

FILED

**IN THE CIRCUIT COURT FOR KNOX COUNTY
SIXTH JUDICIAL DISTRICT AT KNOXVILLE**

KNOX COUNTY CIRCUIT CLERK
CATHERINE F. O'ANNUNZIO

**STATE OF TENNESSEE,
ex rel. HERBERT H. SLATERY III,
ATTORNEY GENERAL and REPORTER,**

Plaintiff,

v.

**PURDUE PHARMA, L.P.,
a foreign limited partnership,**

Defendant.

JURY DEMAND

Case No. 1-173-18

**THE STATE OF TENNESSEE'S MOTION FOR LEAVE TO FILE
COMPLAINT UNDER SEAL**

The State of Tennessee moves for an Order to file its Complaint, which contains references to documents and information that the Defendant asserts contain highly confidential, proprietary, or trade secret information, temporarily under seal. In accordance with the Defendant's confidentiality agreement with the State, the State moves to allow the Defendant ten days from the date it is served to seek a protective order relating to documents and information the Defendant classifies as containing highly confidential, proprietary, or trade secret information. Under the State's proposed order, the temporary seal will be lifted if the Defendant does not seek a protective order within ten days of service of the Complaint.

The State submits that the Complaint should not remain under seal beyond ten days from service and only files this motion to allow the Defendant the opportunity to secure a protective order. The State submits that a time period beyond ten days is not justified because the State is a

public litigant, the Complaint involves a matter of immense public interest, and the Defendant is unlikely to show a specific harm as a result of disclosure.

MOTION


The State moves pursuant to Tennessee Rule of Civil Procedure 26.03 for:

(1) an order placing the Complaint under seal for ten days from service of the State's Complaint to afford the Defendant the opportunity to move for a protective order concerning information and documentation it asserts is highly confidential, proprietary, or trade secret information; and

(2) any other relief the Court deems appropriate.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter



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CERTIFICATE OF SERVICE

On May 15, 2018, I, BRANT HARRELL, certify that the above-referenced document was served with original process.


BRANT HARRELL

IN THE CIRCUIT COURT OF KNOX COUNTY, TENNESSEE
SIXTH JUDICIAL DISTRICT AT KNOXVILLE

FILED

2018 MAY 15 AM 9:25
KNOX COUNTY CIRCUIT COURT
CATHERINE F. STANLEY, CLERK

STATE OF TENNESSEE,
ex rel. HERBERT H. SLATERY III,
ATTORNEY GENERAL and REPORTER,

Plaintiff,

v.

PURDUE PHARMA, L.P.,
a foreign limited partnership,

Defendant.

JURY DEMAND

Case No. 1-173-10

MEMORANDUM IN SUPPORT OF THE STATE OF TENNESSEE'S
MOTION FOR LEAVE TO FILE COMPLAINT UNDER SEAL

The State of Tennessee has moved for an Order to file its Complaint, which contains references to documents and information that Defendant Purdue Pharma, L.P. asserts contain highly confidential, proprietary, or trade secret information, temporarily under seal. In accordance with the Defendant's confidentiality agreement with the State, the State has filed this Motion to allow the Defendant ten days from the date it is served to seek a protective order relating to documents and information the Defendant classifies as containing highly confidential, proprietary, or trade secret information.

The Complaint should not be kept under seal beyond ten days and the State only files this Motion to allow the Defendant the opportunity to secure a protective order. Under the State's Proposed Order, the temporary seal will be lifted if the Defendant does not seek a protective order within ten days of service of the Complaint in accordance with its agreement with the State. The State believes its Complaint should be made public because there is no compelling reason to

withhold it from the public. A time period beyond ten days is not justified because the State is a public litigant, the Complaint involves a matter of immense public concern, and the Defendant is unlikely to show specific harm as a result from disclosure of the Complaint.

SUMMARY OF STATE'S COMPLAINT

The State's civil law enforcement action, as detailed in its approximately 270-page Complaint, is against one of the largest branded manufacturers of opioids and constitutes one of the ways the State seeks to address the opioid epidemic—one of the most significant public health crises in the State's history. The State's Complaint, which contains detailed factual allegations concerning the Defendant's conduct, is of public interest.

The State has brought suit under the Tennessee Consumer Protection Act (TCPA) against the Defendant to (1) protect consumers and the integrity of the commercial marketplace in Tennessee, (2) to remedy the Defendant's violations of the 2007 Agreed Final Judgment (2007 Judgment), and (3) to abate and remedy the statewide public nuisance created by the Defendant's interference with the commercial marketplace and endangerment of the public health.

The Complaint contains detailed allegations that the Defendant violated the TCPA by making a series of unlawful safety, comparative, and benefit claims about its opioid products, failing to disclose its material connection to third-party pain advocacy groups it substantially funded, and unfairly targeting vulnerable populations like the elderly.

Specifically, the Complaint asserts that the Defendant made false, deceptive, and/or unsubstantiated claims about its opioid products or opioids in general including but not limited to:

1. Representing without qualification that OxyContin has no dose ceiling in spite of potential adverse effects at higher doses such as death and respiratory depression, among others;
2. Understating the risk of addiction from its opioid products by perpetuating the discredited concept of pseudoaddiction, which encouraged prescribers to prescribe more, not fewer, opioids to individuals exhibiting drug-seeking behavior;

3. Understating the risk of addiction by overstating the effectiveness of tools prescribers could use in their pain management practices to reduce or mitigate the risk of addiction;
4. Failing to disclose the increased risk of addiction from its opioid products at higher doses while making claims about high doses of opioids through upward titration or otherwise;
5. Failing to disclose the lack of substantiation supporting the long-term use of its opioid products while making claims advocating long-term use;
6. Falsely representing that its opioid products produced fewer peaks and valleys than short acting opioids leading to less euphoria, less abuse, and more effective pain relief;
7. Representing that the abuse-deterrent properties of OxyContin and Hysingla ER are more protective than they actually are;
8. Failing to disclose that the abuse deterrent properties of OxyContin and Hysingla ER do not address oral ingestion, the most common form of abuse, while making claims about OxyContin and Hysingla ER's abuse-deterrent properties;
9. Making sweeping safety claims about its opioid products without qualification;
10. Broadly representing that its own products are safer or more effective than competing opioid and non-opioid products;
11. Representing that OxyContin is safer, more effective, as effective, or superior to other extended release opioids generally, as well as:
 - a. Opana,
 - b. Duragesic,
 - c. methadone, and
 - d. Avinza;
12. Representing that OxyContin is safer, more effective, as effective, or superior to immediate release opioids generally, as well as:
 - e. Dilaudid,
 - f. hydrocodone,
 - g. immediate release opioids containing acetaminophen,
 - h. hydrocodone combinations,
 - i. Lortab and Vicodin, and
 - j. Percocet;
13. Representing that OxyContin is safer, more effective, as effective, or superior to non-opioids;

14. Representing that Butrans is safer, more effective, as effective, or superior to immediate release opioids generally, as well as:
 - k. hydrocodone,
 - l. hydrocodone combinations,
 - m. Darvocet,
 - n. tramadol, and
 - o. Lortab;
15. Representing that Ryzolt is safer, more effective, as effective, or superior to immediate release opioids generally, as well as Percocet and Lortab;
16. Representing that Ryzolt is safer, more effective, as effective, or superior to extended release opioids, including tramadol and Ultram ER;
17. Representing that Hysingla ER is safer, more effective, as effective, or superior to immediate release opioids, including hydrocodone combinations and those containing acetaminophen;
18. Representing that its opioid products could improve a user's quality of life generally;
19. Representing that its opioid products could improve a user's ability to function;
20. Representing that its opioid products could improve a user's sleep or acted as a sleep aid;
21. Failing to disclose that there is a greater risk of respiratory depression from OxyContin and Butrans in elderly patients while making claims about the use of opioids in elderly patients;
22. Failing to disclose that low-dose starts of OxyContin in elderly patients most often lead to higher doses of OxyContin where risks are increased while making claims about the use of opioids in elderly patients;
23. Making unsubstantiated comparative claims that OxyContin is safer, more effective, as effective, or superior to its extended-release competitor, Duragesic, while also making claims about the use of opioids in elderly patients; and
24. Making unsubstantiated comparative claims that Butrans is safer, more effective, as effective, or superior to competing products with acetaminophen, while also making claims about the use of opioids in elderly patients.

The Complaint also contains detailed allegations as to the Defendant's failure to comply with the 2007 Judgment it entered with the State. The 2007 Judgment required the Defendant to take appropriate steps including the cessation of sales promotion to prescribers whose practices

showed indications of abuse or diversion. The State alleges that the Defendant on numerous occasions failed to take appropriate action in spite of knowing about unambiguous, credible signs of abuse or diversion.

The Complaint further contains detailed allegations that the Defendant's actions and omissions concerning its highly addictive narcotics have created and fueled a public nuisance in Tennessee by significantly interfering with the commercial marketplace and endangering the life and health of the State's residents. Through its lawsuit, the State alleges the Defendant created the market for a highly potent, extended release opioid that was easily manipulated by misrepresenting OxyContin's potential for addiction and abuse through an unprecedented marketing campaign for a Schedule II narcotic, which targeted some of the highest prescribing providers and pharmacies of OxyContin and other opioids in Tennessee. The State's action alleges that the Defendant had knowledge in many cases of signs of abuse or diversion from the Tennessee providers and pharmacies that its sales representatives continue to make sales calls and ignore red flags.

The Complaint seeks a permanent injunction, civil penalties of \$1,000 for each TCPA violation, civil penalties of \$10,000 for each TCPA violation targeting the elderly, disgorgement of ill-gotten gains, restitution, \$2,000 per violation of the 2007 Judgment, a nuisance abatement order, equitable costs of abating the nuisance on behalf of the State and its political subdivisions, and damages.

LEGAL STANDARD

Under Tennessee Rule of Civil Procedure 26.03, any party may move for a protective order for good cause shown. Factors that weigh in favor of a finding of good cause include: (1) the litigation involves private litigants, (2) the litigation concerns matters of private concern or of little legitimate public interest, and (3) disclosure would result in serious embarrassment or other

specific harm. *Ballard v. Herzke*, 924 S.W.2d 652, 658–59 (Tenn. 1996) (internal citations omitted). The State asserts that the factors do not justify a protective order lasting longer than ten days.

ARGUMENT

The Defendant has separately agreed that documents it previously marked as confidential may be disclosed if it fails to seek a protective order within ten days of service of the Complaint. The Defendant designated the vast majority of documents produced during the State's investigation, including those referenced in the State's Complaint, as confidential. By doing so, the Defendant has alleged it has a good faith belief that the documents contain highly confidential, proprietary, or trade secret information. Therefore, the proposed order should be granted. However, a protective order lasting longer than ten days is not justified based on the public character of this action.

As previously agreed upon by the Parties, the Defendant should have ten days in which to seek a protective order if it determines that any of the documents referenced in the State's Complaint contain information that would result in specific harm. If it does seek a protective order, the State will likely respond in opposition and the Defendant will have the burden of justifying the confidentiality of each and every document sought to be covered by a protective order. *Ballard*, 924 S.W.2d at 658.

CONCLUSION

The State respectfully requests that the Court enter the proposed order to seal the State's Complaint for ten days from the date of service to allow the Defendant to seek a protective order for information it has designated as containing highly confidential, proprietary, or trade secret information.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter



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ATTORNEY GENERAL and REPORTER,)

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v.)

PURDUE PHARMA, L.P.,)
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Defendant.)

JURY DEMAND

Case No. 1-173-18

ORDER GRANTING LEAVE TO FILE COMPLAINT UNDER SEAL

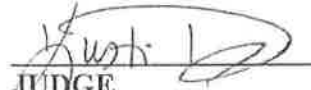
The State of Tennessee has moved for an order requesting that the Complaint be filed under temporary seal and remain sealed for a period of ten days after service of the Complaint on the Defendant. As grounds for the Motion, the State asserted that the Defendant claims that the documents and information it produced to the State and are referenced in the Complaint are highly confidential, proprietary, or trade secret information and that the Defendant previously agreed to a ten-day period following service within which to seek a protective order.

The State's Motion is **GRANTED**. The Complaint shall be filed under seal and the Defendant shall have ten days from the date it is served with the Complaint to seek a protective order concerning documents and information referenced in the State's Complaint that the Defendant continues to designate as confidential. If the Defendant files a motion for a protective order, the parties shall agree to a motion date and the State shall have a reasonable opportunity to

respond. If the Defendant does not seek a protective order within ten days of being served, the seal on the State's Complaint shall expire and the Complaint may be publicly disclosed.

IT IS SO ORDERED.

Entered this day 15 of May, 2018.


JUDGE
Circuit Court Judge
Sixth Judicial District

Prepared for entry:

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