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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRUCE DOYLE,
Plaintiff,
v.
GALDERMA, INC.,
Defendant.

Case No. [19-cv-05678](#) (TSH)

**ORDER RE: ADMINISTRATIVE
MOTIONS TO FILE UNDER SEAL**

Re: Dkt. Nos. 25, 27, 28, 30, 31

United States District Court
Northern District of California

Before the Court are two Administrative Motions to File Under Seal pursuant to Local Rules 79-5 and 7-11:

(1) Defendant Galderma Laboratories, L.P.’s (“Galderma”) February 4, 2021 Administrative Motion to File Under Seal (“Galderma’s Motion to Seal”), ECF No. 25, documents that it filed in connection with its pending Motion for Summary Judgment, or, in the Alternative, Partial Summary Adjudication (“Summary Judgment Motion”), ECF No. 26; and

(2) Plaintiff Bruce Doyle’s February 18, 2021 Administrative Motion to File Under Seal (“Doyle’s Motion to Seal”), ECF No. 28, which is actually a motion to permit Doyle to file documents *not* under seal in order to support his Opposition to Galderma’s Summary Judgment Motion, ECF No. 29.

A. Galderma’s Motion to Seal

In Galderma’s Motion to Seal, it seeks to file under seal materials it believes contain private information of non-parties and its own confidential and proprietary business information.

i. Flores Declaration

Galderma asserts that Exhibits C, G, and H to the Declaration of Edith Flores filed in support of Defendant’s Motion For Summary Judgment (“Flores Declaration”), ECF No. 26,

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1 contain private performance-management and personnel records of third parties who are not
2 participants in this lawsuit and that Exhibits C, D, and F to the Declaration of Ken Curley filed in
3 support of Defendant’s Motion For Summary Judgment (“Curley Declaration”), ECF No. 26,
4 contains Galderma’s confidential and proprietary business information.

5 With respect to the Flores Declaration, Galderma asserts that Exhibits C, G, and H contain
6 private performance-management and personnel records of third parties who are not participants in
7 this lawsuit. Though much discussion of privacy rights of nonparties centers around discovery
8 disputes, the California Constitution expressly grants Californians a right of privacy. Cal. Const.,
9 art. I, § 1. “Protection of informational privacy is the provision’s central concern.” *Board of*
10 *Registered Nursing v. Superior Court of Orange County*, 59 Cal. App. 5th 1011, 1039, review
11 *denied* April 21, 2021.

12 Exhibit C to the Flores Declaration is a Performance Improvement Plan detailing
13 performance shortcomings and criticism of a Galderma employee who is not a party to this
14 lawsuit. Upon examination of this exhibit, it contains information which, if known about the
15 employee, could harm him as it may reflect badly on him for future employment. This document
16 could not be easily redacted, as it contains information, including dates and locations of work-
17 related activities, throughout it that could serve to identify him. *Contrast Foltz v. State Farm Mut.*
18 *Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003) (“Simply redacting the identifying information
19 of third parties ... and disclosing the remaining information would not injure third parties but
20 would reveal only [the defendant's] actions in processing personal injury claims.”). The
21 constitutionally-protected privacy interests of this employee present compelling reasons to justify
22 a sealing order. The Court thus finds that the public’s interest in accessing this document is
23 outweighed by the privacy interests of the third-party employee. Accordingly, Galderma’s Motion
24 to Seal is **GRANTED** with respect to Exhibit C.

25 Exhibits G and H are Separation Letters discussing the termination of former Galderma
26 employees who are not parties to this lawsuit. As in *Foltz*, “We do not see how the presence of a
27 small number of third-party . . . personnel records that can be redacted with minimal effort
28 constitutes ‘good cause,’ let alone a compelling reason, for this protective order to overcome the

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1 strong presumption in favor of public access.” *Foltz*, 331 F.3d at 1137. These documents have
2 already been partially redacted to remove some personally identifiable information and can easily
3 be further redacted. Accordingly, Galderma’s Motion to Seal is **DENIED** with respect to Exhibits
4 G and H. Galderma is **ORDERED** to **REDACT** the names, dates of separation, and end dates of
5 insurance coverage contained in Exhibits G and H and to file the redacted versions in the public
6 record no later than April 28, 2021.

7 **ii. Curley Declaration**

8 With respect to the Curley Declaration, Galderma asserts that Exhibits C, D, and F contain
9 Galderma’s confidential and proprietary business information, including confidential, proprietary,
10 and strategic budgeting, sales, and marketing information. Galderma argues that “Potential
11 wrongdoers who view this information would have unfair access to Galderma’s protected, trade
12 secret information. Production of this trade secret information, would be detrimental to
13 Defendant.” Galderma’s Motion to Seal, pp. 4-5.

14 Exhibit C to the Curley Declaration is a January 2019 email discussing Galderma’s
15 regional extended selling budgets and allocation thereof. Exhibit D is a December 2018 email
16 discussing Galderma’s regional sales and marketing programming allocations. Exhibit F is an
17 April 2019 report detailing the confidential sales targets and sales results for all sales professionals
18 in Galderma’s prescription business sales organization for the first quarter of 2019. Galderma
19 claims these contain confidential, proprietary and strategic information about sales and marketing
20 related to Galderma’s prescription business sales organization. The Court agrees. Galderma’s
21 motion to seal is **GRANTED** as to Exhibits C, D and F.

22 **B. Doyle’s Motion to Seal**

23 In his Motion to Seal, Doyle requests the Court to order that certain documents may be
24 filed in the public record. Doyle contends the following documents should not be filed under seal:
25 Exhibits 1 and 2 to the Declaration of Ian Doyle In Support of Doyle’s Opposition to Galderma’s
26 Motion for Summary Judgment (“Doyle Declaration”), and Exhibits 1-7 to the Declaration of
27 Counsel Robert Wallace In Support of Doyle’s Opposition to Galderma’s Motion for Summary
28 Judgment (“Wallace Declaration”).

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1 The crux of Doyle’s argument is that if the personally identifying information in these
2 documents is not made public it will hamper his ability to prove his claims of age discrimination.
3 He appears to be under the misapprehension that filing a document under seal means the evidence
4 won’t be considered by the Court in ruling on the Summary Judgment Motion. This, of course, is
5 untrue. He also argues that sealing these documents would “defeat[] the purpose of providing
6 public access to civil rights actions such as this.” Doyle’s Motion to Seal, p. 4. The Court agrees
7 as to some of these documents and disagrees as to others.

8 **i. Doyle Declaration**

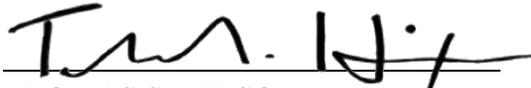
9 Exhibits 1 and 2 to the Doyle Declaration consist, respectively, of “a chronological
10 sampling of some of the awards, raises, and bonuses I received during the course of [Doyle’s]
11 career” (Doyle Decl., ¶ 2) and Doyle’s 2018 Performance Review. Doyle himself requests that his
12 own documents be filed publicly and Galderma does not object. Accordingly, Doyle’s Motion is
13 **GRANTED** with respect to Exhibits 1 and 2. Doyle is **ORDERED** to file these documents in the
14 public record no later than April 28, 2021.

15 **ii. Wallace Declaration**

16 Galderma objects to the public filing of Exhibits 1-4 to the Wallace Declaration because
17 they contain Galderma’s confidential and proprietary business information and to the public filing
18 of Exhibits 5-7 because they contain the full birthdates of third parties. The Court agrees on both
19 counts. The Court **ORDERS** that these Exhibits remain under seal and **ORDERS** Doyle to file
20 public versions of Exhibits 5-7 by April 28, 2021, with the month and date of an individual’s
21 birthdate redacted.

22 **IT IS SO ORDERED.**

23
24 Dated: April 27, 2021

25 
26 THOMAS S. HIXSON
27 United States Magistrate Judge
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