[5]

Purdue also assured the states that it would not misrepresent OxyContin's potential for abuse, addiction or physical dependence.[6]

In order to address one of the recurring criticisms of the marketing strategies of Purdue, it agreed in paragraph 7(C) to clearly and conspicuously disclose the existence of any grant or other form of Remuneration that Purdue

[3] EXHIBIT 1, Section II, paragraphs 2-24.
[4] EXHIBIT 1, Section II, paragraph 2.
[5] EXHIBIT 1, Section II, paragraph 3.
[6] EXHIBIT 1, Section II, paragraph 5.

provided to an organization or entity that published a letter, study, research or other materials pertaining to the drug OxyContin when Purdue disseminated or referred to the letter, study, research or other materials in communications with healthcare professionals.

Purdue also assured the states that it would not employ a compensation structure for its sales persons involved in either promotion or marketing that was based exclusively on the volume of opiate sales.[7]

Among the warranties given by Purdue, as memorialized in the Agreed Final Judgment, was the following:

> Purdue acknowledges and agrees that the Attorney General has relied on all of the representations and warranties set forth in this Judgment and that, if any representation is proved false, unfair, deceptive, misleading, or inaccurate in any material respect, the Attorney General has the right to seek any relief or remedy afforded by the law or equity in the state.[8]

Purdue and the Attorney General also agreed that the state had a right to assert any claim that Purdue had violated the Judgment in a separate civil action to enforce the Judgment or to seek any other relief afforded to it by law. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date would be admissible on any material issue, including alleged willfulness, intent, knowledge, or breach, to the extent permitted by law. Purdue also acknowledged that it understood that the Consumer Protection Act applied and any knowing violation of the Judgment was to be punishable by civil penalties of not more than Two Thousand Dollars

[7] EXHIBIT 1, Section II, paragraph 17.
[8] EXHIBIT 1, Section V(33).

($2,000) for each violation.[9] By agreement then, Purdue has tied itself to promises, agreements and assurances, having as their stated purpose the protection of the citizens of the State of Tennessee as well as the provisions of the Tennessee Consumer Protection Act. Therefore, this action filed by the Plaintiff against Purdue is subject to the terms and conditions of the Agreed Final Judgment as well as the Consumer Protection Act which invests the citizens of the State of Tennessee with a direct interest in the litigation, its progress and its outcome. For Purdue to say even at this early stage that it has any interest of any sort which merits protection to the extent that portions of the Complaint should be withheld from the public is just wrong. Because of the existing Protective Order, arguments cannot be made by the Intervenors with specificity with respect to allegations contained in the Complaint of the Plaintiff against Purdue, however, summaries of some of those allegations were provided by the Plaintiff and have formed in part a basis for the arguments of the Intervenors. Additionally, other similar litigation has been filed and is pending and the pleadings in that litigation offer guidance as to the probable contents of the Complaint which are subject to the Motion for Protective Order of Purdue.

THE KENTUCKY EXPERIENCE

In October of 2007, the Commonwealth of Kentucky and Pike County, on behalf of itself and a putative class of Kentucky counties, filed an action against Purdue in the Pike County Circuit Court. Purdue and a Co-

[9] EXHIBIT 1, Section X, paragraphs 46-47.

Defendant removed the case to federal court. Subsequent to the removal, negotiations between Purdue and the Commonwealth of Kentucky faltered so that Kentucky withdrew from the action it had entered into along with 25 other states. It is alleged that Kentucky's withdrawal from the agreement was as a result of its belief that its amount of the proposed settlement it was to receive ($500,000) was inadequate. After the withdrawal of Kentucky from the settlement agreement, the case was remanded to the Pike County Circuit Court in February of 2013. Prior to the removal of the case to the United States District Court, the Commonwealth of Kentucky had propounded a series of requests for admission under Kentucky law to each of the Defendants, including Purdue. With the removal of the case to federal court, no response was provided to the requests for admission. That remained the status of the file for approximately six years. With the remand of the case to the Pike County Circuit Court, the Commonwealth of Kentucky moved the Court to deem the requests for admission filed some six years earlier and not answered as admitted. An Order was entered in the Pike County Circuit Court granting the State's request. Purdue excepted to that Order, but their objection was denied. Thereafter, Purdue filed an application for a writ (similar to Tennessee's writ of mandamus) seeking an Order from the Court of Appeals requiring the Circuit Judge in Pike County to grant Purdue's request to withdraw the admissions that were in place against it. The application for the writ entitled Purdue Pharma L.P. v. Combs was argued before the Court of

Appeals and an opinion rendered in February of 2014. The Defendant, Combs, was the Circuit Judge in Pike County.[10]

Following the denial of the writ, discovery was taken and Purdue's President, Richard Sackler, was discovered. Following these events, Purdue negotiated a settlement agreement with the Commonwealth of Kentucky whereby it agreed to pay to Kentucky the sum of $24 million. In other words, Kentucky, by opting out of the settlement agreement negotiated in the previous litigation, bettered itself in the amount of $23,500,000. As a part of the settlement agreement, which was entered into in December of 2015, Purdue and the Commonwealth of Kentucky agreed that the requests for admission previously deemed admitted were withdrawn and assurances given by each party to the other that they would not be permitted to be used in litigation between the parties or anyone else.[11]

In May of 2016, Boston Globe Life Sciences Media, L.L.C. (STAT) sought and was allowed intervention seeking the removal of all protective orders pertaining to discovery materials in the Purdue litigation. Those discovery materials would have included the discovery deposition of Mr. Sackler. Upon hearing of that motion, the Circuit Court ordered the seal removed and the discovery materials made public. An appeal was filed by Purdue which is pending before the Court of Appeals at this time.[12]

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[10] 506 S.W.3d 337 (Ky. App. 2014).

[11] Agreed Judgment and Stipulation of Dismissal With Prejudice and Settlement Agreement and General Release, Commonwealth of Kentucky vs. Purdue Pharma L.P., docket no. 07-CI-01303, EXHIBIT 2B.

[12] Order on Motion in Intervention of STAT in cause no. 07-CI-01303, EXHIBIT 2C.

Following the appeal by Purdue of the removal of the protective order upon the intervention of STAT, the Court of Appeals of Kentucky, on the 12th of January, 2017, released for publication its opinion on the Purdue application for the writ which had been denied in February of 2014.[13]

Despite the contents of the Agreed Judgment and Stipulation of Dismissal entered into between Purdue and the Commonwealth of Kentucky, the Kentucky Court of Appeals, in its published opinion, referred to the requests for admission which were deemed admitted. These are the requests referenced by the Court of Appeals:

> **ADMISSION NO. 5**: That Defendant, acting alone or in concert with other persons or entities, including those named Defendants in this action, misrepresented and/or concealed the true and actual addictive nature of OxyContin, including but not limited to the risk of addiction, actual addiction and other adverse health consequences.
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> **ADMISSION NO. 9**: That Defendant promoted and marketed OxyContin to general practitioners and other physicians all of whom Defendant knew had less training and experience in treating chronic pain.
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> **ADMISSION NO. 12**: That Defendant knew how to reduce or eliminate the addictive potential of OxyContin.
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> **ADMISSION NO. 16**: That Defendant and/or its agents did not warn the general public or practitioners of the true and actual addictive potential of OxyContin.
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> **ADMISSION NO. 17**: That the misrepresentations and/or omissions by Defendant caused OxyContin to be excessively over-prescribed.

[13] Purdue Pharma L.P. v. Combs, 506 S.W.3d 337 (Ky. App. 2014).

> **ADMISSION NO. 18**: That the misrepresentations and/or omissions by Defendant caused damage to the Plaintiff, Commonwealth of Kentucky, by causing it to expend excessive amounts of money on OxyContin through state-funded benefits.
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> **ADMISSION NO. 20**: That the misrepresentations and/or omissions by Defendant were in violation of state laws.[14]

A press release was published at the time Judge Combs released the discovery materials in the litigation from their protective order which is attached as EXHIBIT 2.

STATE OF WASHINGTON VS. PURDUE PHARMA L.P., ET AL

The State of Washington, through its Attorney General, filed a 121 page Complaint against Purdue and other related companies in the King County Superior Court. This action was filed on the 28th of September, 2017. Similar to the present litigation in Knox County, Tennessee, Purdue sought a protective order to compel the redaction of certain information and allegations contained in the Complaint. The State of Washington resisted this effort. In December of 2017, the Court issued its Order denying the sealing/redacting of portions of the State's Complaint and directed the State to file an unredacted copy on or before the 5th of January, 2018. The Order, in pertinent part, contains the following language:

> 3. As the party seeking to maintain the redactions, Purdue Pharma carries the burden to identify compelling privacy concerns. Purdue must show 'for each particular document . . . [a] specific prejudice or harm will result' from the disclosure of trade secrets,

[14] Purdue Pharma L.P. v. Combs, 506 S.W.3d 337, 339 (Ky. App. 2014), EXHIBIT 2A.

> supported by 'affidavits and concrete examples'. (citations omitted)
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> 4. Purdue Pharma has failed to provide particularized analysis regarding how specific redactions in the complaint would create a competitive advantage, how its processes are novel or different from those of its competitors, how the secrecy of its prior marketing plans remain currently valuable in the changed regulatory and public relations environment of 2017, and how the secrecy of sales calls and notes with identified and publicly disciplined health care providers have current economic value.
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> 5. Under GR 15(c)(2) and case law, Purdue has failed to meet its burden to justify maintaining the redactions in the complaint filed by the State in this matter.[15]

Following the entry of the Order by the Superior Court, the Attorney General for Washington State, Bob Ferguson, issued a press release dated the 5th of January, 2018, outlining the litigation, the allegations in the Complaint and the results of the Court's action with regard to the requested protective order. This press release together with the Order of the Court and an unredacted copy of the State's Complaint were posted on the internet and could be freely accessed by anyone possessing a computer and the skills to operate it. In other words, the unredacted Complaint against Purdue filed by the State of Washington is a matter of public record on the worldwide web.[16]

The complete unredacted Complaint contains highlighting which was provided by the State of Washington indicating in yellow the portions of the Complaint's allegations which Purdue sought to redact, but which the

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[15] State of Washington v. Purdue Pharma L.P., et al, docket no. 17-2-25505-0 SEA, Order Denying Sealing/Redacting of Portions of the State's Complaint, EXHIBIT 3B, p. 2-3, paragraphs 3-5.
[16] News release, Washington State Attorney General Bob Ferguson, EXHIBIT 3C.

Court ordered filed without redaction. Therefore, by reading the Complaint, one can form an opinion about the position that Purdue takes with regard to these types of litigations. The unredacted portions of the Complaint bear a similarity to the descriptions of the redactions sought by Purdue in the present litigation as outlined by the Plaintiff. A complete and unredacted copy of the Complaint filed by the State of Washington, including the highlighted language which Purdue sought to redact as printed from the internet website of the State of Washington, is attached hereto as EXHIBIT 3A. Among the statistics recited in the Complaint are observations that 87% of OxyContin prescriptions were continuing in nature and not first time prescriptions. Eighty two percent of Butran's prescriptions were continuing in nature and not first time prescriptions.[17]

With regard to Purdue's assertions that trade secrets or confidential information would be conveyed to competitors if the Complaint in the present case is not redacted, the following language from the unredacted Complaint of the Washington State is instructional:

> 4.111 Russell Gasda, a current Purdue executive and former Vice President for Sales and Marketing, testified regarding Purdue's message when marketing any drug. He explained that 'there is a process for any pharmaceutical product that is followed regardless of the product.' The marketing 'usually starts with efficacy. A doctor wants to understand a products [sic] efficacy, will it work? Who is the patient that this is designed to be used for and what data or information do you have that can help me understand what its level of effectiveness will be?'

[17] EXHIBIT 3A, p. 19, lines 5-7.

> 4.112 He also testified that '[t]he next important thing is how that product will be tolerated by [the] patient. Is this a product that will -- what's the side effect profile? What kind of adverse events should I expect. That was the next major part of our promotional message.' Thus, 'efficacy and side effects were the primary two things you had to demonstrate, an efficacious product with an acceptable side effect profile.'
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> 4.113 Finally, he explained that 'you try to provide a general sense of perspective for the physicians of how your drug compares to other products and categories, the efficacy, side effects, dosing schedule.'

Thus, contrary to the assertions of Pharma in its Motion for Protective Order, there is nothing secret about the marketing of its drugs. It does not matter what drug it is. As the statements of Mr. Gasda reflect, Purdue followed the same matrix or course of action regardless of the drug that it was attempting to market. For it now to assert in the present case that there is something secret or confidential about the approach it takes to marketing its products is not supported by the facts.[18] Another apparent strategy of Purdue was the funding of research and making direct cash grants to various organizations who had an interest in pain management. For example, from 2006-2016, Purdue provided more than $68 million in direct grants. These included $124 million to the Center for Practical Bioethics, $4.5 million to the Patient Advocate Foundation, $1.1 million to the American Academy of Pain

[18] EXHIBIT 3A, p. 32, lines 22-26; p. 33, lines 1-10.

Management, and $1.7 million to the American Academy of Family Physicians.[19]

According to the Complaint, Purdue Executive Pamela Bennett explained the company's support for the American Pain Foundation to which it gave $1.3 million in grants as follows:

> 'We have a responsibility to make sure our dollars go to initiatives and have recognition for Purdue that make sense.' In 2010, Purdue gave the APF a grant and required the organization to report to Purdue the 'program outcomes.'

This information is found in portions of the Complaint which Purdue sought to redact. That is understandable. It helps explain that there was no arms length relationship between Purdue and the organizations it helped fund.

THE NEW YORKER

In October of 2017, The New Yorker magazine published an extensive investigative work that is essentially a primer on Purdue.[20] In his work, Mr. Keefe outlines in his words, "The Sackler dynasty's ruthless marketing of painkillers has generated billions of dollars -- and millions of addicts."[21]

Mr. Keefe outlines the history of the Sackler family, its involvement in advertising, pharmaceutical production and sales, and the creation of the concept that opioid medication is acceptable for widespread use and broad

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[19] EXHIBIT 3A, p. 37, lines 1-14.
[20] EXHIBIT 4, "The Family That Built an Empire of Pain" by Patrick Radden Keefe, The New Yorker, October 30, 2017 Issue.
[21] EXHIBIT 4, p. 1.

application which he relates to the creation of the opioid epidemic. The article offers the following details:

Purdue launched OxyContin with a marketing campaign that attempted to counter a negative attitude within the medical community with respect to the prescription of opioids. The campaign attempted to change the prescribing habits of doctors.

The company funded research and paid doctors to make the case that concerns about opioid addiction were overblown and that OxyContin could safely treat an ever-wider range of medical problems. Sales representatives were taught to market OxyContin as "a product to start with and stay with." Since 1999, 200,000 Americans have died from overdoses related to OxyContin and other prescription opioids.[22] (Since the end of World War II, American combat deaths in all actions, including Korea and Vietnam, according to the Department of Defense, totaled 87,469.)

One hundred and forty five Americans a day die from opioid overdoses according to the Centers for Disease Control and Prevention.[23] The OxyContin crisis was initially precipitated by a shift in the culture of prescribing which was a shift carefully engineered by Purdue.[24]

Mortimer Sackler recognized that selling new drugs requires a seduction of not just the patient, but the doctor who writes the prescription.[25] Arthur Sackler became a publisher and started a bi-weekly newspaper entitled

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[22] EXHIBIT 4, p. 3 of 44.
[23] EXHIBIT 4, p. 4 of 44.
[24] EXHIBIT 4, p. 4 of 44.
[25] EXHIBIT 4, p. 5 of 44.

"The Medical Tribune" which eventually reached 6,000 physicians. His company, MD Publications, paid the Chief of the Antibiotics Division of the F.D.A., Henry Welch, nearly $300,000 in exchange for his help in promoting certain drugs. This led to his resignation.[26] A staff member, who prepared a memorandum for a Senate Subcommittee, which was examining the pharmaceutical industry, noted:

> The Sackler empire is a completely integrated operation in that it can devise a new drug in its drug development enterprise, have the drug clinically tested and secure favorable reports on the drug from the various hospitals with which they have connections, conceive the advertising approach and prepare the actual advertising copy with which to promote the drug, have the clinical articles as well as advertising copy published in their own medical journals, and prepare and plant articles in newspapers and magazines.[27]

In 1997, the American Academy of Pain Medicine and the American Pain Society published a statement regarding the use of opioids to treat chronic pain. The statement was written by a committee chaired by Dr. David Haddox who was a paid speaker for Purdue.[28]

The marketing of OxyContin relied upon an empirical circularity: the company convinced doctors of the drug's safety with literature that had been produced by doctors who were paid, or funded, by the company.[29]

In 2001, Purdue paid $40 million in bonuses to its sales personnel who were charged with the responsibility for marketing OxyContin.[30]

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[26] EXHIBIT 4, p. 7 of 44.
[27] EXHIBIT 4, p. 8 of 44.
[28] EXHIBIT 4, p. 11 of 44.
[29] EXHIBIT 4, p. 14 of 44.

The foregoing is merely a brief summary of the opening portions of The New Yorker article. The article exposes the Sackler family's involvement in their closely-held corporation, Purdue, and the techniques and strategies which they have employed and continue to employ in selling opioid medications. If one reads The New Yorker article, you learn that there are no secrets about the Sackler family and Purdue. The history, the techniques, the practices, the strategies, and the financial rewards that have flowed to the family are all laid out in meticulous detail.

SECRECY AND PUBLIC INTEREST

Twenty-six states filed lawsuits against Purdue which resulted in the settlement in May of 2007 which has been referenced earlier in this response. The apparent strategy of Purdue is to contend that litigation filed against them poses a threat to their company by exposing confidential and trade secret material.

The word "confidential" literally means something spoken, written or acted upon in strict privacy or secrecy; a secret or confidential remark; imparting private matters.[31] The word "secret" is similarly defined as something done, made or conducted without the knowledge of others.[32]

Since the original litigation involving 26 states, six more states are presently pursuing litigation against Purdue, including Nevada, Texas, Florida, North Carolina, North Dakota and Tennessee. A query of Lexis using the

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[30] EXHIBIT 4, p. 15 of 44.
[31] Random House Dictionary of the English Language, 2d edition unabridged.
[32] Random House Dictionary of the English Language, 2d edition unabridged.

search words "Purdue Pharma" and "Defendant" yielded 219 case citations. According to a Reuters news report on May 15, 2018, 433 suits were pending against Purdue filed by cities and counties. Opioid deaths in the United States in 2016 were 42,000. As shown by the excerpts from pleadings as well as the New Yorker article and as reflected by the volume of litigation involving Purdue and other manufacturers of opioid products, it is highly unlikely that there is anything secret or confidential about their methods, practices and operations at this stage in the cumulative litigation process. This observation was mirrored in the order of the Superior Court of King County, Washington, when it denied Purdue's request for a protective order with regard to allegations in the Complaint filed by the Attorney General against it. As the Memorandum of the Attorney General and the materials referenced herein reflect, there is no basis for the speculative assumption by Purdue that there are trade secrets or confidential information worthy of protection at this point in time given the overwhelming legitimate public interest in the information and the fact that the Complaint provides a roadmap of the case against Purdue by the State of Tennessee and, therefore, is part of and integral with the proof process.

INAPPOSITE AUTHORITIES

In its Reply to the pleadings filed by the Intervenors, Purdue seeks to diminish the authorities cited by the Intervenors by referring to them as "inapposite". Inapposite means not pertinent. Purdue, however, also cites a number of cases in support of its position.

The first citation is Loveall v. Am. Honda Motor Co.[33] In Loveall, the issue before the Supreme Court of Tennessee was the request of Honda for a protective order seeking to shield from public disclosure certain information obtained by the plaintiff in the discovery phase of the case. The application for protective order was denied at the trial court level. The case made its way to the Supreme Court. In its opinion, speaking through Justice Cooper, it stated:

> . . . Trade secrets and other confidential commercial information **enjoy no privilege from disclosure**, although courts may choose to protect such information for good cause shown. . . . To show good cause under Rule 26(c), the moving party must demonstrate **specific examples of harm** and **not mere conclusory allegations**. . . . When confidential information is involved, this standard requires a showing that disclosure will result in **a clearly defined and very serious injury** to the company's business . . . or, stated differently, great competititive disadvantage and **irreparable harm**. (citations omitted) (emphasis supplied)[34]

This language supports the position of the Intervenors.

In Zyprexa Litig.,[35] certain information had been produced in a multi-district litigation against the manufacturer of the drug Zyprexa. The information was produced in discovery and subjected to an agreed protective order. An expert witness retained by one of the plaintiffs entered into a plan to circumvent the protective order for his benefit and the benefit of a media representative. The circumvention took place by utilizing a friendly attorney who was not representing any party to the multi-district litigation, but who

[33] 649 S.W.2d 937 (Tenn. 1985).
[34] 649 S.W.2d 937, 939.
[35] 474 F.Supp.2d 385 (E.D.N.Y. 2007).

intervened in a similar case and, through the subpoena process, provided an excuse for the expert to divulge protected information so that it could be disseminated to the media and to other public interest and activist organizations. The court issued an injunction upon the application of a defendant ordering the information that had been improperly released returned. The court did not attempt to exercise a restraint over the dissemination of material which had been furnished to the media and published in news stories. This situation is clearly distinguishable from the present case in that it involves discovery and an agreed confidentiality order. However, even in that decision, the court favorably notes as follows:

> Open courts are critical to a democratic society. Access to judicial proceedings and documents is necessary for federal courts to have a measure of accountability and for the public to have confidence in the administration of justice. The rule of law and public acquiescence in judicial decisions demand that courts reveal the basis for their rulings. Without monitoring, the public could have no confidence in the conscientiousness, reasonableness or honesty of judicial proceedings Such monitoring is not possible without access to the testimony and documents that are used in the performance of the Article III functions.
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> The claim of public access is strongest when the documents play a substantial role in determining litigants substantive rights.[36]

This same rationale is applicable to the present litigation. The substantive rights of the litigants will be impacted by the proof which is introduced. The outline of that proof is contained in the Complaint. An abridgement of the Complaint by redaction would deprive the public of a much

[36] 474 F.Supp.2d 385, 412 (E.D.N.Y. 2007)

needed basis for them to form their opinions concerning the respective positions of the parties.

S.E.C. v. TheStreet.com[37] deals with the application of a protective order to pre-trial depositions. In that case, the court lifted the protective order. The lifting of the protective order by the trial court was affirmed by the Court of Appeals. The court concluded by stating:

> Under the circumstances of the case, the District Court's decision to consider anew the balance between the claims of privacy and the claims of public access to confidential testimony and its decision after balancing those considerations were not an abuse of discretion.[38]

In Serono Labs., Inc. v. Shalala,[39] the issue involved the content of the administrative record to be produced for review by the Food and Drug Administration (F.D.A.). A pharmaceutical manufacturer had applied for a license to produce a generic version of a previously licensed drug. In appealing the adverse decision of the F.D.A., an issue arose regarding the content of the administrative record which was to be produced for the reviewing court. The issue was whether the actions of the F.D.A. were arbitrary and capricious. The F.D.A. was required to produce as part of the record for the reviewing court its files which contained information provided by the pharmaceutical companies which were classified as trade secrets. The decision was driven by a number of requirements of the federal law. The F.D.A. is statutorily mandated to guard trade secrets which it has been given access to and requires it to return those

[37] 273 F.3d 222 (2d Cir. 2001).
[38] 273 F.3d 222, 234-35.
[39] 35 F.Supp.2d 1 (D.D.C. 1999).

trade secret documents to the company that generated them. 21 USC § 331(j) (Supp. 1998); 5 USC § 552(b)(4) (1996). Pursuant to 18 USC § 1905 (1984), it is a criminal act for federal employees to disclose trade secrets. None of those factors apply to the present litigation. The Serono Labs case is simply an outlier which refers to a specific and well-documented exception to public disclosure created by federal statute.

The decision of Hamilton-Ryker Grp., LLC v. Keymon[40] involved an employee who breached a covenant not to compete. The employee who was dismissed copied documents related to the company to their personal e-mail and then transmitted them to a customer which ended its business relationship with the former employer. The litigation involved a breach of contract and misappropriation of confidential information in violation of the Trades Secret Act (Tenn. Code Ann. § 47-25-1701, et seq.) This was a matter of contract and the breach of contract and not a matter of discovery or court records.

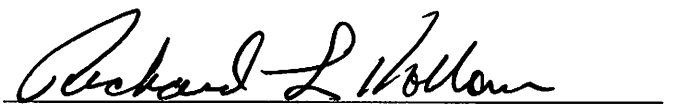
In Newsom v. Breon Laboratories, Inc.,[41] the plaintiffs, in a discovery dispute, were seeking Drug Experience Reports (DER) involving certain pharmaceutical products. The plaintiffs asked the court to direct that all DERs reporting reactions to the drug in question be furnished with no deletions of the name of the doctor or the name of the patient or the patient's address. The Court of Appeals affirmed the trial court's decision that the discovery was appropriate. The Supreme Court reversed. The court was of the

[40] 210 Tenn. App. LEXIS 55, 210 WL 323057 (Tenn. Ct. App. 2010).
[41] 709 S.W.2d 559 (Tenn. 1986).

opinion that the disclosure of the names and addresses of the doctors who had filed the DERs would be sufficient to satisfy the requests and denied the request for the names and addresses of the affected patients. Again, this is a discovery dispute and does not involve a party which had previously entered into a consent judgment involving the same issues presented in the present litigation. The DERs also contained a parenthetical entry stating that the information was "in confidence" and the court concluded arguably that doctors were submitting the report with the idea that it would be held in confidence. There is no such presumption here.

Purdue has produced no citation to any case which is "on all fours" with this litigation. This litigation does not involve discovery. This litigation involves parties who had previously litigated with each other to an Agreed Judgment and then allegations that the terms and conditions of the Agreed Judgment had been violated by one of the parties. Some of the language from the decisions cited by Purdue actually support the theory of the Plaintiff. It is respectfully submitted that the authorities relied upon by Purdue are in fact inapposite.

Respectfully submitted, this 3rd day of July, 2018.



Richard L. Hollow, BPR No. 0000593
Attorney for Intervenors

HOLLOW & HOLLOW, L.L.C.
P. O. Box 11166
Knoxville, TN 37939-1166
Ph. 865-769-1715

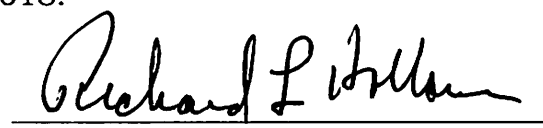
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the following counsel by e-mail transmission (without exhibits) and Federal Express overnight delivery (with exhibits):

Brant Harrell, Senior Counsel
Office of the Attorney General of Tennessee
Consumer Protection and Advocate Division
UBS Tower, 20th Floor
315 Deaderick Street
Nashville, TN 37243

William J. Harbison II
Neal & Harwell, PLC
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203

This 3rd day of July, 2018.



Richard L. Hollow