

1 DURIE TANGRI LLP
 2 DARALYN J. DURIE (SBN 169825)
 3 ddurie@durietangri.com
 4 DAVID McGOWAN (SBN 154289)
 5 dmcgowan@durietangri.com
 6 EUGENE NOVIKOV (SBN 257849)
 7 enovikov@durietangri.com
 8 LAURA E. MILLER (SBN 271713)
 9 lmiller@durietangri.com
 10 RAGHAV R. KRISHNAPRIYAN (SBN 273411)
 11 rkrishnapriyan@durietangri.com
 12 MATTHEW W. SAMUELS (SBN 294668)
 13 msamuels@durietangri.com
 14 217 Leidesdorff Street
 15 San Francisco, CA 94111
 16 Telephone: 415-362-6666
 17 Facsimile: 415-236-6300

10 YOUNG BASILE HANLON & MACFARLANE, P.C.
 11 JEFFREY D. WILSON (*Pro Hac Vice*)
 12 wilson@youngbasile.com
 13 ANDREW R. BASILE, JR. (SBN 208396)
 14 abasile@youngbasile.com
 15 EDDIE D. WOODWORTH (*Pro Hac Vice*)
 16 woodworth@youngbasile.com
 17 RYAN T. MCCLEARY (*Pro Hac Vice*)
 18 mccleary@youngbasile.com
 19 3001 W. Big Beaver Road, Suite 624
 20 Troy, MI 48084
 21 Telephone: (248) 649-3333
 22 Facsimile: (248) 649-3338

17 Attorneys for Plaintiff
 18 PLEXXIKON INC.

19 IN THE UNITED STATES DISTRICT COURT
 20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

22 PLEXXIKON INC.,

23 Plaintiff,

24 v.

25 NOVARTIS PHARMACEUTICALS
 26 CORPORATION,

27 Defendant.

Case No. 4:17-cv-04405-HSG

**PLAINTIFF PLEXXIKON INC.'S
 UNOPPOSED MOTION AND ~~PROPOSED~~
 ORDER TO EXTEND TIME TO SUBMIT
 PUBLIC VERSIONS OF DOCUMENTS**

Ctrm: 2 – 4th Floor
 Judge: Honorable Haywood S. Gilliam, Jr.

1 Pursuant to Federal Rule of Civil Procedure 6(b)(1)(B) and Northern District of California Civil
2 Local Rule 6-3, Plaintiff Plexxikon Inc. (“Plexxikon”) respectfully requests that the Court enter an order
3 extending the time for Plexxikon to file public versions of documents previously filed by Plexxikon for
4 which the proposed sealing has been denied or denied-in-part as a result of the Court’s March 13, 2020
5 Order Granting in Part and Denying in Part Motions to Seal (“Sealing Order”), and allowing Plexxikon’s
6 filing of such documents (the “Public Documents”) on March 23, 2020, ECF Nos. 396–405. Defendant
7 Novartis Pharmaceuticals Corporation (“Novartis”) does not oppose this motion. *See* Decl. Matthew W.
8 Samuels in Supp. Mot. (“Samuels Decl.”) ¶ 6.

9 **I. BACKGROUND**

10 Plexxikon and Novartis filed a number of administrative motions to file under seal in connection
11 with their summary judgment, *Daubert*, and *in limine* motions. *See generally* Sealing Order. On March
12 13, 2020, the Court issued a Sealing Order granting in part and denying in part the parties’ administrative
13 motions to file under seal, and directing the parties “to file public versions of all documents for which the
14 proposed sealing has been denied, as indicated in the chart above, within seven days from the date of this
15 order.” *Id.* at 39.

16 On March 20, 2020, counsel for Plexxikon twice attempted to file the Public Documents as
17 attachments to a Notice of Compliance. Samuels Decl. ¶¶ 3–4. On both occasions, CM/ECF was unable
18 to accept the filing, and instead indicated that “[a]n internal error has occurred” and that CM/ECF “could
19 not open [the] context file.” *Id.*, Exs. A, B.

20 On March 23, 2020, counsel for Plexxikon contacted the California Northern District Court
21 CM/ECF Help Desk at 866-638-7829. *Id.* ¶ 5. The Help Desk representative explained that the error
22 may have been due either to the number of attachments to the Notice or to the system timing out given
23 the length of time required to upload the documents, and advised that counsel may have more luck first
24 filing a notice with approximately 7 attachments and then filing the remaining attachments in batches of
25 approximately 7 that are linked back to the notice. *Id.* Following this call, counsel for Plexxikon filed a
26 Notice of Compliance with Court Order Dated March 13, 2020 (Dkt. No. 386), ECF No. 396, with the
27 Public Documents as attachments, ECF Nos. 397–405. *See id.*

1 **II. DISCUSSION**

2 Federal Rule of Civil Procedure 6(b)(1)(B) provides that for any act that must be done by a party
3 within a specified time frame, the court may “for good cause, extend the time . . . after the time has
4 expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). Courts in the
5 Ninth Circuit examine factors such as the danger of prejudice to the nonmoving party, the length of the
6 delay and its potential impact on judicial proceedings, the reason for the delay, and whether the movant
7 acted in good faith. *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). “[T]he
8 determination of whether a party’s neglect is excusable ‘is at bottom an equitable one, taking account of
9 all relevant circumstances surrounding the party’s omission.’” *Id.* at 382 (quoting *Pioneer Inv. Servs.*
10 *Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993)). “This rule, like all the Federal Rules of
11 Civil Procedure, ‘[is] to be liberally construed to effectuate the general purpose of seeing that cases are
12 tried on the merits.’” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258–59 (9th Cir. 2010)
13 (alteration in original) (citations omitted).

14 The failure to timely file the Public Documents is the result of excusable neglect. As to the first
15 *Briones* factor, prejudice, Novartis does not oppose this request and will not be prejudiced should the
16 Court permit the delayed filing of the Public Documents. As to the second, the length of the delay and its
17 impact on judicial proceedings, Plexxikon’s one-day delay will not impact the proceedings in this case,
18 as the Court has had access to under-seal versions of the Public Documents and therefore has had the
19 ability to review the merits of the parties’ summary judgment, *Daubert*, and in limine motions. The third
20 and fourth factors, the reason for the delay and the movant’s good faith, also weigh in favor of granting
21 Plexxikon’s motion here. As explained above and in the accompanying declaration, the delay was due to
22 an unforeseen error on the part of CM/ECF that caused Plexxikon to miss the deadline.

23 **III. CONCLUSION**

24 For the foregoing reasons, Plexxikon respectfully requests that the Court issue an order extending
25 the time for Plexxikon to file the Public Documents from March 20, 2020 to March 23, 2020 and allow
26 the filing of such documents.

1 **PROPOSED ORDER**

2 Having considered Plaintiff Plexxikon Inc.'s Unopposed Motion to Extend Time to Submit
3 Public Versions of Documents and the materials submitted in connection therewith, the Court GRANTS
4 Plexxikon's motion. The Court finds the March 23, 2020 filing of Plexxikon's Notice of Compliance
5 with Court Order Dated March 13, 2020 (Dkt. No. 386), ECF No. 396, and the exhibits thereto, ECF
6 Nos. 396-405, to be the result of excusable neglect, and allows their filing under Federal Rule of Civil
7 Procedure 6(b)(1)(B) and Northern District of California Civil Local Rule 6-3.

8 **IT IS SO ORDERED.**

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10 Dated: 3/24/2020

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12 _____
13 HONORABLE HAYWOOD S. GILLIAM, JR.
14 UNITED STATES DISTRICT JUDGE
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