

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2024-CA-6896-AXXX-MA

DIVISION: CV-A

MICHAEL MORELLO, derivatively on  
behalf of NEXT SCIENCE, LTD.  
and NEXT SCIENCE, LLC,

Plaintiff,

v.

HARRY HALL, JON SWANSON,  
TOPHER HUNTER, ETHAN SHERMAN,  
MATTHEW MYNTTI, and DOES 1-10,  
individually and as officers and  
directors of NEXT SCIENCE, LTD.  
and NEXT SCIENCE, LLC,

Defendants,

and

NEXT SCIENCE, LTD. and  
NEXT SCIENCE, LLC,

Nominal Defendants.

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**ORDER GRANTING, IN PART, NOMINAL DEFENDANT NEXT SCIENCE, LLC'S  
MOTION TO DETERMINE CONFIDENTIALITY OF COURT RECORDS**

This matter came before the Court on January 30, 2025, for hearing on Nominal Defendant Next Science, LLC's Motion to Determine Confidentiality of Court Records (the "Motion for Confidentiality") filed, by and through its counsel, on December 23, 2024, pursuant to Florida Rule of General Practice and Judicial Administration 2.420. The Court, having considered the Motion, heard argument, and reviewed the applicable law, finds as follows:

## **Background**

1. Michael Morello (“Morello”) is a minority shareholder of Nominal Defendant, Next Science, Ltd. (“Parent Company”), an Australian corporation that develops medical technology products—namely, surgical devices and wound care products—aimed at reducing biofilm-related infections. Morello is also a former employee of Next Science, LLC (hereinafter, “Subsidiary”), a Florida Limited Liability Company and a wholly owned subsidiary of Parent Company or Parent Company’s wholly owned subsidiary, Microbial Defense Systems Holdings, Incorporated. Subsidiary has headquarters in Jacksonville, Florida. Morello is currently employed by a competitor of Subsidiary and, before Morello had initiated the instant case, Subsidiary sued Morello, his current employer, and others for alleged violations of non-compete agreements. The litigation in the non-compete case is ongoing.

2. This is a shareholder derivative action brought by Morello on behalf of Parent Company and Subsidiary against their officers and directors, alleging breaches of fiduciary duties, gross negligence, and mismanagement. Morello alleges that the officers and directors marketed a medical technology product as safe and effective despite internal knowledge of its risks, causing exposure to regulatory penalties, reputational damage, and loss of market confidence.

3. Morello attached, as Exhibits A and B, to the Derivative Complaint various internal communications—none of which Morello was a party to and at least some of which that occurred after Morello had left Subsidiary’s employ—between and among Subsidiary’s high-level employees and executives. Moreover, Morello attached, as Exhibit C, to the Derivative Complaint a purportedly non-public communication from the Food and Drug Administration to Subsidiary. In portions of the Derivative Complaint itself, Morello described, characterized, or quoted the

Exhibits. The Derivative Complaint was not verified, as required by section 607.0742, Florida Statutes.

**The Motion for Confidentiality, Amended Complaint, and Response to the Motion**

4. In the Motion for Confidentiality, Subsidiary requests that the Court enter an order: (1) determining that Exhibits A–C, and the portions of the Derivative Complaint that describe, characterize, or quote the Exhibits are confidential, (2) directing the Clerk of Court to maintain under seal the Exhibits and the Derivative Complaint itself (and any amended complaint) and instead file a redacted copy of the Derivative Complaint, and (3) ordering Morello not to make further filings that contain or reference the Exhibits. Subsidiary proffered a proposed redacted complaint that removes references to and characterizations of the Exhibits. (Mot. for Confidentiality at Ex. 2.) Alternatively, Subsidiary requests that, at the very least, the Court maintain the Exhibits under seal until the Court has adjudicated the threshold issues of whether this case should be dismissed for lack of standing, lack of personal jurisdiction, or failure to join an indispensable party, and whether this case should be stayed pending the investigation<sup>1</sup> of a special litigation committee.

5. As grounds, Subsidiary alleges that, under Rule 2.420(c)(9)(A), confidentiality is required to: (i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice (Ground One), and (v) avoid substantial injury to innocent third parties (Ground Two). Regarding Ground One, Subsidiary alleges that Morello has prematurely—i.e., without satisfying pre-filing requirements—filed this action to publicly air his allegations and information that purportedly should not be in his possession, gain leverage in the non-compete

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<sup>1</sup> Section 607.0744, Florida Statutes, permits a trial court to dismiss a derivative proceeding if, on motion by the corporation, the court finds that a determination has been made in good faith after reasonable investigation that the maintenance of the derivative lawsuit is not in the best interests of the corporation.

case, and benefit his current employer. Regarding Ground Two, Subsidiary argues that Morello's public allegations will cause the reputational harm and loss of market confidence that he purportedly seeks to avoid, which will harm the innocent other shareholders of Parent Company and Subsidiary.

6. On January 3, 2025, after Subsidiary filed the Motion for Confidentiality, Morello filed an Amended Derivative Complaint. The Amended Derivative Complaint is substantially similar to the original Derivative Complaint except that Morello verified the allegations and pleaded his allegation of demand futility with greater particularity. The Exhibits attached to the Amended Derivative Complaint are the same as those attached to the original Derivative Complaint.

7. On the same date, Morello filed his Response in Opposition to the Motion for Confidentiality. Morello highlights that the presumption of openness of judicial proceedings is one of the strongest in Florida law. Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113, 116-19 (Fla. 1998). Further, Morello argues, among other things, that: (1) this action implicates public-health concerns, (2) sealing the records would perpetuate the governance failures that this lawsuit seeks to remedy for the benefit of the companies and their shareholders, (3) Subsidiary has violated its neutral role in this lawsuit to shield the officers and directors from accountability, (4) the records at issue do not meet the criteria for confidentiality under Rule 2.420, (5) Morello's alleged motives for bringing this lawsuit are baseless and irrelevant to the adjudication of the Motion for Confidentiality, and (6) Subsidiary improperly relies on confidential settlement communications to further its arguments related to the non-compete case.

### **Core Legal Determination**

8. The core legal determination for the Court is whether confidentiality of the information at issue is required, notwithstanding the presumption of openness of judicial proceedings recognized in Barron.

9. The Court finds that Exhibits A–C to the Derivative Complaint and certain descriptions of those Exhibits should be made confidential under Rule 2.420(c)(9)(A)(i) to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice, at least until certain threshold issues—i.e., whether Morello has standing to bring this lawsuit, whether any part of this lawsuit can survive dismissal, and whether this action should be stayed pending an investigation of a special litigation committee—are adjudicated in Morello’s favor.

10. These threshold issues concern whether Morello met the pre-filing requirements to properly file this lawsuit. The premature filing of a lawsuit is not a means to air sensitive information, and improper use of the court system for such purpose seriously and imminently threatens the fair, impartial, and orderly administration of justice. If Morello has not met the pre-filing requirements, then he should not have made the sensitive business information public. If Morello has met the pre-filing requirements, then the public may have a legitimate interest in the information, notwithstanding its sensitivity. Thus, the sensitive information must remain confidential, at least until the threshold issues are adjudicated in Morello’s favor. If Morello ultimately prevails on the threshold issues, then the Court will revisit whether the sensitive information should remain confidential.

11. The instant case is materially distinguishable from Barron. In Barron, the Florida Supreme Court reversed a trial court order indefinitely sealing substantial portions of the case file merely because the underlying divorce proceeding contained “uniquely private” information.

Barron, 531 So. 2d at 115. Here, however, the Court has carefully excised only those parts of the Derivative Complaint that pose an immediate threat to the orderly administration of justice, and only until certain threshold issues might be resolved in Morello's favor. Importantly, Barron did not involve the threshold issues presented in the instant case. The wife in Barron undoubtedly had standing to divorce her husband. It remains unclear whether Morello has standing to bring this lawsuit.

12. The particular information that is determined to be confidential are Exhibits A, B, and C to the Derivative Complaint and the Amended Derivative Complaint, and any detailed description, detailed characterization, or quote of any of the Exhibits contained in the pleadings or other filings filed by Morello after the Motion for Confidentiality. Subsidiary's proffered redacted complaint redacts too heavily the references to and characterizations of the Exhibits. Pending the adjudication of the threshold issues, the public should be able to read the redacted complaints and understand the nature of the lawsuit, notwithstanding the sensitive details of the lawsuit that have been redacted in recognition of the concerns raised by Subsidiary. In light of the public's interest in the lawsuit and the presumption of openness under Florida law, the Court has redacted the following pleadings and filings in a manner that adequately protects the interest requiring protection:

- (1) Redacted Copy of Derivative Complaint filed on December 18, 2024 (Ct. Ex. 1.),
- (2) Redacted Copy of Amended Derivative Complaint filed on January 3, 2025 (Ct. Ex. 2.), and
- (3) Redacted Copy of Plaintiff's Response in Opposition to Nominal Defendant Next Science, LLC's Motion to Determine Confidentiality of Court Records filed on January 3, 2025 (Ct. Ex. 3.).

13. Unless Morello prevails on the threshold issues, the confidential information will remain confidential. If Morello prevails on the threshold issues in a manner that will permit this lawsuit to move forward, then he or a nonparty may request that the Court vacate all or part of this Order or request that the Court order the unsealing of records designated as confidential in accordance with Rule 2.420 and Florida law. The Court acknowledges that it may be inappropriate for the information deemed confidential by this Order to remain confidential indefinitely if the threshold issues are resolved in Morello's favor.

**Other Statements Required by Rule 2.420(e)(4)**

14. No party's name has been determined to be confidential.

15. The progress docket or similar records generated to document activity in the case have not been determined to be confidential.

16. The Court finds that: (i) the degree, duration, and manner of confidentiality ordered by the Court are no broader than necessary to protect the interests set forth in 2.420(c), and (ii) no less restrictive measures are available to protect the interests set forth in Rule 2.420(c).

Accordingly, it is:

**ORDERED AND ADJUDGED** as follows:

A. Nominal Defendant Next Science, LLC's Motion to Determine Confidentiality of Court Records is GRANTED IN PART.

B. Exhibits A, B, and C to the Derivative Complaint and the Amended Derivative Complaint, and any detailed description, detailed characterization, or quote of any of the Exhibits contained in the pleadings or other filings filed by Morello after the Motion for Confidentiality are deemed confidential pursuant to Florida Rule of General Practice and Judicial Administration 2.420(c)(9)(A)(i), at least until the threshold issues—i.e., whether Morello has standing to bring

this lawsuit, whether any part of this lawsuit can survive dismissal, and whether this action should be stayed pending the investigation of a special litigation committee—are adjudicated in Morello’s favor. Unless Morello prevails on the threshold issues, the confidential information will remain confidential. If Morello prevails on the threshold issues in a manner that will permit this lawsuit to move forward, then he or a nonparty may request that the Court vacate all or part of this Order or request that the Court order the unsealing of records designated as confidential in accordance with Rule 2.420 and Florida law.

C. The Clerk of Court is directed to seal the unredacted Derivative Complaint filed on December 18, 2024, Amended Derivative Complaint filed on January 3, 2025, and Plaintiff’s Response in Opposition to Nominal Defendant Next Science, LLC’s Motion to Determine Confidentiality of Court Records filed on January 3, 2025, and maintain them under seal until further order of the Court. The Clerk of Court is further directed to respectively file in place of these filings the redacted copies attached hereto as Court’s Exhibits 1, 2, and 3 until further order of the Court.


D. The persons permitted to view the information protected pursuant to this Order are: (1) the presiding Judge, (2) designated court staff, (3) court reporters, and (4) the parties and their counsel of record.

E. The parties should refrain from filing any document containing the information deemed confidential by this Order. To the extent that a party believes it is necessary to file something containing the information deemed confidential by this Order, then the party must file a redacted copy of the same in the public record removing the confidential information and contemporaneously furnish unredacted copies of the filing to the Court and the parties, through counsel of record, by e-mail.



F. The Clerk of Court is directed to publish this Order in accordance with Rule 2.420(e)(5).

**DONE AND ORDERED** in Chambers, at Jacksonville, Duval County, Florida, on this 28<sup>th</sup> day of February 2025.



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**WADDELL A. WALLACE, III**  
**Circuit Court Judge**

**Exhibits 1 – 3 filed separately**

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