

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HSINGCHING HSU, Individually and
on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

PUMA BIOTECHNOLOGY, INC., ALAN
H. AUERBACH, and CHARLES R.
EYLER,

Defendants.

Case No. 8:15-cv-00865 AG (JCGx)
Assigned to: Hon. Andrew J. Guilford
Ctm: 10D

**STIPULATION AND
PROTECTIVE ORDER**

1 Pursuant to Federal Rule of Civil Procedure 26(c), the parties to this action respectfully
2 request that the Court issue this Protective Order to protect the confidentiality of nonpublic and
3 competitively-sensitive information that may need to be disclosed in connection with discovery
4 in this case, and to guard against the waiver of attorney-client privilege and work product
5 protection pursuant to Federal Rule of Evidence 502(d). The parties by and through their
6 counsel hereby stipulate to the following terms governing the pre-trial phase of this action.

7 **1. PURPOSE AND LIMITS OF THIS ORDER**

8 Discovery in this action is likely to involve confidential, proprietary, or private
9 information requiring special protection from public disclosure and from use for any purpose
10 other than this litigation. Thus, the Court enters this Protective Order. This Order does not
11 confer blanket protections on all disclosures or responses to discovery, and the protection it gives
12 from public disclosure and use extends only to the specific material entitled to confidential
13 treatment under the applicable legal principles. This Order does not automatically authorize the
14 filing under seal of material designated under this Order. Instead, the parties must comply with
15 L.R. 79-5.1 if they seek to file anything under seal. This Order does not govern the use at trial of
16 material designated under this Order.

17 **2. DESIGNATING PROTECTED MATERIAL**

18 **2.1 Confidential Information.** A party or non-party may designate as
19 “CONFIDENTIAL” any confidential, proprietary and/or trade-secret technical, scientific,
20 business, or financial information that is not generally known and that the producing party would
21 normally maintain in confidence and not reveal to a third party or would cause third parties to
22 maintain in confidence. Any information that is derived from CONFIDENTIAL information
23 also constitutes CONFIDENTIAL information to the extent the derived information embodies,
24 contains, or discloses any CONFIDENTIAL information.

25 **2.2 Highly Confidential-Attorneys’ Eyes Only Information.** A party or non-party
26 may designate as “HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY” information the
27 disclosure of which the producing party reasonably and in good faith believes could seriously
28 harm the competitive position of the producing party, such as, by way of illustrative example,

1 current business plans, highly sensitive financial information, confidential regulatory
2 submissions, or highly proprietary technical know-how or trade secrets. Any information that is
3 derived from HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information also
4 constitutes HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information to the extent
5 the derived information embodies, contains, or discloses any HIGHLY CONFIDENTIAL-
6 ATTORNEYS' EYES ONLY information.

7 **2.3 Over-Designation Prohibited.** Any party or non-party who designates
8 information or items for protection under this Order as "CONFIDENTIAL" or "HIGHLY
9 CONFIDENTIAL – ATTORNEY EYES ONLY" (a "designator") must only designate specific
10 material that qualifies under the appropriate standards. To the extent practicable, only those
11 parts of documents, items, or oral or written communications that require protection shall be
12 designated. Designations with a higher confidentiality level when a lower level would suffice
13 are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified
14 designations expose the designator to sanctions, including the Court's striking all confidentiality
15 designations made by that designator. Designation under this Order is allowed only if the
16 designation is necessary to protect material that, if disclosed to persons not authorized to view it,
17 would cause competitive or other recognized harm. Material may not be designated if it has
18 been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a
19 designator learns that information or items that it designated for protection do not qualify for
20 protection at all or do not qualify for the level of protection initially asserted, that designator
21 must promptly notify all parties that it is withdrawing the mistaken designation.

22 **2.4 Manner and Timing of Designations.** Designation under this Order requires the
23 designator to affix the applicable legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
24 ATTORNEY EYES ONLY") to each page that contains protected material. For testimony given
25 in deposition or other proceeding, the designator shall specify all protected testimony for which
26 protection is being asserted. It may make that designation during the deposition or proceeding,
27 or may invoke, on the record or by written notice to all parties on or before the next business
28 day, a right to have up to thirty days from the deposition or proceeding to make its designation.

1 **2.4.1 Protected Health Information.** Nothing in this Protective Order
2 shall be read to require the production of confidential patient or medical
3 information as defined by the Health Insurance Portability and Accountability
4 Act. A Disclosing Party shall, as applicable, redact “protected health
5 information” (“PHI”) as defined in the Health Insurance Portability and
6 Accountability Act (“HIPAA”) provisions 45 C.F.R §§ 160.103 and 164.501, or,
7 as defined in 21 C.F.R. § 20.63(f) or (e), which includes but is not limited to
8 health information, including demographic information, relating to either (a) the
9 past, present, or future physical or mental condition of an individual, (b) the
10 provision of care to an individual, or (c) the payment for care provided to any
11 individual, which identifies the individual or which reasonably could be expected
12 to identify the individual, and so note any such redactions on the responsible
13 document or on an appropriate redaction log. To the extent that redactions of
14 PHI would create an undue burden or a party determines that production of PHI
15 is relevant and necessary, the parties shall meet and confer on a proposed
16 amendment to this Protective Order. Any such amendment shall be submitted to
17 the Court as a stipulated amendment or, if the parties are unable to reach an
18 agreement, any party may move the Court to amend the Protective Order.

19 **2.4.2** A party or non-party that makes original documents or materials
20 available for inspection need not designate them for protection until after the
21 inspecting party has identified which material it would like copied and produced.
22 During the inspection and before the designation, all material shall be treated as
23 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting
24 party has identified the documents it wants copied and produced, the producing
25 party must designate the documents, or portions thereof, that qualify for
26 protection under this Order.

27 **2.4.3** Parties shall give advance notice if they expect a deposition or
28 other proceeding to include designated material so that the other parties can

1 ensure that only authorized individuals are present at those proceedings when
2 such material is disclosed or used. The use of a document as an exhibit at a
3 deposition shall not in any way affect its designation. Transcripts containing
4 designated material shall have a legend on the title page noting the presence of
5 designated material, and the title page shall be followed by a list of all pages
6 (including line numbers as appropriate) that have been designated, and the level
7 of protection being asserted. The designator shall inform the court reporter of
8 these requirements. Any transcript that is prepared before the expiration of the
9 thirty-day period for designation shall be treated during that period as if it had
10 been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
11 unless otherwise agreed. After the expiration of the thirty-day period, the
12 transcript shall be treated only as actually designated.

13 **2.5 Inadvertent Failures to Designate.** An inadvertent failure to designate does not,
14 standing alone, waive protection under this Order. If at any time prior to the trial of this action, a
15 producing person or party realizes that discovery material was inadvertently produced without
16 designation, the person or party may designate by apprising all parties in writing, and any
17 designated portions of the discovery material will thereafter be treated as CONFIDENTIAL or
18 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY under the terms of this Order.

19 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 All challenges to confidentiality designations shall proceed under L.R. 37-1 through
21 L.R. 37-4.

22 **4. ACCESS TO DESIGNATED MATERIAL**

23 **4.1 Basic Principles.** A receiving party may use designated material only for this
24 litigation. Designated material may be disclosed only to the categories of persons and under the
25 conditions described in this Order. Designated material, including PHI, shall be used solely for
26 the purpose of this action, and not in any other litigation, and not for any business or other
27 purpose whatsoever. Nothing in this Order shall be interpreted to prohibit or prevent the
28 producing party from using or discussing its own CONFIDENTIAL OR HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY material in any way it sees fit or to so use or
2 discuss that material for any reason. Any such use or discussion of designated material shall not
3 be deemed a waiver of the terms of the Order. If a party or any of its representatives, including
4 counsel, inadvertently discloses any designated material to persons who are not authorized to use
5 or possess such material or has actual knowledge that designated material is being used or
6 possessed by a person not authorized to use or possess that material, regardless of how the
7 material was disclosed or obtained by such person, the party shall provide immediate written
8 notice of the unauthorized use or possession to the designating party or non-party whose material
9 is being used or possessed.

10 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.** Unless
11 otherwise ordered by the Court or permitted in writing by the designator, a receiving party may
12 disclose any material designated CONFIDENTIAL only to:

13 **4.2.1** The receiving party’s outside counsel of record in this action and
14 employees of outside counsel of record to whom disclosure is reasonably
15 necessary;

16 **4.2.2** The officers, directors, and employees of the receiving party to
17 whom disclosure is reasonably necessary, and who have signed the Agreement to
18 Be Bound (Exhibit A);

19 **4.2.3** Experts retained by the receiving party’s outside counsel of record
20 to whom disclosure is reasonably necessary, and who have signed the Agreement
21 to Be Bound (Exhibit A);

22 **4.2.4** The Court and its personnel;

23 **4.2.5** Outside court reporters and their staff, professional jury or trial
24 consultants, mock jurors, and professional vendors to whom disclosure is
25 reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit
26 A);

27 **4.2.6** During their depositions, witnesses, and attorneys for witnesses,
28 in the action to whom disclosure is reasonably necessary provided: (1) the

1 deposing party requests that the witness sign the “Agreement to Be Bound”
2 (attached as Exhibit A hereto); and (2) they will not be permitted to keep any
3 CONFIDENTIAL information unless they sign the “Agreement to Be Bound”
4 (Exhibit A), unless otherwise agreed by the designator or ordered by the court.
5 Pages of transcribed deposition testimony or exhibits to depositions that reveal
6 designated material may be separately bound by the court report and may not be
7 disclosed to anyone except as permitted under this Protective Order;

8 **4.2.7** The author or recipient of a document containing the material, or
9 a custodian or other person who otherwise possessed or knew the information;
10 and

11 **4.2.8** Any mediator or settlement officer, and their supporting
12 personnel, mutually agreed upon by any of the parties engaged in settlement
13 discussions.

14 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY**

15 **Material Without Further Approval.** Unless permitted in writing by the designator, a
16 receiving party may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY
17 EYES ONLY without further approval only to:

18 **4.3.1** The receiving party’s outside counsel of record in this action and
19 employees of outside counsel of record to whom it is reasonably necessary to
20 disclose the information;

21 **4.3.2** The Court and its personnel;

22 **4.3.3** During their depositions, witnesses, and attorneys for witnesses,
23 in the action to whom disclosure is reasonably necessary provided: (1) the
24 deposing party requests that the witness sign the “Agreement to Be Bound”
25 (attached as Exhibit A hereto); and (2) they will not be permitted to keep any
26 HIGHLY-CONFIDENTIAL information, unless otherwise agreed by the
27 designator or ordered by the court. Pages of transcribed deposition testimony or
28 exhibits to depositions that reveal designated material may be separately bound

1 by the court report and may not be disclosed to anyone except as permitted under
2 this Protective Order. Nothing herein shall waive the right of any party or non-
3 party to move for a protective order prohibiting the disclosure of specified
4 HIGHLY CONFIDENTIAL information to a witness;

5 **4.3.4** Outside court reporters and their staff, professional jury or trial
6 consultants, and professional vendors to whom disclosure is reasonably
7 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

8 **4.3.5** The author or recipient of a document containing the material, a
9 custodian or other person who otherwise possessed or knew the information, or,
10 during subpoenaed testimony, any current or former officer or employee of Puma
11 Biotechnology, Inc.

12 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
13 **CONFIDENTIAL – ATTORNEY EYES ONLY or Material to In-House Counsel or**
14 **Experts.** Unless agreed to in writing by the designator:

15 **4.4.1** A party seeking to disclose to in-house counsel any material
16 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
17 make a written request to the designator providing the full name of the in-house
18 counsel, the city and state of such counsel’s residence, and such counsel’s
19 current and reasonably foreseeable future primary job duties and responsibilities
20 in sufficient detail to determine present or potential involvement in any
21 competitive decision-making.

22 **4.4.2** A party seeking to disclose to an expert retained by outside
23 counsel of record any information or item that has been designated HIGHLY
24 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written
25 request to the designator that (1) identifies the general categories of HIGHLY
26 CONFIDENTIAL – ATTORNEY EYES ONLY information that the receiving
27 party seeks permission to disclose to the expert, (2) identifies the expert’s current
28 employer(s), if any employer is a life sciences or pharmaceutical company, and

1 (3) identifies any compensation or funding the expert has received from any life
2 sciences or pharmaceutical company in the past five years.

3 **4.4.3** A party that makes a request and provides the information
4 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the
5 identified in-house counsel or expert unless, within seven days of delivering the
6 request, the party receives a written objection from the designator providing
7 detailed grounds for the objection.

8 **4.5** All challenges to objections from the designator shall proceed under L.R. 37-1
9 through L.R. 37-4.

10 **5. AMENDMENT OF THE PROTECTIVE ORDER**

11 **5.1** Nothing in this Protective Order abridges the right of any person to seek its
12 modification by the Court in the future, or to object to or seek further limitations on discovery
13 that it believes to be otherwise improper or seek further or different relief from the Court.

14 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
15 **OTHER LITIGATION**

16 **6.1 Subpoenas and Court Orders.** This Order in no way excuses noncompliance
17 with a lawful subpoena or court order. The purpose of the duties described in this section is to
18 alert the interested parties to the existence of this Order and to give the designator an opportunity
19 to protect its confidentiality interests in the court where the subpoena or order issued.

20 **6.2 Notification Requirement.** If a party is served with a subpoena or a court order
21 issued in other litigation that compels disclosure of any information or items designated in this
22 action as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, that
23 party must:

24 **6.2.1** Promptly notify the designator in writing. Such notification shall
25 include a copy of the subpoena or court order;

26 **6.2.2** Promptly notify in writing the party who caused the subpoena or
27 order to issue in the other litigation that some or all of the material covered by
28

1 the subpoena or order is subject to this Order. Such notification shall include a
2 copy of this Order; and

3 **6.2.3** Cooperate with all reasonable procedures sought by the designator
4 whose material may be affected.

5 **6.3 Wait For Resolution of Protective Order.** If the designator timely seeks a
6 protective order, the party served with the subpoena or court order shall not produce any
7 information designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL –
8 ATTORNEY EYES ONLY before a determination by the court where the subpoena or order
9 issued, unless the party has obtained the designator’s permission. The designator shall bear the
10 burden and expense of seeking protection of its confidential material in that court.

11 **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

12 If a receiving party learns that, by inadvertence or otherwise, it has disclosed designated
13 material to any person or in any circumstance not authorized under this Order, it must
14 immediately (1) notify in writing the designator of the unauthorized disclosures, (2) use its best
15 efforts to retrieve all unauthorized copies of the designated material, (3) inform the person or
16 persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) use
17 reasonable efforts to have such person or persons execute the Agreement to Be Bound
18 (Exhibit A).

19 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

21 When a producing party gives notice that certain inadvertently produced material is
22 subject to a claim of privilege or other protection, the obligations of the receiving parties are
23 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
24 modify whatever procedure may be established in an e-discovery order that provides for
25 production without prior privilege review pursuant to Federal Rule of Evidence 502(d) and (e).

26 **9. FILING UNDER SEAL**

27 Without written permission from the designator or a Court order, a party may not file in
28 the public record in this action any designated material. A party seeking to file under seal any

1 designated material must comply with L.R. 79-5.1. Filings may be made under seal only
2 pursuant to a court order authorizing the sealing of the specific material at issue. The fact that a
3 document has been designated under this Order is insufficient to justify filing under seal.
4 Instead, parties must explain the basis for confidentiality of each document sought to be filed
5 under seal. Because a party other than the designator will often be seeking to file designated
6 material, cooperation between the parties in preparing, and in reducing the number and extent of,
7 requests for under seal filing is essential. If a *receiving party's* request to file designated
8 material under seal pursuant to L.R. 79-5.1 is denied by the Court, then the receiving party *may*
9 *file the material in the public record* unless (1) *the designator* seeks reconsideration within four
10 days of the denial, or (2) as otherwise instructed by the Court.

11 **10. FINAL DISPOSITION**

12 Within sixty days after the final disposition of this action, each party shall return all
13 designated material to the designator or destroy such material, including all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any designated
15 material. The receiving party must submit a written certification to the designator by the 60- day
16 deadline that (1) identifies (by category, where appropriate) all the designated material that was
17 returned or destroyed, and (2) affirms that the receiving party has not retained any copies,
18 abstracts, compilations, summaries, or any other format reproducing or capturing any of the
19 designated material. This provision shall not prevent counsel from retaining an archival copy of
20 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
21 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
22 consultant and expert work product, even if such materials contain designated material. Any
23 such archival copies remain subject to this Order.

24
25
26
27
28

1 Dated: November 29, 2016

2

LATHAM & WATKINS LLP

3

4

By: /s/ Colleen C. Smith

5

Michele D. Johnson
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925
Tel: (714) 540-1235
michele.johnson@lw.com

6

7

8

Colleen C. Smith
12670 High Bluff Drive
San Diego, CA 92130-3086
Tel: (858) 523-5400
colleen.smith@lw.com

9

10

11

Sarah A. Greenfield (*pro hac vice*)
555 Eleventh Street NW, Suite 1000
Washington, DC 200004-1304
Tel: (202) 637-2200
sarah.greenfield@lw.com

12

13

14

*Attorneys for Defendants Puma
Biotechnology, Inc., Alan H. Auerbach,
and Charles R. Eyer*

15

16

17 Dated: November 29, 2016

18

ROBBINS GELLER RUDMAN & DOWD
LLP

19

20

By: /s/ Tor Gronborg

21

Tor Gronborg
Trig R. Smith
J. Marco Janoski Gray
Susannah R. Conn
655 West Broadway, Suite 1900
San Diego, CA 92101
Tel: (619) 231-7423
Fax: (619) 231-1058
torg@rgrdlaw.com
trigs@rgrdlaw.com
mjanoski@rgrdlaw.com
sconn@rgrdlaw.com

22

23

24

25

26

27

Lead Counsel for Plaintiff

28

1 All signatories listed, and on whose behalf the filing is submitted, concur in the filing's content
2 and have authorized the filing.

3 Dated: November 29, 2016

LATHAM & WATKINS LLP

4

5

/s/ Colleen C. Smith
Colleen C. Smith

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

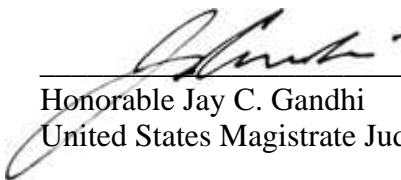
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED.

DATED: December 06, 2016



Honorable Jay C. Gandhi
United States Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Protective Order that was issued by the United States District Court for the
Central District of California on _____ [date] in the case of *Hsingching HSU v. Puma
Biotechnology, Inc., et al.*, Case No. 8:15-cv-00865 AG (JCGx). I agree to comply with and to
be bound by all the terms of this Protective Order, and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment for contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this Protective
Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing this Order, even if such enforcement
proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]