UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

URIEL PHARMACY HEALTH AND WELFARE PLAN; AND URIEL PHARMACY, INC., on their own behalf and on behalf of all others similarly situated, Plaintiffs, VS. ADVOCATE AURORA HEALTH, INC. and AURORA HEALTH CARE, INC., Defendants.	Case No. 2:22-cv-00610
PATRICK SHAW, DEBRA SHAW, and HALEY SHAW, on their own behalf and on behalf of all others similarly situated, Plaintiffs, ADVOCATE AURORA HEALTH, INC. and AURORA HEALTH CARE, INC., Defendants.	Case No. 2:24-cv-00157

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO FILE UNDER RESTRICTED ACCESS AND RESPONSE TO PLAINTIFFS' OBJECTIONS AND MOTION TO FILE UNDER RESTRICTED ACCESS

Plaintiffs ask the Court to publicize documents containing sensitive information regarding Defendants' business practices, market analyses, proprietary business intelligence, operations, and correspondence with regulators, despite substantial authority suggesting that those materials should be restricted from public view. Defendants urge the Court to reject Plaintiffs' position and to maintain the materials identified in Defendants' opening briefs under restricted access, except to the extent the Court relies on them in its opinion(s) resolving the class certification motion and

Daubert motions. To the extent the Court relies on any of the restricted materials in its opinion(s), Defendants ask that the Court adopt their proposed procedure—which Plaintiffs do not object to—whereby fourteen days after the Court issues its opinion(s), Defendants will prepare public versions of the restricted materials as needed to disclose those portions essential to the Court's decision.

ARGUMENT

I. Defendants' reply in support of Defendants' motion to restrict access (*Uriel* ECF No. 226, *Shaw* ECF No. 130).

A. Documents that are not integral to the Court's opinion need not be revealed publicly.

Plaintiffs do not dispute that confidential materials may remain restricted if they are not integral to a Court's decision. (*See Uriel Pharmacy Health and Welfare Plan et al. v. Advocate Aurora Health, Inc. et al.*, Case No. 2:22-cv-00610, ECF No. 228 ("*Uriel* Plaintiffs' Opposition") at 14; *Patrick Shaw et al. v. Advocate Aurora Health, Inc. et al.*, Case No. 2:24-cv-00157, ECF No. 132 ("*Shaw* Plaintiffs' Opposition") at 14.)[1] Nor do they address authority cited by Defendants supporting the same. (*Compare Uriel Pharmacy Health and Welfare Plan et al. v. Advocate Aurora Health, Inc. et al.*, Case No. 2:22-cv-00610, ECF No. 226 ("*Uriel* Motion to Restrict Access") at 16 (citing *Strasser v. City of Milwaukee*, No. 14-CV-1456, 2017 WL 10544079, at *1 (E.D. Wis. Feb. 25, 2017)) *and Patrick Shaw et al. v. Advocate Aurora Health, Inc. et al.*, Case No. 2:22-cv-00157, ECF No. 131 ("*Shaw* Motion to Restrict Access") *with Uriel* Plaintiffs' Opposition (no mention of *Strasser*) *and Shaw* Plaintiffs' Opposition (same)). The Court has utilized this approach throughout this action. *See, e.g.*, *Uriel* ECF No. 153 at 21 ("[B]ecause the exact language of the term is not relevant to the issues decided in the motion to compel, I will

[1] The *Uriel* Plaintiffs' Opposition appears to be identical to the *Shaw* Plaintiffs' Opposition.

allow the letter to remain redacted."); *Uriel* ECF No. 179 at 13 ("The information at issue in the second motion to restrict was not the basis for my decision in the related motion for PHC's production. Rather, it served as an illustrative example of the unaggregated data that AAH complained it found unusable. AAH's argument can be understood without the illustrative example, and the public would not benefit from having the example made available. Accordingly, I will grant the motion to restrict parts of Exhibits . . . B."); *Uriel* ECF No. 197 at 2 ("Some of the documents which the parties have moved to restrict did not inform my decision. As such, these documents may remain restricted.").

In addition, all parties agree that the parties should prepare public versions of the documents upon which the Court relies within fourteen days of the Court's entry of its opinion. (*Uriel* Plaintiffs' Opposition at 14; *Shaw* Plaintiffs' Opposition at 14.) Such an approach is consistent with what was done in *Methodist Health Services Corp. v. OSF Healthcare System*, No. 1:13-cv-01054-SLD-JEH, 2016 WL 5817176, at *17-18 (C.D. Ill. Dec. 11, 2015), and makes sense here given the antitrust context, the sensitive nature of the information in the record, and the volume of evidence filed in connection with the parties' briefing.

Defendants anticipate that many of the documents attached to Plaintiffs' briefing, as well as those attached to Defendants' briefing, *will not* underpin the Court's pending decisions on class certification and the *Daubert* motions, given their tangential-at-best relationship to core issues there. But ultimately, that is for the Court to decide. While Plaintiffs contend that all of the documents filed under restricted access "are now relevant to the merits of the case," what is or is not relevant will depend on the Court's opinions. (*Uriel* Plaintiffs' Opposition at 8; *Shaw* Plaintiffs' Opposition at 8). That is why Defendants ask that the Court adopt the proposed procedure set forth in its motions to restrict, under which, after the Court issues its opinions, Defendants will prepare public versions of those documents integral to the Court's opinion. (*See Uriel* ECF Nos. 206, 232; *Shaw* ECF Nos. 104, 140). This approach conserves judicial resources and promotes efficiency, as it saves the Court the time of having to conduct a document-by-document review of what's been submitted under restricted access.[2]

B. Defendants have shown good cause to restrict access to Defendants' documents filed under restricted access.

In Defendants' opening briefs (*Uriel* Motion to Restrict Access; *Shaw* Motion to Restrict Access), Defendants provide a detailed explanation of why each of several classes of information should remain under restricted access. Defendants *do not* rely solely on the operative protective order or confidentiality designations to support their request, contrary to Plaintiffs' assertion.[3]

For example, Defendants explained that the documents listed on pages 3-7 of the *Uriel* and *Shaw* Motions to Restrict Access include "sensitive information regarding Defendants' business practices, market analyses, proprietary business intelligence, operations, and other information that is kept confidential and not regularly shared." (*Uriel* Motion to Restrict Access at 7; *Shaw* Motion to Restrict Access at 7.) Disclosure of such information would cause Defendants competitive harm "because it would disclose Defendants' internal analyses relating to Defendants' competitors and third parties with whom Defendants contract, thereby giving such parties competitive advantage."

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[2] Regarding the Court's guidance that it is "unlikely to allow the terms of the alleged restraints to remain restricted from public view if those terms are discussed in motions relating to the merits of the antitrust claims," Defendants have agreed that the terms of the Challenged Provisions as provided to Plaintiffs' counsel do not need to be filed under restricted access. (*Uriel* ECF No. 153 at 21; *Uriel* Plaintiffs' Opposition at 5 n.3; *Shaw* Plaintiffs' Opposition at 5 n.3).

[3] Plaintiffs wrongly claim the opposite in a footnote, citing to the portion of Defendants' opening brief concerning third-party productions. (S*ee Uriel* Plaintiffs' Opposition at 4 n.2; *Uriel* Motion to Restrict Access at 10-13; *Shaw* Plaintiffs' Opposition at 4 n.2; *Shaw* Motion to Restrict Access at 10-13.) The cited portion of Defendants' opening brief affirms Defendants' support for placing under restricted access materials produced *by third-party subpoena recipi*ents who made productions with the expectation that their materials would not subsequently appear in the public domain. It does not relate to Defendants' own documents.

(*Id.*)

Courts routinely restrict public access to documents relating to an entity's business practices, market analyses, proprietary business intelligence, and operations—including in antitrust cases. *See, e.g., KM Enterprises, Inc. v. Global Traffic Technologies, Inc.*, 725 F.3d 718, 734 (7th Cir. 2013) (granting a motion to seal a document containing customer and pricing data in a case alleging violations of the Sherman and Clayton Antitrust Acts); *Suture Express, Inc. v. Owens & Minor Distribution, Inc.*, 851 F.3d 1029, 1046-47 (10th Cir. 2017) (granting motions to seal unredacted versions of the joint appendix in an antitrust matter where the joint appendix contained "confidential documents, financial information, and contracts"); *Federal Trade Commission v. Syngenta Crop Protection AG*, 695 F. Supp. 3d 701, 707 (M.D.N.C. 2023) (granting a motion to seal a portion of the government's amended complaint alleging anticompetitive conduct where the defendants argued that disclosure of that portion "would give a windfall to competitors because it would enable pursuit of the same or similar agreements with third parties, that counterparties to future negotiations would gain an advantage to seek more favorable terms with both Defendants and non-parties, and that competitors could modify their business strategies to Defendants' disadvantage"). So should the Court restrict access here.

Likewise, Defendants explained that a small number of documents submitted in connection with a civil investigative demand should remain under restricted access because of Defendants' "legitimate privacy interests in protecting non-public correspondence with the governmental agencies that regulate them." (*Uriel* Motion to Restrict Access at 8; *Shaw* Motion to Restrict Access at 8.) As in the case of proprietary business information, courts have restricted access to regulatory correspondence, including where such correspondence relates to an antitrust investigation of interest to the public. *See, e.g.*, *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1039 (7th Cir. 1998). The Court should do so here also.

> 1. *Defendants' approach of categorizing documents and providing explanations by category is sensible given the large number of documents at issue and what courts, themselves, do when deciding motions like these.*

Plaintiffs dismiss Defendants' legitimate interests by arguing that Defendants' opening brief takes the wrong form—categorizing materials and then explaining why each category should be restricted rather than providing individualized descriptions for each document. (*See Uriel* Plaintiffs' Opposition at 8-14; *Shaw* Plaintiffs' Opposition at 8-14.) But a more detailed description of the more than 120 documents that Plaintiffs seek to make public would not only be unwieldy, but would also risk disclosing the very information that Defendants seek to restrict. Adopting this approach would result in a burden that potentially could not be satisfied. If the motion to restrict had to go into such detail that the confidential information would be disclosed, another motion to restrict would be necessitated in order to restrict the contents of the original motion to restrict. At some point, abstraction is necessary in order to provide the Court with sufficient detail about the contents of the materials without disclosing the sensitive information that is sought to be restricted. Courts recognize this concern, which is why parties are encouraged to meet their burden to provide sufficient information about the contents of the documents without disclosing the confidential information. *See, e.g.*, *Nevada W. Petroleum, LLC v. BP W. Coast Prods., LLC*, No. 2:15-CV-01684-APG-PAL, 2016 WL 5107089, at *2 n.1 (D. Nev. Sept. 19, 2016) ("If the motion to seal itself contains confidential information, the moving party may file a *redacted* motion to seal on the public docket and an *unredacted* motion under seal. However, this practice is disfavored as litigants should attempt to meet their burden . . . without specific references to confidential information.").

Nor is a lengthier description necessary under the Local Rules. Local Rule 79(d)(2) specifies that a "motion to restrict or seal…must describe the *general nature* of the information withheld from the public record." *See* Local Rule 79(d)(2) (emphasis added). Local Rule 79(d)(3) further requires that the request be supported by "sufficient factual basis demonstrating good cause" to restrict or seal the materials, which Defendants have provided, as detailed in the section above. Indeed, a similar approach has been used in this case in the past, without issue. (*See, e.g., Uriel* ECF Nos. 175, 186, 187).

Further, Defendants' approach comports with what courts, themselves, have done when deciding how to treat large numbers of documents. For example, the Western District of Wisconsin answered the question of which trial exhibits should remain under restricted access by categories, rather than performing a detailed document-by-document analysis. *See, e.g.*, *Wisconsin Alumni Research Foundation v. Apple, Inc.*, No. 14-cv-062-wmc, 2015 WL 6453837, at *1-3 (W.D. Wis. Oct. 26, 2015) (addressing the question of which trial exhibits to seal by category).

2. Defendants' interests persist despite changes in the law and the passage of time.

Plaintiffs also claim that Defendants' legitimate interests have been negated by changes to federal regulations, the removal of certain provisions in AAH's contracts, and the passage of time. (*See Uriel* Plaintiffs' Opposition at 5-7; *Shaw* Plaintiffs' Opposition at 5-7). Not so.

Contrary to Plaintiffs' contention, neither changes to federal regulations nor changes to certain provisions in Defendants' contracts negate the concerns described in *Methodist Health*. Although it is true that since 2021, the federal government has required hospitals to disclose raw numbers for certain services that they offer, those regulations do not require hospitals to disclose the methodology behind the numbers. *See* CMS, Hospital Price Transparency Enforcement Updates, *available at* https://www.cms.gov/newsroom/fact-sheets/hospital-price-transparency-enforcement-updates (last accessed July 28, 2026).

Disclosure of the methodology, strategy, and decision making by which Defendants calculate their prices, as would be the case in certain of the materials at issue here, could materially disadvantage Defendants in future negotiations. Further, the materials that Plaintiffs seek to disclose here contain more than just provisions that Defendants have since removed from their contracts. They contain provisions that are in contracts operative today that are not regularly disclosed.

Plaintiffs also argue that certain materials should not be restricted because of their age. (*See Uriel* Plaintiffs' Opposition at 6; *Shaw* Plaintiffs' Opposition at 6.) But courts have maintained documents that were more than ten years old under seal/restricted access where disclosure of the same could harm a party's competitive standing, among other concerns. *See, e.g.*, *City of Providence v. BATS Global Markets, Inc.*, No. 14-CV-2811 (JMF), 2022 WL 539438, at *2-3 (S.D.N.Y. Feb. 23, 2022) (sealing revenues dating back to 2009, a market data strategy presentation from 2015, and a 2009 presentation providing strategic analyses and financial projections, among other materials, for potential harm to defendants' competitive standing, among other concerns); *Encyclopedia Brown Productions, Ltd. v. American International Cablevision Industries, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998) ("Confidential business information dating back even a decade or more may provide valuable insights into a company's current business practices that a competitor would seek to exploit."). So too here, where the documents at issue continue to reflect strategies and practices that remain relevant today.

3. Plaintiffs attempt to downplay Defendants' legitimate concerns about the disclosure of regulatory correspondence by distinguishing Defendants' cases.

Plaintiffs also dispute that Defendants have legitimate concerns about the disclosure of regulatory correspondence because the cases Defendants cited arise in a different context. (*See Uriel* Plaintiffs' Opposition at 7; *Shaw* Plaintiffs' Opposition at 7). Regardless of the contexts in which *Bracco Diagnostics, Inc. v. Amersham Health Inc.*, Civ. A. No. 03-6025, 2007 WL

2085350, at *4-6 (D.N.J. July 18, 2007), and *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1039 (7th Cir. 1998), arose, they make clear that courts uphold the confidentiality of regulatory submissions, even where the public may be interested in viewing them.

II. Defendants' response to Plaintiffs' Objections and Motion to File Under Restricted Access (*Uriel* ECF No. 227, *Shaw* ECF No. 131).

In connection with the *Shaw* Plaintiffs' Opposition and *Uriel* Plaintiffs' Opposition, Plaintiffs filed motions to restrict their oppositions. (*Uriel* ECF No. 227, *Shaw* ECF No. 131). These motions objected to the restriction of certain information in their oppositions that generally pertain to examples of documents that Plaintiffs contend are not entitled to restricted access.

First, the continued cycle of objections supports the adoption of the proposed process all parties support: that within fourteen days of the Court's entry of its opinion, the parties will prepare public versions of the documents that are integral to the Court's opinions. (*See supra* § I.A). The proposed process provides an efficient solution that conserves both judicial and party resources and balances public disclosure of information relevant to the public with not needing to disclose information irrelevant to the Court's decision.

Adopting this approach avoids the present problem of speculating as to what information will or will not underpin the Court's decision. "'The strong presumption of public disclosure applies only to the materials that form[ ] the basis of the parties' dispute and the district court's resolution.'" *Strasser*, 2017 WL 10544079, at *1 (quoting *Baxter Int'l Inc. v. Abbott Labs.*, 297 F.3d 544, 548 (7th Cir. 2002)). "Information that does not 'influence or underpin' a judicial decision need not be made public." *Id.* (quoting *Baxter*, 297 F.3d at 545). Plaintiffs' approach asks that everything be made public regardless of whether it ultimately influences or underpins the Court's opinions, ignoring the standard that information not relevant to the outcome presumptively does not need to be made public.

It is unclear how some of the examples identified by Plaintiffs are likely to be relevant to the Court's decision, and Plaintiffs do not set forth a basis for why such documents are likely to influence or underpin the Court's opinions. In addition, as explained above, such information is still entitled to protection despite its age. *See supra* § I.B.2).

Second, Defendants have continued to work with Plaintiffs to limit the amount of information filed under restricted access pursuant to the Court's guidance and the district's local rules.[4] For example, Defendants filed versions of Plaintiffs' initial briefs further un-redacting information initially redacted by Plaintiffs in an effort to avoid unnecessary redactions and in an attempt to provide guidance to Plaintiffs about which information should or should not be restricted. (*Uriel* ECF Nos. 226-2, 226-3; *Shaw* ECF Nos. 130-2, 130-3). In addition, Defendants have agreed that the terms of the Challenged Provisions, as provided to Plaintiffs' counsel, do not need to be filed under restricted access.

As for the other examples identified by Plaintiffs, Defendants previously provided support for keeping such information under restricted access. *Uriel* ECF No. 226; *Shaw* ECF No. 130.

CONCLUSION

For the reasons set forth above and in Defendants' opening briefs, Defendants respectfully request that the Court enter an order granting the filing of the documents identified in Defendants' opening briefs such that access to those documents is limited to the Court and counsel for the parties. Defendants also respectfully request that they be permitted fourteen days

[4] While Defendants have worked with Plaintiffs to ensure that only information that is entitled to be filed under restricted access is filed as such, Defendants acknowledge that some of the information identified by Plaintiffs in their opposition should be un-restricted. Specifically, the first bulleted item, the text of the second bulleted item beginning with "AAH embedded" through "with the Class," and the fourth bulleted item under subsection a (*Uriel* Plaintiffs' Opposition at 10-11; *Shaw* Plaintiffs' Opposition at 10-11) and the first three bulleted items under subsection b (*Uriel* Plaintiffs' Opposition at 13; *Shaw* Plaintiffs' Opposition at 13).

after the Court issues its decision to prepare any necessary public versions of documents such that those portions essential to the Court's decision are disclosed.

Defendants also request that the information in the *Uriel* Plaintiffs' Opposition and *Shaw* Plaintiffs' Opposition remain under restricted access, except for the information discussed in footnote four.

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