UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: RANBAXY GENERIC DRUG APPLICATION ANTITRUST LITIGATION	MDL NO. 2878 Master File No. 19-md-02878-NMG
THIS DOCUMENT RELATES TO: *All Cases*	

MEMORANDUM OF LAW OF PRO PUBLICA, INC. IN SUPPORT OF MOTION TO INTERVENE AND UNSEAL JUDICIAL RECORDS

ORAL ARGUMENT REQUESTED

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INTRODUCTION

This case involved allegations of significant public interest and concern—that Defendants (collectively, "Ranbaxy") fraudulently obstructed the FDA's process for approving generic drugs for the U.S. market, and that those efforts jeopardized the public's access to safe and effective generic drugs. Yet at summary judgment, both parties filed their briefing and supportive exhibits almost entirely under seal, preventing the public from understanding the bases for their cross-motions and the record before the Court when it denied those motions. Pro Publica, Inc. ("ProPublica"), a Pulitzer Prize-winning nonprofit newsroom, moves to intervene in this case for the limited purpose of seeking to unseal these summary judgment filings. Releasing these records will enable ProPublica to report on public health issues of paramount importance including how one of the leading generic drugmakers in the world manufactures drugs and ensures their safety, how the FDA's approval process operates, and why the FDA approved Ranbaxy before other companies to manufacture three generic drugs.

ProPublica's motion to intervene should be granted. The motion is timely, as motions to intervene to access court records after a case has ended are routinely granted in the First Circuit and in federal courts across the country. In the First Circuit, courts interpret timeliness especially broadly when the media seek to intervene to assert the public's right of access to court records. Without media intervention, courts might rarely reach right of access issues. ProPublica's motion to intervene is made for the limited purpose of exercising common law and First

Amendment rights of access to certain sealed records from the summary judgment phase of this case. These interests are not represented by any party in this action, as the action has settled and, prior to settlement, no party sought to unseal the summary judgment records identified herein.

ProPublica's motion to unseal should also be granted. The public has a presumptive right of access under both the common law and the First Amendment to the summary judgment-related filings at issue. These filings were submitted to aid in the adjudication of issues impacting the parties' substantive rights, and such judicial records have traditionally been available on the public docket. Moreover, disclosure of these records would serve the public interest by enabling greater understanding of the FDA's oversight of generic drug manufacturing.

At the time of sealing, the parties made no showing to establish that sealing was necessary, nor did the Court make any findings to justify its order. There are no countervailing interests to support continued sealing. This civil case settled prior to trial, so there are no fair trial rights at stake. There is no indication that the filings contain highly personal information. As to concerns about revealing sensitive business information, the First Circuit has held such concerns, on their own, do not outweigh the public's access rights. ProPublica's motion to unseal should therefore be granted in its entirety.[1]

[1] In the alternative, if the Court finds that the strong common law and First Amendment presumptions of access are overcome for portions of the records identified by ProPublica, the Court should allow access to those records with only minimal redactions that are narrowly tailored and supported by specific findings on the record.

FACTUAL BACKGROUND

A. The proposed intervenor, ProPublica, has reported extensively on foreign generic drug manufacturers.

Proposed intervenor ProPublica is a nonprofit, investigative news organization that seeks to "dig deep into important issues, shining a light on abuses of power and betrayals of public trust."[2] ProPublica has won dozens of awards for its investigative work, including eight Pulitzer Prizes, five Peabody Awards, eight Emmy Awards, and 16 George Polk Awards.[3]

Since its founding in 2007, ProPublica has investigated and reported on controversies surrounding foreign generic drug manufacturers and the impact of those manufacturers' practices on Americans who rely on generic drugs.[4] Most recently, ProPublica's work on this topic has focused on the FDA's failure to enforce its own bans on importing drugs from factories worldwide, including those owned and operated by Sun Pharma, which acquired Ranbaxy in 2015.[5]

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[2] *About Us*, PROPUBLICA, https://www.propublica.org/about/ (last visited Dec. 2, 2025).

[3] *Awards*, PROPUBLICA, https://www.propublica.org/awards (last visited Dec. 2, 2025).

[4] *See, e.g.*, Alexandra Andrews, *U.S. AIDs Program Funds Questionable Drugmaker*, PROPUBLICA (Aug. 14, 2008), https://www.propublica.org/article/us-aids-program-funds-questionable-drug-maker-814; Marian Wang, *Pfizer's Latest Twist on 'Pay for Delay'*, PROPUBLICA (Nov. 14, 2011), https://www.propublica.org/article/pfizers-latest-twist-on-pay-for-delay.

[5] Debbie Cenziper et al., *Threat in Your Medicine Cabinet: The FDA's Gamble on America's Drugs*, PROPUBLICA (June 17, 2025), https://www.propublica.org/article/fda-drug-loophole-sun-pharma.

B. The parties settled this case after the Court denied cross-motions for summary judgment.

In March 2019, several direct purchaser and end-payor class actions were consolidated against Defendants Ranbaxy Inc., Ranbaxy Laboratories Limited, Ranbaxy USA, Inc., and Sun Pharmaceutical Industries Limited. ECF No. 3.[6] The claims brought by consolidated end-payor and direct purchaser class plaintiffs ("Plaintiffs") included civil Racketeer Influenced and Corrupt Organizations ("RICO") Act violations, federal and state antitrust law violations, and state consumer protection law violations. At the heart of these allegations was Plaintiffs' assertion that Defendants engaged in a fraudulent scheme to maintain control of the market for their generic drugs, leading to "artificially inflated prices" for their products. ECF No. 20 ¶¶ 305–366. As alleged in the consolidated direct purchaser amended complaint, "[t]his case is about how Ranbaxy recklessly stuffed the generic drug approval queues with grossly inadequate applications, deceived the FDA into granting tentative approvals to lock in statutory exclusivities to which Ranbaxy was not entitled, and brandished these undeserved exclusivities to exclude others while its own applications floundered, all at the direct expense of U.S. drug purchasers." *Id.* ¶ 2.

On May 11, 2021, Plaintiffs filed an unopposed motion to file their summary judgment, *Daubert*, and collateral estoppel motions and related materials under seal.

[6] Two of these entities, Ranbaxy Laboratories Limited and Ranbaxy USA, Inc., no longer existed by the time the complaints were filed. They were dismissed from the case on November 27, 2019. ECF No. 148 at 2 n.1.

ECF No. 386. On the same day, Defendants similarly filed an unopposed motion to file under seal their summary judgment motions, Rule 56.1 statement, certain materials in support, and *Daubert* motions. ECF No. 387. On May 12, 2021, the Court granted Plaintiffs' and Defendants' motions to seal but offered no explanation for its ruling. ECF No. 388.

On May 17, 2021, the parties filed under seal their motions for summary judgment and supporting memoranda of law. ECF Nos. 414–424. By July 27, 2021, the summary judgment motions were fully briefed. *See* ECF No. 458.

On September 29, 2021, the Court entered an order, ECF No. 470, granting a joint motion by the parties to unseal certain summary judgment-related filings, ECF No. 467. On October 19, 2021, the Court granted the parties' joint motion to unseal additional summary judgment-related filings, ECF No. 484, which was made pursuant at least in part to Plaintiffs' earlier representation that they would seek to unseal some summary judgment materials after their filing, ECF 386. On December 17, 2021, the Court granted a third joint motion to unseal certain additional summary judgment-related filings. ECF No. 524. Still, under the initial blanket sealing order, ECF No. 388, all summary judgment-related filings that were not specifically identified within those three joint motions have remained sealed and inaccessible to the public.

On November 22, 2021, the Court denied Defendants' motions for summary judgment as to direct purchaser plaintiffs and end-payor plaintiffs. ECF No. 505. The Court also denied Plaintiffs' motion for partial summary judgment. *Id.*

The case later settled and never proceeded to trial. The Court granted final approval of the settlement on September 19, 2022, ECF No. 613, and dismissed the case on September 21, 2022, ECF No. 614.

C. ProPublica seeks access to records from the parties' cross-motions for summary judgment.

ProPublica frequently relies on access to judicial proceedings and records in order to investigate matters of public concern. Here, ProPublica seeks access to the records identified below, to further its reporting on generic drug safety and the availability of effective and affordable generics.

Specifically, ProPublica seeks to unseal the parties' respective summary judgment motions and oppositions, including all declarations and memoranda, in support of (1) motions for summary judgment as to the direct and end-payor plaintiffs, and (2) Plaintiffs' motion for summary judgment on *Burwell* findings, all in unredacted form (collectively, the "Requested Records").[7]

ARGUMENT

I. The Court should grant ProPublica's motion to intervene.

ProPublica seeks to intervene in these proceedings pursuant to Federal Rule of Civil Procedure 24(b) for the limited purpose of vindicating the public's right of access to the Requested Records. This is the appropriate means of bringing motions to unseal in the First Circuit. *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 11 (1st Cir. 2009) (permissive intervention is the "procedurally correct

[7] The specific docket entries sought to be unsealed are listed in Addendum A to this memorandum.

vehicle" for unsealing judicial records). *See also Pub. Citizen v. Liggett Grp., Inc.*, 858 F.2d 775, 783 (1st Cir. 1988) ("[W]here intervention is available (*i.e.* civil cases), it is an effective mechanism for third-party claims of access to information generated through judicial proceedings."); *accord Does 1-6 v. Mills*, No. 1:21-CV-00242-JDL, 2021 WL 6197377, at *1 (D. Me. Dec. 30, 2021) (same). Under Rule 24(b), a proposed intervenor must show "that (1) it timely moved to intervene; (2) it has an interest relating to the property or transaction that forms the basis of the ongoing suit; (3) the disposition of the action threatens to create a practical impediment to its ability to protect[ ] its interest; and (4) no existing party adequately represents its interests." *Doe v. Smith*, No. 2:23-CV-00423-JAW, 2024 WL 1240935, at *2 (D. Me. Mar. 22, 2024) (quoting *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 544–45 (1st Cir. 2006)).

Here, ProPublica's motion to intervene is timely. That the case has settled does not justify the ongoing denial of public access, nor does it limit ProPublica's standing to intervene. *See Pub. Citizen*, 858 F.2d at 785 (noting that "postjudgment intervention is not altogether rare") (collecting cases); *accord Wilson v. Am. Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985) (permitting intervention to challenge a seal on court documents even after judicially approved settlement); *FDIC v. Ernst & Ernst*, 677 F.2d 230 (2d Cir. 1982) (third party permitted to intervene and challenge a stipulated confidentiality order two years after a judicially-approved settlement); *see also Smith*, 2024 WL 1240935, at *2–3 (holding that "press entities and others seeking access to court records may intervene to unseal court records even after

judgment" and noting that "[b]ased on *Public Citizen*, the Court is not at all certain that the ordinary timeliness requirements apply when the media moves to intervene to assert the right of public access to court documents" (internal quotation marks omitted)).

The second and third prongs for intervening under Rule 24(b) are not stringently enforced in the media-intervenor context. Rather, where a proposed intervenor has a specific interest in a limited aspect of the case and "does not seek to become a party to the litigation, the nexus-of-fact-or-law requirement is loosened, and '[s]pecificity, *e.g.*, that the intervenors' claim involve the same legal theory that was raised in the main action, is not required.'" *Mills*, 2021 WL 6197377, at *1 (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 778 (3d Cir. 1994)). Such is the case here. ProPublica seeks intervention only so that it may move to unseal specific judicial records in the above-captioned matter. It does not seek to become a general party to the litigation.

Finally, for the purposes of the fourth prong of intervention, ProPublica's interests are not represented by any party in this action, as both Plaintiffs and Defendants sought the sealing prior to settlement, and there is no other party representing the public interest in unsealing the Requested Records. It has settled and no party in the action had an interest in unsealing the Requested Records. *Cf. Mills*, 2021 WL 6197377, at *2 ("Because the Media Intervenors seek to vindicate their and the public's common law and First Amendment rights of access to judicial

proceedings, and that interest is not currently represented by any of the parties, this consideration weighs in favor of granting, not denying, intervention.").

Accordingly, because its motion is timely and made for the limited purpose of exercising common law and First Amendment rights not represented by any party in this action, ProPublica should be permitted to intervene. To the extent this Court grants intervention, ProPublica respectfully requests that it promptly address the merits of the access claims set forth below. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 127 (2nd Cir. 2006) ("Our public access cases and those in other circuits emphasize the importance of immediate access where a right to access is found. . . . The public cannot properly monitor the work of the courts with long delays in adjudication based on secret documents.").

II. The press and public should be given access to the Requested Records.

A. The common law presumption against sealing records applies to the Requested Records and has not been overcome in this case.

The common law provides a strong presumption of access to the Requested Records. *Siedle v. Putnam Invs., Inc.*, 147 F.3d 7, 9 (1st Cir. 1998) ("The common law presumes a right of public access to judicial records."); *In re Salem Suede, Inc.*, 268 F.3d 42, 45 (1st Cir. 2001) ("[T]here is a strong common law presumption favoring public access to judicial proceedings and records."). This presumption "stems from the premise that public monitoring of the judicial system fosters the important values of quality, honesty and respect for our legal system." *Siedle*, 147 F.3d at 9–10 (citation and internal quotation marks omitted).

If a document is a "judicial record," the "presumption that it is public applies." *Doe v. Smith*, No. 2:23-CV-00423-JAW, 2025 WL 1080750, at *9 (D. Me. Apr. 10, 2025) (citing *United States v. Kravetz*, 706 F.3d 47, 52 (1st Cir. 2013)). In the First Circuit, a document is determined to be a judicial record where it is "submitted by parties to aid in the adjudication of" an issue before the court and it is "meant to impact the court's disposition of substantive rights." *Id.* (quoting *Kravetz*, 706 F.3d at 56); *United States ex rel. Nargol v. DePuy Orthopaedics, Inc.*, 69 F.4th 1, 15 (1st Cir. 2023). The First Circuit has not required that a document "actually influenced a judge's decision" to be a judicial record. *Doe*, 2025 WL 1080750, at *9 (citing *Kravetz*, 706 F.3d at 58–59). As the Court of Appeals stated in the context of consent decrees in *FTC v. Standard Fin'l Mgmt. Corp.*, 830 F.2d 404, 409 (1st Cir. 1987),

> [S]ubmissions [that] come to the attention of the district judge … can fairly be assumed to play a role in the court's deliberations. To hold otherwise would place us in the position of attempting to divine and dissect the exact thought process of judges…—a task more suitable to a clairvoyant than to an appellate court. To avoid the necessity for such mindreading, we rule that relevant documents which are submitted to, and accepted by, a court of competent jurisdiction in the course of adjudicatory proceeedings, become documents to which the presumption of public access applies.

Here, the Requested Records consist of the parties' summary judgment papers. (*See supra* at 6 n.7 & Addendum.*)* Each document was submitted by the parties to aid the Court's adjudication of the parties' substantive rights. "[J]udicial records consisting of memoranda and exhibits . . . filed in support of [a] summary judgment motion" are judicial records subject to the common law presumption of access. *Taylor*

v. Grunigen, No. CV 19-11947-MBB, 2022 WL 313970, at *1 (D. Mass. Feb. 2, 2022) (collecting cases). The Requested Records are therefore judicial records.

Given that, "far more" than a protective order is required to justify sealing. *Mangosoft, Inc. v. Oracle Corp.*, No. 02-CV-545-SM, 2005 WL 2203171, at *2 (D.N.H. Sept. 9, 2005). Where discovery materials have been filed in support of a dispositive motion, such as a motion for summary judgment, they are subject to the common law and First Amendment presumptions of access, even if the materials have been designated "confidential" or "highly confidential" pursuant to a protective order and FRCP 26. *See*, e.g., *id.* at *2 ("Public access to trials, pre-trial hearings, and pre-trial motions practice is a longstanding tradition in the American judicial system, protected by the common law and implicating the First Amendment. . . . Eliminating public access to the summary judgment record in this case will require more than a mere agreement between or among parties."); *Bradford & Bigelow, Inc. v. Richardson*, 109 F. Supp. 3d 445, 447 (D. Mass. 2015) ("The 'good cause' that justifies an umbrella protective order at the discovery stage . . . is not sufficient to meet the heightened standard to seal filings about dispositive motions or trial."). S*ee also Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 533 (1st Cir. 1993) (holding that there is a presumption of access to discovery materials, once they has been introduced into evidence). Accordingly, "[p]arties therefore may not rely solely on their designations under a discovery protective order to support sealing motions; they must show that each document they seek to seal should be sealed under the

appropriate [common law or First Amendment] standard." *Bradford & Bigelow*, 109 F. Supp. 3d at 447.

Because ProPublica seeks to unseal documents that qualify as judicial records, any party seeking continued sealing must set forth a particularized factual demonstration that the common law presumption has been overcome. As set forth below, no party has made such a showing, and ProPublica anticipates that it cannot be made in this case.

B. The First Amendment provides a rebuttable presumption against sealing that has not been overcome in this case.

The First Amendment also provides a strong presumption of access to the Requested Records. *See In re Bos. Herald, Inc.*, 321 F.3d 174, 182 (1st Cir. 2003) ("The Supreme Court recognized a qualified First Amendment right of access to certain judicial proceedings and documents in *Richmond Newspapers, Inc. v. Virginia*, [448 U.S. 555 (1980)]."). The public and the press share this First Amendment presumptive right of access. *See Richmond Newspapers, Inc.*, 448 U.S. at 572–73 ("[M]edia representatives enjoy the same right of access as the public[.]"). This is because the press "function[s] as surrogates for the public," providing information through "print and electronic media" such that the public need not "acquir[e] information about trials by firsthand observation or by word of mouth from those who attended." *Id.*

The First Circuit recognizes a First Amendment right of access to judicial records in criminal cases. *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 502 (1st Cir. 1989) ("This circuit, along with other circuits, has established a First Amendment

right of access to records submitted in connection with criminal proceedings."). Neither the First Circuit nor the U.S. Supreme Court has ruled on whether the presumption of access under the First Amendment also applies to civil cases. *Courthouse News Serv. v. Quinlan*, 32 F.4th 15, 20 (1st Cir. 2022). However, the Circuits that have considered the question "have widely agreed" that the constitutional right of access extends to civil cases:

> Though the Supreme Court originally recognized the First Amendment right of access in the context of criminal trials, *see Richmond Newspapers*, 448 U.S. 555, 100 S.Ct. 2814, the federal courts of appeals have widely agreed that it extends to civil proceedings and associated records and documents. *See, e.g.*, *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 305 (2d Cir. 2011) (finding a right of access to administrative civil infraction hearings); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1061 (3d Cir.1984) ("We hold that the First Amendment does secure a right of access to civil proceedings."); *In re Cont'l Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir.1984) (finding a right of access to litigation committee reports in shareholder derivative suits); *Brown & Williamson Tobacco Corp. v. Fed. Trade Comm'n*, 710 F.2d 1165, 1177 (6th Cir.1983) (holding that the First Amendment limits judicial discretion to seal documents in a civil case).

Courthouse News Serv. v. Planet, 750 F.3d 776, 786 (9th Cir. 2014); *see also In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.* ("*In re Avandia*"), 924 F.3d 662, 683 (3d Cir. 2019) (holding that the First Amendment right of access extends to records of civil proceedings); *Westmoreland v. Columbia Broad. Sys., Inc.*, 752 F.2d 16, 23 (2d Cir. 1984). The presumption of access is particularly vital for civil case records reflecting dispositive motions. In *Virginia Department of State Police v. Washington Post*, for example, the Fourth Circuit held that "summary judgment serves as a substitute for a trial and . . . the more rigorous First Amendment standard

should [] apply to documents filed in connection with a summary judgment motion in a civil case." 386 F.3d 567, 576 (4th Cir. 2004) (citation and internal quotation marks omitted).

The federal district court in Maine has also recognized a First Amendment right of access to judicial records in a civil proceeding, citing the above-mentioned decisions by the Courts of Appeals. *See National Organization for Marriage v. McKee*, No. CIV. 09-538-B-H, 2010 WL 3364448, at *3 (D. Me. Aug. 24, 2010), *report and recommendation adopted*, 2010 WL 3516579 (D. Me. Aug. 31, 2010), *aff'd under common law analysis without reaching constitutional question*, 649 F.3d 34, 70 (1st Cir. 2011). As that court explained, "[T]here can be little doubt that civil trials have traditionally been open to the public and that the public's right of access to trial evidence pertaining to the vindication of First Amendment rights is comparable to the right of access to criminal trials." *McKee*, 2010 WL 3364448, at *3. Because "there [was] a First Amendment right of access to the trial record in [that] case," the court held that the party seeking sealing bore the burden of demonstrating that the sealing it sought was narrowly tailored and "essential to preserve higher values." *Id.*

Whether the presumption of access imposes a similar burden on the parties in this case is determined by the standard articulated in *Press-Enterprise Co. v. Superior Court* ("*Press-Enterprise II*"), 478 U.S. 1, 8 (1986) and *In re Boston Herald, Inc.*, 321 F.3d 174, 184 (1st Cir. 2003). Namely, the court is to "look at whether materials like these [] documents have been open to the public in the past, 'because a tradition of accessibility implies the favorable judgment of experience' . . . [, and] ask 'whether

public access plays a significant positive role in the functioning of the particular process in question.'" *In re Bos. Herald, Inc.*, 321 F.3d at 182 (quoting *Press-Enterprise II*, 478 U.S. at 8). Whether the materials at issue have been open to the public in the past is referred to as the "experience" prong of the test, and whether public access plays a significant positive role in the functioning of the process in question is referred to as the "logic" prong. *See id.* Courts analyze "experience" and "logic" as "complementary considerations." *Id.* (quoting *Press-Enterprise II*, 478 U.S. at 8).

Here, both experience and logic favor unsealing. As to "experience," case entries—including summary judgment filings—have historically been accessible to the public through the public docket. The district court stated in *McKee* that "there can be little doubt that civil trials have traditionally been open to the public and that the public's right of access to trial evidence pertaining to the vindication of First Amendment rights is comparable to the right of access to criminal trials." 2010 WL 3364448, at *3. Summary judgment is potentially case-dispositive. Accordingly, the Second, Third, and Fourth Circuits have held that "'summary judgment adjudicates substantive rights and serves as a substitute for a trial,' and thus there is no principled basis to hold that the First Amendment right of public access extends to records of civil trials, but not records submitted in connection with motions for summary judgment." *In re Avandia*, 924 F.3d at 683 (quoting *Rushford v. New Yorker Mag., Inc.*, 846 F.2d 249, 252 (4th Cir. 1988)); *see also Lugosch*, 435 F.3d at 124 ("We therefore conclude that there exists a qualified First Amendment right of access to

documents submitted to the court in connection with a summary judgment motion."). The tradition of public access to such proceedings leaves little doubt that "experience" favors access to records filed in support of or in opposition to summary judgment.

"Logic" also favors the conclusion that a constitutional right of access applies. As the First Circuit has held, the logic prong extends the reach of the First Amendment beyond "those judicial processes that would realize efficiency and accuracy gains in the 'sunshine' of public access." *In re Bos. Herald, Inc.*, 321 F.3d at 201 ("the benefits accruing to society from a right of public access to judicial documents and proceedings are assumed *prima facie* under the logic prong."). Thus, in this Circuit, the logic prong is satisfied so long as public disclosure would not "defeat the purpose of the specific judicial process at issue." *Id.*

Here, public disclosure would not in any way defeat the purpose of summary judgment, for several reasons. First, the summary judgment proceedings have been completed, and an order denying all parties' motions for summary judgment issued. ECF No. 505. Public disclosure of the motions, oppositions, replies, and supporting materials filed in the summary judgment phase of the case will have no impact whatsoever on the already-completed judicial process of determining whether to grant or deny any party summary judgment. Further, the usual arguments about the benefits of open judicial records apply: As with evidence submitted at trial, information submitted in support of summary judgment "plays a significant positive role with respect to the overall judicial process." *See McKee*, 2010 WL 3364448, at *3

(discussing trial evidence); *Lugosch*, 435 F.3d at 124 (summary judgment records); *In re Avandia*, 924 F.3d at 683 (summary judgment records).

This Court should follow *McKee* and the Second, Third, and Fourth Circuits in recognizing that the First Amendment right of access applies equally to civil cases (and particularly to records submitted in connection with summary judgment) as it does to criminal cases and should further find that the public has a presumptive First Amendment right to access the Requested Records.

C. The parties have not and likely cannot set forth facts sufficient to overcome the public's presumption of access to the Requested Records.

While the right of access to sealed judicial records under the common law and the First Amendment is not absolute, "only the most compelling reasons can justify non-disclosure of judicial records." *Kravetz*, 706 F.3d at 59 (quoting *In re Providence J. Co.*, 293 F.3d 1, 10 (1st Cir. 2002)). The common law right of access requires that "[w]hen addressing a request to unseal, a court must carefully balance the presumptive public right of access against the competing interests that are at stake in a particular case[.]" *Id.*

Under the First Amendment, a court sealing records must make specific findings on the record "demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *McKee*, 2010 WL 3364448, at *3 (quoting *United States v. Aref*, 533 F.3d 72, 82 (2d Cir. 2008)); *accord Press-Enterprise II*, 478 U.S. at 13–14. The burden is on the party seeking continued sealing to set forth particularized facts from which the court may determine whether the constitutional presumption against sealing has been overcome. *Press-Enter. Co. v.*

Superior Court ("*Press-Enterprise I*"), 464 U.S. 501, 510 (1984); *see also, e.g.*, *United States v. Doe*, 356 F. App'x 488, 490 (2d Cir. 2009) ("A party seeking to overcome this presumption bears a heavy burden.").[8] ProPublica anticipates that any interest in sealing identified by the parties will not be sufficiently compelling to outweigh the substantial public interest in access to the Requested Records.

In this case, where the Court allowed motions to seal the summary judgment papers, *see, e.g.*, ECF Nos. 388, 427, it did so without explanation or making any findings. Norhave the parties provided any compelling reasons to justify sealing.

This is not a case in which a defendant's Sixth Amendment right to a fair trial is implicated, *see In re Providence J. Co.*, 293 F.3d at 13, nor is the court presented with "highly personal" privacy concerns. *Cf. Kravetz*, 706 F.3d at 62. Not only is this case civil and not criminal, but the parties here settled prior to trial. Further, the case concerned alleged RICO and Sherman Act violations, not "incidents of domestic violence [or] other domestic relations matters." *Cf. Kravetz*, 706 F.3d at 61–62.

Sealing is also not necessary here to prevent harm to business interests as a result of adverse publicity, nor to safeguard confidential business information. Business interests and "fear of adverse publicity," standing alone, are not sufficiently

[8] The First Amendment standard for overcoming the public's presumption of access to judicial records is more burdensome than that under the common law. *See, e.g.*, *United States v. Ciccolo*, No. 15-CR-30018-MGM, 2015 WL 9294206, at *3 (D. Mass. Dec. 21, 2015) ("To determine whether a countervailing interest should prevail over the public's right of access, a court must carefully balance the competing interests in light of the relevant facts and circumstances of the particular case."). Thus, the Court must ensure that the First Amendment burden is met (if it permits any redaction or sealing at all under the common law balancing test) in order to ensure that the public's constitutional right of access is not infringed.

compelling to outweigh the public's access rights. *Kravetz,* 706 F.3d at 64*; see, e.g., Planet Fitness Int'l Franchise v. JEG-United, LLC*, No. 20-CV-693-LM, 2022 WL 20053903, at *2 (D.N.H. Dec. 20, 2022) (a business's financial information is not "universally presumed to be private").

Several other Courts of Appeals have rejected arguments for closure on the basis of feared reputational harm to a business entity. *See, e.g., Cent. Nat'l Bank of Mattoon v. U.S. Dep't of Treasury,* 912 F.2d 897, 900 (7th Cir. 1990) (holding that a "bank's interest in keeping the bad news about its management secret is meager in relation to the claims of a free press for access to governmental proceedings"); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983) (reputational harm insufficient to prevent unsealing); *Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982) (same). There is simply not a factual basis to overcome the public's right of access to the Requested Records.

D. In the alternative, the records should only be redacted to the extent required to protect compelling interests specifically articulated in written findings.

Even if this Court finds that some information should properly remain sealed, the Court must narrowly tailor any redactions to those that are necessary to serve compelling interests and support its decision with specific on-the-record findings. *See Press-Enterprise I*, 464 U.S. at 510, 520 (Marshall, J., concurring) (redaction is "the constitutionally preferable method for reconciling the First Amendment interests of the public and press" with countervailing interests); *In re Providence Journal Co.,* 293 F.3d at 15 ("[T]he district court's refusal to consider redaction on a document-by-document basis is insupportable.").

CONCLUSION

For the reasons set forth above, ProPublica respectfully requests that the Court grant its motion to intervene and unseal and enter an order requiring the Clerk of the Court to unseal the Requested Records reflected at docket entries 416, 418, 420, 420-3, 420-4, 420-10, 420-12, 420-17 through 420-25, 424-1 through 424-113, 431, 432, 432-1 through 432-221, 433, 433-1, 435, 435-1, 450, 455, 455-1, 456, 456-1 through 456-11, 457, 457-1 through 457-3, and 458.

Respectfully submitted,

PRO PUBLICA, INC.

By its attorneys,

Date: February 12, 2026

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CERTIFICATE OF SERVICE

I, Robert A. Bertsche, hereby certify that on February 12, 2026, I served this document upon all registered parties via the ECF Notice of Electronic Filing (NEF) system.

/s/ Robert A. Bertsche
Robert A. Bertsche (BBO 554333)
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ADDENDUM

List of Requested Records

Docket No.	Description
416	Defendants' memorandum in support of motions for summary judgment as to the direct purchaser and end-payor plaintiffs (ECF Nos. 414–15).
418	Defendants' statement of material facts pursuant to L.R. 56.1 in support of motions for summary judgment as to the direct purchaser and end-payor plaintiffs (ECF Nos. 414–15).
420	Declaration of Kristen A. Johnson in support of Plaintiffs' motion for partial summary judgment on *Burwell* findings (ECF No. 417).
420-3, 420-4, 420-10, 420-12, 420-17 through 420-25	Exhibits to declaration of Kristen A. Johnson (ECF No. 420) in support of Plaintiffs' motion for partial summary judgment on *Burwell* findings (ECF No. 417).
424-1 through 424-113	Exhibits to declaration (ECF No. 424) of Devora W. Allon in support of Defendants' motions for summary judgment as to the direct purchaser and end-payor plaintiffs (ECF Nos. 414–15).
431	Plaintiffs' response to Defendants' Rule 56.1 statement of material facts (ECF No. 418).
432	Declaration of Kristie A. LaSalle in support of Plaintiffs' response (ECF No. 431) to Defendants' Rule 56.1 statement of material facts (ECF No. 418).
432-1 through 432-221	Exhibits to declaration (ECF No. 432) of Kristie A. LaSalle in support of Plaintiffs' response (ECF No. 431) to Defendants' Rule 56.1 statement of material facts (ECF No. 418).
433	Defendants' memorandum in opposition to Plaintiffs' motion for partial summary judgment on *Burwell* findings (ECF No. 417).
433-1	Opposition to Plaintiffs' motion for partial summary judgment on *Burwell* findings.

435	Defendants' response to Plaintiffs' Rule 56.1 statement of material facts.
435-1	Response to Plaintiff's Rule 56.1 statement of material facts.
450	Plaintiffs' opposition to Defendants' motions for summary judgment as to the direct purchaser and end-payor plaintiffs (ECF Nos. 414–15).
455	Plaintiffs' reply in support of motion for partial summary judgment on *Burwell* findings (ECF No. 417).
455-1	Plaintiffs' unredacted reply in support of motion for partial summary judgment on *Burwell* findings (ECF No. 417).
456	Reply declaration of Kristen A. Johnson in further support of Plaintiffs' motion for partial summary judgment on *Burwell* findings (ECF No. 417).
456-1 through 456-11	Exhibits to reply declaration of Kristen A. Johnson in further support of Plaintiffs' motion for partial summary judgment on *Burwell* findings (ECF No. 417).
457	Reply declaration of Gregory T. Arnold in further support of Plaintiffs' motion for partial summary judgment on *Burwell* findings (ECF No. 417).
457-1 through 457-3	Exhibits to reply declaration of Gregory T. Arnold in further support of Plaintiffs' motion for partial summary judgment on *Burwell* findings (ECF No. 417).
458	Defendants' reply in support of motions for summary judgment as to the direct purchaser and end-payor plaintiffs (ECF Nos. 414–15).