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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

IN RE: PUBLIC FIRST LAW CENTER, Objector.	MISC. NO. 26-396 [CIV. NO. 1:25-cv-00230-SASP-WRP] OBJECTION TO PLAINTIFFS' MOTION TO SEAL (1) EXHIBITS 1, 3, 6-13, 16-17, 18-22 IN SUPPORT OF TRIAL BRIEF; AND (2) UNREDACTED TRIAL BRIEF [DKT. 166]

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TABLE OF CONTENTS

TABLE OF CONTENTS I

TABLE OF AUTHORITIES..... II

I. FACTUAL BACKGROUND 1

II. THE PUBLIC HAS A PRESUMED CONSTITUTIONAL RIGHT OF ACCESS TO JUDICIAL RECORDS. 2

III. THE MOTION TO SEAL DOES NOT PROVIDE A BASIS FOR DENYING THE PUBLIC'S RIGHT OF ACCESS. 4

A. ABBVIE FAILS TO PROVIDE SPECIFIC FACTS THAT ESTABLISH A COMPELLING INTEREST FOR SEALING. 4

B. ABBVIE FAILS TO ESTABLISH A SUBSTANTIAL PROBABILITY OF HARM TO A COMPELLING INTEREST. 9

C. THERE ARE MORE NARROWLY TAILORED ALTERNATIVES FOR ABBVIE'S CONCERNS THAN COMPLETE SEALING. 10

CONCLUSION 11

TABLE OF AUTHORITIES

Cases

Apple Inc. v. Psystar Corp., 658 F.3d 1150 (9th Cir. 2011) 4
Baxter Int'l, Inc. v. Abbott Lab., 297 F.3d 544 (7th Cir. 2002) 4
Civil Beat Law Ctr. for the Pub. Int., Inc. v. Maile, 113 F.4th 1168 (9th Cir. 2024) 3
Courthouse News Serv. v. Planet, 947 F.3d 581 (9th Cir. 2020) 3
Dana-Farber Cancer Inst., Inc. v. Bristol-Myers Squibb, Co., No. 19-CV-11380-PBS, 2021 U.S. Dist. LEXIS 262358 (D. Mass. June 22, 2021) 11
Dew v. E.I. Dupont Nemours & Co., No. 5:18-CV-73-D, 2024 U.S. Dist. LEXIS 216518 (E.D.N.C. Nov. 27, 2024) 8
Foltz v. State Farm Mut. Auto Ins. Co., 331 F.3d 1122 (9th Cir. 2003) 8
Globe Newspaper Co. v. Superior Ct., 457 U.S. 596 (1982) 2, 3
Imax Corp. v. Cinema Techs., Inc., 152 F.3d 1161 (9th Cir. 1998) 5
Kondash v. Kia Motors, Inc., 767 Fed. Appx. 635 (6th Cir. 2019) 7
MAI Sys. Corp. v. Peak Computer, Inc., 991 F.2d 511 (9th Cir. 1993) 5
Markel Am. Ins. Co. v. Internet Brands, Inc., No. CV-17-2429 (AJWx), 2017 U.S. Dist. LEXIS 224860 (C.D. Cal. Aug. 2, 2017) 8
Mendell v. Am. Med. Response, Inc., No. 19-CV-1227-BAS-KSC, 2021 U.S. Dist. LEXIS 21251 (S.D. Cal. Feb. 3, 2021) 6
Minter v. Wells Fargo Bank, N.A., 258 F.R.D. 118 (D. Md. 2009). 9
N. Am. Lubricants Co. v. Terry, No. Civ. S-11-1284 KJM GGH, 2011 U.S. Dist. LEXIS 133672 (E.D. Cal. Nov. 18, 2011) 5
Oregonian Publ'g Co. v. U.S. Dist. Court, 920 F.2d 1462 (9th Cir. 1990) 3, 6
Phoenix Newspapers, Inc. v. U.S. Dist. Ct., 156 F.3d 940 (9th Cir. 1998) 3, 9, 10
Press-Enterprise Co. v. Super. Ct., 464 U.S. 501 (1984) 2
Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) 2
Signify Holding B.V. v. TP-Link Research Am. Corp., No. 21-CV-9472 (JGK) (KHP), 2022 U.S. Dist. LEXIS 154240 (S.D.N.Y. Aug. 26, 2022) 10
Terran Biosciences, Inc. v. Compass Pathfinder Ltd., Civ. No. ELH-22-1956, 2024 U.S. Dist. LEXIS 80067 (D. Md. May 2, 2024) 10

Statutes

18 U.S.C. § 1839(3) 5

Rules

D. Haw. L.R. 5.2(b) 8

Pursuant to the public right of access guaranteed by the First Amendment and the Court's October 13, 2026 Order, Public First Law Center (Public First) objects to Plaintiffs AbbVie Inc., Allergan, Inc., Durata Therapeutics, Inc., AbbVie Products LLC, Pharmacyclics LLC, and Allergan Sales, LLC's (collectively, AbbVie) Motion for Leave to File Under Seal (1) Exhibits 1, 3, 6-13, 16-17, 18-22 in Support of Trial Brief; and (2) Unredacted Trial Brief, Dkt. 166, filed October 12, 2026, in *AbbVie Inc. v. Lopez*, Civ. No. 1:25-cv-00230-SASP-WRP.[1]

AbbVie's motion to seal ignores the strong *constitutional* right to access records; fails to provide a sufficient basis to overcome the constitutional presumption of public access to judicial records; and does not address the fact that limited redaction can adequately protect any legitimate compelling interest of protecting non-public, commercially sensitive information, trade secrets, and/or information likely to cause harm if disclosed. The motion to seal should be denied.

I. FACTUAL BACKGROUND

AbbVie filed its complaint for declaratory and injunctive relief on June 2, 2025, seeking to invalidate Hawai‘i law concerning discounted sales of prescription drugs. On April 16, 2026, the parties entered into an Amended Stipulated Protective Order for exchange of discovery materials. Dkt. 108.

[1] "Dkt." refers to the corresponding docket entry in *AbbVie Inc. v. Lopez*, Civ. No. 1:25-cv-00230-SASP-WRP, unless otherwise specified.

On October 12, pursuant to the Amended Stipulated Protective Order, AbbVie filed a motion to seal its unredacted trial brief and supporting exhibits 1, 3, 6-13, and 16-22 ("sealed trial documents"). Dkt. 166. On October 13, this Court granted the motion to seal, subject to oppositions from any party or non-party filed within 14 days.[2] Dkt. 170 at PageID.3446-47.

II. THE PUBLIC HAS A PRESUMED CONSTITUTIONAL RIGHT OF ACCESS TO JUDICIAL RECORDS.

The constitutional right of public access to court proceedings is among those rights that, "while not unambiguously enumerated in the very terms of the [First] Amendment, are nonetheless necessary to the enjoyment of other First Amendment rights." *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 604 (1982). "A major purpose of that Amendment was to protect the free discussion of governmental affairs." *Id.*; *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (plurality opinion) (the freedoms in the First Amendment "share a common core purpose of assuring freedom of communication on matters relating to the functioning of government").

[2] Although the Court's order, Dkt. 170, initially identifies "(1) Exhibits 7 through 21 in support of AbbVie's trial brief" as the exhibits that Plaintiff AbbVie sought to seal, it later discusses Exhibits 1, 3, 6-13, 16-17, and 18-22 and ostensibly grants the motion in full. This objection concerns *all* exhibits sealed pursuant to the October 13 order.

To preserve the societal values reflected in the First Amendment, the U.S. Supreme Court held that "[c]losed proceedings, although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness." *Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 509 (1984). "The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* at 510; *accord Globe Newspaper*, 457 U.S. at 606-07.

In the decades since the United States Supreme Court decided *Richmond Newspapers*, *Globe Newspaper*, and *Press-Enterprise*, the Ninth Circuit has "concluded that the presumptive First Amendment right of public access attaches broadly to criminal and civil proceedings." *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. Maile*, 113 F.4th 1168, 1176 (9th Cir. 2024). In doing so, it has "joined the nationwide consensus" in concluding that the First Amendment right of access "reaches civil judicial proceedings and records." *Id.*; *accord Courthouse News Serv. v. Planet*, 947 F.3d 581, 591 (9th Cir. 2020) (First Amendment right of access attaches to civil complaints).

The proponent of sealing has the burden to overcome the presumption of access. *Oregonian Publ'g Co. v. U.S. Dist. Ct.*, 920 F.2d 1462, 1467 (9th Cir. 1990). AbbVie thus has the burden to prove that: "(1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this

compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest." *Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940, 949 (9th Cir. 1998). The findings must be supported by specific facts and may not be based on "conclusory assertions." *Id.*

III. THE MOTION TO SEAL DOES NOT PROVIDE A BASIS FOR DENYING THE PUBLIC'S RIGHT OF ACCESS.

AbbVie's motion to seal does not satisfy the constitutional standard to seal presumptively open judicial records.

A. AbbVie Fails to Provide Specific Facts that Establish a Compelling Interest for Sealing.

AbbVie claims that records contain trade secrets, Dkt. 166 at PageID.3397, and sensitive business information. *Id.* at PageID.3398. However, it did not *prove* that any information contained in the records were trade secrets. And, even if properly proven by specific facts, "sensitive" business information—short of trade secrets—are not a compelling interest that justifies sealing court records.

i. AbbVie has not proven trade secrets through competent, non-conclusory evidence.

There is no question that trade secrets are a compelling interest that meets the first element for sealing—but only if proven by competent, non-conclusory evidence. *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) (vacating orders sealing summary judgment filings that were based solely on conclusory reference to "technological protection measures and other proprietary

technology"); *accord Baxter Int'l, Inc. v. Abbott Lab.*, 297 F.3d 544, 547 (7th Cir. 2002) (rejecting argument for sealing of licensing agreement based on the "bald assertion that confidentiality promotes [the parties'] business interests"). Here, the proof falls well short.

Federal law defines "trade secret" as

> [A]ll forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—
>
> (A) the owner thereof has taken reasonable measures to keep such information secret; and
>
> (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

18 U.S.C. § 1839(3).

The trade secret proponent "must identify the trade secrets and carry the burden of showing that they exist," *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 522 (9th Cir. 1993). Trade secrets must be identified with particularity to—among other things—separate the trade secret from general industry knowledge. *Imax Corp. v. Cinema Techs., Inc.*, 152 F.3d 1161, 1164-65 (9th Cir. 1998) ("plaintiff 'should describe the subject matter of the trade secret

with *sufficient particularity* to separate it from matters of general knowledge in the trade or of special knowledge of those persons . . . skilled in the trade'"); *see also N. Am. Lubricants Co. v. Terry*, No. Civ. S-11-1284 KJM GGH, 2011 U.S. Dist. LEXIS 133672, at *18-19 (E.D. Cal. Nov. 18, 2011) (rejecting, for lack of specificity, claims of trade secret for "'business model,' 'business plan,' and 'marketing materials,' as well as any other 'boilerplate' items").

AbbVie offers only conclusory references to trade secret concerns and counsel's assurances that the records are confidential. *E.g.,* Dkt. 166 at PageID.3398 (the "third parties represented to AbbVie that the information contained in these exhibits is non-public and commercially sensitive, contains trade secrets, and/or is likely to cause harm if disclosed" and AbbVie thus "seeks to seal those documents").

Generic declarations of counsel regarding compelling interest are not evidence from which a court may determine whether a party has met its burden to overcome the public's presumed right of access. *E.g., Oregonian Publ'g Co. v. U.S. Dist. Ct.*, 920 F.2d 1462, 1467 (9th Cir. 1990) (vague references to a compelling interest and a supporting letter from party's attorney insufficient evidentiary basis for sealing); *Mendell v. Am. Med. Response, Inc.*, No. 19-CV-1227-BAS-KSC, 2021 U.S. Dist. LEXIS 21251, at *6-9 (S.D. Cal. Feb. 3, 2021) (declarations of outside counsel regarding purported business harms lack personal

knowledge and foundation to justify sealing). Moreover, AbbVie never explains what reasonable measures it takes to keep particular information secret, the economic value of the information, why its information is novel or materially different from industry practices, or how competitors could use the information to gain an unfair advantage. AbbVie simply concludes that the exhibits contain trade secrets and that disclosure would harm AbbVie. Plaintiff has failed to submit any substantive evidence from which this Court could find that they have a compelling interest in hiding the information that it seeks to use to invalidate a duly enacted Hawai‘i law.

ii. Commercially sensitive business information is not inherently a compelling interest.

Commercially sensitive business information is not a separate compelling interest from trade secrets. "Sensitive" information, without greater specificity and further evidence showing a compelling interest, does not alone rise to the level of an interest such that it overcomes the strong presumption in favor of openness. *Accord, e.g., Kondash v. Kia Motors, Inc.*, 767 Fed. Appx. 635, 639 (6th Cir. 2019) ("The fact that a document will reveal 'competitively-sensitive financial and negotiating information' is not an adequate justification for sealing"). If a company cannot explain with specificity how particular information derives economic value from its secrecy and how the company endeavors to keep that information secret—*i.e.*, is a trade secret—then the information does not deserve

sealing in court. There is no legal basis nor standard to apply a more lenient "sensitive business information" exception to the *strong* constitutional presumption of public access.

In any event, AbbVie has only provided conclusory statements from counsel regarding the purportedly sensitive business information. For the same reasons that AbbVie fails to prove a trade secret, it has not provided specific facts sufficient to establish commercially sensitive information.

iii. Stipulated protective orders are not a compelling interest.

AbbVie also cites to the Amended Protective Order, Dkt. 108, as a basis for sealing. Protective orders for discovery are not a basis for sealing. D. Haw. L.R. 5.2(b) ("A stipulation or blanket protective order that allows a party to designate matters to be filed under seal will not suffice to allow the filing of the matter under seal."); *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003) (common law presumption of public access—lower standard—is not rebutted by a blanket protective order for discovery); *Markel Am. Ins. Co. v. Internet Brands, Inc.*, No. CV-17-2429 (AJWx), 2017 U.S. Dist. LEXIS 224860, at *20-21 (C.D. Cal. Aug. 2, 2017) ("The issue of sealing discovery is not the same as sealing adjudicatory materials - an issue governed by the Ninth Circuit authorities cited above, and ultimately the First Amendment."); *Dew v. E.I. Dupont Nemours & Co.*, No. 5:18-CV-73-D, 2024 U.S. Dist. LEXIS 216518, at *69

(E.D.N.C. Nov. 27, 2024) ("The standard a party must satisfy before being granted a protective order differs by an order of magnitude from the standard a party must satisfy to keep judicial documents out of the public eye.").

AbbVie has not met its burden to establish a compelling interest by specific facts. Because AbbVie's motion failed to provide an adequate factual basis, Public First has no meaningful opportunity to address AbbVie's alleged basis for sealing. The motion to seal should be denied.

B. AbbVie Fails to Establish a Substantial Probability of Harm to a Compelling Interest.

Without proper showing of the existence of a compelling interest, the inquiry cannot continue to whether there is a substantial probability of harm to a compelling interest. However, even assuming that AbbVie proved the existence of a compelling interest, they have failed to establish a substantial probability of "irreparable damage" to the interest. *Phoenix Newspapers*, 156 F.3d at 950.

Simply stating that sensitive information will cause a party harm is insufficient to establish a substantial probability of harm. Parties must "explicitly identify information akin to trade secrets, *and describe how its release will result in an unfair commercial advantage*." *Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 123 (D. Md. 2009) (emphasis added).

AbbVie offers no argument or specific facts why disclosure of the exhibits would harm a compelling interest. Because AbbVie's motion failed to provide an

adequate factual basis, Public First has no meaningful opportunity to address AbbVie's alleged basis for sealing. The motion to seal should be denied.

C. There Are More Narrowly Tailored Alternatives for AbbVie's Concerns than Complete Sealing.

AbbVie moved to seal the entirety of its exhibits. AbbVie must prove that no other less drastic alternatives exist other than sealing the entire filing. *E.g.*, *Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940, 950-51 (9th Cir. 1998) (holding insufficient the court's conclusory observation concerning redactions "that so much of the transcript would have to be redacted that the remaining portion would be unintelligible and/or would shed little, if any, light on the proceeding").

Even if the generic assurances of counsel were sufficient to prove a compelling interest and a substantial probability of irreparable harm—which they are not—sealing the *entirety* of certain exhibits is contrary to the presumption of public access and the mandate for a narrowly tailored solution. *E.g., Terran Biosciences, Inc. v. Compass Pathfinder Ltd.*, Civ. No. ELH-22-1956, 2024 U.S. Dist. LEXIS 80067, at *28 (D. Md. May 2, 2024) ("the Court does not agree that every term in the [master licensing agreement] is so 'competitively sensitive' that it is appropriate to seal 'the MLA in full'"); *Signify Holding B.V. v. TP-Link Research Am. Corp.*, No. 21-CV-9472 (JGK) (KHP), 2022 U.S. Dist. LEXIS 154240, at *5-7 (S.D.N.Y. Aug. 26, 2022) (denying motion to seal entire licensing

agreement absent proof that portions of the agreement "actually implicate sensitive business information"); *Dana-Farber Cancer Inst., Inc. v. Bristol-Myers Squibb, Co.*, No. 19-CV-11380-PBS, 2021 U.S. Dist. LEXIS 262358, at *8-9 (D. Mass. June 22, 2021) (denying motion to seal provisions of settlement and licensing agreements that were the "core dispute" in the case and largely disclosed in open court).

AbbVie has not addressed alternatives to complete sealing of the exhibits, and Plaintiff's arguments are not enough to overcome the presumption of access. Because AbbVie's motion failed to provide an adequate factual basis, Public First has no meaningful opportunity to suggest additional alternatives to address AbbVie's alleged basis for sealing. The motion to seal should be denied.

CONCLUSION

Based on the foregoing, the Public First respectfully requests that the Court deny the motion to seal the unredacted trial brief and supporting Exhibits 1, 3, 6-13, and 16-22.

DATED: Honolulu, Hawai'i, October 27, 2026

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