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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 and Plaintiff’s *Daubert* motion. ECF 374, 377, 386. 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 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228–29 (Fed. Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the

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

18 In addition to making particularized showings of good cause, parties moving to seal
19 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
20 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
21 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
22 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
23 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
24 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable
25 material” which “lists in table format each document or portion thereof that is sought to be
26 sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by
27 highlighting or other clear method, the portions of the document that have been omitted from the
28 redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative

1 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
2 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

3 **II. DISCUSSION**

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

9 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>
10 374-4	11 Defendant 12 Genentech Inc.’s 13 (“Genentech”) Reply 14 ISO its motion for 15 summary judgment	16 GRANTED as 17 to highlighted 18 portions.	19 The highlighted portions contain confidential 20 information relating to Genentech’s clinical 21 testing and sales data, the disclosure of which 22 could harm Genentech’s competitiveness. <i>See</i> 23 <i>Kreeger Decl.</i> ¶ 3, ECF 374-1.
24 377-2	25 Plaintiff Phigenix 26 Inc.’s (“Phigenix”) Motion to Exclude 27 Genentech’s Expert 28 Witness Testimony 29 (“Phigenix’ Daubert 30 Motion”)	31 GRANTED as 32 to highlighted 33 portions.	34 The highlighted portions contain confidential 35 financial and sales data relating to Kadcyła, 36 the disclosure of which could harm 37 Genentech’s competitiveness. <i>See Wildman</i> 38 <i>Decl.</i> ¶ 2, ECF 370.
39 377-4	40 Exhibit 2 to 41 Ackerman Decl. ISO 42 Phigenix Daubert 43 Motion (Excerpts of 44 expert report of 45 Mark Robbins)	46 GRANTED.	47 The entire exhibit contains confidential 48 information relating to licensing terms 49 between Genentech and third parties, the 50 disclosure of which could harm Genentech’s 51 competitiveness. <i>See Wildman Decl.</i> ¶ 3, ECF 52 379.
53 377-5	54 Exhibit 3 to 55 Ackerman Decl. ISO 56 Phigenix Daubert 57 Motion (Excerpts of 58 Dep. Tr. of Mark 59 Robbins)	60 GRANTED.	61 The entire exhibit contains confidential 62 information relating to licensing terms 63 between Genentech and third parties, the 64 disclosure of which could harm Genentech’s 65 competitiveness. <i>See Wildman Decl.</i> ¶ 4, ECF 66 379.
67 377-6	68 Exhibit 4 to 69 Ackerman Decl. ISO 70 Phigenix Daubert 71 Motion (Excerpts of 72 expert report of 73 Gregory Bell)	74 GRANTED.	75 The entire exhibit contains confidential 76 information relating to licensing terms 77 between Genentech and third parties, the 78 disclosure of which could harm Genentech’s 79 competitiveness. <i>See Wildman Decl.</i> ¶ 5, ECF 80 379.


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377-7	Exhibit 5 to Ackerman Decl. ISO Phigenix Daubert Motion (license agreement)	GRANTED.	The entire exhibit contains confidential licensing terms between Genentech and a third party, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 6, ECF 379.
377-8	Exhibit 6 to Ackerman Decl. ISO Phigenix Daubert Motion (Excerpts of Dep. Tr. of Gregory Bell)	GRANTED.	The entire exhibit contains confidential information relating to licensing terms between Genentech and third parties, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 7, ECF 379.
386-5	Genentech's opposition to Phigenix' Daubert Motion	GRANTED as to highlighted portions.	The highlighted portions contain confidential information relating to licensing terms and royalty rates between Genentech and third parties, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 5, ECF 386-2.
386-7	Exhibit 1 to Kreeger Decl. ("Expert Report of Mark Robbins")	GRANTED as to highlighted portions.	The highlighted portions contain confidential information relating to licensing terms and royalty rates between Genentech and third parties, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 5, ECF 386-2.
386-9	Exhibit 4 to Kreeger Decl. ("Expert Report of Gregory Bell")	GRANTED as to highlighted portions.	The highlighted portions contain confidential information relating to licensing rates and Kadcyra sales, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 3, ECF 386-2.
386-11	Exhibit 5 to Kreeger Decl. ("Excerpts of Dep. Tr. of Gregory Bell")	GRANTED as to highlighted portions.	The highlighted portions contain confidential information relating to licensing terms and royalty rates between Genentech and third parties, the disclosure of which could harm Genentech's competitiveness. <i>See</i> Wildman Decl. ¶ 4, ECF 386-2.

For the foregoing reasons, the sealing motions at ECF 374, 377, 386 are GRANTED.

IT IS SO ORDERED.

Dated: August 15, 2017


BETH LABSON FREEMAN
United States District Judge