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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMGEN INC., ET AL.,
Plaintiffs,

v.

SANDOZ INC., et al.,
Defendants.

Case No. [14-cv-04741-RS](#) (MEJ)

**ORDER RE: MOTION TO FILE UNDER
SEAL**

Re: Dkt. No. 227

INTRODUCTION

On April 13, 2017, Plaintiffs Amgen Inc. and Amgen Manufacturing, Ltd. (collectively, “Amgen”) move to file under seal Exhibit A to the Maniscalco Declaration in Support of Amgen’s Motion for Leave to Amend Infringement Contentions. Sealing Mot., Dkt. No. 227; Maniscalco Decl., Ex. A, Dkt. No. 226-1. In support of Amgen’s Motion, Maniscalco declares Defendant Sandoz¹ designated Exhibit A as “Highly Confidential – BLA Material” pursuant to the parties’ protective order. Maniscalco Sealing Decl. ¶ 2, Dkt. No. 227-1; Protective Order, Dkt. No. 60. Having considered the parties’ arguments and the relevant legal authority, the Court **GRANTS** Amgen’s Motion for the following reasons.

LEGAL STANDARD

There is a “strong presumption in favor of access” by the public to judicial records and documents accompanying dispositive motions. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). To overcome this presumption, a “party must articulate compelling reasons

¹ Amgen does not specify whether “Sandoz” refers to Sandoz Inc., Sandoz International GmbH, or Sandoz GmbH.

1 supported by specific fact[s].” *Id.* at 1178 (internal quotation and citation omitted); *see also*
2 *Apple, Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1223 (Fed. Cir. 2013) (finding sealing
3 appropriate where companies “filed declarations from employees” that “explained the measures
4 the two companies take to keep their product-specific financial information confidential” and “the
5 harm they would suffer if their product-specific financial information were made public”).
6 Indeed, such showing is required even where “the dispositive motion, or its attachments, were
7 previously filed under seal or protective order.” *Kamakana*, 447 F.3d at 1179.

8 But the presumption does not apply in the same way to non-dispositive motions, “such that
9 the usual presumption of the public’s right of access is rebutted.” *Id.* (citing *Phillips v. General*
10 *Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). “Good cause” is the proper standard when
11 parties wish to keep records attached to a non-dispositive motion under seal. *Pintos v. Pac.*
12 *Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010).

13 DISCUSSION

14 Where a party seeks to file under seal any material designated as confidential by another
15 party, the submitting party must request a sealing order. *See* Civil L.R. 79-5(d)-(e). “Within 4
16 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file
17 a declaration . . . establishing that all of the designated information is sealable.” *Id.* at 79-5(e)(1).
18 “If the Designating Party does not file a responsive declaration as required by subsection 79-
19 5(e)(1) and the Administrative Motion to File Under Seal is denied, the Submitting Party may file
20 the document in the public record no earlier than 4 days, and no later than 10 days, after the
21 motion is denied.” *Id.* at 79-5(e)(2).

22 Pursuant to Rule 79-5(e)(1), Josephine Liu, Head of U.S. Intellectual Property at Sandoz
23 Inc., submitted a declaration supporting Sandoz’s confidentiality designations. Liu Decl., Dkt.
24 No. 229. Liu explains Exhibit A “contains confidential information concerning Sandoz’s
25 manufacturing and purification processes for Zarxio, Sandoz’s biosimilar filgrastim product.” *Id.*
26 ¶ 2. She contends Sandoz’s competitors could use this information to Sandoz’s disadvantage;
27 Sandoz accordingly takes “careful measures” to ensure that it is not disclosed to the public so as to
28 avoid substantial harm. *Id.* Sandoz demonstrates good cause for sealing Exhibit A to Amgen’s

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nondispositive motion, and the Court finds Exhibit A is sealable. “[C]ourts have refused to permit their files to serve . . . as sources of business information that might harm a litigants competitive standing[.]” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (internal citations omitted). Accordingly, the Court **GRANTS** Amgen’s Motion.

IT IS SO ORDERED.

Dated: April 18, 2017



MARIA-ELENA JAMES
United States Magistrate Judge