

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**IN RE: ZANTAC (RANITIDINE)
PRODUCTS LIABILITY
LITIGATION**

**MDL NO. 2924
20-MD-2924**

**JUDGE ROBIN L. ROSENBERG
MAGISTRATE JUDGE BRUCE E. REINHART**

**GENERIC MANUFACTURERS' MOTION TO FILE UNDER SEAL THEIR
SUBMISSIONS IN SUPPORT OF TAXING COSTS**

Generic Manufacturers respectfully request entry of an Order, pursuant to Southern District of Florida Local Rule 5.4(b), authorizing the filing under seal of their respective individual forthcoming Submissions in Support of Taxing Costs or Bill of Costs with Accompanying Exhibits ("Bills of Costs"). Generic Manufacturers will file redacted versions of their individual Bills of Costs on the public CM/ECF docket.¹

I. BACKGROUND

On July 8, 2021, this Court entered an order dismissing all claims against Generic Manufacturers with prejudice, making each Generic Manufacturer a prevailing party and raising the presumption that they are entitled to an award of taxable costs under Federal Rule of Civil Procedure 54 and 28 U.S.C. § 1920. The Generic Manufacturers intend to submit Bills of Costs with supporting evidence and invoices, some of which include confidential information as defined under the law and under Pretrial Order #26. The two types of information the Generic Manufacturers seek to file under seal are: (1) pricing related to ESI charges, and (2) the Special Master fees and expenses.

¹ The Generic Manufacturers seeking to file Bills of Cost under seal include: Ajanta, ANI, Amneal, Apotex Corp. Aurobindo, Dr. Reddy's, Granules, Heritage, Hikma, Lannett, Nostrum, Novitium, PAI, Par, Sandoz, Strides, Teva, Torrent, and Wockhardt.

During an August 19, 2021 meet and confer conference with Plaintiffs on the issue of Bills of Costs, Generic Manufacturers raised the issue of confidentiality and inquired whether Plaintiffs would oppose a request to file these materials under seal. Plaintiffs notified Generic Manufacturers on August 29, 2021, that they would oppose the filing of this sensitive personal and business information under seal. Generic Manufacturers thus file this motion.

II. ARGUMENT

The Protective Order entered in this MDL requires that materials containing Confidential Information be filed with the Court under seal, in accordance with Local Rules for the Southern District of Florida. Pretrial Order #26 at 15 [DE 780]. “Confidential Information” is defined in Pretrial Order #26 to include, among other things, “(1) information that the Producing Party reasonably believes constitutes a trade secret under applicable statutory and case law; or (2) information that the Producing Party reasonably believes constitutes highly sensitive technical or proprietary business information of such Producing Party that its disclosure might result in an unfair competitive, financial or commercial advantage to the Receiving Party or competitors or disadvantage to the Producing Party.” Pretrial Order #26, B.6. [DE 780]. “Confidential Information” also includes “sensitive personal data” or “any other sensitive information.” *Id.*

The ESI vendor invoices contain highly sensitive information that reflects the result of the Generic Manufacturers’ competitive dealings with their respective ESI vendors, and their disclosure would “result in an unfair competitive, financial or commercial advantage to . . . competitors.”² *Id.* Many of the invoices that Generic Manufacturers intend to submit with their Bill of Costs were marked “confidential” by ESI vendors, reflecting that the invoices were the

² Additionally, the ESI Vendor invoices also often reflect confidential and protected attorney work product information regarding the dates and volumes of ingestion, processing, and production of ESI by each Generic Manufacturer that a party cannot disclose and the Generic Manufacturers intend to redact that information accordingly.

result of price negotiations and not intended to be shared. To date, those invoices have not been shared publicly or produced in discovery in this case. Even if certain invoices have never been labeled “confidential,” however, they nonetheless contain information that falls within the definition of “Confidential Information” because they contain the trade secret and proprietary business information of the ESI vendors, which, if disclosed, could cause an unfair competitive disadvantage to those ESI vendors. Pretrial Order #26, B.6. [DE 780].

Even outside the parameters of this governing Pretrial Order, however, there should be no dispute that a vendor’s pricing is a trade secret and confidential business information that is entitled to protection by filing under seal. *See VAS Aero Services, LLC v. Arroyo*, 860 F. Supp. 2d 1349 (S.D. Fla. 2012) (an agreement between a vendor and its customer, which contains agreed pricing formulas and pricing terms, and which would enable a competitor to undercut the vendor’s prices, qualifies as a trade secret). Protecting this information here is particularly important because the ESI Vendors have merely provided support services to the Generic Manufacturers, and their pricing and pricing strategies are not at issue in this lawsuit.

Similarly, disclosure of the fees and expenses of the Special Master could reveal commercial or competitive issues and certainly would reveal “sensitive personal data.” Indeed, the fees and expenses charged by the Special Master indirectly reveal personal financial information of the Special Master’s, including the hourly rate and hours worked, the total amount charged, and

the allocation of that cost amongst parties.³ *Id.* Therefore, it is appropriate that this information also should be filed under seal.

Pursuant to Southern District of Florida Local Rule 5.4(b)(1), Generic Manufacturers request that the unredacted version of this information (including the exhibits) be sealed until entry of an Order overruling the designation of materials referenced therein as Confidential Information. *See* S.D. Fla. L.R. 5.4(b)(1). A party seeking to seal materials must “set[] forth the factual and legal basis for departing from the policy that Court filings are public” and the party must describe the Proposed Sealed Material “with as much particularity as possible, but without attaching or revealing the content of the proposed sealed material.” S.D. Fla. L.R. 5.4(b). While court filings in this district are typically matters of public record pursuant to the common law right of public access, *see Donoff v. Delta Air Lines, Inc.*, No. 18-81258-CV, 2019 WL 2568020, at *1 (S.D. Fla. Mar. 14, 2019), this right of access may be overcome by a showing of good cause, which requires the Court to “balance the [public] interest in obtaining access to the information against the interest in keeping the information confidential.” *Citrullo v. Nat’l Beverage Corp.*, No. 17-60225-CIV, 2018 WL 6620110, at *1 (S.D. Fla. Oct. 17, 2018), *report and recommendation adopted*, No. 17-60225, 2018 WL 6620464 (S.D. Fla. Nov. 2, 2018). “In balancing the public interest in accessing court documents against a party’s interest in keeping the information confidential, courts consider, among other factors, whether allowing access would impair court functions or harm legitimate privacy interests, the degree of and likelihood of injury if made public . . . [and] whether the information concerns public officials or public concerns” *Id.*; *NXP B.V. v. Research In Motion, Ltd.*, No. 6:12-CV-498-ORL-22, 2013 WL 4402833, at *2 (M.D. Fla. Aug. 15, 2013); *United*

³ Generic Manufacturers Aurobindo, Amneal, Dr. Reddy’s, PAI, and Teva do not intend to request reimbursement of Special Master fees and expenses. Thus, they do not take a position with respect to the designation of that information.

States v. Steinger, 626 F. Supp. 2d 1231, 1234 (S.D. Fla. 2009) (quoting *Romero v. Drummond Co.*, 480 F.3d 1234, 1246 (11th Cir. 2007)).

The Generic Manufacturers have easily met this burden. The usual concerns for denying filings under seal include preventing key facts surrounding issues in dispute from being shielded from the public. Here, these concerns are not present because this MDL is about Zantac and not about what any one company pays its ESI vendor for those litigation support services.

Pursuant to Local Rule 7.1, undersigned counsel certify that they conferred with Plaintiffs prior to filing this motion in a good faith effort to resolve by agreement the issues that are raised in this motion, and Plaintiffs oppose the relief sought herein.

WHEREFORE, Generic Manufacturers respectfully request entry of an Order authorizing each Generic Manufacturer to file under seal unredacted versions of their Bills of Costs and exhibits thereto. A proposed Order is attached.

Dated: August 31, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will provide automatic notification to all counsel of record.

/s/ Terry M. Henry

Terry M. Henry