

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,  
*Plaintiff,*

v.

INHANCE TECHNOLOGIES LLC,

*Defendant.*

Civ. No. \_\_\_\_\_

**PLAINTIFFS' MOTION AND INCORPORATED MEMORANDUM FOR LEAVE TO  
FILE UNREDACTED COMPLAINT UNDER SEAL AND REQUEST FOR AN  
EXPEDITED RULING**

Pursuant to Federal Rule of Civil Procedure 5.2(d), and Local Rules 5.1.2(7) and 5.1.5(a) for the United States District Court for the Eastern District of Pennsylvania, the United States of America, by the authority of the Attorney General and through the undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency (the "EPA"), hereby moves the Court to file the unredacted Complaint against Inhance Technologies LLC (the "Defendant" or Inhance") attached hereto under seal. In addition, the United States seeks expedited consideration of this motion to preserve its authority to initiate any suit to enforce the Toxic Substances Control Act ("TSCA").

It is well-established that federal courts have inherent authority to seal court filings from public disclosure. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). A familiar reason for exercising this authority is to prevent the disclosure of trade secrets and confidential business information ("CBI"). *See, e.g., Littlejohn v. Bic Corp.*, 851 F.2d 673, 685 (3d Cir. 1988) ("There is no public access right to those portions of the judicial record which contain trade secret or confidential business information."). Under Section 14 of TSCA, 15

U.S.C. § 2613(e), the EPA “shall protect from disclosure” information submitted by a regulated entity that the entity claims as confidential until the EPA “becomes aware that the information does not qualify for protection” from disclosure, and the EPA, in a written statement of reasons, denies or denies in part the claim of confidentiality. *See also* 40 C.F.R. §§ 2.203, 2.204(d) and 2.306.

At the same time, there also is a common-law right of access to judicial records. *See In re Avandia Mktg., Sales Practices and Prods. Liab. Litig.*, 924 F.3d 662 (3d Cir. 2019). In *In re Avandia*, the Third Circuit stated that the common law “requires as a starting point the application of a presumption of public access” to judicial proceedings and records. *Id.* at 669, 672. The public right of access includes the right to inspect public records and documents, including judicial records. *Id.* at 672. “The right of access ‘promotes public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court.’” *Id.* (quoting *Littlejohn.*, 851 F.3d at 678).

“To overcome the presumption of access, the party seeking to do so must show ‘that the interests in secrecy outweighs the presumption,’ and ‘that disclosure will result in a serious injury to the party seeking protection.’” *Best Med. Int’l, Inc. v. Buchanan Ingersoll & Rooney PC*, No., CV 20-1077, 2020 WL 12574939 (W.D. Pa. Aug. 24, 2020) (first quoting *Bank of Am. Nat’l Tr. & Sav. Ass’n. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986); then quoting *Miller v. Ind. Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)).

Here, the Defendant has alleged that both prongs of this test are satisfied. In TSCA, Congress established that the EPA must protect from disclosure information that a regulated entity has alleged is confidential until the EPA becomes aware that the information does not qualify for protection. In regulatory filings with the EPA, Inhance has asserted CBI claims

over broad swaths of information. The EPA is presently reviewing these submissions. The United States disagrees with much of Inhance's assertions of CBI and anticipates asking the Court to reject them at a later date.

In addition, sealing is appropriate here because the United States has already submitted a redacted version of the Complaint into the publicly accessible record. The portions of the Complaint that are redacted are those that allegedly contain CBI. *See McCowan v. City of Philadelphia*, No. 2:19-CV-03326, 2021 WL 3737204 (granting sealing of personally identifying information concerning non-litigants where a redacted version of the document was also submitted because "redacting this information, as opposed to sealing the records wholesale, represents the least restrictive means available to protect the privacy interests at stake").

Alternatively, if the Court denies the motion, the United States requests that the Court order that the unredacted version of the Complaint be filed into the record.

Wherefore, the United States requests that the Court grant this motion for leave to file the attached unredacted version of the Complaint under seal.

Respectfully submitted,

**FOR THE UNITED STATES OF AMERICA**

**TODD KIM**

Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Dated: December 19, 2022

/s/ Richard Gladstein

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**CERTIFICATE OF SERVICE**

The forgoing Plaintiff's Motion and Incorporated Memorandum to File Unredacted Complaint Under Seal and Request for an Expedited Ruling has been filed electronically using the ECF system and is available for viewing and downloading from the ECF system. Counsel for the Plaintiff also has served by email an electronic copy of this Motion and proposed Order on counsel for the Defendant.

/s/ Richard Gladstein  
RICHARD GLADSTEIN