

Rebekah Conroy
STONE CONROY LLC
25 A Hanover Road, Suite 301
Florham Park, NJ 07932
Tel: (973) 400-4181
Fax: (973) 498-0070
rconroy@stoneconroy.com

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

TEVA BRANDED PHARMACEUTICAL
PRODUCTS R&D, INC., NORTON
(WATERFORD) LTD., and TEVA
PHARMACEUTICALS USA, INC.

Plaintiffs,

v.

AMNEAL PHARMACEUTICALS OF NEW
YORK, LLC, AMNEAL IRELAND
LIMITED, AMNEAL PHARMACEUTICALS
LLC, and AMNEAL PHARMACEUTICALS
INC.

Defendants.

Civil Action No. 23-cv-20964-SRC-MAH

**ORDER GRANTING MOTION TO
SEAL A PORTION OF THE RECORD**

THIS MATTER having come before the Court pursuant to Defendants' Motion to Seal a Portion of the Record pursuant to Local Civil Rule 5.3(c) to seal Defendants' Confidential Information contained in the following documents, collectively referenced as the "**Confidential Material**"¹:

and there being no opposition to the motion;

¹ The portions of the documents which Defendants seek to seal are also removed in the redacted versions of these documents, which have been filed electronically via ECF, where applicable.

- **Plaintiffs' Memorandum of Law In Support of Motion for Stay (Doc. No. 91-1):**
 - Page 10 at Section B, after the word "*Currently*," through page 11 to the word "*Accordingly*."
- **June 11, 2024 Declaration of Liza Walsh (Doc. No. 91):**
 - Paragraph 3, from the word "a" to the word "*This*."
 - Paragraph 4, from the word "*an*" to the word "*This*."
 - Paragraph 5, from the word "*a*" to the word "*This*."
 - Exhibit A, in its entirety **(Doc. No. 91-2)**;
 - Exhibit B, in its entirety **(Doc. No. 91-3)**;
 - Exhibit C, in its entirety **(Doc. No. 91-4)**.
- **Defendants' Memorandum of Law in Opposition to Plaintiffs Motion for a Stay (Doc. No. 94)**
 - Page 10, Section B, first paragraph, from the word "*as*" to the word "*In*."
 - Page 10, footnote 2, in its entirety

and the Court having considered the written submissions of the parties; and Defendants having reported to the Court that Plaintiff takes no position as to the confidentiality of the material that Defendants move to seal but, for the purposes of this motion only, does not object to its sealing; and the Court having considered the papers submitted in support of the within Motion; and the Court having determined that this action involves allegations regarding the disclosure of confidential and proprietary information and for other and good cause having been shown; the Court makes the following findings and conclusions:

FINDINGS OF FACT

1. The information that Defendants seek to seal has been designated as "Confidential" Information.

2. By designating the material as “Confidential,” Defendants have represented that the subject information is a trade secret or confidential research, development or commercial information within the meaning of Fed. R. Civ. P. 26(c).

3. This is a pharmaceutical patent infringement action. As such, a significant portion of the materials exchanged in discovery, and subsequently filed with the Court in connection with pretrial proceedings, may contain proprietary and confidential research, development and business information of the parties. The material identified herein contains information designated by Defendants as “Confidential,” and includes its proprietary and highly sensitive formulation and other business information.

4. By designating this information “Confidential,” it is apparent that the Defendants have indicated that the public disclosure of this information would be detrimental to its businesses. Due to the nature of the materials herein, there is no less restrictive alternative to sealing portions of the Confidential Material.

5. Defendants’ request is narrowly tailored to only the confidential information contained in the above materials. In this regard, redacted, nonconfidential versions of the subject materials, where appropriate, have been filed.

CONCLUSIONS OF LAW

6. Upon consideration of the papers submitted in support of the motion, and the information that Defendants have designated as “Confidential,” the Court concludes that Defendants have met their burden of proving under Local Civil Rule 5.3 and applicable case law that the information described above should be sealed. Specifically, the Court concludes that with regard to the Confidential Information (a) the materials contain confidential information concerning Defendants’ businesses; (b) Defendants have a legitimate interest in maintaining the

confidentiality of the information to protect its disclosure to potential competitors who could use the information contained therein to develop and market competing products; (c) public disclosure of the confidential information would result in clearly defined and serious injury, including the use of the confidential information by competitors to Defendants' financial detriment; and (d) no less restrictive alternative to sealing the subject information is available.

7. The foregoing conclusions are supported by relevant case law holding that the right of public access to the full court transcript is not absolute, and may be overcome by a showing such as made here, in the discretion of the trial court. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 603 (1978); *see also Goldenberg v. Indel, Inc.*, No. 09-cv-5202, 2012 WL 15909, at *3-4 (D.N.J. Jan. 3, 2012). The Court, upon such a proper showing, may in its discretion prevent confidential information from being "transmuted into materials presumptively subject to public access." *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 143 n.8 (2d Cir. 2004).

8. Defendants have a legitimate private interest, within the meaning of L. Civ. R. 5.3(c), in avoiding the competitive harms described above, and that such legitimate private interest is sufficient to warrant granting the motion to seal as to the Confidential Materials described herein. L. Civ. R. 5.3(c); *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 658 (D.N.J. 2004) (sealing papers concerning "the parties' products, research and development, processes . . . formulas, [and] the parties' suppliers;" "[t]he presence of trade secrets or other confidential information weighs against public access and, accordingly, documents containing such information may be protected from disclosure."); *Impax Labs., Inc. v. Zydus Pharm. (USA) Inc.*, 2018 U.S. Dist. LEXIS 206044, at *3 (D.N.J. Dec. 6, 2018) (granting motion to seal where record "refers to proprietary commercial and business interests, including information relevant to the parties' research, development, and technical information on the components and formulation of its ANDA product, which is presently

unavailable to the public.”); *Depomed, Inc. v. Purdue Pharma L.P.*, 2017 U.S. Dist. Lexis 212, at *6-8 (D.N.J. Jan. 3, 2017) (sealing confidential manufacturing and research and development processes and information as well as internal documents, such as laboratory notebooks); *Boehringer Ingelheim Pharma GmbH & Co. KG v. Mylan Pharms. Inc.*, 2015 U.S. Dist. LEXIS 103716 at *6 (D.N.J. Aug. 7, 2015) (granting motion to seal portions of documents containing “highly proprietary business information regarding the development, formulation, manufacture and sale of [Mylan's] ANDA products”); *Purdue Pharm. Products v. Actavis Elizabeth*, 2015 U.S. Dist. Lexis 111363, at *2 (D.N.J. Aug. 24, 2015) (sealing part of trial transcript where “revealing the confidential business information to the public and competitors to the parties to this action would injure the parties' business interests”); *Vista India, Inc. v. Raaga, LLC*, 2008 WL 834399, *2 (D.N.J. Mar. 27, 2008) (“Courts will generally grant motions to seal when the materials contain trade secrets or . . . commercial information to prevent harm to a litigant’s standing in the marketplace”).

WHEREFORE, IT IS on this 23rd day of July, 2024

ORDERED that based upon the foregoing findings of fact and conclusions of law, that the motion to seal is hereby GRANTED; and

IT IS FURTHER ORDERED that the Clerk of the Court shall permit the Confidential Material to be sealed permanently and take such other steps as may be reasonably necessary to maintain the confidentiality of the Confidential Material.

IT IS FURTHER ORDERED that nothing herein shall constitute a ruling concerning future requests to seal.

SO ORDERED

SO ORDERED

s/Michael A. Hammer
Michael A. Hammer, U.S.M.J.

Date: 7/23/24