

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ASSOCIATION FOR ACCESSIBLE
MEDICINES,

Plaintiff,

v.

KWAME RAOUL,
in his official capacity as Attorney
General of the State of Illinois,

Defendant.

Case No. 1:24-cv-00544

PLAINTIFF’S UNOPPOSED MOTION TO SEAL AMENDED COMPLAINT

Pursuant to Local Rule 26.2, Plaintiff, the Association for Accessible Medicines (“AAM”), respectfully requests that the Court enter an order permanently sealing the unredacted copy of the proposed Amended Complaint that AAM has filed under seal (ECF No. 35). AAM further requests that the Court enter an order prohibiting Defendant from disclosing the sealed portions of the proposed Amended Complaint to any person except those persons within the Office of the Attorney General of Illinois (or, with reasonable advance notice to Plaintiff of the disclosure, retained by that Office) to whom disclosure is necessary for Defendant to litigate this action. Defendant consents to the relief requested in this motion.

In support of this motion, AAM states as follows:

1. On January 22, 2024, AAM filed its Complaint against Defendant, the Attorney General of Illinois, alleging that Public Act 103-167 (“the Act”), codified at [410 Ill. Comp. Stat. Ann. 725/1 et seq.](#), is unconstitutional. [ECF No. 1.](#)

2. On February 2, 2024, AAM filed its motion for a preliminary injunction, seeking to enjoin the Attorney General from enforcing the Act against AAM's members. [ECF No. 17](#).

3. On March 8, 2024, the Attorney General filed its motion to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(1). [ECF No. 25](#).

4. On June 18, 2024, the Court granted the Attorney General's motion to dismiss and denied AAM's motion for a preliminary injunction as moot. [ECF No. 32](#). The Court directed that AAM file an amended complaint, if any, within three weeks from the date of its decision, which is July 9, 2024. [ECF No. 31](#).

5. AAM has timely filed its Motion for Leave to File First Amended Complaint. ECF No. 33.

6. Limited portions of the proposed Amended Complaint describe non-party Sandoz's intent to increase the wholesale acquisition cost of one of its generic products in calendar year 2024, and provides specific details regarding the price increase Sandoz intends to implement for that product. In accordance with Local Rule 26.2(c), AAM has filed: (1) an unredacted copy of the proposed Amended Complaint provisionally under seal (ECF No. 35); and (2) a separate copy of the proposed Amended Complaint on the public docket (ECF No. 34), which redacts the portions of the proposed Amended Complaint that AAM now requests be permanently sealed.

7. AAM respectfully requests that the Court permanently seal the unredacted copy of the proposed Amended Complaint (ECF No. 35). The limited portions of the proposed Amended Complaint that AAM requests be permanently sealed consist of: (1) internal pricing information for a specific product of non-party Sandoz; and (2) information that would reveal the identity of the product. AAM seeks to have these narrow categories of information permanently sealed to protect the confidentiality of non-party Sandoz's proprietary pricing and business information and

to prevent the harm to its competitive position that would result if its confidential pricing plans were made public.

8. Although materials submitted in litigation are “presumptively in the public domain,” [*Solaia Tech. LLC v. Arvinmeritor, Inc.*, 2004 WL 549449, at *1 \(N.D. Ill. Jan. 28, 2004\)](#), this Court’s Local Rules provide that “[t]he court may for good cause shown enter an order directing that one or more documents be filed under seal,” [*Local Rule 26.2\(a\)*](#); *see also* [*Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 \(7th Cir. 1999\)](#) (providing that the public’s interest in judicial proceedings “does not always trump the property and privacy interests of the litigants” and “can be overridden ... only if there is good cause for sealing a part or the whole of the record”).

9. “[T]rade secrets” as well as “other properly demarcated categor[ies] of legitimately confidential information ... are entitled to be kept secret and out of the public record.” [*Solaia Tech. LLC*, 2004 WL 549449, at *1](#) (citations omitted); *see* [*SmithKline Beecham Corp. v. Pentech Pharms, Inc.*, 261 F. Supp. 2d 1002, 1008 \(N.D. Ill. 2003\)](#) (“[P]ortions of documents that are shown to contain trade secrets, or other information that would cause undue private or public harm if disclosed ... may be kept under seal.”). This includes “[h]ighly confidential commercial information[,] such as pricing information,” which may be kept confidential if: (1) “the information [is] sufficiently secret to give [the company] a competitive advantage,” and (2) “[the company] took affirmative measures to prevent others from acquiring or using the information.” [*FTC v. OSF Healthcare Sys.*, 2012 WL 1144620, at *3 \(N.D. Ill. Apr. 5, 2012\)](#) (citing [*Baxter Int’l, Inc. v. Abbott Lab’ys*, 297 F.3d 544, 547 \(7th Cir. 2002\)](#)).

10. The proposed Amended Complaint describes Sandoz’s anticipated increase in the wholesale acquisition cost of an identified pharmaceutical product in calendar year 2024. *See* Am.

Compl. (ECF No. 35) ¶¶ 46-48. Sandoz does not disclose anticipated price increases for any of its products before they take effect, and it has implemented safeguards to prevent such pricing information from becoming known to its competitors or any third party. *See* [ECF No. 20 ¶ 18](#). Making Sandoz’s confidential pricing decisions public would harm Sandoz’s competitive position by giving Sandoz’s competitors the opportunity to make adjustments to their own pricing or other business strategies based on that pricing information. *Id.* ¶¶ 19-20; *accord* [SmithKline Beecham Corp., 261 F. Supp. 2d at 1008](#) (confidentiality justified where disclosure “might give other firms an unearned competitive advantage”). In addition, maintaining the confidentiality of Sandoz’s pricing plans is necessary to ensure compliance and the appearance of compliance with applicable laws, including federal and state antitrust laws. *See* [ECF No. 20 ¶ 19](#); *accord* [Benton Cnty. Wind Farm LLC v. Duke Energy Ind., Inc., 2015 WL 12559884, at *2 \(S.D. Ind. Aug. 26, 2015\)](#) (granting motion to seal bids and bid history, in part to avoid “a reduction of competition in contravention of antitrust laws”).

11. In addition, the proposed Amended Complaint contains information that Sandoz’s competitors could use to identify the specific product whose price Sandoz intends to increase in calendar year 2024. Specifically, the proposed Amended Complaint describes the conditions for which the Sandoz product is indicated and dosage information. *See* Am. Compl. (ECF No. 35) ¶¶ 46-47. This information, if made public, would enable Sandoz’s competitors to identify the product referenced in the proposed Amended Complaint, and then use that information in formulating their pricing or other business strategies to harm Sandoz’s competitive position. [ECF No. 20 ¶¶ 18-20](#).

12. Conversely, the “public does not need to know” the details of Sandoz’s anticipated pricing plans, or the identity of the specific product whose price it intends to increase, “in order to

evaluate the handling of this litigation by the judiciary.” [*SmithKline Beecham Corp.*, 261 F. Supp. 2d at 1008](#). The portions of the proposed Amended Complaint that AAM has *not* sought to seal, and which are viewable in the redacted copy of the proposed Amended Complaint filed on the public docket (ECF No. 34), identify the company that intends to raise the wholesale acquisition cost for one of its products, state the company’s intent to increase the wholesale acquisition cost of the product in a manner that would trigger liability under the Illinois law, and describe the timeframe for the price increase. That information is more than sufficient to enable the public to understand this case and the Court’s “handling of this litigation.” [*SmithKline Beecham Corp.*, 261 F. Supp. 2d at 1008](#).

13. Thus, good cause exists to permanently seal the unredacted copy of the proposed Amended Complaint. *Accord* [*OSF Healthcare Sys.*, 2012 WL 1144620, at *3](#) (granting motion to seal documents containing pricing information); [*Hedrick v. Kraft Heinz Co.*, 2019 WL 4958238, at *13 \(N.D. Ill. Oct. 8, 2019\)](#) (finding good cause to permit sealing of proprietary information); [*Williamson v. S.A. Gear Co.*, 2017 WL 3971043, at *1 \(S.D. Ill. Sept. 8, 2017\)](#) (granting motion to seal documents consisting of “confidential, proprietary business information” in the form of company’s “unique internal claims procedures, warranty processes, and sales information”); [*Caterpillar Inc. v. Brington Indus. Ltd.*, 2014 WL 12733648, at *2 \(C.D. Ill. Jan. 31, 2014\)](#) (permitting sealing of “royalty rates” where proponent “derives economic value from keeping the royalty rates confidential”).

14. Notably, this Court has already concluded that the information AAM has redacted from the proposed Amended Complaint should remain under seal. Specifically, in conjunction with its motion for a preliminary injunction ([ECF No. 17](#)), AAM submitted the Declaration of Timothy de Gavre, which contained the same information AAM now wishes to redact from the

proposed Amended Complaint. Compare [ECF No. 19 ¶¶ 14-15](#), with Am. Compl. (ECF No. 35) ¶¶ 46-48. This Court granted AAM's motion to permanently seal the de Gavre Declaration. [ECF No. 24](#).

15. Accordingly, AAM respectfully requests that the Court grant this motion to permanently seal the unredacted copy of the proposed Amended Complaint (ECF No. 35).

16. Further, AAM respectfully requests that the Court enter an order prohibiting Defendant from disclosing the confidential portions of the proposed Amended Complaint to any person except those persons within the Office of the Attorney General of Illinois (or, with reasonable advance notice to Plaintiff of the disclosure, retained by that Office) to whom disclosure is necessary for Defendant to litigate this action. This relief is necessary to ensure that the portions of the proposed Amended Complaint that AAM has requested be permanently sealed remain confidential. This Court previously ordered this same relief when granting AAM's motion to seal the Declaration of Timothy de Gavre. See [ECF No. 24](#).

17. AAM has conferred with counsel for Defendant, who has consented to the relief requested in this motion.

Dated: July 9, 2024

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