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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

8 ELSEVIER, INC., a foreign corporation,
9
10 Plaintiff,

11 v.

12 WASHINGTON STATE UNIVERSITY,
13 Defendant.

No.

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

14 Plaintiff Elsevier, Inc., alleges:

15 **I. PARTIES**

16 1.1. Plaintiff, Elsevier, Inc. (formerly Elsevier Science, Inc.), is a foreign
17 corporation that is authorized to do business in the State of Washington, and all
18 prerequisites to its maintenance of this action (including the payment of any fees and taxes
19 due the State of Washington) have been met or excused.

20 1.2. Defendant Washington State University ("WSU") is a public agency and an
21 institution of higher education that, inter alia, operates as "Washington State Libraries".

22 **II. JURISDICTION AND VENUE**

23 2.1. Prior allegations are adopted by incorporation.

24 2.2. This Court has subject matter jurisdiction pursuant to the Washington
25 Constitution, Art. IV, § 6.
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1 2.3. Defendant WSU is located in Whitman County, Washington, so that venue is
2 proper in this Court.

3 **III. GENERAL ALLEGATIONS**

4 3.1. Prior allegations are adopted by incorporation.

5 3.2. Plaintiff Elsevier, Inc., does sales and marketing for its affiliated corporation,
6 Elsevier, B.V., which is based in The Netherlands. These related companies (hereinafter
7 collectively referred to as "Elsevier") have a 124 year history and operate worldwide.
8 Elsevier employs 8,000 people in 24 countries and is the world's leading publisher of
9 science and health information. It serves more than 30 million scientists, students, and
10 health and information professionals worldwide.

11 3.3. Elsevier's primary business is providing information and services to scientific,
12 technical, and medical professionals, and others. It has accumulated, working with 7,000
13 journal editors, 70,000 editorial board members, 300,000 reviewers, and 600,000 authors
14 publishing 2,000 journals, 19,000 books, and 2000-plus books each year, a vast library of
15 medical and health information.

16 3.4. While Elsevier has a leading market position, it also faces substantial
17 alternative vendors in a competitive marketplace. A substantial contributor to Elsevier's
18 achieving its preeminent market success has been its developing proprietary pricing
19 methods and formulae which are not generally known. Rather, this information constitutes
20 data unique to the products and services of Elsevier.

21 3.5. These methods and formulae reflect Elsevier's confidential research and
22 development of commercial information that derives independent economic value, actual or
23 potential, from not being known to, and which is not readily ascertainable by proper means
24 by, other persons who can obtain economic value from its disclosure or use.

1 3.6. These methods and formulae allow Elsevier to negotiate contracts with
2 customers, small and large, that fit their particular needs and circumstances, with customer-
3 specific pricing. That is, while Elsevier has list prices for various services and publications, it
4 does not follow a "one size fits all" pricing methodology, but often negotiates individual
5 pricing, particularly with large users who have more extensive and complex requirements.

6 3.7. Elsevier's largest customers include major universities such as WSU and its
7 Libraries. Currently, and in past years, Elsevier has negotiated periodic contracts with WSU
8 for access to hundreds of medical journals and other health publications, based on
9 individualized pricing.

10 3.8. By a May 7, 2009 "Notice re Public Records Request" (the "Request," copy
11 attached as Exhibit A to the accompanying James Tonna Declaration), WSU advised
12 Elsevier that Dr. Theodore C. Bergstrom, of the University of California Santa Barbara's
13 Department of Economics, had requested disclosure of Elsevier-WSU contracts and related
14 information reflecting the specific details of pricing arrangements negotiated between
15 Elsevier and WSU.

16 3.9. Disclosure of the requested contracts and information, in an un-redacted
17 form, would disclose aspects of Elsevier's pricing methods and formula so as to produce
18 private gain and public loss. Such disclosure would violate Elsevier's rights under
19 Washington statutes (including exemptions provided for by RCW 42.56.270(1) and (11) of
20 the Public Records Act, and the Uniform Trade Secrets Act [RCW 19.48, the "UTSA"]) to
21 preserve the confidentiality of its proprietary pricing methods and formulae.

22 3.10. While Elsevier has offered to produce the requested information in un-
23 redacted form to Dr. Bergstrom subject to appropriate confidentiality provisions, absent his
24 acceptance of such proposal, Elsevier seeks and is entitled to judicial relief upholding its
25 confidentiality rights under Washington statutes. That relief should restrict WSU's disclosure
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1 pursuant to the Request to a redacted form (as set forth in Elsevier's Motion for Preliminary
2 and/or Permanent Injunction, or other appropriate form) that will protect the confidentiality of
3 Elsevier's proprietary pricing methods and formulae.

4 **IV. FIRST CAUSE OF ACTION: INJUNCTION**

5 4.1. Prior allegations are adopted by incorporation.

6 4.2. Elsevier will suffer permanent and irreparable harm from an un-redacted
7 disclosure of the documents sought by the Request. Such harm justifies preliminary and
8 permanent injunctive relief because Elsevier has the right to preclude such disclosure under
9 applicable statutes, including Public Records Act exemptions and the UTSA.

10 4.3. Under RCW 7.40.010, 42.56,540, and 19.108.020, injunctive relief is proper
11 to enjoin WSU's producing material pursuant to the Request except in redacted form that
12 adequately protects Elsevier's rights under applicable statutes.

13 **V. SECOND CAUSE OF ACTION: DECLARATORY RELIEF**

14 5.1. Prior allegations are adopted by incorporation.

15 5.2. Under the Washington Uniform Declaratory Judgments Act, Chapter 7.24
16 RCW, courts of record are authorized "to declare rights, status and other legal relations
17 whether or not further relief is or could be claimed." Elsevier is entitled to a declaratory
18 judgment establishing that no disclosure should be made by WSU pursuant to the Request
19 except in appropriate redacted form that protects Elsevier's confidentiality rights in protected
20 pricing methods and formulae.

21 **VI. PRAYER FOR RELIEF**

22 WHEREFORE, plaintiff Elsevier requests:

23 1. For preliminary and permanent injunctive relief enjoining WSU, its agents,
24 servants, employees, attorneys, and all persons in active concert and participations with it,
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1 from any disclosure of documents sought by the Request except in an appropriately
2 redacted form that protects Elsevier's confidentiality rights under Washington statutes;

3 2. For a declaratory judgment adjudicating that no disclosure pursuant to the
4 Request is proper except one that is appropriately redacted to protect Elsevier's
5 confidentiality rights under Washington statutes; and

6 3. Any further and proper relief determined by the Court to be appropriate in the
7 circumstances.

8 DATED this 9th day of June, 2009.

9 OLES MORRISON RINKER & BAKER LLP

10
11 By



12 Arthur D. McGarry, WSBA 4808

13 Hillary A. Madsen, WSBA 41038

14 Attorneys for Elsevier, Inc.