

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: ALL-CLAD METALCRAFTERS,
LLC, COOKWARE MARKETING AND
SALES PRACTICES LITIGATION

This Document Relates to All Actions

MDL No. 2988
Master Case No. 2:21-mc-491-NR

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**JOHN MICHAEL ANDREN'S RESPONSE TO JOINT MOTION
FOR LEAVE TO FILE DOCUMENTS UNDER SEAL**

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The parties ask this Court to allow them to file under seal “information relating to the costs and expenses Defendants have incurred in connection with the implementing the Settlement in this matter” including “costs associated with the non-party claims administrator.” Dkt. 113 at 1. But what they seek requires an unusually high showing to overcome the “thumb on the scale in favor of openness—the strong presumption of public access” to judicial records. *In re Avandia Mktg., Sales Practices, & Prods. Liab. Litig.*, 924 F.3d 662, 676 (3d Cir. 2019). “[V]ague assertions that the [document] contains secretive business information, and that disclosure would render [the litigant] at a tactical disadvantage [are] insufficient to overcome that strong presumption.” *Id.* (internal quotation omitted). “Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient.” *Id.* at 673 (quoting *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001)). Rather, the injury must be “clearly defined and serious.” *Cendant*, 260 F.3d at 194.

The standard is even higher because this is a class action proceeding and “many members of the ‘public’ are also plaintiffs in the class action.” *Id.* at 193; accord *Shane Group v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (following *Cendant* and applying a “particular[ly] strict[]” standard to seal records in class actions). “Accordingly, all the reasons ... for the right of access to public records apply with even greater force here.” *Cendant*, 260 F.3d at 193. Public access in class action proceedings (1) “promotes class members’ confidence in the administration of the case”; (2) “diminishes the possibility that injustice, incompetence, perjury, or fraud will be perpetrated against those class members who have some stake in the case but are not at the forefront of the litigation”; and (3) “provides class members with a more complete understanding of the class action process and better perception of its fairness.” *Id.* (internal quotations and alterations omitted).

Here, the parties wish to seal information that relates to—indeed, arises directly out of—the administration of the class’s judicially-approved settlement. Information arising from the settlement is precisely the sort of information that should be publicly revealed. *See generally* John Michael Andren’s Response to Joint Notice, Dkt. 109. That the contested costs information here arises out of the settlement administration itself immediately distinguishes this case from the unpublished *Alchem*

decision (Dkt. 113 at 2). For example, in *Cendant* the Third Circuit reversed the decision to seal the terms of auction bids that class counsel had made for the purposes of gaining the right to represent the class. 260 F.3d at 197-98. *Alchem*, by contrast, involved a bevy of information¹ that all existed independently of the litigation. In any event, it is not enough to simply gesture at the information being a “trade secret.” *Shane Grp.*, 825 F.3d at 307-08 (holding that “financial and negotiating information” was not “comparable to a trade secret”); *cf. Mallet & Co. v. Lacayo*, 16 F.4th 364, 385 (3d Cir. 2021) (generic descriptions like “pricing information” do not “articulate with particularity the information to which [should be] accorded trade secret status”).

At the very least, the Court should require a greater showing of specificity before granting the parties motion for leave to file under seal.

Dated: March 13, 2024

Respectfully submitted,

/s/ Adam E. Schulman

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¹ The *Alchem* filing contained: “(i) contact information for individual(s) with purchasing power within an organization; (ii) order history on a specific client basis; (iii) pricing history on a specific client basis; (iv) shipping and billing information on a specific client basis; (v) contact/communication history on a specific client basis; (vi) marketing efforts on a specific client basis; (vii) packaging methods on a specific client basis; and (viii) order frequency [as well as] [i]nformation relative to the properties and formulations of Alchem’s liquid nicotine products.” *Alchem USA Inc. v. Cage*, 2022 WL 3043153, 2022 U.S. App. LEXIS 21283, at *3 (3d Cir. Aug. 2, 2022).

CERTIFICATE OF SERVICE

I certify that I have filed the foregoing Response through the Court's ECF system, which has effectuated service of this motion upon all attorneys in this case who are registered for electronic filing.

Dated: March 13, 2024

/s/ Adam E. Schulman
Adam E. Schulman (admitted *pro hac vice*)