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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER E BANAS, et al.,
Plaintiffs,
v.
VOLCANO CORPORATION, et al.,
Defendants.

Case No. [12-cv-01535-WHO](#)

**ORDER GRANTING PARTIES'
MOTIONS TO SEAL AND REQUEST
FOR JUDICIAL NOTICE**

Re: Dkt. Nos. 64, 73, 79, 81, 86

This order addresses the parties' motions to file under seal and Volcano's request for judicial notice, filed in connection with the parties' cross motions for summary judgment and the plaintiffs' motion for sanctions.

I. PARTIES' MOTIONS TO SEAL

Upon good cause shown, IT IS HEREBY ORDERED that the documents listed below shall be filed under seal by the Clerk. The party which sought to file each document under seal shall ensure that a redacted version of each document is publicly accessible on the Court's electronic filing system (ECF), and that only the portions identified below are redacted.

1. The Unredacted version of the Declaration of Martin Woodward in Support of Plaintiffs' Motion for Partial Summary Judgment to which Plaintiffs' Exhibits 2-5 and 9-11 are attached;
2. The Unredacted version of Plaintiffs' Notice of Motion and Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Partial Summary Judgment.
3. The document titled "Agreement and Plan of Merger" contained within **Exhibit 9** to the Declaration of Martin Woodward in Support of Plaintiffs' Motion for Partial Summary Judgment (the "Woodward Declaration"), bearing bates labels VOLCANO_00046942 through VOLCANO_00047014.
4. Pages 6-8, 10-12, and 14-29 of the presentation contained within **Exhibit 10** to the

1 Woodward Declaration, bearing bates labels VOLCANO_00047166 through
2 VOLCANO_00047168, VOLCANO_00047170 through VOLCANO_00047172, and
3 VOLCANO_00047174 through VOLCANO_00047189.

- 4 5. Pages 6 and 10-18 of the presentation contained within **Exhibit 11** to the Woodward
5 Declaration, bearing bates labels VOLCANO_00047367 and VOLCANO_00047371
6 through VOLCANO_00047379.
- 7 6. **Exhibit 26** to the Woodward Declaration, titled “Expert Report of Dr. Zvi Ladin, Ph.D.”
- 8 7. **Exhibits 30-31, 42-43, and 45** to the Woodward Declaration, bearing bates labels
9 VOLCANO_00126384 through VOLCANO_00126392, VOLCANO_00173380 through
10 VOLCANO_00173416, VOLCANO_00063076 through VOLCANO_00063133,
11 VOLCANO_00063149 through VOLCANO_00063163, and VOLCANO_00241735
12 through VOLCANO_00241763.
- 13 8. **Exhibits 32 and 54** to the Woodward Declaration, bearing bates labels
14 VOLCANO_00078024 through VOLCANO_00078028 and VOLCANO_00343340
15 through VOLCANO_00343343, and the quoting of such exhibits appearing in Plaintiffs’
16 Opposition at footnote 71 on page 17.
- 17 9. **Exhibits 34, 37-38, and 48** to the Woodward Declaration, bearing bates labels
18 VOLCANO_00094799 through VOLCANO_00094818, VOLCANO_00193416 through
19 VOLCANO_00193436, VOLCANO_00168552 through VOLCANO_00168576, and
20 VOLCANO_00267670 through VOLCANO_00267707.
- 21 10. **Exhibit OO** (in its entirety) filed in support of Volcano’s Reply in Support of its Motion
22 for Summary Judgment;
- 23 11. **Exhibit SS** (in its entirety) filed in support of Volcano’s Reply in Support of its Motion for
24 Summary Judgment;
- 25 12. **Exhibit TT** (in its entirety) filed in support of Volcano’s Reply in Support of its Motion
26 for Summary Judgment; and
- 27 13. **Exhibit UU** (email attachment only) filed in support of Volcano’s Reply in Support of its
28 Motion for Summary Judgment;
14. The Unredacted version of the Declaration of Scott A. Kitner in Support of Plaintiffs’
Motion for Sanctions, including **Exhibit 6** attached thereto (containing previously-filed
Exhibits OO and TT).

The plaintiffs moved to file Woodward Declaration Exhibits 2-5, 16-25, 27-29, 33, 35-36,
39-41, 44, 46-47, 49-53, 55-62 under seal because these documents were apparently designated
confidential by Volcano. Volcano evidently no longer believes these documents are confidential.
Unless Volcano submits a declaration by 5:00 pm, Tuesday April 1, 2014 establishing that

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these documents are sealable, the plaintiffs shall file these documents on ECF not under seal.

II. VOLCANO’S REQUEST FOR JUDICIAL NOTICE

Volcano requests that the Court take judicial notice of information made publicly available on the website of the United States Food & Drug Administration (“FDA”) in a document labeled “IDE Guidance Memorandum #D99-1 – Pre-IDE Program: Issues and Answers” and dated March 25, 1999 (“FDA Guidance”). Dkt. No. 79 (exhibit VV). The plaintiffs do not object to the request. Pursuant to Federal Rule of Evidence 201, the request is GRANTED.

IT IS SO ORDERED.

Dated: March 31, 2014



WILLIAM H. ORRICK
United States District Judge