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**United States District Court
Central District of California**

10 MIOTOX LLC,

11 Plaintiff,

12 v.

13 ALLERGAN, INC.; and ALLERGAN

14 BOTOX LIMITED,

15 Defendants.
16

Case № 2:14-cv-08723-ODW(PJWx)

**ORDER GRANTING APPLICATION
TO FILE UNDER SEAL [248]**

17 Plaintiff Miotox LLC applied to this Court for an order permitting it to file
18 under seal an exhibit to its claim construction briefing that was designated as “highly
19 confidential” by Defendants Allergan, Inc. and Allergan Botox Ltd. (collectively
20 “Allergan”). (ECF Nos. 243, 248.) Allergan filed two declarations in support of
21 Miotox’s request, in which they argue that they will suffer competitive harm if the
22 exhibit in question is publicly disclosed. (ECF No. 249.) For the reasons discussed
23 below, the Court **GRANTS** the application.

24 “Historically, courts have recognized a ‘general right to inspect and copy public
25 records and documents, including judicial records and documents.’” *Kamakana v.*
26 *City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Thus, “a strong
27 presumption in favor of access [to such records] is the starting point.” *Id.* “A party
28 seeking to seal a judicial record then bears the burden of overcoming this strong

1 presumption by meeting the compelling reasons standard. That is, the party must
2 articulate compelling reasons supported by specific factual findings that outweigh the
3 general history of access and the public policies favoring disclosure” *Id.* at
4 1178–79. However, where the documents sought to be sealed are unrelated or only
5 “tangentially related” to the underlying cause of action, the presumption of public
6 access can be overcome simply by showing “good cause.” *Ctr. for Auto Safety v.*
7 *Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

8 The Court concludes that the document the parties seek to seal is more than
9 “tangentially related” to the underlying claim. The document is being filed in support
10 of Miotox’s claim construction briefing. Far from being “tangentially related” to a
11 patent infringement suit, the court’s construction of the terms of the patent claim is
12 often critical to the outcome of such a suit. *See Markman v. Westview Instruments,*
13 *Inc.*, 517 U.S. 370, 374 (1996) (“Victory in an infringement suit requires a finding that
14 the patent claim covers the alleged infringer’s product or process, which in turn
15 necessitates a determination of what the words in the claim mean.”). Therefore, the
16 parties must show that there are “compelling reasons” to overcome the presumption of
17 public access to documents filed in support of claim construction briefing.¹

18 Under the compelling reasons standard, “[the] presumption of access may be
19 overcome only ‘on the basis of articulable facts known to the court, not on the basis of
20 unsupported hypothesis or conjecture.’ The factors relevant to a determination of
21 whether the strong presumption of access is overcome include the ‘public interest in
22 understanding the judicial process and whether disclosure of the material could result

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24 ¹ The Court rejects Allergan’s argument that the “good cause” standard applies simply because
25 claim construction briefing is a non-dispositive filing. (Twomey Decl. ¶ 5.) In *Chrysler Group*, the
26 Ninth Circuit clarified that the whether the “good cause” or “compelling reasons” standard applied
27 did not turn on the dispositive/non-dispositive distinction, but on whether the documents were more
28 than “tangentially related to the underlying cause of action,” 809 F.3d at 1097, despite language
seemingly to the contrary in prior cases, *e.g.*, *Kamakana*, 447 F.3d at 1179; *Foltz v. State Farm Mut.*
Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003); *Phillips ex rel. Estates of Byrd v. Gen. Motors*
Corp., 307 F.3d 1206, 1212 (9th Cir. 2002).

1 in improper use of the material for scandalous or libelous purposes or infringement
2 upon trade secrets.’ After taking all relevant factors into consideration, the district
3 court must base its decision on a compelling reason and articulate the factual basis for
4 its ruling, without relying on hypothesis or conjecture.” *Hagestad v. Tragesser*, 49
5 F.3d 1430, 1434 (9th Cir. 1995) (citations and footnote omitted). “In general,
6 ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and
7 justify sealing court records exist when such ‘court files might have become a vehicle
8 for improper purposes,’ such as the use of records to . . . release trade secrets.”
9 *Kamakana*, 447 F.3d at 1179 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S.
10 589, 598 (1978)); *Chrysler Grp.*, 809 F.3d at 1097 (“compelling reasons” include the
11 potential disclosure of “sources of business information that might harm a litigant’s
12 competitive standing”).

13 Here, there does not appear to be any public interest in accessing records in this
14 case that is greater than the public interest in accessing records in all civil cases.
15 There are no novel legal issues, issues of widespread interest or importance, or any
16 particular public interest in the outcome of the case. On the other hand, Allergan
17 submits a declaration showing that they will suffer significant competitive harm if the
18 exhibit is made public. The document in question is a compilation of survey questions
19 developed by Allergan that are sent to physicians that use Allergan’s products, as well
20 some of the data received from those surveys in aggregate form. (Giese Decl. ¶¶ 5–6.)
21 While certain specific questions are presented to physicians for response, both the full
22 compilation of questions and the data obtained from the surveys are kept confidential
23 and are not publicly disclosed. (*Id.* ¶ 7.) Allergan invested substantial time and
24 resources developing the these questions and obtaining the data, and permitting public
25 access to this document would give Allergan’s competitors the opportunity to copy or
26 otherwise use these questions and data, thereby taking unfair advantage of Allergan’s
27 industry. (*Id.* ¶¶ 7–8.) Further, Allergan’s competitors would be privy to Allergan’s
28 confidential marketing strategy and focus on physician specialties, and could use this

1 to undermine Allergan's position in the marketplace. (*Id.* ¶ 9.) Based on this, the
2 Court finds that the parties have shown compelling reasons to file the document under
3 seal.

4 For the foregoing reasons, Miotox's Application to File Under Seal is
5 **GRANTED**. (ECF No. 248.) Miotox is directed to file and serve the document
6 bearing Bates numbers AGN-MTX-27884 to AGN-MTX-27989 pursuant to Local
7 Rule 79-5.2.2(c) and 79-5.3.

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9 **IT IS SO ORDERED.**

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11 June 2, 2016

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15 **OTIS D. WRIGHT, II**
16 **UNITED STATES DISTRICT JUDGE**
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