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WALGREEN CO.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI`I

ABBVIE INC. (a Delaware corporation; ALLERGAN, INC. (a Delaware corporation); DURATA THERAPEUTICS, INC. (a Delaware corporation); ABBVIE PRODUCTS LLC (a Georgia limited liability company); PHARMACYCLICS LLC (a Delaware limited liability company); and ALLERGAN SALES, LLC (a Delaware limited liability company),

Plaintiffs,

v.

CASE NO. 1:25-cv-00230-SASP-WRP

NONPARTY WALGREEN CO.'S MOTION TO SEAL TRIAL EXHIBITS; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF J. RANDALL RICHARDS; [PROPOSED] ORDER; CERTIFICATE OF SERVICE

Trial Judge: Hon. Shanlyn A.S. Park

ANNE E. LOPEZ, in her official capacity as ATTORNEY GENERAL OF THE STATE OF HAWAI'I,

Defendant.

NONPARTY WALGREEN CO.'S
MOTION TO SEAL TRIAL EXHIBITS

Pursuant to Local Rule 5.2 and the pretrial schedule adopted by the Court (ECF Nos. 148, 160), nonparty Walgreen Co. ("Walgreens") hereby respectfully moves for an order: (1) sealing, and directing that no party file on the public docket, any trial exhibit consisting of or reproducing (a) the 340B Contract Pharmacy Services Agreement between Hilo Medical Center and Walgreens (HBMC0000001)[1], and (b) the 340B Contract Pharmacy Services Agreement between Adventist Health System/West and Walgreens (CMC_Subpoena_Production_000076)[2]; (2) directing that, if these agreements are

[1] The Agreement between Walgreens and Hilo Medical Center was produced by Hilo Medical Center as HBMC0000001. Walgreens is not aware of whether that document has previously been provided to the Court, but can provide a copy under seal or *in camera* at the Court's direction. The same agreement was filed, and sealed by the court, in the related *AstraZeneca* litigation at ECF No. 94-2. *AstraZeneca Pharms. LP v. Lopez*, No. 1:25-cv-00369-MWJS-WRP (D. Haw.).

[2] The Agreement between Walgreens and Adventist Health System/West, which was made applicable to nonparty Castle Medical Center through a companion Covered Entity Agreement with Walgreens, and which was produced to Plaintiffs by Castle Medical Center as CMC_Subpoena_Production_000076, was previously filed in this action and sealed by the Court as Exhibit 9 to Plaintiffs' Trial Brief, docketed at ECF No. 171-6.

used at trial, they not be displayed on courtroom monitors visible to the public and that their specific terms be presented only in the presence of persons authorized to view "CONFIDENTIAL – ATTORNEYS' EYES ONLY" material under the Stipulated Protective Order; and (3) to the extent the Court is inclined to defer any sealing determination until after trial, permitting Walgreens to later move to seal or redact any exhibits or portions of the transcript that disclose the two agreements' terms.

This motion is supported by the accompanying Memorandum, Declaration of J. Randall Richards, the records and files in this action, and such other matters as the Court may consider. Walgreens requests that the Motion be decided without a hearing.[3]

[3] Walgreens acknowledges Local Rule 7.8, which requires a pre-filing conference for motions. Given that (1) Walgreens did not itself produce the documents at issue, (2) was therefore not notified directly by Plaintiffs of their intent to use the documents as trial exhibits, and (3) only recently determined that this motion was necessary, Walgreens was unable to confer with Plaintiffs and Defendant seven days prior to the filing of this motion. Nonetheless, counsel conferred with Plaintiffs' counsel by telephone yesterday and with counsel for both Plaintiffs and Defendant by email today. Walgreens understands that the parties do not oppose the Court developing a post-trial process through which nonparties can seek to seal exhibits used at trial, and that they intend to discuss this issue with the Court at the upcoming pretrial conference. In addition, counsel for Defendant informed Walgreens that Defendant does not oppose the relief requested herein.

DATED: Honolulu, Hawai‘i, October 28, 2026

Respectfully submitted,

/s/ James R. Ferguson

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CASE NO. 1:25-cv-00230-SASP-WRP

NONPARTY WALGREEN CO.'S MEMORANDUM IN SUPPORT OF MOTION TO SEAL TRIAL EXHIBITS

Trial Judge: Hon. Shanlyn A.S. Park

ANNE E. LOPEZ, in her official capacity as ATTORNEY GENERAL OF THE STATE OF HAWAI'I,

Defendant.

NONPARTY WALGREEN CO.'S MEMORANDUM IN SUPPORT OF MOTION TO SEAL TRIAL EXHIBITS

INTRODUCTION

Walgreen Co. ("Walgreens") is not a party to this case, and it did not choose to place its contracts before the Court. But two of its 340B covered entity customers, Hilo Medical Center ("Hilo") and Castle Medical Center ("CMC"), produced their 340B contract pharmacy services agreements with Walgreens (the "Hilo Agreement"[1] and the "CMC Agreement"[2]; together, the "Agreements") in response to subpoenas served by Plaintiffs.[3] The Agreements were designated as

[1] The Agreement between Walgreens and Hilo was produced by Hilo as HBMC0000001. Walgreens is not aware of whether that document has previously been provided to the Court, but can provide a copy under seal or *in camera* at the Court's direction. The same agreement was filed, and sealed by the court, in the related *AstraZeneca* litigation at ECF No. 94-2. *AstraZeneca Pharms. LP v. Lopez*, No. 1:25-cv-00369-MWJS-WRP (D. Haw.).

[2] The Agreement between Walgreens and Adventist Health System/West, which was made applicable to nonparty CMC through a companion Covered Entity Agreement with Walgreens, and which was produced to Plaintiffs by CMC as CMC_Subpoena_Production_000076, was previously filed in this action and sealed by the Court as Exhibit 9 to Plaintiffs' Trial Brief, docketed at ECF No. 171-6.

[3] In addition to these two Agreements, nonparty The Queen's Medical Center ("QMC") also produced, in response to a subpoena from Plaintiffs, a 340B contract pharmacy services agreement between QMC and Walgreens, which QMC designated AEO. Walgreens understands that QMC is filing its own motion with

"CONFIDENTIAL – ATTORNEYS' EYES ONLY" ("AEO") under the Stipulated Protective Order, and Plaintiffs have now provided notice that they may use the Agreements as trial exhibits.

The Agreements are exactly the kinds of documents that courts regularly protect. They are commercial contracts related to Walgreens' proprietary 340B contract pharmacy services, and they contain Walgreens' sensitive trade secrets. Among other terms, the Agreements include Walgreens' negotiated fee and financial remittance terms; the formulas through which Walgreens is compensated; and detailed descriptions of how Walgreens offers and operates its 340B contract pharmacy services. The Agreements also contain robust confidentiality provisions declaring the terms confidential and acknowledging that disclosure would cause irreparable harm. Walgreens has never made the Agreements public, and this Court has already found sufficient reason to seal the CMC Agreement when Plaintiffs attached it as an exhibit to their trial brief. Another judge in this District, as well as the Ninth Circuit, have likewise found sufficient reason for sealing the Hilo Agreement in the parallel *AstraZeneca* litigation.

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respect to the sealing of certain materials it produced, including that agreement, and Walgreens has provided a declaration in support of that motion. Walgreens therefore does not separately address the QMC agreement here, but supports the sealing of that agreement for the reasons stated in QMC's motion and the supporting declaration.

Public disclosure of the Agreements' terms would provide Walgreens' competitors, its current and prospective customers, and other drug manufacturers information they could not otherwise obtain. At the same time, sealing the Agreements will not materially impair the public's understanding of this case. The issues at trial concern the constitutionality of a Hawai'i statute, and the parties have already described in public filings the general structure of contract pharmacy agreements and how they work. Walgreens therefore respectfully requests that the Court take steps to protect the Agreements' confidentiality.

BACKGROUND

Walgreens provides 340B contract pharmacy services to covered entities across the country, including in Hawai'i, under written agreements negotiated with each covered entity. *See* attached Declaration of J. Randall Richards ("Richards Decl.") ¶ 3. The Hilo and CMC Agreements are two such contracts. *Id.* ¶ 4. Among other terms, they contain Walgreens' negotiated fee schedules and compensation formulas; detailed descriptions of how the parties order drug inventory, track 340B dispenses through proprietary systems, reconcile inventory, and issue invoices; and audit, termination, and risk-allocation terms. *Id.* ¶¶ 5–6. The Agreements expressly provide that their terms are confidential and acknowledge that disclosure would cause Walgreens irreparable harm. *Id.* ¶ 7. To Walgreens' knowledge, neither of the Agreements has ever been publicly disclosed. *Id.* ¶ 9.

Hilo and CMC produced the Agreements in response to Plaintiffs' subpoenas under an AEO designation, and Walgreens did not object to their production based on the protections provided in the Stipulated Protective Order. *Id.* ¶ 10; *see also* ECF No. 108 § 8.3 (providing that production of AEO material, "including contracts between covered entities and contract pharmacies, shall not constitute a waiver" of confidentiality). But Plaintiffs have recently notified Hilo and CMC that they intend to use those materials as exhibits at trial. Richards Decl. ¶ 11.

This Court has previously sealed the CMC Agreement, after Plaintiffs attached it to their trial brief, finding "compelling reasons" to seal "contracts between CMC and various contract pharmacies" and that sealing was "narrowly tailored." ECF No. 170 at 2, 4. And in the parallel *AstraZeneca* litigation, the court agreed to maintain the Hilo Agreement under seal after Walgreens submitted a statement and a supporting declaration. *See AstraZeneca Pharms. LP v. Lopez*, No. 1:25-cv-00369-MWJS-WRP (D. Haw.), ECF Nos. 92, 92-1, 93. That case is now on appeal, and the Ninth Circuit granted a motion to maintain the Hilo Agreement under seal there as well. *See AstraZeneca Pharms., LP v. Lopez*, No. 26-1172 (9th Cir.), ECF Nos. 11, 29, & 36.

STANDARD OF REVIEW

Although courts recognize a general right to access judicial records, that right "is not absolute." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

Accordingly, a court may seal records based on "compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006) (citation modified). In general, "compelling reasons" exist when court files could "become a vehicle for improper purposes," such as being used to "release trade secrets." *Id.* at 1179. Courts similarly have sealed records to prevent their use as "sources of business information that might harm a litigant's competitive standing." *Nixon*, 435 U.S. at 598.

ARGUMENT

I. Compelling Reasons Support Sealing Walgreens' Agreements.

Several compelling reasons support sealing the Agreements. First, the Agreements contain trade secrets and highly confidential commercial information. As the Ninth Circuit has recognized, "pricing terms, royalty rates, and guaranteed minimum payment terms" in commercial agreements are "the precise sort of information" that may be sealed, because such terms "plainly fall[] within the definition of 'trade secrets.'" *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008); *see also Apple, Inc. v. Samsung Elecs. Co.*, No. 11-cv-01846-LHK, 2013 WL 3958232, at *3 (N.D. Cal. July 29, 2013) (sealing nonparty "pricing terms, royalty rates, and payments," the disclosure of which "could indeed place [the nonparty] in a diminished bargaining position in future negotiations with potential customers and

competitors"); *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823JLR, 2012 WL 5476846, at *3–4, *7 (W.D. Wash. Nov. 12, 2012) (provisionally sealing licensing agreements with nonparties that could be used as trial exhibits).

That is especially true when it comes to pharmacy pricing terms. For example, in *Mission Wellness Pharmacy LLC v. Caremark LLC*, the court sealed discount information, dispensing fees, and related information used in pharmacy network agreements because "[t]he specific methods and means" by which companies in the pharmacy supply chain price their services "are important commercial assets," and competitors could use them as "a roadmap for creating competing fee structures and methodologies that they otherwise could not develop without significant research and investment." 641 F. Supp. 3d 673, 678–79 (D. Ariz. 2022). In fact, the court held that such terms could remain subject to sealing even when they appeared in older agreements because competitors could still use them "to glean something about [the company's] current practices." *Id.* at 679–80.

Here, the Agreements contain exactly these kinds of terms—among others, Walgreens' negotiated administrative and dispensing fees, terms related to third-party reimbursement, formulas used to calculate amounts owed for unreplenished drugs, and the process for determining annual adjustment of its fees. Richards Decl. ¶ 5. Beyond pricing, the Agreements also describe in detail how Walgreens performs its 340B services and what capabilities its offers to its customers—for

example, how it orders inventory, tracks dispenses through proprietary systems, and invoices covered entities. *Id.* ¶ 6. These terms are not publicly known, and the Agreements' confidentiality provisions were specifically included to protect them. *Id.* ¶¶ 7–9.

Disclosure of the Agreements would cause Walgreens specific competitive harm. If the Agreements were disclosed, other current and prospective covered-entity customers could use their terms as leverage when negotiating with Walgreens. *Id.* ¶ 13. Likewise, Walgreens' competitors could use the Agreements to undercut Walgreens' pricing or emulate its offerings and services. *Id.* ¶ 14. In addition, drug manufacturers, which are adverse to contract pharmacies when it comes to these arrangements, could use them to Walgreens' disadvantage in commercial and regulatory disputes. *Id.* ¶ 15. The latter possibility was in part why the Agreements were designated as AEO—specifically to prevent even *Plaintiffs*' business personnel from using them to Walgreens' disadvantage. These are precisely the kind of concrete business and competitive harms that courts recognize as supporting the sealing of sensitive commercial contracts. *See, e.g.*, *In re Elec. Arts*, 298 F. App'x at 569; *Mission Wellness*, 641 F. Supp. 3d at 678–79.

Notably, these specific Agreements have *already* been sealed by either this Court or another judge in this District. This Court agreed to seal the CMC Agreement just two weeks ago, when Plaintiffs attached it as an exhibit to their trial

brief. ECF No. 170. Judge Smith likewise agreed to seal the Hilo Agreement in *AstraZeneca*—even when it was attached as an exhibit to a merits-based motion for a preliminary injunction. *AstraZeneca*, No. 1:25-cv-00369-MWJS-WRP (D. Haw.), ECF No. 93 ("[T]he court finds that Walgreens has shown compelling reasons sufficient to overcome the presumption of public access."). On appeal, the Ninth Circuit entered an order maintaining the Hilo Agreement under seal in that Court as well. *AstraZeneca*, No. 26-1172 (9th Cir.), ECF No. 36. Thus, if this Court were to *allow* public disclosure of the Hilo Agreement here, it would effectively nullify the Ninth Circuit's own determination that sealing of the Agreement was warranted.

At bottom, while the Agreements may now be offered as trial exhibits, rather than attached to a written filing, there is no less justification for protecting their confidentiality than there was before. *See, e.g.*, *Microsoft Corp.*, at *3–4, *7 (provisionally sealing potential trial exhibits).

II. The Public Interest Does Not Outweigh Walgreens' Interest in Confidentiality.

Set against those compelling reasons for sealing the Agreements, the public interest in access to judicial records does not justify their disclosure. Indeed, sealing will not meaningfully impair the public's understanding of this case, which concerns the constitutionality of a state statute governing *manufacturers'* conduct with respect to contract pharmacies. Whatever relevance the agreements may have to Plaintiffs' claims primarily turns on the general structure of contract pharmacy arrangements—

for example, that covered entities purchase 340B drugs that are shipped to contract pharmacies under a replenishment model—and not on the specific fees, formulas, and operational details Walgreens negotiated with its customers. Those general features are already adequately described in numerous public filings and records—both in this case and in other similar cases across the country.[4] *See, e.g.*, ECF No. 170 at 4 (noting that the public version of Plaintiffs' trial brief "allow[s] public access to [Plaintiffs'] arguments").

Walgreens' status as a nonparty also weighs in favor of sealing. Walgreens did not bring this lawsuit, did not put its contracts at issue, and had little control over their production. To that point, courts regularly protect the confidentiality interests of nonparties whose information is implicated in litigation through discovery. *See, e.g.*, *Microsoft Corp.*, 2012 WL 5476846, at *3–5; *Apple*, 2013 WL 3958232, at *3–4. Avoiding a lawsuit Walgreens had no role in bringing from becoming a vehicle for publishing its trade secrets is exactly the kind of imperative that overcomes a

[4] Only confirming as much, Judge Smith's lengthy decision in *AstraZeneca* thoroughly explained the legal issues and the court's reasoning without needing to describe the specific terms or details of Walgreens' agreements. *See AstraZeneca*, No. 1:25-cv-00369-MWJS-WRP (D. Haw.), ECF No. 99. And, as noted above, the Hilo Agreement has thus far remained under seal at the Ninth Circuit as well, suggesting that court likewise has not determined that the public interest in understanding the issues presented by the appeal somehow demands the Agreement's disclosure.

general public interest in disclosure and warrants sealing. *See Kamakana*, 447 F.3d at 1179.

III. Walgreens Seeks Narrowly Tailored Relief.

Based on the above considerations, Walgreens seeks two primary forms of relief with respect to the Agreements. First, Walgreens asks that any trial exhibit consisting of or reproducing portions of the Agreements be filed under seal and kept off the public docket. Second, because sealing the exhibits would mean little if the Agreements' terms were disclosed in open court, Walgreens asks that if the Agreements are used at trial, they not be displayed on publicly visible courtroom monitors, and that any examination concerning their specific terms occur only in the presence of persons authorized to view AEO materials under the Stipulated Protective Order.[5] ECF No. 108 § 8.3. That Order specifically contemplates the Court taking steps to address the use of confidential materials during trial (*id.* § 6.3(b)), and other courts have taken similar measures to keep confidential information protected. *See, e.g.*, *Microsoft Corp.*, 2012 WL 5476846, at *4 (declining to "broadcast the contents of the license agreements to the public through courtroom monitors open to public view").

[5] Walgreens understands that QMC is seeking similar relief with respect to its own confidential information, including its contract pharmacy agreement with Walgreens.

That relief is narrowly tailored. Walgreens is not seeking to prevent any party from *using* the Agreements at trial, to close the courtroom, or to shroud any of the party's arguments or the general facts on which they rest, such as the contours of how contract pharmacy arrangements generally work. And certainly the parties can examine witnesses about the general structure of the relevant arrangements without publicly disclosing the specific details of Walgreens' fees, formulas, operational methods, and other trade secrets.

Finally, if the Court would prefer to address the sealing of trial exhibits and transcripts *after* trial—an approach Walgreens understands the parties may propose at the upcoming pretrial conference—Walgreens asks that the Agreements remain sealed in the interim and that it be permitted to request sealing of any admitted exhibits or related portions of the transcript within a reasonable period following the end of trial or the filing of the transcript.

CONCLUSION

For the foregoing reasons, Walgreens respectfully requests that the Court grant this motion and enter the accompanying proposed order.

DATED: Honolulu, Hawai‘i, October 28, 2026

Respectfully submitted,

/s/ James R. Ferguson

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ABBVIE INC. (a Delaware corporation; ALLERGAN, INC. (a Delaware corporation); DURATA THERAPEUTICS, INC. (a Delaware corporation); ABBVIE PRODUCTS LLC (a Georgia limited liability company); PHARMACYCLICS LLC (a Delaware limited liability company); and ALLERGAN SALES, LLC (a Delaware limited liability company), Plaintiffs, v. ANNE E. LOPEZ, in her official capacity as ATTORNEY GENERAL OF THE STATE OF HAWAI'I, Defendant.	CASE NO. 1:25-cv-00230-SASP-WRP **DECLARATION OF J. RANDALL RICHARDS IN SUPPORT OF NONPARTY WALGREEN CO.'S MOTION TO SEAL TRIAL EXHIBITS** Trial Judge: Hon. Shanlyn A.S. Park

DECLARATION OF J. RANDALL RICHARDS

I, J. Randall Richards, hereby declare and state as follows:

1. I am over the age of eighteen, and am competent to testify. I have personal knowledge of the facts and information contained herein. I submit this

Declaration in support of nonparty Walgreen Co.'s Motion to Seal Trial Exhibits ("Motion").

2. I am an attorney licensed in the State of Illinois. I am employed by Walgreen Co. ("Walgreens"), where I serve as Senior Director and Managing Counsel, Pharmacy & Healthcare Services Legal. In that role, I oversee legal matters related to Walgreens' contractual relationships with 340B covered entities.

3. Walgreens provides 340B contract pharmacy services to covered entities across the country, including in Hawai'i. Walgreens provides those services under written agreements negotiated with each covered entity.

4. Two such agreements are: (1) the 340B Contract Pharmacy Services Agreement between Hilo Medical Center and Walgreens (HBMC000001) (the "Hilo Agreement"); and (2) the 340B Contract Pharmacy Services Agreement between Adventist Health System/West and Walgreens (CMC_Subpoena_Production_000076) (the "CMC Agreement"; and together with the Hilo Agreement, the "Agreements").[1]

5. The Agreements contain highly confidential pricing and payment terms. Among other things, they set out Walgreens' negotiated administrative and dispensing fees, include terms related to third-party reimbursement, and detail the

[1] The CMC Agreement is a Master Services Agreement that was made applicable to nonparty Castle Medical Center through a separate Covered Entity Agreement between Walgreens and Castle Medical Center.

formulas used to calculate amounts owed for drugs that are not replenished, and the process for annual adjustment of Walgreens' fees.

6. The Agreements also contain confidential and proprietary information about the nature, details, and capabilities of Walgreens' 340B services. Among other things, they describe in detail how the parties order replenishment inventory, track 340B dispenses through proprietary systems, reconcile inventory, and submit invoices. They also contain negotiated audit, termination, and risk-allocation terms.

7. The terms of the Agreements are the result of confidential negotiations. The Agreements expressly provide that their terms, and the negotiations of those terms, are confidential, and they acknowledge that disclosure of confidential information would cause Walgreens irreparable harm.

8. Walgreens' confidential information is not confined to a single section or schedule of the Agreements. It appears throughout the Agreements.

9. Walgreens closely guards the terms of its contract pharmacy agreements with 340B covered entities and takes appropriate steps to ensure that those agreements remain confidential, including by requiring contractual confidentiality obligations. To my knowledge, neither of the Agreements has ever been publicly disclosed.

10. I understand that Hilo Medical Center and Castle Medical Center produced the Agreements to Plaintiffs in response to nonparty subpoenas, and that

they produced the Agreements under a "CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation pursuant to the Stipulated Protective Order entered in this case. Walgreens did not object to the production of the Agreements based on the protections provided in that Order.

11. I understand that Plaintiffs have notified Hilo Medical Center and Castle Medical Center that they intend to use the Agreements as exhibits at the trial in this matter.

12. Public disclosure of the Agreements and their terms would harm Walgreens in several ways.

13. First, Walgreens' current and prospective covered-entity customers could use the pricing and other terms contained in the Agreements as leverage when negotiating the terms of their own agreements with Walgreens.

14. Second, Walgreens' competitors could use the pricing terms and other confidential details about Walgreens' services and operations to undercut Walgreens' pricing, to gain an unfair advantage in negotiations with potential customers, or to better emulate Walgreens' services.

15. Third, drug manufacturers, which are adverse to contract pharmacies with respect to 340B contract pharmacy arrangements, could use the information contained in the Agreements to gain unfair advantage over Walgreens in various commercial and regulatory disputes.

16. Walgreens' considerable efforts to protect the confidentiality of the Agreements' terms would be for naught if the Agreements were filed on the public docket or displayed or discussed in open court in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of October 2026.



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Plaintiffs,

CASE NO. 1:25-cv-00230-SASP-WRP

[PROPOSED] ORDER GRANTING NONPARTY WALGREEN CO.'S MOTION TO SEAL TRIAL EXHIBITS

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ANNE E. LOPEZ, in her official capacity as ATTORNEY GENERAL OF THE STATE OF HAWAIʻI,

Defendant.

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Defendant.

ORDER GRANTING NONPARTY WALGREEN CO.’S MOTION TO SEAL TRIAL EXHIBITS

Before the Court is nonparty Walgreen Co.’s (“Walgreens”) Motion to Seal Trial Exhibits (“Motion”), filed October 28, 2026. Having considered the Motion, the accompanying Declaration of J. Randall Richards, and the record, the Court FINDS that compelling reasons exist to grant the Motion.

The Motion concerns (a) the 340B Contract Pharmacy Services Agreement between Hilo Medical Center and Walgreens (HBMC0000001) (the “Hilo Agreement”), and (b) the 340B Contract Pharmacy Services Agreement between Adventist Health System/West and Walgreens (CMC_Subpoena_Production_000076) (the “the CMC Agreement”; together with the Hilo Agreement, the “Agreements”). Both Agreements were produced by nonparties in discovery and designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Amended Stipulated Protective Order, ECF No. 108.

Records may be sealed upon a showing of “compelling reasons supported by specific factual findings that outweigh the general history of access and public

policies favoring disclosure." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006) (citation and internal quotation marks omitted). Compelling reasons exist when records could be used to release trade secrets or as sources of business information that might harm a litigant's competitive standing. *Id.* at 1179; *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008).

The Court finds that compelling reasons exist to seal the Agreements. The Agreements contain a nonparty's confidential, non-public pricing, fee, and reimbursement terms and descriptions of its proprietary operational processes. The Richards Declaration establishes that public disclosure would cause Walgreens specific competitive harm, including in negotiations with customers and in competition with other pharmacies. Walgreens' interest in confidentiality outweighs the public's interest in access to the Agreements' specific terms, which are not necessary for the public's understanding of the issues at trial. The Court further finds that the relief sought is narrowly tailored.

IT IS THEREFORE ORDERED that the motion is GRANTED:

1. Any trial exhibit consisting of or reproducing the Hilo Agreement or the CMC Agreement shall be filed or lodged under seal and shall not be available on the public docket.
2. If the Agreements are used at trial, they shall not be displayed on courtroom monitors visible to the public, and any examination concerning

their specific terms shall be conducted, to the extent practicable, only in the presence of persons authorized to view "CONFIDENTIAL – ATTORNEYS' EYES ONLY" material under the Amended Stipulated Protective Order.

3. To the extent that any portion of the trial transcript or any admitted exhibit discloses the Agreements' terms, Walgreens may file a motion to seal or redact such material within a period after the close of trial to be determined by the Court. Such material shall remain under seal pending resolution of any such motion.

APPROVED AND SO ORDERED:

DATED: Honolulu, Hawai'i, _____.

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UNITED STATES MAGISTRATE JUDGE