

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXPEDITE
 No Hearing Set
 Hearing is Set
Date:
Time:
The Honorable Erik D. Price

FILED

JUN 12 2015

Superior Court
Linda Myhre Enlow
Thurston County Clerk

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
Plaintiff,

v.

GROCERY MANUFACTURERS
ASSOCIATION,
Defendant.

NO. 13-2-02156-8
14-2-00027-5

~~PROPOSED~~ AGREED
PROTECTIVE ORDER REGARDING
TREATMENT OF CERTAIN
DOCUMENTS OR INFORMATION
PRODUCED BY THIRD PARTIES
DURING DISCOVERY

GROCERY MANUFACTURERS
ASSOCIATION,
Plaintiff,

v.

ROBERT W. FERGUSON,
Attorney General of the State of Washington,
in his official capacity,
Defendant.

THIS MATTER comes before the Court on the parties' and the subject of a third party subpoena, Biotechnology Industry Organization's ("BIO"), joint motion for a protective order concerning documents and information responsive to the subpoena served by Plaintiff State of Washington ("State"). In order to facilitate the exchange of, and resolution of any dispute over, responsive documents and/or information that BIO asserts contains confidential, trade

1 secret, sensitive, or proprietary information that should be treated as “confidential,” the Court
2 hereby finds good cause exists for entry of this protective order under CR 26(c) and hereby
3 ORDERS the following process be used:

- 4 1. BIO will produce all relevant and discoverable, non-privileged documents responsive to
5 the State’s subpoena subject to the State and BIO’s agreement as to the scope of the
6 production and any valid objections submitted by BIO.
- 7 2. BIO may not designate as “confidential” any documents and/or information that is already
8 in the public domain or becomes part of the public domain through trial or otherwise;
9 information that the State can show was obtained (without any benefit or use of the BIO’s
10 “confidential” material) from Grocery Manufacturers Association (“GMA”) or another
11 third party having the right to disclose such information to the receiving party without
12 restriction or obligation of confidentiality; information which, after its disclosure, is
13 published to the general public by a third party having the right to publish such
14 information; or information that the State can show by written record was independently
15 developed by it after the time of disclosure by persons who did not have access to the other
16 party’s “confidential” material.
- 17 3. Subject to the process for objecting below, BIO may mark certain documents and/or
18 information as “confidential” if it has a reasonable, good faith belief and legal basis for so
19 designating those documents and/or information. Designating a document as
20 “confidential” does not prevent production of that document if it is properly responsive to a
21 discovery request. Rather, any document or information produced or provided by BIO in
22 response to the State’s third party subpoena that is marked “confidential” pursuant to this
23 Protective Order shall be held in confidence by the parties and their attorneys, and shall not
24 be disclosed to any other person nor used for any other purpose except as necessary in the
25
26

1 prosecution or defense of this lawsuit and in compliance with this protective order, and as
2 subject to the process for objecting below.

3 4. If any participant to this agreed protective order objects to any “confidential” designation
4 on any document or portion provided by BIO, the objecting person shall provide each
5 participant to this agreed protective order with written notice of its objections, stating the
6 basis for each objection. If, after conducting a discovery conference, the participants
7 cannot resolve the objection, the objecting person may file a motion with this Court,
8 including a request for an in-camera review, to determine whether there is a legal basis for
9 the document and/or information to be treated as “confidential.”

10 5. To the extent that depositions of any person in this proceeding involve a specific discussion
11 of the contents (as opposed to the existence) of “confidential” material, then those portions
12 of the depositions should also be treated as “confidential” and designated as such. The
13 duty to mark the depositions or portions of depositions, as “confidential” shall rest with the
14 person claiming confidentiality. All depositions shall be treated as “confidential” until ten
15 days after each participant to this agreed protective order receives the deposition transcript.

16 6. BIO shall be notified when “confidential” material designated by BIO is referred to or used
17 by the State or GMA, respectively, during a deposition by providing BIO with copies of the
18 deposition transcript not later than ten working days following the parties’ receipt of the
19 transcript. BIO will then have an additional ten days to mark certain portions of the
20 deposition as “confidential” on the record.

21 7. “Confidential” material, including the contents thereof, may be disseminated only to:

- 22 a. The parties, attorneys for the parties in this litigation, and their
23 partners/supervisors, associates/attorney colleagues, secretaries, legal assistants,
24 paralegals/paralegal assistants, and other employees of the parties to whom it is
25 reasonably necessary to disclose the information for the prosecution or defense of
26

1 this litigation; experts retained for the purpose of consulting or testifying in this
2 litigation to whom disclosure is reasonably necessary for this litigation and who
3 has been provided with this Protective Order and agreed to abide by its terms in
4 writing;

5 b. Court officials other than the Court and/or its staff, involved in this litigation,
6 including court reporters and persons operating video recording equipment at
7 depositions, as may be required for purposes of attaching exhibits to depositions;

8 c. Copy or imaging services retained by counsel to assist in the duplication of
9 "confidential" material, provided that counsel for the party retaining the copy or
10 imaging service instructs the service not to disclose any "confidential" material to
11 third parties and to immediately return all originals and copies of "confidential"
12 material;

13 d. Mediators involved in resolving this matter should the parties choose to proceed
14 through alternative dispute resolution, who will be provided with this Protective
15 Order and agree to abide by its terms in writing; and

16 e. During their depositions, witnesses to whom disclosure is reasonably necessary
17 and who have been provided with this Protective Order and agreed to abide by its
18 terms in writing or on the record, unless otherwise agreed to by the parties or
19 ordered by the Court. "Confidential" material must be separately bound by the
20 court reporter and may not be disclosed to anyone except as permitted under this
21 Protective Order.

22 8. All expert witnesses who receive "confidential" material shall use the "confidential"
23 material only for this litigation, and shall not disclose any "confidential" information to
24 any third person for any purpose without written consent of the parties or as ordered by
25 the Court.
26

- 1 9. Neither counsel, employees of the law firms representing the parties or third parties in this
2 litigation, nor experts retained for purposes of consulting or testifying shall disclose or
3 disseminate any "confidential" material to any third person, whether by oral description or
4 by writing, or by any other means, outside the group of persons listed in paragraph 7
5 without a court order.
- 6 10. If the State receives a request for public disclosure of any "confidential" material under
7 the state Public Records Act (Ch. 42.56 RCW), the State will provide BIO through
8 counsel, with notice and an opportunity, per RCW 42.56.520 and .540, to seek an order
9 prohibiting the State from releasing any "confidential" material, or take other appropriate
10 action within BIO's discretion. The State will provide such notice no later than five
11 working days after receiving the request. If BIO does not seek and obtain an order
12 prohibiting the State from releasing any "confidential" material within 14 days of being
13 provided notice of the request for disclosure of any "confidential" material by the State,
14 the State may release the requested "confidential" material. The State shall not release the
15 requested "confidential" material during the pendency of any ruling(s) on BIO's motion to
16 prevent disclosure. The participants to this Protective Order further agree exemptions to
17 the Public Records Act may apply to any and all documents and/or information marked as
18 "confidential."
- 19 11. When "confidential" material (or any pleading, motion, or memorandum referring to such
20 material) is to be filed with the Court, the filing must be under seal and the party making
21 the filing must submit an appropriate motion and proposed order in accordance with the
22 applicable rules. In lieu of, or in addition to, filing papers under seal that include or
23 otherwise reveal "confidential" material, a party may file a redacted version to remove
24 "confidential" material. A party choosing to do so, however, must first confirm with
25 counsel for the producing party that the redactions are sufficient.
- 26

1 12. In the event that any participant of this agreement, its attorneys, experts, agents, or
2 employees learns of any breach of the confidentiality of, or the misappropriation of, any of
3 the "confidential" material, that individual or entity shall promptly give notice thereof to
4 BIO's counsel to whom the "confidential" material belonged. In addition, any participant
5 to this agreement shall be entitled, without limitation of any other remedies to which they
6 may be entitled by law, to seek injunctive relief and to enforcement of specific
7 performance of this Protective Order.

8 13. Nothing in this Order shall preclude reconsideration by the Court of any of the terms of
9 the Protective Order upon written application, with notice to the other parties, and for
10 good cause shown.

11 DONE this 12 day of June, 2015.

REBEKAH ZINN
COURT COMMISSIONER

~~JUDGE ERIK D. PRICE~~

12 PRESENTED BY:

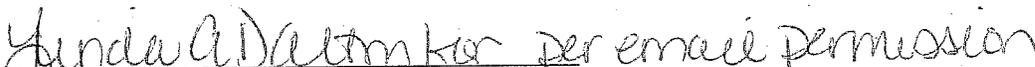
13 ROBERT W. FERGUSON
14 Attorney General

15 
16 LINDA A. DALTON, WSBA No. 15467

17 Senior Assistant Attorney General
18 CALLIE A. CASTILLO, WSBA No. 38214
19 Deputy Solicitor General

Attorneys for Plaintiff State of Washington/Defendant Robert W. Ferguson

20 APPROVED AS TO FORM:

21 
22 MICHAEL K. RYAN, WSBA No. 32091

23 AARON E. MILLSTEIN, WSBA No. 44135
K&L GATES, LLP

24 BERT W. REIN, (admitted *pro hac vice*)

25 CAROL A. LAHAM (admitted *pro hac vice*)
WILEY REIN LLP

26 Attorneys for Defendant/Plaintiff Grocery Manufacturers Association

1 to this agreement shall be entitled, without limitation of any other remedies to which they
2 may be entitled by law, to seek injunctive relief and to enforcement of specific
3 performance of this Protective Order.

4 13. Nothing in this Order shall preclude reconsideration by the Court of any of the terms of
5 the Protective Order upon written application, with notice to the other parties, and for
6 good cause shown.

7 DONE this _____ day of June, 2015.

REBEKAH ZINN
COURT COMMISSIONER

JUDGE ERIK D. PRICE

10 PRESENTED BY:
11 ROBERT W. FERGUSON
12 Attorney General

13 _____
LINDA A. DALTON, WSBA No. 15467
Senior Assistant Attorney General
14 CALLIE A. CASTILLO, WSBA No. 38214
Deputy Solicitor General
15 Attorneys for Plaintiff State of Washington/Defendant Robert W. Ferguson

16 APPROVED AS TO FORM:

18 _____
MICHAEL K. RYAN, WSBA No. 32091
19 AARON E. MILLSTEIN, WSBA No. 44135
K&L GATES, LLP

20 BERT W. REIN, (admitted *pro hac vice*)
21 CAROL A. LAHAM (admitted *pro hac vice*)
WILEY REIN LLP
22 Attorneys for Defendant/Plaintiff Grocery Manufacturers Association

23 
24 _____
KEVIN HAMILTON, WSBA No. 15648
25 BEN STAFFORD, WSBA No. 39849
Perkins Coie, LLP
26 Attorneys for Biotechnology Industry Organization