

Federal Court



Cour fédérale

Date: 20220615

Docket: ~~T-1241-22-XXXX-XX~~

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Ottawa, Ontario, June 15, 2022

PRESENT: Mr. Justice Pentney

BETWEEN:

**BAYER INC. and REGENERON
PHARMACEUTICALS, INC.**

Moving Parties

and

BGP PHARMA ULC d.b.a. VIATRIS CANADA

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Respondent

ORDER

UPON the motion of June 14, 2022 by the Moving Parties (Plaintiffs in the underlying action) for an interim order of confidentiality under Rule 151 of the *Federal Courts Rules* for the Statement of Claim they intend to file in the within matter, and for leave to file a public version of their Statement of Claim in the form included with their Notice of Motion;

CONSIDERING the consent of the Respondent (Defendants in the underlying action), and the terms of that consent, set out in the email from counsel for the Respondent dated June 14, 2022;

AND CONSIDERING that:

- the request relates to the names of two companies that the Moving Parties say are involved with the Respondent (and who are named as Defendants in the underlying action) in the activity which the Moving Parties say is in violation of their rights, but the Defendant has claimed confidentiality in respect of the identities of these companies, pursuant to subsections 5(3.5) and 5(3.6) of the *Patented Medicines (Notice of Compliance) Regulations (PM(NOC) Regulations)*;
- the Moving Parties submit they need to file their Statement of Claim on or before June 16, 2022, and they seek an interim order of confidentiality to permit them to meet this deadline without breaching the confidentiality interests asserted by the Respondent; they seek a confidentiality order only for 45 days, during which time further clarity can be obtained regarding the assertion of confidentiality over the identities of these companies, and either one or both of the parties or the companies can take further steps to protect their confidentiality interests, if they choose to do so;
- the Moving Parties also seek leave to file a Public version of the Statement of Claim that refers to the companies as “Company X” and “Company Y”;

CONSIDERING that the Court finds it is in the interests of justice to grant the interim confidentiality motion, taking into consideration the submissions of the parties, the statutory framework (including Rule 151 and the confidentiality provisions of the *PM (NOC) Regulations*, as well as the guidance set out in *Sherman Estate v Donovan*, 2021, SCC 25, as well as the fact that the interim order will only

continue for 45 days, during which time a public version of the Statement of Claim will be available as part of the Court record.

THIS COURT ORDERS that:

1. The Moving Parties' motion for an Interim Confidentiality Order is granted.
2. The Moving Party shall file the Confidential Statement of Claim and it shall be treated as a confidential document pursuant to Rule 151, for a duration of 45 days from the date of this Order.
3. The Moving Parties are granted leave to file a Public Version of their Statement of Claim in this matter, in accordance with the version set out at Exhibit A of the Affidavit of Christina Vincent affirmed June 14, 2022.
4. If no party to the proceeding or other interested party brings a motion to seek to extend this Interim Confidentiality Order within 45 days, this Order shall lapse and the Confidential Statement of Claim filed pursuant to paragraph 2 above shall thereafter be treated as a public document, subject to any other Order of this Court.
5. The whole without costs.

"William F. Pentney"
Judge