COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, ss

SUPERIOR COURT DEPARTMENT
No. 1884-cv-01808 (BLS2)

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

PURDUE PHARMA L.P., PURDUE PHARMA INC., RICHARD SACKLER, THERESA SACKLER, KATHE SACKLER, JONATHAN SACKLER, MORTIMER D.A. SACKLER, BEVERLY SACKLER, DAVID SACKLER, ILENE SACKLER LEFCOURT, PETER BOER, PAULO COSTA, CECIL PICKETT, RALPH SNYDERMAN, JUDITH LEWENT, CRAIG LANDAU, JOHN STEWART, MARK TIMNEY, and RUSSELL J. GASDIA

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF LEARN TO COPE, INC.'S JOINDER TO THE MEDIA CONSORTIUM'S EMERGENCY MOTION TO TERMINATE THE IMPOUNDMENT OF THE FIRST AMENDED COMPLAINT AND ACCOMPANYING EXHIBITS

I. INTRODUCTION

"Prescription medicines, which are supposed to protect our health, are instead ruining people's lives." Am. Compl. at 2 (Docket No. 29). In its First Amended Complaint, the Commonwealth of Massachusetts has brought allegations against the parties it believes are responsible for the lives ruined across "[e]very community in our Commonwealth." *Id.* Defendants Purdue Pharma L.P. and Purdue Pharm Inc. (collectively "Purdue Pharma") have asked the Court to impound the First Amended Complaint and thus restrict public access to the details of these allegations. *See, generally*, Defs.' Mot. (Docket No. 28).

Now, pursuant to Rules 6(a) and 10 of the Uniform Rules of Impoundment Procedure, non-

party Learn to Cope, Inc. ("Learn to Cope") respectfully joins the Emergency Motion filed by the Media Consortium to terminate the Court's impoundment of the First Amended Complaint. By joining the Media Consortium's Emergency Motion, Learn to Cope incorporates by reference the facts and arguments found in the Emergency Motion and its accompanying memorandum. *See, generally,* Non-Party Mot. (Docket No. 34).

II. BACKGROUND

Learn to Cope is a non-profit support network founded in 2004 that offers education, resources, and peer support for family members in Massachusetts affected by the opioid crisis. For fifteen years Learn to Cope members have formed a community of support and a welcoming environment to share personal stories of hope, loss, and recovery. Now, over 10,000 members use the resources offered on Learn to Cope's online forum and attend weekly meetings in over twenty-five Massachusetts communities and across a dozen counties. The members are grandparents, parents, siblings, sons, daughters, and friends of those addicted to the opioid products manufactured by Purdue Pharma.[1]

III. ARGUMENT

A. There is a heightened presumption of public access to the First Amended Complaint because it was drafted by the Attorney General's Office regarding allegations brought on behalf of victims across the Commonwealth.

There is a well-established presumption of public access to judicial documents. *Ferring Pharmaceuticals, Inc. v. Braintree Lab, Inc.*, 214 F. Supp. 3d 114, 127 (D. Mass. 2016) *citing Fed. Trade Comm'n v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 408 (1st Cir. 1987). Moreover, in addition to this presumption, "[t]he appropriateness of making court files accessible is accentuated in cases where the government is a party: in such circumstances, the public's right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the

[1] *See, generally* Learn to Cope (Jan. 24, 2019), https://www.learn2cope.org/.

judicial branch." *Standard Fin. Mgmt. Corp.*, 830 F.2d 404 at 412-13. Here, there must be a heightened presumption of public access because the First Amended Complaint includes the specific allegations brought by the Attorney General's Office on behalf of the Commonwealth against Purdue Pharma.

The Attorney General has a general statutory mandate to protect the public interest, represent the public interest, and enforce public rights. *See Commonwealth v. Mass. CRINC*, 392 Mass. 79, 88 (1984). The Attorney General also has a specific statutory mandate found in G.L. c. 93A § 4 to act in the public interest and protect consumers from unfair business practices. This specific statutory mandate includes advocating for the interests of the individuals allegedly wronged by the defendants who violated the Consumer Protection Act. *See, e.g. Commonwealth v. DeCotis*, 366 Mass. 234, 245-46 (1974) ("The very purpose of the Attorney General's involvement [in an action under the Consumer Protection Act] is to provide an efficient, inexpensive, prompt and broad solution to the alleged wrong.") Allowing the facts alleged by the Commonwealth to remain impounded affects "the public's right to know" the actions of their executive branch and the allegations brought on their behalf. *See Standard Fin. Mgmt. Corp.*, 830 F.2d 404 at 412-13.

Here, Purdue Pharma correctly states that under Massachusetts law, "a judge must balance the rights of the parties based on the particular facts of each case" and "take into account all relevant factors, including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason for the request" when restricting public access to court documents. *See* Defs.' Mot. at 9 (Docket No. 28) *quoting New England Internet Café, LLC v. Clerk of Superior Court for Criminal Business in Suffolk Co.,* 966 N.E.2d 797, 803 (Mass. 2012). Importantly, this quote illustrates how the presumption of public access must come out *in favor* of terminating the impoundment order in

cases involving the Commonwealth. In *New England Internet Cafe*, the court unsealed search warrants over the Attorney General's opposition because of the community interest in the records. *Id.* Similarly here, the fact that the impoundment order involves the actions of the Attorney General necessitates a heightened presumption for public access.

B. Purdue Pharma has not shown "good cause" to impound the First Amended Complaint.

The presumption of public access to documents governs both the initial decision to impound and requests to modify or terminate impoundment, and in either instance the party urging impoundment (or continued impoundment) bears the burden of "demonstrating the existence of good cause." *New England Internet Café, LLC*, 966 N.E.2d 797 at 803 *citing Republican Co. v. Appeals Court*, 442 Mass. 218, 225 (2004). The justification for impoundment must not just be that the complaint will reveal embarrassing information; rather, the moving party must demonstrate "a particular factual demonstration of harm." *Ferring Pharmaceuticals, Inc.*, 214 F. Supp. 3d 144 at 127. To demonstrate "good cause" Purdue Pharma points to, in part, the personal embarrassment and outrage that may result if the public is given access to the allegations of this lawsuit and the facts regarding the wealth of its owners and directors. Docket No. 28 at 10. Here, the Court need only look to historic examples to determine that this is not "a particular factual demonstration of harm."

For example, in *Demeo v. Geoghan*, the plaintiffs moved to amend their complaint detailing the sexual abuse committed by Rev. John J. Geoghan to add as His Eminence Bernard Cardinal Law as a defendant for his supervisory failure of the Archdiocese of Boston. *See* No. Civ. A 99-3170, 2011 WL 1902397, (Mass. Super. Ct. Jan. 5, 2001) (McHugh, J.). Cardinal Law sought impoundment of the amended complaint on the grounds that the allegations were unproven and the likelihood of publicity would make a fair trial difficult, but the impoundment was denied

because of the "general principle of publicity, strong although not absolute, regarding court records and proceedings[.]" *Id.* A year after that decision, this Court further terminated the impoundment orders for five civil cases containing allegations of sexual abuse by clergy in the Archdiocese of Boston. *Globe Newspaper Co., Inc. v. Clerk of Suffolk County Superior Court*, 14 Mass.L.Rptr. 315, 2002 WL 202464 (Mass. Super. Ct. Feb. 4, 2002) (Gants, J). This Court stated that giving public access to the records "would have a devasting impact on [the defendants] reputations and their lives," but still terminated the impoundment orders because it determined that the public had a valid interest in the court records. *Id.*

When ruling on impoundment or protective orders other trial courts have similarly applied this same stringent standard whereby public access trumps the pretrial publicity or embarrassment of individual defendants or their companies. *See, e.g.*, *Dahl v. Bain Capital Partners, LLC*, 891 F.Supp.2d 221 (D. Mass 2012) (where the court held that information contained in the text of a fifth amended complaint was subject to common law and First Amendment presumptive right of access); *Baker v. Liggett Group, Inc.*, 132 F.R.D. 123, Civ. No. 86-1326-WF, (D. Mass 1990) (where tobacco manufacturers failed to make particularized showing of "good cause" necessary for entry of protective order prohibiting dissemination of confidential and nonconfidential documents in discovery); *In re: Enron Corporation Securities and Derivative and "ERISA" Litigation*, No. MDL 1446, 2003 WL 22218315, (S.D. Texas 2003) (where the individual directors of Enron Corp. requested the redaction of "private" information such as financial and telephone records during discovery and the court held that only information unrelated to the case could be redacted). Moreover, it the norm in civil practice for defendants, including individuals in highly publicized cases, to face the allegations of plaintiffs in a public forum. *See, e.g. In re: New England Compounding Pharmacy, Inc. Products Liability Litigation,* 1:13-md-02419-RWZ, (D. Mass 2013) (where the individual plaintiffs harmed by the meningitis outbreak caused by New

England Compounding Pharmacy, Inc. filed detailed complaints which included wrongful acts committed by the individual owners and directors as well as the wealth they accumulated during the same time period).[2]

C. Public access to the First Amended Complaint will help put an end to the stigmatization of family members affected by the opioid crisis.

A party seeking to modify or terminate an impoundment order need only come forward "with a nonfrivolous reason to do so" in order to be heard by the court. *New England Internet Café, LLC*, 966 N.E. 2d 797 at 804 *quoting Republican Co.*, 442 Mass. at 224-225. Learn to Cope is before the court requesting relief that is from frivolous: public access to the full allegations against Purdue Pharma and the individual defendants, including the Sackler defendants, to help put an end to the stigmatization of family members affected by the opioid crisis.

The Learn to Cope members are the victims behind the allegations brought by the Commonwealth. These members are the witnesses to how the products manufactured by Purdue Pharma created spiraling addictions. These members know that the opioid crisis victimizes the public, not just the individuals suffering with addiction. These members know that having a family member addicted to opioids leads to an entire family's financial precarity and loss. These members know the unnecessary shame and embarrassment that comes from having a family member suffering with opioid addiction. These members believe that full transparency of the allegations here will lead to destruction of the myth that those suffering with opioid addiction bear the full blame for their illness.

If the Court does not terminate the impoundment order, Purdue Pharma will continue to keep key factual allegations secret and the family members who have lived through this crisis will continue to feel stigmatized. Learn to Cope and its members deserve all the information available

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[2] As an example, an excerpt from the complaint filed in *Jenkins, et al. v. New England Compounding Center, et al.* 1:12-cv-12276-RWZ, (D. Mass. Dec. 7, 2012) is attached as Exhibit A.

regarding this crisis and the alleged unfair and deceptive acts of Purdue Pharma.

IV. CONCLUSION

For the foregoing reasons, Learn to Cope respectfully joins the Emergency Motion and respectfully requests the Court to terminate the impoundment of the First Amended Complaint.

Respectfully submitted,

LEARN TO COPE, INC.

By its attorneys,

Lisa G. Arrowood (BBO #022330)
Kevin Smith (BBO # 688418)
ARROWOOD LLP
10 Post Office Square, 7th Floor South
Boston, MA 02109
(617) 849-6200
(617) 849-6201
larrowood@arrowoodllp.com
ksmith@arrowoodllp.com

Dated: January 24, 2019

CERTIFICATE OF SERVICE

I, Kevin Smith, hereby certify that on January 24, 2019, the foregoing document was served pursuant to Uniform Rules of Impoundment 4(a) by Federal Express and e-mail on counsel for all parties, as follows:

Syndenham Alexander, III
Gillian Feiner
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Sandy.Alexander@mass.gov
gillian.feiner@state.ma.us

Timothy C. Blank
Jon Olssson
Dechert LLP
One International Place, 40th Floor
Boston, MA 02110
Timothy.blank@dechert.com
Jon.olsson@dechert.com

Joan Lukey
Samuel Rudman
Choate Hall & Stewart
Two International Place
Boston, MA 02110
joan.lukey@choate.com
srudman@choate.com

James Carroll
Maya Florence
Skadden Arps Slate Meagher & Flom
500 Boylston Street
Boston, MA 02116
James.Carroll@skadden.com;
maya.florence@skadden.com

Robert A. Bertsche
Jeffrey J. Pyle
Prince Lobel Tye LLP
One International Place, Suit 3700
Boston, MA 02110
rbertsche@princelobel.com
jpyle@princelobel.com

Kevin Smith (BBO # 688418)