

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
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JERRY TWINDE, On Behalf of Himself and All Others Similarly Situated,)	No. 4:07-cv-04972-CW
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
vs.)	
)	
THRESHOLD PHARMACEUTICALS, INC., et al.,)	
)	
Defendants.)	
<hr/>		
RAYNOLD L. GILBERT, On Behalf of Himself and All Others Similarly Situated,)	No. 4:07-cv-04971-CW
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
vs.)	
)	
THRESHOLD PHARMACEUTICALS, INC., et al.,)	
)	
Defendants.)	
<hr/>		

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords extends only to the limited
8 information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
10 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
11 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
12 when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 (a) Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 (b) Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner generated, stored, or maintained (including, among other things, testimony,
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
19 in this matter.

20 (c) “Confidential” Information or Items: information (regardless of how
21 generated, stored or maintained) or tangible things that qualify for protection under standards
22 developed under Fed. R. Civ. P. 26(c), federal law or any applicable state law, including but not
23 limited to confidential non-public information, such as social security numbers, personnel
24 evaluations, medical information and financial information.

25 (d) “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
26 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
27 nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive
28 means.

1 (e) Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 (f) Producing Party: a Party or non-party that produces Disclosure or Discovery
4 Material in this action.

5 (g) Designating Party: a Party or non-party that designates information or items
6 produced in disclosures or in responses to discovery as “Confidential” or “Highly Confidential –
7 Attorneys’ Eyes Only.”

8 (h) Protected Material: any Disclosure or Discovery Material that is designated as
9 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

10 (i) Outside Counsel: attorneys who are not employees of a Party but who are
11 retained to represent or advise a Party in this action.

12 (j) House Counsel: attorneys who are employees of a Party.

13 (k) Counsel (without qualifier): Outside Counsel and House Counsel (as well as
14 their support staffs).

15 (l) Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
17 witness or as a consultant in this action and who is not a current employee of a Party or a current
18 employee of a Competitor of Threshold Pharmaceuticals (as further defined in Exhibit B hereto) and
19 who, at the time of retention, is not anticipated to become an employee of a Party or of a Competitor
20 of Threshold Pharmaceuticals. This definition includes a professional jury or trial consultant
21 retained in connection with this litigation.

22 (m) Professional Vendors: persons or entities that provide litigation support
23 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;
24 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
25 subcontractors.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected Material (as
28 defined above), but also any information copied or extracted therefrom, as well as all copies,

1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations imposed by this
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
6 otherwise directs.

7 5. DESIGNATING PROTECTED MATERIAL

8 (a) Exercise of Restraint and Care in Designating Material for Protection. Each
9 Party or non-party that designates information or items for protection under this Order must take care
10 to limit any such designation to specific material that qualifies under the appropriate standards.

11 If it comes to a Party's or a non-party's attention that information or items that it designated
12 for protection do not qualify for protection at all, or do not qualify for the level of protection initially
13 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
14 mistaken designation.

15 (b) Manner and Timing of Designations. Except as otherwise provided in this
16 Order (*see, e.g.*, second paragraph of section 5(b)(i), below), or as otherwise stipulated or ordered,
17 material that qualifies for protection under this Order must be clearly so designated before the
18 material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (i) for information in documentary form (apart from
21 transcripts of depositions or other pretrial or trial proceedings), that the Producing
22 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
23 ATTORNEYS' EYES ONLY" on each page that contains protected material.

24 A Party or non-party that makes original documents or materials
25 available for inspection need not designate them for protection until after the inspecting Party has
26 indicated which material it would like copied and produced. During the inspection and before the
27 designation, all of the material made available for inspection shall be deemed "HIGHLY
28 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the

1 documents it wants copied and produced, the Producing Party must determine which documents, or
2 portions thereof, qualify for protection under this Order, then, before producing the specified
3 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on each page that contains Protected
5 Material.

6 (ii) for testimony given in deposition or in other pretrial or
7 trial proceedings, that the Party or non-party offering or sponsoring the testimony
8 identify on the record, before the close of the deposition, hearing, or other proceeding,
9 all protected testimony, and further specify any portions of the testimony that qualify
10 as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is
11 impractical to identify separately each portion of testimony that is entitled to
12 protection, and when it appears that substantial portions of the testimony may qualify
13 for protection, the Party or non-party that sponsors, offers, or gives the testimony may
14 invoke on the record (before the deposition or proceeding is concluded) a right to have
15 up to 30 days following receipt of the deposition transcript to identify the specific
16 portions of the testimony as to which protection is sought and to specify the level of
17 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are
19 appropriately designated for protection within the 30 days shall be covered by the
20 provisions of this Stipulated Protective Order.

21 Transcript pages containing Protected Material must be separately
22 bound by the court reporter, who must affix on each such page the legend “CONFIDENTIAL” or
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
24 nonparty offering or sponsoring the witness or presenting the testimony.

25 (iii) for information produced in some form other than
26 documentary, and for any other tangible items, that the Producing Party affix in a
27 prominent place on the exterior of the container or containers in which the information
28 or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY.” If only portions of the information or item warrant
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential
4 – Attorneys’ Eyes Only.”

5 (c) Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
6 to designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
7 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
8 this Order for such material. If material is appropriately designated as “Confidential or “Highly
9 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
10 on timely notification of the designation, must make reasonable efforts to assure that the material is
11 treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 (a) Timing of Challenges. Unless a prompt challenge to a Designating Party’s
14 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
15 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
16 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
17 after the original designation is disclosed.

18 (b) Meet and Confer. A Party that elects to initiate a challenge to a Designating
19 Party’s confidentiality designation must do so in good faith and must begin the process by conferring
20 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
21 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
22 that the confidentiality designation was not proper and must give the Designating Party an
23 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
24 designation is offered, to explain the basis for the chosen designation. A challenging Party may
25 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
26 process first.

27 (c) Judicial Intervention. A Party that elects to press a challenge to a
28 confidentiality designation after considering the justification offered by the Designating Party may

1 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
2 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
3 Each such motion must be accompanied by a competent declaration that affirms that the movant has
4 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
5 forth with specificity the justification for the confidentiality designation that was given by the
6 Designating Party in the meet and confer dialogue.

7 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
9 material in question the level of protection to which it is entitled under the Producing Party's
10 designation.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 (a) Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a non-party in connection with this case only for
14 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
15 disclosed only to the categories of persons and under the conditions described in this Order. When
16 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
17 below (FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location
19 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

20 (b) Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
21 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
22 disclose any information or item designated CONFIDENTIAL only to:

23 (i) The Receiving Party's Outside Counsel of record in this
24 action, including employees of said Outside Counsel to whom it is reasonably
25 necessary to disclose the information for this litigation;

26 (ii) the officers, directors, and employees (including House
27 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
28

1 litigation and who have signed the “Agreement to Be Bound by Protective Order”
2 (Exhibit A);

3 (iii) Experts (as defined in this Order) to whom disclosure is
4 reasonably necessary for this litigation and who have signed the “Agreement to Be
5 Bound by Protective Order” (Exhibit A);

6 (iv) the Court and its personnel;

7 (v) court reporters and their staffs to whom disclosure is
8 reasonably necessary for this litigation;

9 (vi) Professional Vendors (as defined in this Order) to whom
10 disclosure is reasonably necessary for this litigation and who have signed the
11 “Agreement to Be Bound by Protective Order” (Exhibit A);

12 (vii) during their depositions, witnesses in the action to whom
13 disclosure is reasonably necessary. Pages of transcribed deposition testimony or
14 exhibits to depositions that reveal Protected Material must be affixed with a
15 “CONFIDENTIAL” legend on each such page and must be separately bound by the
16 court reporter and may not be disclosed to anyone except as permitted under this
17 Stipulated Protective Order.

18 (viii) any author or actual recipient of the document or the
19 original source of the information; and

20 (ix) any witness at trial.

21 (c) Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”
22 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
23 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

25 (i) The Receiving Party’s Outside Counsel of record in this
26 action, including employees of said Outside Counsel to whom it is reasonably
27 necessary to disclose the information for this litigation;

1 (ii) House Counsel of a Receiving Party to whom disclosure
2 is reasonably necessary for this litigation and who has signed the “Agreement to Be
3 Bound by Protective Order” (Exhibit A);

4 (iii) Experts (as defined in this Order) to whom disclosure is
5 reasonably necessary for this litigation and who have signed the “Agreement to Be
6 Bound by Protective Order” (Exhibit A);

7 (iv) the Court and its personnel;

8 (v) court reporters and their staffs;

9 (vi) Professional Vendors (as defined in this Order) to whom
10 disclosure is reasonably necessary for this litigation and who have signed the
11 “Agreement to Be Bound by Protective Order” (Exhibit A);

12 (vii) during their depositions, witnesses in the action to whom
13 disclosure is reasonably necessary; provided that prior to the disclosure to a deposition
14 witness to whom disclosure of such Protected Material is not otherwise permitted
15 under a different subparagraph of this section 7(c), the Receiving Party or its Counsel
16 shall inform the Producing Party or its Counsel of the intention to disclose such
17 Protected Material to such deposition witness and shall provide the Producing Party a
18 reasonable opportunity to object to such disclosure, and provided further that during
19 the pendency of any proceedings relating to an objection made under this subsection
20 7(c)(vii), the objected-to Protected Materials shall not be shown to the deposition
21 witness. Pages of transcribed deposition testimony or exhibits to depositions that
22 reveal Protected Material must be affixed with a “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY” legend on each such page and must be separately
24 bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this Stipulated Protective Order;

26 (viii) any author or actual recipient of the document or the
27 original source of the information; and

28 (ix) any witness at trial.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION.

3 If a Receiving Party is served with a subpoena or an order issued in other litigation that
4 would compel disclosure of any information or items designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
6 Receiving Party must so notify the Designating Party, in writing (by fax or electronic mail, if
7 possible) immediately and in no event more than three court days after receiving the subpoena or
8 order. Such notification must include a copy of the subpoena or court order.

9 The Receiving Party also must immediately inform in writing the party who caused the
10 subpoena or order to issue in the other litigation that some or all the material covered by the
11 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
12 deliver a copy of this Stipulated Protective Order promptly to the party in the other action that
13 caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the existence of this
15 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
16 confidentiality interests in the court from which the subpoena or order issued. The Designating
17 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
18 material – and nothing in these provisions should be construed as authorizing or encouraging a
19 Receiving Party in this action to disobey a lawful directive from another court.

20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If a Receiving
21 Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or
22 in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must
23 immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its
24 best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom
25 unauthorized disclosures were made of all the terms of this Order, and (d) request such person or
26 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
27 Exhibit A.

1 10. FILING PROTECTED MATERIAL. Without written permission from the
2 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
3 may not file in the public record in this action any Protected Material. A Party that seeks to file
4 under seal any Protected Material must comply with Civil Local Rule 79-5.

5 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
6 Producing Party, within sixty days after the final termination of this action, each Receiving Party
7 must destroy or return to the Producing Party all Protected Material. As used in this subdivision, “all
8 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
9 reproducing or capturing any of the Protected Material. Whether the Protected Material is returned
10 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if
11 not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by
12 category, where appropriate) all the Protected Material that was returned or destroyed and that
13 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or
14 other forms of reproducing or capturing any of the Protected Material. Notwithstanding this
15 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts,
16 legal memoranda, correspondence or attorney work product, even if such materials contain Protected
17 Material. Any such archival copies that contain or constitute Protected Material remain subject to
18 this Protective Order as set forth in Section 4 (DURATION), above.

19 12. MISCELLANEOUS

20 (a) Right to Further Relief. Nothing in this Order abridges the right of any person
21 to seek its modification by the Court in the future.

22 (b) Right to Assert Other Objections. By stipulating to the entry of this Protective
23 Order no Party waives any right it otherwise would have to object to disclosing or producing any
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
25 Party waives any right to object on any ground to use in evidence of any of the material covered by
26 this Protective Order.

27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
28

1 DATED: June 3, 2009

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
DENNIS J. HERMAN
SHIRLEY H. HUANG
DANIEL J. PFEFFERBAUM

2

3

4

5

/s/
SHIRLEY H. HUANG

6

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

7

8

9

Lead Counsel for Plaintiffs

10

DATED: June 3, 2009

HOGAN & HARTSON LLP
LAURENCE A. WEISS

11

12

13

/s/
LAURENCE A. WEISS

14

525 University Avenue, 4th Floor
Palo Alto, California 94301
Telephone: 650/463-4000
650/463-4199 (fax)

15

16

17

Attorneys for Defendants THRESHOLD
PHARMACEUTICALS, INC.,
and HAROLD "BARRY" E. SELICK

18

19

I, Shirley H. Huang, am the ECF User whose ID and password are being used to file this
STIPULATED [PROPOSED] PROTECTIVE ORDER. In compliance with General Order 45, X.B.,
I hereby attest that Laurence A. Weiss has concurred in this filing.

20

21

22

23

24

/s/
SHIRLEY H. HUANG

25

26

* * *

27

ORDER

28

PURSUANT TO STIPULATION,

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

IT IS SO ORDERED.



DATED: 6/10/09

THE HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT 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

ACKNOWLEDGMENT AND 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 Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *Twinde v. Threshold Pharmaceuticals Inc.*, No. C07-04972 CW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective 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 Stipulated Protective Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____

1 **EXHIBIT B**

2 Competitor of Threshold Pharmaceuticals: For purposes of Section 2(l) of this stipulation, a

3 “Competitor of Threshold Pharmaceuticals” is defined as follows:

4 Any entity developing or marketing cancer therapeutics to treat solid tumors or hematologic malignancies;

5 Any entity developing or marketing therapies that target tumor hypoxia;

6 Any entity developing or marketing therapies for benign prostatic hyperplasia;

7 Abbott Laboratories;

8 Amgen Inc.;

9 ARIAD Pharmaceuticals, Inc.;

10 Astellas Pharma Inc.;

11 AstraZeneca PLC;

12 Bayer Pharmaceuticals;

13 Boehringer Ingelheim;

14 Bristol-Myers Squibb Company;

15 Eli Lilly and Company;

16 Genentech, Inc.;

17 GlaxoSmithKline plc;

18 Hoffmann-LaRoche, Inc.;

19 ImClone Systems, Inc.;

20 Johnson & Johnson;

21 Onyx Pharmaceuticals, Inc.;

22 Merck KGaA;

23 Millennium Pharmaceuticals, Inc.;

24 Novartis AG;

25 OSI Pharmaceuticals, Inc.;

26 Pfizer, Inc.;

27 Proacta Incorporated;

28 sanofi-aventis Group;

Sunesis Pharmaceuticals, Inc.;

Telik, Inc.;

Transcept Pharmaceuticals; and

ZIOPHARM Oncology, Inc.

