

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARBUTUS BIOPHARMA CORPORATION)	
and GENEVANT SCIENCES GmbH,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 22-252 (MSG)
)	
MODERNA, INC. and MODERNATX, INC.)	REDACTED - PUBLIC VERSION
)	
Defendants.)	

**DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO SEAL
PORTIONS OF PLAINTIFFS' MOTION TO COMPEL (D.I. 184)**

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I. INTRODUCTION

Pursuant to the Protective Order (D.I. 91) as modified by the Court’s November 14, 2023 Order (D.I. 155), Defendants Moderna, Inc. and ModernaTX, Inc. (“Moderna”) respectfully move this Court to seal Moderna’s sensitive and confidential information and to grant leave to file partially redacted versions of Plaintiffs’ Motion to Compel (D.I. 184) and Exhibits 1, 7, and 10-11 thereto. As explained in more detail below, the portions marked for redaction contain Moderna’s sensitive and confidential technical information, including confidential regulatory submissions and trade secrets.

In support of this motion, Moderna attaches as Exhibit A the Declaration of Peter Wojciechowski, CMC Knowledge Management Lead at ModernaTX, Inc., who is knowledgeable about Moderna’s confidential information that Moderna seeks to seal and is familiar with its sensitivity. Moderna seeks to redact portions of Plaintiffs’ Motion and Exhibits 1, 7, and 10-11 thereto (collectively, the “Confidential Materials”).

The Confidential Materials contain Moderna’s highly confidential information, and the Court should maintain that material under seal to prevent serious and real harm to Moderna. Release of Moderna’s highly confidential information to the public and Moderna’s competitors would create a clearly defined and serious injury to Moderna, as discussed in detail below.

II. LEGAL STANDARD

Third Circuit common law presumes a public right of access to judicial records, however it also protects business and financial information when access would cause economic harm, including competitive harm. *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019). “Although the common law right to public access is a recognized and venerated principle, courts have also recognized the accompanying principle that the right is not

absolute.” *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001) (citations and quotations omitted); *see also Littlejohn v. Bic Corp.*, 851 F.2d 673, 678 (3d Cir. 1988) (“Despite the presumption, courts may deny access to judicial records, for example, where they are sources of business information that might harm a litigant’s competitive standing.”).

This presumption is overcome where a movant shows “that the interest in secrecy outweighs the presumption.” *In re Avandia Mktg.*, 924 F.3d at 672 (quoting *Bank of Am. Nat’l Tr. & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986)). This showing may be made by demonstrating that disclosure will work a clearly defined and serious injury to the movant and that the material is the kind of information that courts will protect. *See In re Avandia Mktg.*, 924 F.3d at 672 (citing *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)). The Court will apply a “good cause” standard justifying sealing or redacting judicial records, requiring a “balancing process, in which courts weigh the harm of disclosing information against the importance of disclosure to the public.” *Mosaid Techs. Inc. v. LSI Corp.*, 878 F. Supp. 2d 503, 507-08 (D. Del. 2012) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787 (3d Cir. 1994)).

III. ARGUMENT

Good cause exists here to seal the Confidential Materials because the Confidential Materials contain Moderna’s highly confidential technical and business information. Disclosure of such information would cause real and serious competitive harm to Moderna and the information does not need to be disclosed to the public to understand the filings at issue.

Although the public’s presumptive common law right of access to judicial records attaches to materials filed in connection with a pretrial motion of a non-discovery nature, this right is “not absolute” and may be overcome by a showing that the material sought to be sealed

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