UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DEPUY SYNTHES PRODUCTS, INC.
and DEPUY SYNTHES SALES, INC.

Plaintiffs,

v. **Case No. 3:18-cv-1342-J-20PDB**

VETERINARY ORTHOPEDIC
IMPLANTS, INC.

Defendants.
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ORDER

Plaintiffs DePuy Synthes Products, Inc. and DePuy Synthes Sales, Inc. (collectively "DePuy") have filed an "Unopposed Motion for Leave to File an Amended Complaint and Incorporated Memorandum of Law." (Dkts. 89, S-92). The Court previously sought clarification as to whether the proposed Amended Complaint should be filed under seal, with redactions or "as is" in Exhibit 1 of Dkt. S-92. (Dkt. S-93). After considering both the positions of DePuy (Dkts. 89, S-92, 97, S-100, 117) and Veterinary Orthopedic Implants, Inc. ("VOI") (Dkts. 98, S-99, 118, 119) and reviewing the evidence submitted (including Dkt. S-123), the Court determines DePuy should be allowed to file its Amended Complaint, without redaction, on the public docket as it appears in Exhibit 1 of Dkt. S-92.

I. ANALYSIS

VOI does not oppose the filing of the Amended Complaint, which adds a party— the manufacturer of the products that DePuy alleges infringes the patent at issue— and additional accused products. Rather, VOI contends that, "[c]ertain information DePuy proposes to include in its Amended Complaint, including the identity of the manufacturer of VOI's Accused Products,

the business relationship of the manufacturer and VOI, and any information that could be used to identify the manufacturer . . . is Highly Confidential information that should not be made public." (Dkt. S-99, pages 1-2). Specifically, VOI argues the Amended Complaint should be filed under seal, "to prevent the public disclosure of highly sensitive, highly confidential, trade secret information that would place VOI at a significant disadvantage if made public." (*Id.* at page 4).

"Judges deliberate in private but issue public decisions after public arguments based on public records . . . . Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat and requires rigorous justification." *Perez-Guerrero v. U.S. Atty. Gen.*, 717 F.3d 1224, 1225 (11th Cir. 2013) (quotation and citation omitted). A complaint is a judicial record to which the presumption of public access applies. *F.T.C. v. AbbVie Products LLC*, 713 F.3d 54, 62-63 (11th Cir. 2013). "A complaint, which initiates judicial proceedings, is the cornerstone of every case, the very architecture of the lawsuit, and access to the complaint is almost always necessary if the public is to understand a court's decision." *Id.* at 62.

Nevertheless, a showing of good cause may overcome the public's common-law right of access. *Romero v. Drummond*, 480 F.3d 1234, 1246 (11th Cir. 2007). The Court must "balanc[e] the asserted right of access against the other's party's interest in keeping the information confidential." *Id.* (citation and quotation omitted). When balancing the public interest against a party's interest in keeping the material confidential, courts consider a number of factors, including:

> whether allowing access would impair court functions or harm legitimate privacy interests, the degree of and likelihood of injury if made public, the reliability of the information, whether there will be an opportunity to respond to the information, whether the information concerns public officials or public concerns, and the availability of a less onerous alternative to sealing the documents.

Id. Notably, "[a] party's proprietary interest in information sometimes overcomes the interest of the public in accessing the information." *Id.*

However, that is not the case here, where the information considered is the identity of a manufacturer. The identity of a supplier is "typically well-known" and not a trade secret.[1] *Yellowfin Yachts, Inc. v. Barker Boatworks, LLC*, 237 F. Supp. 3d 1230, 1242 (M.D. Fla. 2017); *aff'd* 898 F.3d 1279 (11th Cir. 2018). *See also Sciele Pharma, Inc. v. Brookstone Pharms., LLC*, No. 1:09-cv-3283-JEC, 2010 WL 9098290, at *9 (N.D. Ga., June 23, 2010) ("[T]he identity of product manufacturers and suppliers is not generally considered to be a trade secret."); *Panther Sys. II, Ltd. v. Panther Comput. Sys., Inc.*, 783 F. Supp. 53, 70 (E.D.N.Y. 1991) ("In general, the identity of suppliers is not a trade secret entitled to protection since they can be readily learned in any productive industry."). As VOI has explained, "a trade secret consists of information that (1) derives economic value from not being readily ascertainable by others and (2) is the subject of reasonable efforts to maintain its secrecy." *Am. Red Cross v. Palm Beach Blood Bank*, 143 F.3d 1407, 1410 (11th Cir. 1998) (interpreting Florida law). (Dkt. S-99, page 5 (same)). The identity of the manufacturer, on the evidence before the Court, does not meet this test.

The open and public way VOI's supplier advertises its availability as a manufacturer of orthopedic devices undercuts the alleged proprietary nature of VOI's use of the supplier to manufacture its products. The manufacturer's services are available to any potential customer by simple Internet search. The manufacturer's website,[1] presently lists its manufacturing capabilities, including: "orthopedic instrumentation," "titanium implants," "bone plates—titanium and stainless." Moreover, the apparent lack of any type of confidentiality agreement between VOI and

[1] The address of which was provided to the Court in Dkt. S-100, page 2.

the manufacturer further demonstrates VOI's manufacturer is not a trade secret. (Dkt. 100-Exhibit B).

No matter the label VOI places on the identity of the manufacturer, the Record before the Court demonstrates VOI's use of this manufacturer is indeed known within the relevant community. While courting a prospective client in August of 2013, a VOI employee sent a follow-up e-mail asking for feedback. The prospective client's Vice President of Sales and Marketing at the time, responded, in relevant part, "[t]hank you for reaching out to us . . . I think we have things lined out on the delivery of orthopedic implants. We heard that . . . VOI . . . [is] getting their implants from [manufacturer]. We are hesitant to go that route." (Dkt. S-100-6, Exhibit F).

II. CONCLUSION

VOI undoubtedly has an interest in the identity of the manufacturer remaining under seal. "'Many a litigant would prefer the subject of the case . . . be kept from the curious . . . , but the tradition that litigation is open to the public is of very long standing.'" *Carbiener v. Lender Processing Servs., Inc., etc.*, No. 3:13-cv-970-J-39PDB, 2015 WL 12835680, at *2 (M.D. Fla., Mar. 6, 2015) (quoting *Union Oil Co. of Cal. v. Leavell*, 220 F.3d 562, 567 (7th Cir. 2000)). The Court has considered the factors that could militate against access. *Romero*, 480 F.3d at 1246. The reasons proffered for maintaining confidentiality are unpersuasive and do not rebut the presumption of public access.

Accordingly, it is hereby **ORDERED**:

1. DePuy's Motion for Leave to File an Amended Complaint to add an additional defendant and identify all of the accused products (Dkts. 89; S-92) is **GRANTED**;

2. The Clerk is directed to **UNSEAL** Exhibit 1 of Dkt. S-92 and **FILE** said exhibit as the operative complaint in this matter.

DONE and ENTERED at Jacksonville, Florida, this 18th day of December, 2019.

HARVEY E. SCHLESINGER
UNITED STATES DISTRICT JUDGE

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