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November 18, 2021

BY ECF

The Honorable Denise Cote
United States District Judge
United States District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1910
New York, NY 10007

Re: *FTC, et al. v. Vyera Pharmaceuticals, LLC, et al., 1:20-cv-00706 (DLC)*

Dear Judge Cote:

This firm represents non-party Fera Pharmaceuticals, LLC (“Fera”) in the above-referenced matter. On November 12, 2021, Your Honor issued an Order (ECF Doc. No. 580) granting Fera’s request, dated November 10, 2021 (ECF Doc. Nos. 559, 560), to redact its confidential information included in the pre-trial submissions by the parties in this action. Following this initial request, the parties have continued to file pre-trial submissions with the Court containing Fera’s business-sensitive information. We are writing to respectfully request that Fera’s business-sensitive information found in these additional filings, as identified in the November 18, 2021 Declaration of Susan McDougal, Fera’s Vice President (the “McDougal Declaration”) submitted herewith, also be redacted.

The additional pre-trial submissions subject of this request consist of the Reply Briefs of Defendants Vyera Pharmaceuticals, LLC, Phoenixus AG, Martin Shkreli, and Kevin Mulleady (“Defendants” or “Vyera”), Defendants’ Exhibit List, and the excerpts of the Motions in Limine (including the supporting Expert Reports), Fact Stipulations, and Findings of Fact of Plaintiffs Federal Trade Commission and State of New York (“Plaintiffs” or “FTC”) described in the McDougal Declaration (collectively, the “Additional Pre-Trial Submissions”).

The Additional Pre-Trial Submissions incorporate, or reference, certain information produced by Fera in response to both the April 3, 2019 and August 19, 2019 Civil Investigative Demands (“CIDs”) to Fera, as well as Plaintiffs’ June 19, 2020 Subpoena to Fera and Defendants’ October 20, 2020 Subpoena to Fera (collectively, the “Subpoenas”) in this litigation. McDougal Decl. ¶ 3. As attested, this information further details Fera’s trade secrets and confidential information regarding its research, development, regulatory applications, marketing, pricing, and revenue of its [REDACTED] pharmaceutical product, as well as other business

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practices and products, including Fera's relationships with its third-party suppliers (the "Confidential Materials"). *See id.* ¶ 6.

The same arguments relating to the use of the Confidential Materials previously made to the Court in Fera's initial letter motion (ECF Doc. Nos. 559, 560) govern the parties' use of this information in connection with the Additional Pre-Trial Submissions. Prior to producing the Confidential Materials in response to the CIDs and the Subpoenas, Fera had never disseminated this business-sensitive information to the public. McDougal Decl. ¶ 7. The Confidential Materials are not otherwise publicly available through the FDA, pursuant to Sections 312.130 and 314.430 of the Code of Federal Regulations, *See id.* ¶ 9. The public disclosure of the Confidential Materials would be detrimental to Fera's financial privacy and commercial competitiveness. *See id.* ¶ 8.

This supplemental request to seal the Confidential Material is grounded on Fera's financial interest to protect its business-sensitive information. Any redactions to the Additional Pre-Trial Submissions also will be reasonably limited in scope and are consistent with the precedent and Rules of this Court.

For the foregoing reasons, Fera respectfully requests that the Court order Defendants and Plaintiffs to redact and file under seal those portions of their respective Additional Pre-Trial Submissions incorporating or referencing the Confidential Materials.

We thank Your Honor for your consideration of this request.

Respectfully submitted,

/s/ Paul W. Garrity

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Granted.

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11/19/21

cc: All Counsel of Record

SMRH:4893-0447-3859.10