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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

PHIGENIX, INC.,
Plaintiff,
v.
GENENTECH INC,
Defendant.

Case No. 15-cv-01238-BLF

**ORDER GRANTING SEALING
MOTIONS**

Before the Court are parties’ motions to file under seal portions of their briefing and exhibits in connection with a motion for summary judgment. ECF 367, 371. For the reasons discussed below, the Court GRANTS the motions.

I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more than tangentially related to the underlying cause of action” bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

However, “while protecting the public’s interest in access to the courts, we must remain mindful of the parties’ right to access those same courts upon terms which will not unduly harm

1 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228–29 (Fed.
2 Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the
3 merits of a case” therefore are not subject to the strong presumption of access. *Ctr. for Auto*
4 *Safety*, 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need
5 for access to court records attached only to non-dispositive motions because those documents are
6 often unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving
7 to seal the documents attached to such motions must meet the lower “good cause” standard of
8 Rule 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This
9 standard requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
10 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
11 1210–11 (9th Cir. 2002); *see Fed. R. Civ. P. 26(c)*. “Broad allegations of harm, unsubstantiated
12 by specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins.*
13 *Co.*, 966 F.2d 470, 476 (9th Cir. 1992). A protective order sealing the documents during
14 discovery may reflect the court’s previous determination that good cause exists to keep the
15 documents sealed, *see Kamakana*, 447 F.3d at 1179–80, but a blanket protective order that allows
16 the parties to designate confidential documents does not provide sufficient judicial scrutiny to
17 determine whether each particular document should remain sealed. *See Civ. L.R. 79-5(d)(1)(A)*
18 (“Reference to a stipulation or protective order that allows a party to designate certain documents
19 as confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

20 In addition to making particularized showings of good cause, parties moving to seal
21 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
22 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
23 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
24 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
25 must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the
26 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable
27 material” which “lists in table format each document or portion thereof that is sought to be
28 sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by

1 highlighting or other clear method, the portions of the document that have been omitted from the
 2 redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative
 3 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
 4 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

5 **II. DISCUSSION**

6 Because the sealing motions relate to a motion for summary judgment, which is more than
 7 tangentially related to the merits of the case, the instant motions are resolved under the compelling
 8 reasons standard. *Ctr. for Auto Safety*, 809 F.3d at 1101-2 (holding that “public access will turn
 9 on whether the motion is more than tangentially related to the merits of a case” and finding that a
 10 “motion for preliminary injunction is more than tangentially related to the merits”).

11 With this standard in mind, the Court rules on the instant motions as follows:

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
13 367-3	14 Plaintiff Phigenix Inc.’s (“Phigenix”) Opposition to Genentech Inc.’s (“Genentech”) Motion for Summary Judgment (“Opp’n”)	15 GRANTED as to highlighted portions.	16 The highlighted portions contain confidential financial and sales data relating to Kadcyła, the disclosure of which could harm Genentech’s competitiveness. <i>See Wildman Decl. ¶ 2, ECF 370.</i>
17 367-4	18 Exhibit 4 to Ackerman Decl. ISO Opp’n (Excerpts of Dep. Tr. of Timothy Schwartz)	19 GRANTED.	20 The entire exhibit contains confidential licensing discussion between Phigenix and Genentech and Genentech’s business strategies, the disclosure of which could harm Genentech’s competitiveness. <i>See Wildman Decl. ¶ 3, ECF 370.</i>
21 367-5	22 Exhibit 7 to Ackerman Decl. ISO Opp’n (Excerpts of expert report of Gregory Bell)	23 GRANTED.	24 The entire exhibit contains confidential sales data of Kadcyła, the disclosure of which could harm Genentech’s competitiveness. <i>See Wildman Decl. ¶ 4, ECF 370.</i>
25 367-6	26 Exhibit 8 to Ackerman Decl. ISO Opp’n (Tables in report of expert Joseph Wyse)	27 GRANTED.	28 The entire exhibit contains confidential sales data of Kadcyła and Genentech’s marketing strategies, the disclosure of which could harm Genentech’s competitiveness. <i>See Wildman Decl. ¶ 5, ECF 370.</i>

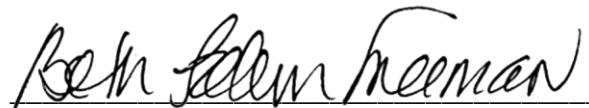
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367-7	Exhibit 9 to Ackerman Decl. ISO Opp'n (excerpt of FDA submission)	GRANTED.	The entire exhibit contains confidential information relating to Genentech's clinical testing, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 6, ECF 370.
367-10	Exhibit 10 to Ackerman Decl. ISO Opp'n (excerpts of patient records)	GRANTED.	The entire exhibit contains confidential information relating to patient records and Genentech's clinical testing, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 7, ECF 370.
371-5	Exhibit 3 to Kreeger Decl. (expert report of John Wyse)	GRANTED as to highlighted portions.	The highlighted portions contain confidential financial and sales data relating to Kadcylya, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 2, ECF 371-2.
371-7	Exhibit 4 to Kreeger Decl. (expert rebuttal report of John Wyse)	GRANTED as to highlighted portions.	The highlighted portions contain confidential sales data and licensing strategies relating to Kadcylya, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 3, ECF 371-2.

For the foregoing reasons, the sealing motions at ECF 367, 371 are GRANTED.

IT IS SO ORDERED.

Dated: July 19, 2017



BETH LABSON FREEMAN
United States District Judge