

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PLEXXIKON INC.,

Plaintiff,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

Case No. [17-cv-04405-HSG](#)

**ORDER DENYING MOTIONS TO
SEAL**

Re: Dkt. Nos. 344, 390

Pending before the Court are Defendant Novartis Pharmaceuticals Corporation’s administrative motions to file under seal portions of documents in connection with its request to file a second motion for summary judgment as well as its objections to the Special Master’s recommendation regarding Plaintiff Plexxikon Inc.’s motion in limine. See Dkt. Nos. 344, 390. For the reasons detailed below, the Court **DENIES** the motions to file under seal.

I. LEGAL STANDARD

Courts generally apply a “compelling reasons” standard when considering motions to seal documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “This standard derives from the common law right ‘to inspect and copy public records and documents, including judicial records and documents.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1178). “[A] strong presumption in favor of access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotations omitted). To overcome this strong presumption, the party seeking to seal a judicial record attached to a dispositive motion must “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process” and “significant public events.” *Id.* at 1178–79 (quotations

1 omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in
 2 disclosure and justify sealing court records exist when such ‘court files might have become a
 3 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
 4 scandal, circulate libelous statements, or release trade secrets.” Id. at 1179 (quoting *Nixon v.*
 5 *Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the production of records
 6 may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not,
 7 without more, compel the court to seal its records.” Id.

8 Civil Local Rule 79-5 supplements the “compelling reasons” standard. The party seeking
 9 to file under seal must submit “a request that establishes that the document, or portions thereof, are
 10 privileged, protectable as a trade secret or otherwise entitled to protection under the law The
 11 request must be narrowly tailored to seek sealing only of sealable material” Civil L.R. 79-
 12 5(b). Courts have found that “confidential business information” in the form of “license
 13 agreements, financial terms, details of confidential licensing negotiations, and business strategies”
 14 satisfies the “compelling reasons” standard. See *In re Qualcomm Litig.*, No. 3:17-cv-0108-GPC-
 15 MDD, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017) (observing that sealing such information
 16 “prevent[ed] competitors from gaining insight into the parties’ business model and strategy”);
 17 *Finisar Corp. v. Nistica, Inc.*, No. 13-cv-03345-BLF (JSC), 2015 WL 3988132, at *5 (N.D. Cal.
 18 June 30, 2015).

19 Records attached to nondispositive motions must meet the lower “good cause” standard of
 20 Rule 26(c) of the Federal Rules of Civil Procedure, as such records “are often unrelated, or only
 21 tangentially related, to the underlying cause of action.” Id. at 1179–80 (quotations omitted). This
 22 requires a “particularized showing” that “specific prejudice or harm will result” if the information
 23 is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th
 24 Cir. 2002); see also Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific
 25 examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966
 26 F.2d 470, 476 (9th Cir. 1992) (quotation omitted).

27 //

28 //

1 **II. DISCUSSION**

2 The Court applies the lower good cause standard for those documents related to
3 Defendant’s request to file a second motion for summary judgment¹ and the parties’ motions in
4 limine.

5 As indicated in the table below, the only proffered justification for sealing many of the
6 documents is that the information was designated as “highly confidential” by either Plaintiff or
7 Defendant. But a designation of confidentiality is not sufficient to establish that a document is
8 sealable. See Civ. L. R. 79-5(d)(1)(A). “Confidential” is merely the parties’ initial designation of
9 confidentiality to establish coverage under the stipulated protective order. See *Verinata Health,*
10 *Inc. v. Ariosa Diagnostics, Inc.*, No. 12-cv-05501-SI, 2015 WL 5117083, at *5 (N.D. Cal. Aug.
11 31, 2015) (“But good cause ‘cannot be established simply by showing that the document is subject
12 to a protective order or by stating in general terms that the material is considered to be
13 confidential’”) (quoting *Bain v. AstraZeneca LP*, No. 09-cv-4147, 2011 WL 482767, at *1 (N.D.
14 Cal. Feb. 7, 2011)). Thus, many of the parties’ motions do not comply with Civil Local Rule 79-
15 5(d)(1)(A). In addition, in many instances the designating party for the materials did not comply
16 with Civil Local Rule 79-5(e)(1), because they did not file a declaration within four days of the
17 motion. See Civ. L.R. 79-5(e)(1). The Court finds that sealing is not warranted as to those
18 documents.

19 As to the others, Defendant offers nothing more than a conclusory explanation that the
20 documents contain either “highly confidential deposition testimony” or “highly confidential
21 information of Novartis.” See Dkt. No. 390-1. This is insufficient. Critically, Defendant provides
22 no explanation why this information is “highly confidential.” Thus, the Court finds that
23 Defendant has not established good cause to grant the motion to file under seal.

24 //

25 //

26
27
28

¹ The Court further notes that it did not rely the documents that are the subject of Defendant’s
second motion for summary judgment because the Court ultimately denied Defendant’s request to
file this motion. See Dkt. No. 361.

Docket No. Public /(Sealed)	Document	Portion(s) Sought to be Sealed	Ruling
Dkt. No. 344 – DENIED			
Dkt. No. 345-2/ (344-4)	Defendant’s Notice of Motion and Second Motion for Summary Judgment	p. 7, ll. 19–28 p. 8, ll. 1–3, 18–26 p. 10, ll. 14–27 p. 11, ll. 1–11, 13–23, 25–27 p. 12, ll. 2–14, 16–28 p. 13, ll. 1–17, 18–27 p. 14, ll. 1–6, 9–14, 17–27 p. 15, ll. 2–4, 12–16\ p. 19, ll. 26–28 p. 21, ll. 22–26 p. 22, ll. 1–2, 5–8	DENIED (No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
Dkt. No. 345-7/ (344-5)	Declaration of Thomas P. Steindler In Support of Defendant’s Second Motion for Summary Judgment, Exhibit C	Entire Document	DENIED (No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
Dkt. No. 345-8/ (344-6)	Declaration of Thomas P. Steindler In Support of Defendant’s Second Motion for Summary Judgment, Exhibit D	Entire Document	DENIED (No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
Dkt. No. 345-10/ (344-7)	Declaration of Thomas P. Steindler In Support of Defendant’s Second Motion for Summary Judgment, Exhibit F	Entire Document	DENIED (No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
Dkt. No. 345-11/ (344-8)	Declaration of Thomas P. Steindler In Support of Defendant’s Second Motion for Summary Judgment, Exhibit G	Entire Document	DENIED (No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
Dkt. No. 345-13/ (344-9)	Declaration of Thomas P. Steindler In Support of Defendant’s Second Motion for Summary Judgment, Exhibit I	Entire Document	DENIED (No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
Dkt. No. 345-14/	Declaration of Thomas P.	Entire Document	DENIED

1	(344-10)	Steindler In Support of Defendant's Second Motion for Summary Judgment, Exhibit J		(No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
2				
3				
4	Dkt. No. 345-15/ (344-11)	Declaration of Thomas P. Steindler In Support of Defendant's Second Motion for Summary Judgment, Exhibit K	Entire Document	DENIED (No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
5				
6				
7	Dkt. No. 345-16/ (344-12)	Declaration of Thomas P. Steindler In Support of Defendant's Second Motion for Summary Judgment, Exhibit L	Entire Document	DENIED (No supporting declaration filed. See Civ. L.R. 79-5(e)(1).)
8				
9				
10				
Dkt. No. 390 – DENIED				
11	Dkt. No. 389-8 / (390-3)	Declaration of Thomas P. Steindler in Support of Defendant Novartis Pharmaceutical Corporation's Objections To The Special Master's Report And Recommendation, Ex. C-4	Entire document	DENIED (Defendant states, in conclusory fashion, that the document "contains highly confidential deposition testimony." See Dkt. No. 390-1. This generic explanation is insufficient to establish good cause.)
12				
13				
14				
15				
16				
17				
18	Dkt. No. 389-14 / (390-4)	Declaration of Thomas P. Steindler in Support of Defendant Novartis Pharmaceutical Corporation's Objections To The Special Master's Report And Recommendation, Ex. C-10	Entire document	DENIED (Defendant states, in conclusory fashion, that the document "contains highly confidential deposition testimony." See Dkt. No. 390-1. This generic explanation is insufficient to establish good cause.)
19				
20				
21				
22				
23				
24				
25	Dkt. No. 389-15 / (390-5)	Declaration of Thomas P. Steindler in Support of Defendant Novartis Pharmaceutical Corporation's Objections To The Special Master's	Entire document	DENIED (Defendant states, in conclusory fashion, that the document "contains highly confidential
26				
27				
28				

1		Report And Recommendation, Ex. C-11		information of Novartis.” See Dkt. No. 390-1. This generic explanation is insufficient to establish good cause.)
2				
3				
4	Dkt. No. 389-16 / (390-6)	Declaration of Thomas P. Steindler in Support of Defendant Novartis Pharmaceutical Corporation’s Objections To The Special Master’s Report And Recommendation, Ex. C-12	Entire document	DENIED (Defendant states, in conclusory fashion, that the document “contains highly confidential information of Novartis.” See Dkt. No. 390-1. This generic explanation is insufficient to establish good cause.)
5				
6				
7				
8				
9				
10				
11	Dkt. No. 389-17 / (390-7)	Declaration of Thomas P. Steindler in Support of Defendant Novartis Pharmaceutical Corporation’s Objections To The Special Master’s Report And Recommendation, Ex. C-13	Entire document	DENIED (Defendant states, in conclusory fashion, that the document “contains highly confidential information of Novartis.” See Dkt. No. 390-1. This generic explanation is insufficient to establish good cause.)
12				
13				
14				
15				
16				
17				
18	Dkt. No. 389-18 / (390-8)	Declaration of Thomas P. Steindler in Support of Defendant Novartis Pharmaceutical Corporation’s Objections To The Special Master’s Report And Recommendation, Ex. C-14	Entire document	DENIED (Defendant states, in conclusory fashion, that the document “contains highly confidential deposition testimony.” See Dkt. No. 390-1. This generic explanation is insufficient to establish good cause.)
19				
20				
21				
22				
23				
24				
25	Dkt. No. 389-19 / (390-9)	Declaration of Thomas P. Steindler in Support of Defendant Novartis Pharmaceutical Corporation’s Objections To The Special Master’s	Entire document	DENIED (Defendant states, in conclusory fashion, that the document “contains highly confidential
26				
27				
28				

United States District Court
Northern District of California

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

	Report And Recommendation, Ex. C-15		deposition testimony.” See Dkt. No. 390-1. This generic explanation is insufficient to establish good cause.)
Dkt. No. 389-20 / (390-10)	Declaration of Thomas P. Steindler in Support of Defendant Novartis Pharmaceutical Corporation’s Objections To The Special Master’s Report And Recommendation, Ex. C-16	Entire document	DENIED (Defendant states, in conclusory fashion, that the document “contains highly confidential deposition testimony.” See Dkt. No. 390-1. This generic explanation is insufficient to establish good cause.)

III. CONCLUSION

The Court **DENIES** the administrative motions to file under seal. The Court **DIRECTS** the parties to file public versions of all documents for which the proposed sealing has been denied, as indicated in the chart above, within seven days from the date of this order.

IT IS SO ORDERED.

Dated: 11/30/2020

HAYWOOD S. GILLIAM, JR.
United States District Judge