

**Shareholder Representative v Sandoz Inc.**

2014 NY Slip Op 30200(U)

January 23, 2014

Sup Ct, New York County

Docket Number: 653506/2013

Judge: Eileen Bransten

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: EILEEN BRANSTEN Justice

PART 3

SHAREHOLDER REPRESENTATIVE

INDEX NO. 653506/2013

MOTION DATE 1/23/2014

- v -

SANDOZ INC.

MOTION SEQ. NO. 002

The following papers, numbered 1 to 1, were read on this motion to/for redacted complaint

Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s) 1

Answering Affidavits - Exhibits No(s)

Replying Affidavits No(s)

Upon the foregoing papers, it is ordered that this motion is

IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM

DATED: 1/23/2014

Eileen Branstén signature and name EILEEN BRANSTEN, J.S.C.

- 1. CHECK ONE : [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE : MOTION IS : [X] GRANTED [ ] DENIED [ ] GRANTED IN PART [ ] OTHER
3. CHECK IF APPROPRIATE : [ ] SETTLE ORDER [ ] SUBMIT ORDER
[ ] DO NOT POST [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART THREE

-----X

SHAREHOLDER REPRESENTATIVE  
SERVICES LLC,  
suing on its own behalf and in its capacity  
as Stockholders' Representative,

Index No.: 653506/2013  
Motion Date: 1/23/14  
Motion Seq. Nos.: 001 and 002

Plaintiff,

-against-

SANDOZ INC., SANDOZ AG,  
SANDOZ INTERNATIONAL GmbH,  
JEFF GEORGE, and CHRISTINA ACKERMANN,

Defendants,

-----X

BRANSTEN, J.

This matter comes before the Court on Plaintiff's motion (sequence no. 002) for leave to file a redacted version of its complaint. Defendants Sandoz Inc. and Christina Ackerman filed memoranda in support of the relief sought in that motion. Plaintiff's prior motion (sequence no. 001) is also before the Court, in which Plaintiff seeks leave to file the entire complaint under seal. For the reasons that follow, Plaintiff's motion (sequence no. 002) for leave to file a redacted version of its complaint is granted, and its prior motion (sequence no. 001), for leave to file the entire complaint under seal, is denied as moot.

**BACKGROUND**

This action arises from the 2010 sale of a pharmaceutical company, Oriel Therapeutics, Inc. ("Oriel"), to Defendant Sandoz Inc., pursuant to a merger agreement. At the time of the sale, Oriel was in the process of developing a drug which is not yet publicly available. Included in the

merger agreement, were certain deadlines, or “milestones,” which related to the progress which Defendant Sandoz Inc. represented would be made with respect to the drug’s development.

In bringing this action, Plaintiff alleges, among other things, that Defendant Sandoz Inc. failed to meet certain of the milestones provided for by the merger agreement. In addition, Plaintiff asserts a cause of action for fraud, alleging that Defendants misrepresented the readiness of a facility involved in the drug’s development.

Plaintiff previously brought an action arising out of the same facts as those alleged here, in the United States District Court for the Southern District of New York, which is captioned *Shareholder Representative Services LLC v. Sandoz Inc. et al.*, Case No. 12-CV-6154. In August 2013, that action was dismissed without prejudice on federal subject matter jurisdiction grounds.

On November 13, 2013, this Court held a hearing on Plaintiff’s motion, sequence number 001, for leave to file the entire complaint under seal. At that hearing, the Court directed the parties to meet and confer on the preparation of a Proposed Stipulation and Order for the Production and Exchange of Confidential Information, and also regarding how the complaint could be rewritten, such that the need to file the entire pleading under seal could be obviated.

**ANALYSIS**

Section 216.1(a) of the Uniform Rules for New York State Trial Courts (“Uniform Rule”) addresses the sealing of Court records and provides that “[e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court

records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof.” 22 NYCRR 216.1(a).

Uniform Rule 216.1 further provides that “[i]n determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties.” 22 NYCRR 216.1(a). Although “good cause” is not defined in Section 216.1(a), “[a] finding of ‘good cause’ presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant.” *Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 502 (2d Dep’t 2007).

The First Department has held that “[t]he presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public’s right to access, e.g., in the case of trade secrets.” *Matter of East 51st St. Crane Collapse Litig.*, 106 A.D.3d 473, 474 (1st Dep’t 2013) (quoting *Applehead Pictures LLC v. Perelman*, 80 A.D.3d 181, 191-92 (1st Dep’t 2010)). Furthermore, “New York law has adopted the definition of a trade secret from Restatement of Torts § 757, Comment b and recognizes that a trade secret exists where there is a ‘formula, pattern, device or compilation of information . . . used in one’s business . . . which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it.’” *Mann v. Cooper Tire Co.*, 33 A.D.3d 24, 31 (1st Dep’t 2006) (quoting *Ashland Mgmt. v. Janien*, 82 N.Y.2d 395, 407 (1993)).

Here, the information which the parties seek to redact includes technical information about a pharmaceutical drug which is still in development. At this time, neither that drug, nor

information about its use and development, is publicly available. Because such information appears to fit the First Department's definition of a "trade secret," it follows that the parties have a compelling interest in keeping such information secret, notwithstanding the presumption in favor of the public's right to access. Furthermore, the proposed redacted version of the complaint which accompanies this motion (sequence no. 002), contains sufficient unredacted information, such that the broad contours of this action and the relief sought therein are publicly available, which, in the Court's opinion, effectively balances the public's need and right of access to such information with that of the parties' need to preserve the secrecy of this drug and its development.

Based on the foregoing, the Court finds that Plaintiff and those Defendants heard in support of this motion have established good cause for the relief sought. Accordingly, Plaintiff's motion (sequence no. 002) for leave to file a redacted version of its complaint is granted. Furthermore, Plaintiff's prior motion (sequence no. 001), seeking leave to file the entire complaint under seal, is denied as moot.

### CONCLUSION

Accordingly, it is hereby

ORDERED, that Plaintiff's motion, sequence number 002, for leave to file a redacted complaint is granted, and the redacted complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this decision and order with notice of entry thereof; and it is further

ORDERED, that the Defendants shall serve an answer to the redacted complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED, that Plaintiff's motion, sequence number 001, for leave to file the entire complaint under seal, is denied as moot; and it is further

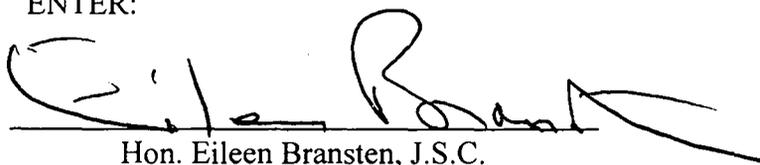
ORDERED, that the parties shall contact the Court's Part Clerk, Ms. Regina Sgro, at (646) 386-3287, to schedule a preliminary conference in this matter at a date and time that is mutually agreeable for all parties.

This constitutes the decision and order of the Court.

Dated: New York, New York

January 23, 2014

ENTER:



Hon. Eileen Bransten, J.S.C.