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FILED VIA ECF

June 25, 2021

The Honorable Loretta A. Preska
United States District Judge, Southern District of New York
United States Courthouse, Courtroom 12A
500 Pearl Street
New York, NY 10007-1312

Re: *Berall v. Verathon Inc. et al.*, C.A. No. 1:10-CV-05777-LAP-DCF

Dear Judge Preska:

I write on behalf of Defendants Verathon Inc. (“Verathon”) and Teleflex Medical Incorporated (“Teleflex”) (collectively, “Defendants”). Pursuant to Your Honor’s Individual Practices, Defendants seek an order permitting Defendants to file the following documents under seal:

- An unredacted copy of Defendants’ Letter Motion for Pre-Motion Conference Regarding Motion to Compel Production of Waived Privileged Documents (“the Letter Motion”), filed on June 25, 2021;
- Exhibits B and C to the Letter Motion;
- An unredacted copy of Exhibit G to the Letter Motion¹.

Exhibit B to the Letter Motion contains information pertaining to confidential licensing negotiations. Exhibit C to the Letter Motion is a privilege log produced by Plaintiff Dr. Berall (“Berall”) on behalf of Mr. Charles Baxley (“Baxley”) in response to a subpoena served upon Baxley by Verathon. The redacted portions of Exhibit G to the Letter motion contain information from the once privileged notes of a meeting between Berall and Baxley. The redacted portions of the Letter Motion contain information regarding Exhibits B, C, and G to the Letter Motion.

Courts in this district have routinely ordered that information pertaining to licensing negotiations be sealed. *See, e.g., UMG Recordings, Inc. v. Escape Media Grp., Inc.*, No. 11-civ-8407 (TPG),

¹ Plaintiff filed the redacted information in Exhibit G to the Letter Motion publicly at the United States Patent and Trademark Office, but produced the document in the litigation with a designation of Highly Confidential Information – Outside Counsel’s Eyes Only. Defendant Verathon has requested that Plaintiff de-designate this document in accordance with the Protective Order and is awaiting Plaintiff’s position.



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2015 WL 1873098, *6 (S.D.N.Y. Apr. 23, 2015). Courts in this district have also routinely ordered that information claimed to be privileged be redacted or sealed. *See, e.g., Moshell v. Sasol Ltd.*, No. 1:20-cv-01008-JPC, 2021 WL 67107, *1 (S.D.N.Y. Jan. 4, 2021); *BlackRock Allocation Target Shares: Series S Portfolio v. Wells Fargo Bank, Nat'l Ass'n*, No. 14-cv-09371 (KPF)(SN), 2017 WL 953514, *3 (S.D.N.Y. Mar. 9, 2017); *Diversified Grp., Inc. v. Daugerdas*, 217 F.R.D. 152, 162 (S.D.N.Y. 2003).

Accordingly, Defendants respectfully request that this Court enter an order that the Letter Motion and Exhibits B, C and G to the Letter Motion may be filed under seal.

Sincerely,
/s/ Thad C. Kodish
Thad C. Kodish
Counsel for Verathon Inc.

/s/ Jonathan R. Wise
Jonathan R. Wise
Counsel for Teleflex Medical Incorporated

cc: Counsel of Record

Defendants may file the proposed documents under seal.

SO ORDERED.

Dated: September 21, 2021
New York, New York


LORETTA A. PRESKA, U.S.D.J.