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

IN RE: PUBLIC FIRST LAW CENTER, Objector.	CIV. NO. 25-cv-230-SASP-WRP NONPARTY PUBLIC FIRST LAW CENTER'S POSITION STATEMENT REGARDING THREE MOTIONS TO SEAL [DKT. 186, 187, 188]

NONPARTY PUBLIC FIRST LAW CENTER'S POSITION STATEMENT REGARDING THREE MOTIONS TO SEAL [DKT. 186, 187, 188]

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Pursuant to Local Rule 5.2, Public First Law Center (Public First) submits this position statement regarding the motions to seal filed by nonparties Walgreen Co. (Walgreen), Accredo Health Group and Verity Solutions Group Inc. (together, Accredo), and Queen's Health Systems and Queen's Medical Center (together, Queens) (collectively, movants).[1] *See* Dkt. 186, 187, 188. Public First objects to the overly broad, blanket sealing sought by the movants and submits the following points and authorities to help the Court address the sealing requests consistent with the constitutional right of access and current trial schedule.[2]

Private contracts are not trade secrets simply because the contract has a confidentiality clause. Certain contractual terms may be a company's special sauce that derives independent economic value from its secrecy, but it is not the entire contract. For the Court to meet its obligation to enter an order based on specific facts that overcome the strong presumption of constitutional access to trials, movants must prove that each piece of information to be sealed is a trade

[1] Although the undersigned understands from discussions with counsel for the parties that ongoing meet and confer efforts may narrow or resolve the issues raised by movants' sealing requests, Public First submits this position statement to comply with the 7-day deadline set by LR 5.2.

[2] These issues can be readily resolved at the November 10 pretrial conference. Public First is available to attend if it would aid the Court. In any event, the Court must still enter an order consistent with the constitutional standards outlined below if there is any sealing of records or closure of the courtroom.

secret. Movants have not met the constitutional standard to justify their sealing requests.[3]

Even if the movants established some limited measure of trade secret, the requested relief regarding trial proceedings is excessive and unwarranted. The narrower solution here is the submission of only relevant material for the Court's consideration, careful presentation of witness testimony, and limited redaction of publicly accessible exhibits. Stipulations as to foundation or material facts also may mitigate unnecessary and excessive closure. Public First does not object to targeted redaction of legitimate trade secrets—so long as a sufficient factual basis exists.[4]

On the current record, however, Public First respectfully requests that the Court deny the motions to seal (Dkt. 186, 187, and 188) in their entirety and proceed with trial in open court.

[3] Although we identify gaps in the factual proof, Public First does not intend to challenge any *limited* trade secret determinations.

[4] As an example, Public First does not object to the limited redaction—one numerical figure in one paragraph of a declaration—sought by Longs Drug Stores California LLC (Longs) and Wellpartner LLC (Wellpartner). Dkt. 189 and 191.

I. Standard for Sealing

The First Amendment protects the public's right to observe trials and obtain related court records.[5] *E.g.*, *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. Maile*, 113 F.4th 1168, 1176 (9th Cir. 2024). 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). Movants thus have 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.* For sealing or courtroom closure, the Court must have

[5] The strong presumption of public access under the First Amendment is not the same as the more lenient common law standard. *E.g.*, *United States v. Bus. of the Custer Battlefield Museum*, 658 F.3d 1188, 1197 n.7 (9th Cir. 2011) ("The First Amendment is generally understood to provide a stronger right of access than the common law."); *accord United States v. Kaczynski*, 154 F.3d 930, 932-33 (9th Cir. 1998) (concurring opinion) (outlining some differences between common law and constitutional analyses). To the extent movants rely on common law cases (*e.g.*, *Nixon* and *Kamakana*), the motions fail to fully articulate the importance of public access in the circumstances presented here. Dkt. 186 at PageID.4061-62; Dkt. 187 at PageID.4091; Dkt. 188 at PageID.4249059. But when litigants have failed to satisfy even the common law standard, as referenced below, sealing is clearly not justified under the more stringent constitutional standard.

sufficient information to enter a written order that addresses the three prongs and is supported by specific factual findings.

II. Movants must prove trade secrets.

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.[6] *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,

[6] The "good cause" discovery protections for "commercial information"—as recognized, for example, under Fed. R. Civ. P. 26(c)(1)(G)—do not apply at trial. *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"); *cf.* 56 F.R.D. 183, 251 (1972) (proposed advisory committee note promulgated by U.S. Supreme Court) ("While the instant evidence rule extends this underlying policy [regarding trade secrets] into the trial, the difference in circumstances between discovery stage and trial may well be such as to require a different ruling at the trial.").

> 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); *accord* Uniform Law Commission, Uniform Trade Secrets Act (UTSA) § 1(4), *at* https://www.uniformlaws.org/committees/community-home?communitykey=3a2538fb-e030-4e2d-a9e2-90373dc05792.

For the confidentiality prong, "reasonable efforts to maintain secrecy have been held to include advising employees of the existence of a trade secret, limiting access to a trade secret on a 'need to know basis', and controlling plant access." *Buffets, Inc. Klinke*, 73 F.3d 965, 969 (9th Cir. 1996). Movants simply state that they do not disclose the information publicly or that they consider the documents to be confidential. *E.g.*, Dkt. 186 at PageID.4072; Dkt. 187 at PageID.4106; Dkt. 188 at PageID.4258-59. Such conclusory assertions do not establish that movants have taken reasonable measures to keep the information secret.

For the economic value prong, one factor in assessing whether information derives independent economic value from its secrecy is the information's novelty or other concrete value in competition. *E.g.*, *Bernier v. Merrill Air Eng'rs*, 770

A.2d 97, 107 (Me. 2001). Another factor is "the effort and expense that was expended in developing the information." *Robbins Geller Rudman & Dowd, LLP v. Office of Attorney Gen.*, 328 P.3d 905, 911 (Wash. App. 2014); *accord Bernier*, 770 A.2d at 107-08.

Trade secrets must be identified with particularity to separate the trade secret from general industry knowledge. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002 (1984) ("Information that is public knowledge or that is generally known in an industry cannot be a trade secret."); *Imax Corp. v. Cinema Techs., Inc.*, 152 F.3d 1161, 1164-65 (9th Cir. 1998); *accord Robbins*, 328 P.3d at 911 ("The alleged unique, innovative, or novel information must be described with specificity"); UTSA § 1 cmt. ("The language 'not being generally known to and not being readily ascertainable by proper means by other persons' does not require that information be generally known to the public for trade secret rights to be lost. . . . A method of casting metal, for example, may be unknown to the general public but readily known within the foundry industry.").

Information is not trade secret by default because it concerns pricing, internal policies, or business methodology. *E.g.*, *Self Directed Placement Corp. v. Control Data Corp.*, 908 F.2d 462, 465-66 (9th Cir. 1990) (internal employment counseling program not protected); *Belo Mgmt. Servs., Inc. v. Click! Network*, 343 P.3d 370, 375-76 (Wash. App. 2014) (pricing terms and non-cash compensation in

agreements are not trade secrets); *McCallum v. Allstate Property & Cas. Ins. Co.*, 204 P.3d 944, 950-51 (Wash. App. 2009) (insurance policy documents not protected); *Woo v. Fireman's Fund Ins. Co.*, 154 P.3d 236, 239-42 (Wash. App. 2007) (insurance company's claims manuals were not trade secret and thus no compelling interest to seal); *Kukui Nuts, Inc. v. R. Baird & Co.*, 7 Haw. App. 598, 620-21, 789 P.2d 501, 515 (App. 1990) (rejecting trade secret privilege claim for manufacturing processes and sources of capitalization); *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"); *Weiss v. Allstate Ins. Co.*, Civ. No. 06-3774, 2007 WL 2377119, at *4 (E.D. La. Aug. 16, 2007) (disclosure of insurance company documents would not place corporation at competitive disadvantage). That other courts have upheld redaction of pricing or other information based on case-specific evidentiary submissions does not equate to sealing pricing terms in every case.[7]

[7] Movants cite, among other cases, the memorandum decision *In re Electronic Arts, Inc.*, 298 Fed. Appx. 568 (9th Cir. 2008), for the principle that pricing terms are protected trade secrets. While the Ninth Circuit did not recite the evidence submitted to prove the trade secrets in that case, the Court of Appeals subsequently made clear that case-specific evidence is necessary. *Apple*, 658 F.3d at 1162.

Movants do not provide specific facts to establish that the information at issue is a trade secret. *See, e.g.*, *McCallum v. Allstate Prop. & Cas. Ins. Co.*, 204 P.3d 944, 951 (Wash. App. 2009) ("Sullivan's and Bjorback's declarations consist of conclusory statements that should its competitors gain access to its national policies, the competitors will gain an unfair advantage. And similarly, the declarations provide only conclusory statements that Allstate devoted considerable time, manpower, and finances to developing the documents. Again, the declarations include no specific examples to support these conclusions."); *accord Squiric v. Surgical Hosp.*, 2020-Ohio-7026 ¶¶ 76-81 (App. 2020) ("The affiant said disclosure of the financial information would leave the hospital open to attack from competitors without explaining how this would occur. The court is left to speculate as to the fears of the hospital and create our own scenarios for how the secretive nature of annual financial statements and profit and loss statements has independent economic value due to being secret from unknown others. Plus, the unknown others must be able to 'obtain economic value' from the release of the information, and the hospital has not explained how this would occur."). AbbVie's 83-page complaint outlines at length the extensive industry knowledge of how these 340B programs operate.[8] Dkt. 1 at PageID.16-50. And it is not patently

[8] These industry practices have been the subject of congressional scrutiny and are public knowledge. *E.g., The 340B Program: Examining Its Growth and Impact on Patients: Hearing Before the S. Comm. on Health, Educ., Lab. & Pensions*, 119th

obvious without further specific facts from movants that movants' particular process for exploiting the 340B program has independent economic value.

Without adequate proof of trade secrets, movants have not established a compelling interest that overrides the strong constitutional presumption of public access to trials and trial-related documents.

III. Sealing entire documents is not narrowly tailored to protecting limited trade secrets.

Assuming movants prove some limited measure of trade secrets, that proof does not justify sealing entire agreements or other documents.

For example, movants focus more intently on pricing terms within their "340B Contract Pharmacy Services Agreements." *E.g.*, Dkt. 186 at PageID.4062-

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Cong. 3 (2025) (statement of Michelle B. Rosenberg, Dir., Health Care, U.S. Gov't Accountability Off.) ("Covered entities can realize substantial savings through 340B price discounts—an estimated 20 to 50 percent of the cost of the drugs, according to HRSA. In addition, covered entities can provide 340B drugs to eligible patients regardless of income or insurance status and can generate revenue under the program when insurance reimbursement exceeds the 340B price paid for the drugs."), *available at* https://www.help.senate.gov/imo/media/doc/4510f17b-be5d-0f1a-2145-03e2950e1602/Rosenberg%20Testimony.pdf; *The 340B Program: Examining Its Growth and Impact on Patients: Hearing Before the S. Comm. on Health, Educ., Lab. & Pensions*, 119th Cong. 2 (2025) (statement of William B. Feldman, M.D., D.Phil., M.P.H., Univ. of Cal., L.A., David Geffen Sch. of Med.) (proposing reforms in part because the program currently "incentivizes a set of behaviors that increases healthcare costs and misallocates resources away from facilities with the greatest need."), *available at* https://www.help.senate.gov/imo/media/doc/4510f17b-be5d-0f1a-2145-03e2950e1602/Feldman%20Testimony.pdf; *Overview of the 340B Drug Discount Program* (2026), *available at* https://www.congress.gov/crs-product/IF13311 (describing industry practices concerning 340B drug discount program).

65; Dkt. 187 at PageID.4091-95; Dkt. 188 at PageID.4251, 4258 ¶ 7. But—as the cases relied on by the movants hold—the existence of a few provisions with trade secret protected pricing information does *not* justify wholesale sealing of an entire agreement. *Elec. Arts*, 298 Fed. Appx. at 569 (affirming redaction of one paragraph containing the specific trade secret information); *Mission Wellness Pharmacy LLC v. Caremark LLC*, 641 F. Supp. 3d 673, 678 (D. Ariz. 2022) (applying common law standard) ("Caremark has identified the alleged trade secrets with sufficient particularity. It has redacted specific figures, but otherwise provides documents in their original, unredacted form. . . . Still, not all of the data Caremark seeks to seal appears to retain economic value by virtue of being unknown. Likewise, some of the data has been publicly disclosed."); *Hoard v. Capital One, N.A.*, No. 24-CV-1133 JLS (VET), 2026 U.S. Dist. LEXIS 4473, at *5-7 (S.D. Cal. Jan. 9, 2026) (common law) ("The Court finds that the requests to seal are narrowly tailored to the portions of the documents containing confidential and sensitive business information."); *Intuit Inc. v. HRB Tax Grp., Inc.*, No. 5:24-cv-00253-BLF, 2024 U.S. Dist. LEXIS 173775, at *6-7 (N.D. Cal. Sep. 25, 2024) (common law) (identifying specific, sentence-level redactions); *Lawson v. Grubhub, Inc.*, No. 15-cv-05128-JSC, 2017 U.S. Dist. LEXIS 106291, at *28-29 (N.D. Cal. July 10, 2017) (common law) ("Mr. Chia seeks to file this deposition under seal in its entirety. This is overly broad. Grubhub must narrowly tailor its

request to only the sealable material that concerns sensitive business information."); *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2013 U.S. Dist. LEXIS 107039, at *39-40 (N.D. Cal. July 29, 2013) (common law) ("While the Court does not find that Rovi has set forth good cause to maintain the entire PLA under seal, the Court finds that Rovi has made a sufficiently particularized showing to maintain under seal the portions of the PLA that Rovi identifies in Exhibit A.").

Unlike the specific and targeted redactions proposed by Longs and Wellpartner, *see* Dkt. 189 and 191, the movants here ask for blanket sealing of entire documents that have not yet been presented to the Court. They contend an entire agreement may be sealed simply because it was the product of private negotiations. Dkt 188 at PageID.4253 (arguing "non-pricing, terms of the contracts are protected because they are part of the underlying negotiations and contribute to the value of the agreements"); Dkt. 187 at PageID.4094 (asking to seal the entirety of the "Mississippi Agreements"). There is no factual or legal basis to grant such overly broad requests.

The supporting declarations offer only a generic harm *untethered to any specific contract term*: "Public disclosure of the confidential terms of the pharmacy contracts would have a significant detrimental impact on Queen's negotiating position with other pharmacies because those entities would know

exactly what terms Queen's has accepted from their competitors." *Id*. at PageID.4259; *see also* Dkt. 187 at PageID.4094 (alleging disclosure of unspecified "terms and conditions" could be "leveraged by competitors and vendors"). That claim is far too broad to be true. For example, the movants have not identified a harm that would result from disclosure of standard—albeit, privately negotiated—boilerplate terms. *See generally N. Am. Lubricants*, 2011 U.S. Dist. LEXIS 133672, at *18-19 (rejecting claims of trade secret for 'boilerplate' items"); *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003) (rejecting sealing of boilerplate terms).

Queens' request to seal its policies and procedures manual is similarly overly broad. It contends disclosure of the manual "could have a significant detrimental impact on [Queens'] ability to negotiate future agreements because opposing parties would have detailed non-public information about [Queens'] internal policies and practices" and is likely to negatively impact its "ability to negotiate favorable terms in the future." Dkt. 188 at PageID.4259. But Queens' offers no evidence to suggest its manual describes anything *other than* industry-standard practices procedures. As noted, industry-standard practices are not protected trade secrets. Nor has Queens offered facts to establish its manual has "independent economic value," a prerequisite of any trade secret finding.

Even if movants had provided adequate facts to justify sealing pricing terms—they have not—there is no basis to seal the entirety of contracts or policies. The movants fail to articulate specific and probable, irreparable harms that would result from disclosure of non-pricing terms. Their blanket sealing request is not narrowly tailored as required by the constitutional standard.

IV. The request for a post-trial sealing process should be rejected.

Some movants ask the Court to create a process for post-trial sealing of exhibits and transcripts. *E.g.*, Dkt. 186 at PageID.4053; Dkt. 188 at PageID.4255. Such a process does not comport with the constitutional standard.

Information that is publicly discussed in open court during trial cannot later be made secret. "Secrecy is a one-way street: Once information is published, it cannot be made secret again." *United States v. Doe*, 870 F.3d 991, 1002 (9th Cir. 2017); *accord Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 (2d Cir. 2004) ("We simply do not have the power, even were we of the mind to use it if we had, to make what has thus become public private again."); *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1184 (9th Cir. 2006) (affirming an unsealing order because the information at issue was "already publicly available"); *see also Constand v. Cosby*, 833 F.3d 405, 410 (3d Cir. 2016) ("appeals seeking to restrain 'further dissemination of publicly disclosed information' are moot"); *MD Spa Shop LLC v. Med-Aesthetic Sols, Inc.*, No. 21-CV-1050, 2021 U.S. Dist. LEXIS 210552

at *18-19 (S.D. Cal. Oct. 29, 2021) ("A request to seal information that was publicly disclosed involves 'an inherent logical dilemma' in that 'information that has already entered the public domain cannot in any meaningful way be later removed from the public domain.'").

Waiting until after trial to designate portions of transcripts as confidential is not a viable alternative to anything.

V. There are narrowly tailored alternatives to closing the courtroom at trial if legitimate trade secrets exist.

Rather than blanket sealing and closure of the courtroom during trial, careful trial procedures can address legitimate trade secret concerns without unduly interfering with the public's right to observe and understand the trial.

First, as a practical alternative, the parties and movants can meet and confer to limit the scope of what is presented to the Court for trial. *E.g.*, Dkt. 206. As reflected by the unchallenged motions to seal, stipulations or focused declarations that limit the information disclosed can avoid movants' excessive trade secret assertions. The constitutional presumption of public access only applies to documents submitted to the Court. For example, if parties offer only excerpts from an agreement as a trial exhibit, movants may not claim trade secret or may be able to factually support a trade secret claim for the excerpted portion. Thus, as a threshold matter, the parties can structure the presentation of evidence to avoid or minimize infringing alleged trade secrets.

Second, as to trial testimony regarding legitimate trade secrets, testimony describing the specificity of the trade secret is not required. The Court will have a document that describes the details of the trade secret; oral testimony can discuss the issue more abstractly and point to the document for specific details. The Court may issue an advance admonishment to counsel and every witness who will speak to a trade secret that such discussions must be kept general. Counsel should be able to comply with such an instruction in questioning and to instruct relevant professional witnesses (*e.g.*, experts) to comply when answering questions. And movants' witnesses presumably will not disclose what they consider trade secrets.

Nevertheless, if the Court or the parties must elicit oral testimony that will touch on legitimate trade secrets because trial exhibits are insufficient, closure closely tailored to that specific testimony would be warranted.

VI. The constitutional standard for sealing is not "relaxed" for non-parties.

Accredo incorrectly suggests the standard for sealing is "relaxed" for movants because they are non-parties. Dkt. 187 at PageID.4092-93. The two cases cited in support rely on a single district case, *In re Northshore Univ. HealthSystem*, 254 F.R.D. 338, 342 (N.D. Ill. 2008), which concerned a motion for protective order under the less-stringent "good cause" standard governing discovery protective orders—not the strong presumption of openness under the constitutional standard applicable to judicial records. *See Markel Am. Ins. Co. v.*

Internet Brands, Inc., 2017 U.S. Dist. LEXIS 224860, *20-21 (C.D. Cal. Aug. 2, 2017) ("A similar issue arises where the parties have agreed that certain discovery material should be treated as confidential pursuant to a protective order. 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."). Accredo cites no authority holding that the constitutional standard is so flimsy as to depend on the identity of the proponent of secrecy, and Public First is aware of none.

CONCLUSION

Based on the foregoing, the Public First respectfully requests that the Court deny the movants' blanket requests for sealing records and closing court proceedings. Public First is available to meet and confer with the parties and movants in the next ten days to expediently address objections before trial.

DATED: Honolulu, Hawai'i, November 4, 2026

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