

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: DAVOL, INC./C.R. BARD,  
INC., POLYPROPYLENE HERNIA  
MESH PRODUCTS LIABILITY  
LITIGATION**

**Case No. 2:18-md-2846**

**JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Kimberly A. Jolson**

**This document relates to:  
ALL ACTIONS.**

**CASE MANAGEMENT ORDER NO. 26**

**Procedure for Filing Under Seal**

This Court hereby issues the following Case Management Order (“CMO”) to govern the unique situation of a party filing documents claimed by another party as “Confidential” or “Highly Confidential,” which, according to the PSC and Defendants (“the Parties”), is anticipated in the upcoming briefing deadlines set forth in CMO 20-A.

Recognizing that some filings will likely reference and/or attach documents designated by Defendants as “Confidential” or “Highly Confidential” under CMO No. 7 (ECF No. 48), the Parties, and the Court, seek to balance the need for such confidentiality being preserved with the public’s right to access court filings that are used to adjudicate substantive issues in this litigation. This CMO attempts to achieve such a balance.

The following procedure pertains to the submissions filed by the Parties pursuant to CMO 20-A (including any amendments reflected by a subsequently-issued CMO), and the procedure specifically addresses only the unique situation in which one party intends to file with the Court “Confidential” or “Highly Confidential” documents that were produced by the other party or a

third party.<sup>1</sup> Specifically, a party filing a motion that references and/or attaches documents claimed as “Confidential” or “Highly Confidential” by the other party or third party, must comply with the following procedure:

File a Motion to Temporarily Seal, contemporaneous with filing the underlying motion. The Motion to Temporarily Seal shall contain a brief statement as to the reason for such filing along with a statement that the underlying motion is being filed under seal pursuant to this CMO No. 26, and that it will be temporarily sealed for a period of 7 days to allow an opportunity for judicial review as set forth in this CMO. The Clerk shall accept filing of the underlying motion under seal pursuant to the terms of this CMO. The Motion to Temporarily Seal shall be publicly filed.

The Parties have agreed that, for the purposes of briefing pursuant to CMO 20-A, they will not challenge the other party’s Motions to Temporarily Seal or File Under Seal.

If the party or third party that produced the “Confidential” or “Highly Confidential” Information fails to file a Motion to Seal the underlying motion within 7 days of service of a Motion to Temporarily Seal, the Clerk shall promptly remove all the documents filed under seal and make them publicly accessible on the docket.

If the party or third party that produced the “Confidential” or “Highly Confidential” Information files a Motion to Seal within 7 days of electronic service of the Motion to Temporarily Seal, these documents are to remain conditionally under seal until the Court rules on the Motion to Seal. Because this is a unique situation involving filing another party or third party’s “Confidential” or “Highly Confidential” documents, the 7-day period is necessary to protect the non-filing party’s interests. *See, e.g., Ethicon Endo-Surgery, Inc. v. Covidien, Inc.*, No. 1:11-cv-871, 2017 WL 4168290, at \*2 (S.D. Ohio Sept. 20, 2017) (allowing documents to be filed under seal on a temporary basis). This short sealing period balances the public’s interest in access to court records and the non-filing party’s interests in protecting information filed by the other party

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<sup>1</sup> The Parties expressly retain, and do not waive, any argument or objection concerning the relevance or admissibility of any document that is the subject of a motion to seal.

while the Court considers whether the documents shall remain under seal.

The Parties are reminded, however, that “[t]he public has a strong interest in obtaining the information contained in the court record.” *Shane Grp., Inc. v. BlueCross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983)). The burden of overcoming the “strong presumption in favor of openness” of court records is a heavy one: “Only the most compelling reasons can justify the non-disclosure of judicial records.” *Shane Grp.*, 825 F.3d at 305 (quoting *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)). The seal itself must be “narrowly tailored to serve that reason” and the party seeking to file under seal must “analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Shane Grp.*, 825 F.3d at 305-06 (quoting *Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 545 (7th Cir. 2002)).


District courts must consider “each pleading [to be] filed under seal or with redactions and to make a specific determination as to the necessity of nondisclosure in each instance.” *In re Nat’l Prescription Opiate Litig.*, 927 F.3d 919, 939-40 (6th Cir. 2019). If a district court permits a document to be filed under seal or with redactions, “it shall be incumbent on the court to adequately explain ‘why the interests in support of nondisclosure are compelling, why the interests supporting access are less so, and why the seal itself is no broader than necessary.’” *Id.* at 940 (quoting *Shane Grp.*, 825 F.3d at 306).

Accordingly, any party that files a Motion to Seal pursuant to this CMO must provide a “compelling reason” to do so and demonstrate that the seal is “narrowly tailored to serve that reason.” *In re Nat’l Prescription Opiate Litig.*, 927 F.3d at 940 (quoting *Shane Grp.*, 825 F.3d at 305). This CMO shall not apply with respect to documents admitted into evidence as exhibits at the trial of this matter.

**IT IS SO ORDERED.**

1-27-2020  
DATE

1/27/2020  
DATE

  
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EDMUND A. SARGUS, JR.  
UNITED STATES DISTRICT JUDGE

  
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KIMBERLY A. JOLSON  
UNITED STATES MAGISTRATE JUDGE