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26 **IN THE UNITED STATES DISTRICT COURT
 27 FOR THE DISTRICT OF NEVADA**

28 BAYER SCHERING PHARMA AG &
 BAYER HEALTHCARE
 PHARMACEUTICALS INC.,

Plaintiffs,

Civil Case No. 2:10-cv-1166-GMN-RJJ

v.

LUPIN LIMITED and LUPIN
 PHARMACEUTICALS, INC.,

Defendants.

**DEFENDANTS LUPIN LIMITED'S AND LUPIN PHARMACEUTICALS, INC.'S
 REQUEST FOR LEAVE TO FILE UNDER SEAL "CONFIDENTIAL" REPLY IN
 SUPPORT OF THE JOINT MOTION TO CONSOLIDATE**

1 Defendants Lupin Limited and Lupin Pharmaceuticals, Inc. respectfully request leave to
2 file under seal “Confidential” Reply in Support of the Joint Motion to Consolidate that was
3 previously filed with the Court. In support of this Motion, Defendants state:

4 1. The public interest in full disclosure of documents is limited to ensuring the
5 “public understanding of both the judicial process and significant public events.” *Kamakana v.*
6 *City & County of Honolulu*, 447 F.3d 172 (9th Cir. 2006). When a party requests a court to seal a
7 document, the Court must balance the compelling reason for sealing the document with the
8 public interest favoring disclosure. *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665 (9th Cir.
9 2010). Documents will be sealed where compelling reasons “outweigh the general history of
10 access and the public policies favoring disclosure” *Kamakana*, 447 F. 3d at 1178-1179.

11 2. Compelling reasons exist for sealing documents where their disclosure may
12 “gratify private spite, promote public scandal, circulate libelous statements, or release trade
13 secrets.” *Kamakana*, 447 F.3d at 1179.

14 3. In *Nixon v. Warner Communications, Inc.*, 98 S. Ct. 1306 (1973), the United
15 States Supreme Court recognized that one of the fundamental basis for a district court to use its
16 substantial discretion to permit the filing of a documents under seal was to protect a litigant’s
17 business information that might harm the litigant’s competitive standing.

18 4. In determining whether documents should be sealed, a court should consider
19 whether “disclosure of the material could result in improper use of the material for ... purposes
20 of infringement upon trade secrets” *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122,
21 1135 (9th Cir. 2003) (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)).

22 5. In this matter, the parties have submitted a Stipulated Protective Order, which has
23 not yet been approved by the Court (Dkt. 13).

24 6. As the Stipulated Protective Order has not yet been executed, and given that the
25 Reply to the Opposition to Motion to Consolidate contains Defendants’ confidential business and
26 technical information, request is hereby made that Defendants be allowed to file under seal the
27
28

1 Confidential Version of the Reply.¹

2 7. Defendants would suffer potential irreparable harm should the redacted portions
3 of their Reply become part of the public record.

4 8. Defendants will coordinate providing an un-redacted version of the Reply for the
5 Court's in camera consideration prior to a ruling on this Motion. In addition, an un-redacted
6 version of the Reply will be served on opposing counsel in this matter.

7 Respectfully submitted,

8 Dated: October 22, 2010

/s/ James E. Whitmire

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22 IT IS SO ORDERED.



23 UNITED STATES MAGISTRATE JUDGE

24 DATE: OCT. 26, 2010

*Attorneys for Defendants Lupin Limited
and Lupin Pharmaceuticals, Inc.*

27 _____
28 ¹ The Confidential Reply contains approximately one paragraph of information that needs to be kept confidential and the corresponding Exhibit that supports the Reply.