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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

WALTER RICHARDSON; MICHAEL  
REMERAZ; SAM BLOOM; CHRISS  
BLOOM; and STEPHANIE  
LEEWRIGHT,

Plaintiffs,

v.

MYLAN INC.; MYLAN  
PHARMACEUTICALS INC.; MYLAN  
TECHNOLOGIES INC.; and DOES 1  
through 100, inclusive,

Defendants.

CASE NO. 09-CV-1041-JM (WVG)

**ORDER SEALING SELECT  
PAGES OF TRIAL  
TRANSCRIPT**

Doc. No. 235

The above-entitled case is a wrongful death action brought against the pharmaceutical companies that designed, manufactured, marketed, and distributed a certain pain-relief patch used by Decedent Sandra Richardson (“Decedent”) and alleged to have caused her death. At trial, Defendants called a number of their own employees to testify as to the patch’s development and design, as well as to the manufacturing, quality assurance, and quality control processes implemented with respect to that product. Defendants now bring the instant motion requesting that the court redact certain portions of those witnesses’ testimony. (Doc. No. 235.) For the following reasons, the court GRANTS Defendants’ motion as amended.

**I. BACKGROUND**

This action arises out of the death of Sandra Richardson, whose death Plaintiffs alleged

1 was caused, *inter alia*, by the improper design and/or manufacture of the fentanyl pain-relief  
2 patch produced by Defendants Mylan Technologies, Inc. and Mylan Pharmaceuticals, Inc.  
3 (collectively “Mylan”) and worn by Decedent at the time of her death. Between November 8,  
4 2010 and November 23, 2010, Plaintiffs’ case was tried before a jury. On November 18, 2010,  
5 Defendants called as witnesses two Mylan employees, Kenneth Miller (“Dr. Miller”) and  
6 Michael Houghton (“Mr. Houghton), who each provided testimony about the details behind  
7 the Mylan patch’s design and production. Specifically, Dr. Miller, the Senior Director for  
8 Transdermal Product Development for Mylan Technologies, Inc. (“MTI”), discussed the  
9 rationale behind and the advantages of the patch’s design, while Mr. Houghton, Vice President  
10 of Research and Development for MTI, gave a step-by-step account of the process by which  
11 the Mylan patch was manufactured in Mylan’s facilities, including steps taken by Defendants  
12 to ensure the quality of their product. (See Doc. No. 235 Exh. D [filed under seal].) Mr.  
13 Houghton also made reference to certain of Defendant’s exhibits during his testimony that  
14 were sealed pursuant to the court’s order. (See id.; Doc. Nos.190 & 191.)

15       Following a jury verdict in their favor, Defendants now seek a court order redacting  
16 certain portions of the November 18 trial transcript containing Dr. Miller’s and Mr.  
17 Houghton’s testimonies. (Doc. No. 235.) No opposition to this motion has been filed.

## 18 **II. LEGAL STANDARD**

19       “It is clear that the courts of this country recognize a general right to inspect and copy  
20 public records and documents, including judicial records and documents.” Nixon v. Warner  
21 Commc’ns, Inc., 435 U.S. 589, 597 (1978). However, it is equally clear that this right “is not  
22 absolute. Every court has supervisory power over its own records and files, and access has  
23 been denied where court files might have become a vehicle for improper purposes.” Id.  
24 Nevertheless, “[u]nless a particular court record is one ‘traditionally kept secret,’ a ‘strong  
25 presumption in favor of access’ is the starting point” for the court’s analysis. Kamakana v. City  
26 and County of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting Foltz v. State Farm  
27 Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003)).

28       In general, a party who seeks to seal a judicial record bears the burden of overcoming

1 this presumption, and can only do so by

2 “articulat[ing] compelling reasons supported by specific factual findings” that  
3 outweigh the general history of access and the public policies favoring  
4 disclosure, such as the “public interest in understanding the judicial process.” In  
5 turn, the court must “conscientiously balance[] the competing interests” of the  
6 public and the party who seeks to keep certain judicial records secret. After  
7 considering these interests, if the court decides to seal certain judicial records,  
8 it must “base its decision on a compelling reason and articulate the factual basis  
9 for its ruling, without relying on hypothesis or conjecture.”

7 Kamekana, 447 F.3d at 1178-79 (quoting Foltz, 331 F.3d at 1135 and Hagestad v. Tragesser,  
8 49 F.3d 1430, 1434 (9th Cir. 1995)) (internal citations omitted).

### 9 **III. DISCUSSION**

10 At the outset, the court notes that the more appropriate form of relief sought by  
11 Defendants should be an order sealing the transcripts in question, as opposed to redacting  
12 them. Generally, redactions from the court’s record are reserved for information such as  
13 individuals’ home addresses, telephone numbers, and Social Security numbers. See, e.g.,  
14 Kamakana, 447 F.3d at 1178-79; Phoenix Newspapers, Inc. v. U.S. Dist. Court for the Dist.  
15 of Ariz., 156 F.3d 940, 945 (9th Cir. 1998); cf. FED. R. CIV. P. 5.2(a) (requiring parties to  
16 redact certain information in court filings including social-security and taxpayer-identification  
17 numbers and names of minors). By contrast, parties who wish to foreclose public access to  
18 court documents for other reasons should generally request that those records be sealed. See,  
19 e.g., Kamakana, 447 F.3d at 1178-79; Hagestad, 49 F.3d at 1432.

20 In order to prevail on a motion to seal portions of the trial transcripts, Defendants must  
21 demonstrate that their interests in concealing the information therein outweigh the public’s  
22 interest in accessing it. Here, Defendants have argued that the testimony of Dr. Miller and  
23 Mr. Houghton contains “commercially sensitive information” about “[t]he method and manner  
24 by which the [Mylan patch] was invented, is manufactured, and is maintained.” (Doc. No. 235  
25 pp. 4, 9.) According to Defendants, the Mylan patch “is manufactured in a way that other  
26 manufacturers cannot duplicate or legally copy”; as a result, the types of information contained  
27 in the testimony at issue “is the most secret proprietary confidential information Mylan  
28 possesses.” (Id. at p.4.) Particularly, in light of “the highly competitive environment in which

1 drug manufacturers operate,” Defendants urge that protection of this information from public  
2 scrutiny is vital. (Id. at p.5.)

3 Defendants’ assertions are borne out by a review of the portions of the transcript  
4 identified as containing sensitive information. (See id. Exh. D.) The testimony in question does  
5 appear to contain certain proprietary information that, if revealed to Defendants’ competitors,  
6 could have serious consequences for Defendants’ business.<sup>1</sup> Moreover, as Defendants have  
7 convincingly argued, the information at issue is of comparatively little value to the general  
8 public in terms of enhancing its “understanding [of] the judicial process”; because Defendants  
9 seek to seal relatively small portions of the overall trial transcript, and because those portions  
10 do not include any information vital to understanding the nature of the underlying proceedings,  
11 Defendants’ private interests clearly outweigh the public’s interest in disclosure. Indeed, courts  
12 have repeatedly mentioned trade secrets as an archetypal category of information for which  
13 sealing of a court’s records is justified. See Kamakana, 447 F.3d at 1179 (finding “compelling  
14 reasons” to seal court records where those records would be used “to gratify private spite,  
15 promote public scandal, circulate libelous statements, or release trade secrets”); see also Nixon,  
16 435 U.S. at 598 (citing to cases where court files have been properly sealed to protect “sources  
17 of business information that might harm a litigant’s competitive standing”). Therefore,  
18 Defendants have met their burden and proven that a court order sealing the transcripts in  
19 question is appropriate.

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27 <sup>1</sup> This conclusion is based on the nature of the testimony itself. Defendants’ reliance  
28 on references in Mr. Houghton’s testimony to trial exhibits that were themselves sealed is  
misplaced. (Doc. No. 235 p.2.) Because these exhibits were sealed pursuant to the stipulation  
of the parties, the court’s decision to admit the exhibits under seal implies no actual findings  
by the court. See Kamakana, 447 F.3d at 1176.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court hereby orders the following pages of trial transcript  
3 in the above-entitled case dated November 18, 2010 to be SEALED:

4 1) Testimony of Kenneth Miller:


- 5 ● Doc. No. 226, p.1217 1.16 (“The drug . . . .”) to p.1220 1.14  
6 (“ . . . our advantage.”)

7 2) Testimony of Michael Houghton:

- 8 ● Doc. No. 227, p.1258 1.3 (“The process . . . .”) to p.1259 1.18  
9 (“ . . . we are manufacturing.”)  
10 ● Doc. No. 227, p.1260 1.19 (“You mentioned . . . .”) to p.1276 1.23  
11 (“ . . . that appear.”)  
12 ● Doc. No. 227, p.1282 1.7 (“And you have talked about. . . .”) to  
13 p.1285 1.22 (“Yes, it is.”)

14 **IT IS SO ORDERED.**

15 DATED: March 9, 2011

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18 Hon. Jeffrey T. Miller  
19 United States District Judge  
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