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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 CESCO THERAPEUTICS, INC.,

12 Plaintiff,

13 v.

14 SYNGEN, INC., et al.,

15 Defendants.  
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No. 2:14-cv-2085-TLN-KJN

ORDER

17 On October 13, 2016, this case was before the undersigned to address defendants SynGen,  
18 Inc.'s, PHC Medical, Inc.'s, and Philip Coelho's (collectively "defendants") motion to compel  
19 plaintiff CESCO Therapeutics, Inc. ("plaintiff") to produce responses to defendants' interrogatory  
20 numbers 1, 2, and 7. (ECF No. 81.) Also before the undersigned was plaintiff's motion to  
21 compel defendants to produce documents in response to plaintiff's request for production  
22 numbers 2, 3, 9, 11, 12, 13, 14, 15, 19, 27, 32, 33, 34, 35, 36, 37, 39, 42, 44, 49. (ECF No. 82.)  
23 Attorneys Ali Razai and Lauren Katzenellenbogen appeared on behalf of plaintiff. Attorneys  
24 Matan Shacham and Eric MacMichael appeared on behalf of defendants.

25 Based on the parties' motions and joint statements regarding these discovery disputes,  
26 other relevant filings, and oral argument, and for the reasons discussed below and on the record  
27 during the hearing, IT IS HEREBY ORDERED that:

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1           1. Defendants' motion to compel (ECF No. 81) is GRANTED in part:

2           a. With regard to interrogatory number 1, the court finds that the first item listed  
3           in "Exhibit A" attached to plaintiff's response (i.e. 1. "Cesca's development  
4           history...") fails to disclose the specific trade secret or trade secrets plaintiff  
5           alleges defendants misappropriated, misused, or disclosed over the course of  
6           the "development history" plaintiff describes in that item. Accordingly, the  
7           court grants defendants' motion with respect to that aspect of plaintiff's  
8           response. Within 45 days of the date of this order,<sup>1</sup> plaintiff shall supplement  
9           its response to interrogatory number 1 to identify the specific secret  
10          information it allegedly developed over the course of the "development  
11          history" it describes in its response that defendants allegedly misappropriated,  
12          misused, or disclosed. However, with regard to the second item and all other  
13          subsequent entries in "Exhibit A" attached to plaintiff's response, the court  
14          finds that plaintiff's response is adequately responsive to defendants' request  
15          given the information currently available to plaintiff at this juncture for the  
16          reasons discussed on the record during the hearing. Accordingly, defendants'  
17          motion to compel is denied insofar as it seeks plaintiff to supplement its  
18          response to interrogatory number 1 with regard to any trade secret items listed  
19          subsequent to the first item in "Exhibit A" to plaintiff's response.<sup>2</sup>

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21          <sup>1</sup> During the hearing plaintiff's counsel noted that plaintiff will need roughly 30 days to complete  
22          its own current production to defendants and review defendants' latest production. Accordingly,  
23          the court finds 45 days to be an adequate amount of time for plaintiff to review defendants'  
24          production thus far and craft its supplemental interrogatory responses. Ideally, plaintiff will have  
25          first reviewed the entirety of defendants' document production thus far before providing  
26          defendants with its supplemental interrogatory responses. If plaintiff reasonably believes that it  
27          will need additional time to respond to defendants' interrogatories in a manner that complies fully  
28          with this order, it may request such an extension through a motion that provides reasons why the  
29          extension is necessary and describes the efforts plaintiff has already taken to review defendants'  
30          production and craft its supplemental responses.

31          <sup>2</sup> Nevertheless, as discovery progresses in this action and plaintiff has an opportunity to further  
32          review the documents and other discovery produced by defendants, plaintiff may find it  
33          appropriate to supplement its response to defendants' interrogatory number 1 to further narrow

1                   b. With regard to interrogatory number 2, defendants' motion is granted. Within  
2                   45 days of the date of this order, plaintiff shall supplement its response to  
3                   interrogatory number 2 to identify, to the extent that plaintiff is able to at this  
4                   juncture, when and how the specific elements of its alleged rigid cartridge  
5                   device trade secret, as they are set forth in plaintiff's response to interrogatory  
6                   number 1, were developed, and who developed those elements. To the extent  
7                   possible, plaintiff shall reference in its supplemental response specific  
8                   documents that have been produced in this action by their Bates-stamp  
9                   numbers that substantiate its representations. If plaintiff believes it is unable to  
10                  provide a conclusive response regarding any information requested through  
11                  interrogatory number 2, it shall state that position in its supplemental response  
12                  and represent that it will further supplement its response as discovery proceeds  
13                  in this action.

14               c. With regard to interrogatory number 7, defendants' motion is granted. The  
15               court finds that the general categories of "confidential information" plaintiff  
16               includes in its response are overly vague and provide an insufficient response  
17               to defendants' interrogatory. Accordingly, within 45 days of the date of this  
18               order, plaintiff shall supplement its response to interrogatory 7 to provide a  
19               detailed description of each specific piece of confidential information it claims  
20               defendants misappropriated.

21           2. Plaintiff's motion to compel (ECF No. 82) is GRANTED in part:

22               a. With regard to request for production numbers 9, 11, 12, 32, and 33, to the  
23               extent those requests seek documents relating to defendants' research, design,  
24               development, manufacturing and/or testing of specific SynGen, Inc. devices  
25               incorporating the rigid cartridge device technology at issue, including the  
26               SynGen X-1000 product, defendants shall produce any responsive documents

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27               the scope of the specific trade secrets it alleges defendants misappropriated based on the  
28               information that defendants' production reveals.

1 created up through March 17, 2011, to the extent they have not already done  
2 so. Moreover, to the extent those requests seek documents relating to  
3 defendants' research, design, development, manufacturing and/or testing  
4 specifically relating to any changes defendants have made to the rigid cartridge  
5 device technology at issue, defendants shall produce all such documents  
6 without any limitation as to the time those documents were developed.  
7 Finally, to the extent defendants have not already done so, they shall produce  
8 the "device master record" for SynGen's X-LAB product discussed on the  
9 record during the hearing. Defendants shall produce the above documents  
10 within 30 days of the date of this order. To the extent plaintiff's requests for  
11 production numbers 9, 11, 12, 32, and 33 seek any documents beyond those  
12 described above, plaintiff's motion is denied without prejudice to later renewal  
13 after the parties have engaged in further meet and confer efforts regarding  
14 plaintiff's request subsequent to plaintiff's review of defendants' recent and  
15 upcoming document productions, and upon a showing by plaintiff that the  
16 discovery already produced gives rise to a reasonable inference that the  
17 documents sought through these requests for production are relevant and  
18 production of such documents will be proportional within the meaning of  
19 Federal Rule of Civil Procedure 26(b)(1).

- 20 b. With regard to request for production number 19, defendants shall provide  
21 plaintiff with a list of investors in SynGen, Inc. To the extent plaintiff seeks to  
22 obtain all documents and things defendants provided to any potential investors  
23 regarding the rigid cartridge device technology at issue, plaintiff's motion is  
24 denied without prejudice to renewal after the parties have engaged in further  
25 meet and confer efforts regarding plaintiff's request after plaintiff has had the  
26 opportunity to review defendants' recent and upcoming document productions,  
27 and upon a showing by plaintiff that the discovery already produced gives rise  
28 to a reasonable inference that the documents sought through request for

1 production number 19 are relevant and production of such documents will be  
2 proportional within the meaning of Federal Rule of Civil Procedure 26(b)(1).

3 c. With regard to request for production number 27, plaintiff shall provide  
4 defendants with a list of its customers from 2006 through the end of 2011 for  
5 the purpose of allowing defendants to respond to plaintiff's request. Plaintiff  
6 may provide the list as part of a supplement or amendment to its request for  
7 production number 27, or may produce the list to defendants as a separate  
8 document. Plaintiff shall produce the customer list in one of the above forms  
9 within 21 days of the date of this order. Defendants shall produce any  
10 documents responsive to plaintiff's request for production number 27 based on  
11 the list plaintiff provides within 21 days of plaintiff's production of that list.  
12 Defendants' production shall include any documents that refer or relate to the  
13 customers in the list plaintiff provides without any limitation as to the time  
14 those documents were developed.

15 d. With regard to request for production numbers 34, 35, 36, and 42, plaintiff's  
16 motion is denied without prejudice to later renewal after the parties have  
17 engaged in further meet and confer efforts regarding plaintiff's request  
18 subsequent to plaintiff's review of defendants' recent and upcoming document  
19 productions, and upon a showing by plaintiff that the discovery already  
20 produced gives rise to a reasonable inference that the documents sought  
21 through these requests for production are relevant and production of those  
22 documents will be proportional within the meaning of Federal Rule of Civil  
23 Procedure 26(b)(1).

24 e. With regard to request for production numbers 37 and 39, plaintiff's motion is  
25 denied without prejudice to later renewal after the parties have engaged in  
26 further meet and confer efforts regarding plaintiff's request subsequent to  
27 plaintiff's review of defendants' recent and upcoming document productions,  
28 and upon a showing by plaintiff that the discovery already produced gives rise

1 to a reasonable inference that the documents sought through these requests for  
2 production are relevant and production of those documents will be proportional  
3 within the meaning of Federal Rule of Civil Procedure 26(b)(1).

4 f. With regard to request for production numbers 44 and 49, counsel for the  
5 parties represented at the hearing that the documents defendants agreed to  
6 produce are a sufficient response to those requests as of this time. Specifically,  
7 defendants shall produce, to the extent that they have not already done so, any  
8 documents identifying any third parties who have received a license to  
9 SynGen, Inc.'s U.S. patent No. 8,747,289 referenced in the complaint and any  
10 revenues SynGen, Inc. has generated from such licenses, in addition to  
11 SynGen, Inc.'s loan agreement with General Electric Capital Corporation  
12 defendants reference in their portion of the parties' joint statement regarding  
13 plaintiff's motion to compel (ECF No. 85 at 65). To the extent plaintiff seeks  
14 any additional documents through these requests, plaintiff's motion is denied  
15 without prejudice to later renewal after the parties have engaged in further  
16 meet and confer efforts regarding plaintiff's request subsequent to plaintiff's  
17 review of defendants' recent and upcoming document productions, and upon a  
18 showing by plaintiff that the discovery already produced gives rise to a  
19 reasonable inference that the documents sought through these requests for  
20 production are relevant and production of those documents will be proportional  
21 within the meaning of Federal Rule of Civil Procedure 26(b)(1).

22 g. With regard to request for production numbers 2, 3, 13, 14, 15, 28, 29, and 30,  
23 plaintiff's motion is denied without prejudice to later renewal after the parties  
24 have engaged in further meet and confer efforts regarding plaintiff's request  
25 subsequent to plaintiff's review of defendants' recent and upcoming document  
26 productions, and upon a showing by plaintiff that the discovery already  
27 produced gives rise to a reasonable inference that the documents sought  
28 through these requests for production are relevant and production of those

documents will be proportional within the meaning of Federal Rule of Civil Procedure 26(b)(1).

3. The parties' joint request to seal certain documents pursuant to Local Rule 141 (ECF No. 84) is GRANTED in part:

- a. The parties' request to seal Exhibit 3 to the Declaration of Matan Shacham filed in support of plaintiff's opposition to defendants' motion to compel is granted. Accordingly, that document shall be filed under seal pursuant to Local Rule 141.
- b. With regard to the parties' request to seal plaintiff's portion of the parties' joint statement regarding defendants' motion to compel, the court finds that while certain portions of that statement, in particular, the portions quoting plaintiff's responses to defendants' interrogatory numbers 1, 2, and 7, contain potentially sensitive information regarding purported trade secrets or other confidential information, the remainder of that statement does not appear to contain information that warrants sealing of the entire statement. Accordingly, the parties' request to seal this document is granted only in part. The parties shall file in the public record a copy of their joint statement regarding defendants' motion to compel with any direct quotations from plaintiff's responses to defendants' interrogatory numbers 1, 2, and 7 redacted. The parties shall also file under seal an unredacted copy of that document pursuant to Local Rule 140.
- c. All other documents filed in support of the parties' motions to compel, including any portions of Matan Shacham's declaration and the parties' joint statement regarding defendants' motion to compel not subject to redaction or sealing in accordance with this order, shall be filed in the public record for this action to the extent they have not already been filed in such a manner.

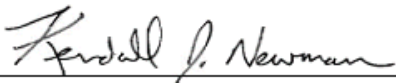
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IT IS SO ORDERED.

Dated: October 20, 2016

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE