

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

HILLARY SCOTT, et al)
)
v.) NO. 3:20-0585
) Campbell/Holmes
ANITA WHITE)

O R D E R

On December 1, 2020, Plaintiffs filed an unopposed motion for leave to file documents under seal. (Docket No. 45.) For the reasons discussed in more detail below, by no later than **December 15, 2020**, Defendant must file a response to the motion to seal, which analyzes in detail, document by document, the propriety of secrecy, providing factual and legal bases.

Plaintiffs' motion to seal generally relies on the Court's prior order of October 14, 2020 that permitted information to be produced as confidential for discovery purposes pending finalization of a discovery protective order. No such protective order has been requested. More importantly, the Court's prior order expressly cautioned that production of documents as confidential for discovery purposes would not automatically justify sealing documents offered as part of the record in this case. *See* Corrected Order, Docket No. 41 at n.4.

Other than this general reference, Plaintiffs' motion to seal does not provide enough information from which the Court can make an informed decision or the necessary findings of whether nondisclosure is justified. For that reason, Defendant must file a response to the motion to seal, which analyzes in detail, document by document, the propriety of secrecy, providing factual reasons and legal citations. To that end, Defendant is cautioned that simply stating that a prior order of the Court allowed information to be produced as confidential for discovery purposes

does not constitute cause for deviating from the default standard of public accessibility to and transparency of court filings.

The Sixth Circuit specifically addressed this issue and cautioned against conflating the standards for a protective order under Rule 26 with the “vastly more demanding standards for sealing off judicial records from public view.” *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 307, (6th Cir. 2016). Additionally, the Sixth Circuit specifically (and emphatically) directed that, in sealing records, the district court must set forth specific findings and conclusions that “justify nondisclosure to the public,” even if neither party objects to the motion to seal. *Id.* (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1176 (6th Cir. 1983)). *See also Beauchamp v. Federal Home Mortgage Corp.*, 658 F. App’x 202, 207-08 (6th Cir. 2016) (district court orders to seal documents vacated *sua sponte* for lack of findings and conclusions to justify withholding documents from the public). The proponent of sealing must provide compelling reasons to seal the documents and that the sealing is narrowly tailored to those reasons—specifically, by “analyz[ing] in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Id.* at 207 (6th Cir. 2016) (quoting *Shane Grp, Inc. v. Blue Cross Blue Shield of Michigan*, *supra*). Generally, “only trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), and information required by statute to be maintained in confidence … is typically enough to over the presumption of [public] access.” *Rudd Equipment Co., Inc. v. John Deere Construction & Forestry Co.*, 834 F.3d 589, 594-95 (6th Cir. 2016) (quoting *Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 546 (7th Cir. 2002)). A protective order in a case is insufficient cause for sealing a document. *Id.*

Accordingly, by no later than December 15, 2020, Defendant must file a response to the motion to seal, which analyzes in detail, document by document, the propriety of secrecy,

providing factual reasons and legal citations. Pending a response by Defendant, the documents filed under seal shall remain sealed. Additionally, the motion to seal (Docket No. 45) shall remain pending for further action following Defendant's response.

It is SO ORDERED.



Barbara D. Holmes
United States Magistrate Judge