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TEVA PHARMACEUTICALS USA, INC.
17

18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA
20

21 TOBY HENRY,) CASE NO. 2:17-CV-02593-TLN-KJN
22)
Plaintiff,)
23 vs.) **AGREED PROTECTIVE**
24) **ORDER**
ANGELINI PHARMA INC., et al.)
25)
Defendants.)
26)

27 WHEREAS, Rule 26(c) of the Federal Rules of Civil Procedure provides for the issuance
28 of protective orders limiting the disclosure of discovered information in appropriate

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1 circumstances; and

2 WHEREAS, Plaintiff Toby Henry (“Plaintiff”) and Defendant Teva Pharmaceuticals
3 USA, Inc. (“Teva”) have agreed to the entry of a protective order limiting the disclosure of
4 discovered information between them in appropriate circumstances;

5 WHEREAS, this Order allows the parties to this action to designate certain documents
6 produced in discovery – for example, documents containing trade secrets or other proprietary
7 and confidential research, development, or commercial information, or documents containing
8 confidential personal information, including information deemed confidential by operation of
9 the Code of Federal Regulations, such as information identifying anyone who reports an alleged
10 adverse drug reaction or anyone who allegedly experienced an adverse drug reaction – as
11 confidential and subject to an enhanced level of protection from disclosure. This Order strikes
12 an appropriate balance between the parties’ interests in prosecuting and defending this case, the
13 judicial interest in the efficiency and integrity of the discovery process, and the public interest
14 in access to information. The parties also acknowledge, as set forth in paragraph 16, below, that
15 this Agreed Protective Order creates no entitlement to file confidential information under seal;
16 and further that Local Rule 141 sets forth the procedures that must be followed when a party
17 seeks permission from the court to file material under seal.

18 Therefore, the Court finds good cause for the entry of this Agreed Protective Order under
19 Federal Rule of Civil Procedure 26(c) and hereby ORDERS that all documents and other
20 information produced in this case by the parties shall be produced subject to the following:

21 1. When used in this Order, the following words shall have the following meanings:

22 “Documents” means (1) all written, recorded or graphic matter whatsoever and
23 information produced on computer disks or tapes, including all written materials,
24 and (2) any copies, reproductions or summaries of the foregoing, including
microfilmed, imaged or electronic copies.

25 “Discovery Materials” means (1) documents or other information produced by any
26 party or third person, whether pursuant to the applicable civil rules, by subpoena
27 or by agreement, other than documents that are publicly available;
28 (2) interrogatory or other discovery responses; and (3) deposition testimony of any
party or third person taken in this action, exhibits thereto and/or any videos or
transcripts thereof, whether in written or computer format, and all contents of the
foregoing.

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“Producing Party” means any party or third person producing discovery materials, whether pursuant to the applicable civil rules, by subpoena, or by agreement.

“Receiving Party” means any party receiving discovery materials from a producing party, whether pursuant to the applicable civil rules, by subpoena, or by agreement.

“Disclose” (and any variant thereof) means to show, give, make available, reproduce, or communicate any discovery materials, or any part or content thereof.

“Confidential Discovery Materials” means any discovery materials that are designated in good faith as “Confidential” by any party or third person. Confidential Discovery Materials are those materials that constitute or contain personal medical information or other personal information pertaining to research subjects or patients, reporters of alleged adverse drug events or persons or entities identified in such reports; trade secrets or other confidential research, development, or commercial information which may include proprietary information such as costs, pricing, budgets, customer lists and data, distributor lists and agreements, personnel files, and other private and personal information relating to employees; product formulations, manufacturing procedures and standards, financial data, identity of suppliers, identity of manufacturers, trade secrets, consumer data, confidential research, business plans, strategies and data, marketing plans and strategies, and any other confidential or proprietary information.

“Attorneys of Record” means attorneys of record for any of the parties to this action, members of the firm of the attorneys of record for the parties, and any in-house attorneys who are employed by the parties.

2. Any Confidential Discovery Materials produced by the producing party and designated as such shall be used solely for the purposes of this litigation and shall not be used for any other legal action, except by agreement of the parties or subject to a Court Order. The parties agree (a) Plaintiff’s attorneys of record, in their capacity as counsel for plaintiff in the action captioned *Camejo v. Angelini Pharma, Inc.*, et al., Case No. N19C-09-023-PRW, currently pending in the Superior Court of the State of Delaware (the “*Camejo Case*”), may in the *Camejo Case* request production of Confidential Discovery Materials produced by Teva in this action following entry of a protective order in the *Camejo Case*, and (b) Teva reserves and preserves all objections to such discovery requests in the *Camejo Case*.

3. Disclosure of Confidential Discovery Materials other than in accordance with the terms of this Order may subject the disclosing party to such sanctions and remedies as the Court may deem appropriate.

4. Subject to the terms, conditions, and restrictions of this Order, Confidential

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1 Discovery Materials marked “Confidential” may be disclosed only to the following persons and
2 only to the extent such persons have a legitimate need to know the particular Confidential
3 Discovery Materials disclosed to them:

- 4 (a) Persons employed by the Court and the jury empaneled in connection with the
5 handling of this action;
- 6 (b) Attorneys of Record;
- 7 (c) Employees of the Attorneys of Record working under the direct supervision of
8 such Attorneys of Record;
- 9 (d) The parties, including current employees, officers, partners or directors;
- 10 (e) Former employees, officers, partners or directors of the parties who are potential
11 witnesses or deponents;
- 12 (f) Outside experts or consultants provided that prior to any disclosure the Attorney
13 of Record who retains the outside expert or consultant obtains such expert’s or
14 consultant’s agreement to the non-disclosure agreement described in paragraph 6
15 below;
- 16 (g) Certified shorthand reporters and videotape operators for the purposes of
17 recording the testimony of deposition witnesses and preparing a written or
18 videotaped record of testimony;
- 19 (h) Independent copying services, independent computer consulting and support
20 services, independent translators, independent exhibit makers, and other
21 independent litigation support services retained for purposes of this litigation; and
- 22 (i) Any other person who is designated by written stipulation of the parties to have
23 access to Confidential Discovery Materials, or by order of the Court after notice
24 to all parties upon a showing of good cause why such person shall be so designated
25 and opposing parties have had an opportunity to be heard in opposition thereto.

26 5. Before disclosing any Confidential Discovery Materials to any person specified
27 in paragraph 4(e) or 4(f), above, disclosing counsel shall advise said persons of this Order and
28 said person must agree in writing to the non-disclosure agreement attached hereto as Exhibit A,
which states that such persons agree (1) to be bound by the terms hereof, (2) to maintain
Confidential Discovery Materials in confidence, and (3) not to disclose Confidential Discovery
Materials to anyone other than in accordance with the terms of this Order. All deposition
witnesses to whom Confidential Discovery Materials are disclosed at deposition must agree in

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1 writing to the non-disclosure agreement attached hereto as Exhibit A, and are hereby ordered
2 (1) to maintain Confidential Discovery Materials in confidence and (2) not to disclose
3 Confidential Discovery Materials to anyone other than in accordance with the terms of this
4 Order. Each party shall maintain a file containing such certifications and, upon request, forward
5 those certifications to the producing party within ten (10) days of such request. In no event shall
6 any disclosure of Confidential Discovery Materials be made to competitors of Defendants,
7 including any person who, upon reasonable and good faith inquiry could be determined to be,
8 an employee of a competitor of Defendants, irrespective of whether such person is retained as
9 an expert or consultant by counsel for Plaintiff.

10 6. Any party desiring to designate particular Discovery Materials as Confidential
11 Discovery Materials must place upon such materials in a conspicuous manner so as to not
12 obliterate, cover, or interfere with the reading of such material a marking which reads:
13 “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.”

14 7. In addition, to protect against unauthorized disclosure of confidential personal
15 information or invasion of the physician-patient privilege and/or individual privacy interests or
16 rights, the parties may redact from Confidential Discovery Materials names, addresses, and other
17 identifying information pertaining to: research subjects or patients; reporters of alleged adverse
18 events or persons or entities identified in such reports (however, the remainder of such reports
19 shall be disclosed provided they otherwise are discoverable); and other individuals or entities
20 whose names and other identifying information are protected from disclosure by the regulations
21 of the Food, Drug & Cosmetics Act, including, but not limited to, 21 C.F.R. §20.63, 21 C.F.R.
22 §20.111, 21 C.F.R. §20.112, 21 C.F.R. §50.25, 21 C.F.R. §314.80, and 21 C.F.R. §803.9, by the
23 regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), or by
24 any other relevant rules or regulations.

25 8. Discovery Materials disclosed at a deposition may be designated by a party as
26 Confidential Discovery Materials by indicating on the record at the deposition that the specific
27 part of the testimony and/or any exhibits marked for identification is confidential, and is subject
28 to the provisions of the Order. In such situations, the questions and answers designated as

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1 confidential may be transcribed separately from the remainder of the deposition. Counsel for
2 any party may exclude from the room during any portion of a deposition any person not entitled
3 under this Order to receive Confidential Discovery Materials while such materials are being
4 disclosed and/or discussed. A party may also designate discovery materials disclosed at such
5 depositions as confidential by notifying all parties in writing, within fifteen (15) days of receipt
6 of the transcript by the attorneys of record for the designating party, of the specific pages and
7 lines of the transcript which contain Confidential Discovery Materials. Each party shall attach
8 a copy of such written statement to the face of the transcript and each copy thereof in his or her
9 possession, custody or control. During such fifteen (15) day period, all Discovery Materials
10 shall be treated as Confidential Discovery Materials.

11 9. By making any such Confidential Discovery Materials available during the course
12 of this litigation, the producing party does not waive any trade secret or other confidential
13 protection that might otherwise be afforded over those materials. Furthermore, by designating
14 any Discovery Materials “confidential,” the parties do not acknowledge that any such Discovery
15 Materials are relevant or discoverable in this action. This Order shall not constitute a waiver of
16 any right to seek discovery of, or alternatively to resist discovery of, any material in this action.

17 10. Inadvertent failure to designate Discovery Materials as confidential at the time of
18 production may be remedied by supplemental written notice. If such notice is given, the
19 identified materials shall thereafter be fully subject to this Order as if they had initially been
20 designated as Confidential Discovery Materials, provided that there shall be no sanction for any
21 use or disclosure of such material prior to designation. The inadvertent disclosure by the
22 producing party of Confidential Discovery Materials, regardless of whether such materials were
23 so designated at the time of disclosure, shall not be deemed a waiver, in whole or in part, of a
24 party’s claim of confidentiality, either as to the specific discovery materials disclosed or as to
25 any other Discovery Materials relating thereto or on the same or related subject matter.

26 11. If a receiving party desires to disclose any part of any Confidential Discovery
27 Materials in any manner not in accordance with the terms of this Order, the party seeking to
28 make such disclosure shall obtain the written agreement of the producing party to so proceed or,

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1 in the absence of such agreement, shall seek the approval of the Court by way of a motion filed
2 with the Court.

3 12. This Order is without prejudice to any party's right to assert the attorney-client,
4 work-product, or other privileges or doctrines, or to any party's right to contest the designation
5 of Confidential Discovery Materials. A party shall not be obligated to challenge the designation
6 of any particular Discovery Materials as being confidential at the time such designation is made
7 and failure to do so shall not preclude a subsequent challenge thereto. In the event that any party
8 to this litigation disagrees at any point in these proceedings with the designation by the
9 producing party of Discovery Materials as being confidential, the parties shall first try to dispose
10 of such dispute in good faith on an informal basis by conferring directly with counsel for the
11 producing party. The challenging party must explain the basis for its belief that the designation
12 was not proper and must give the producing party an opportunity to review the designated
13 material, to reconsider the circumstances, and, if no change in designation is offered, to explain
14 the basis for the designation. If the dispute cannot be resolved, the objecting party may seek
15 appropriate relief from the court. Any objections to such a designation, when made, shall be in
16 writing and shall specify the nature of any objection. Any designated Confidential Discovery
17 Materials shall remain as such under the terms of this Order until the Court makes a
18 determination otherwise.

19 13. Nothing in this Order restricts or affects the rights of the producing party to use or
20 disclose any Confidential Discovery Materials produced by such party. Any such use or
21 disclosure of Confidential Discovery Materials by the producing party shall not be deemed a
22 waiver of the terms of this Order. Nothing in this Order, or any proceeding undertaken pursuant
23 hereto, shall be deemed to have the effect of a waiver by any Party of, or otherwise deemed to
24 alter the confidentiality or non-confidentiality of, any information. Nor shall compliance with
25 this Order operate as an admission as to the admissibility of any information.

26 14. All Discovery Materials provided by non-parties may be made, by separate written
27 agreement, specifically subject to the terms of this Order. Such nonparties and/or the parties
28 may designate Discovery Materials as confidential in accordance with this Order. Any

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1 designation by such non-parties and/or the parties shall have the same force and effect as if made
2 pursuant to the terms of this Order. The provisions of paragraph 12 relating to a challenge on
3 the assertion of confidential status shall apply to Discovery Materials designated confidential by
4 nonparties.

5 15. Without written permission from the designating party or a court order secured
6 after appropriate notice to all interested persons, a party may not file in the public record in this
7 action any Confidential Discovery Materials. In the event disclosure of sealed materials is
8 sought, no portion of the materials thus sealed shall be released except upon notice to the
9 producing party made by the party or non-party seeking disclosure, proof of which shall be made
10 to the Court, and after a full opportunity for hearing upon the matter.

11 16. Confidential Discovery Material shall not be filed with the Court except when
12 required in connection with matters pending before the Court. If filed they shall be filed in a
13 sealed envelope, clearly marked:

14 **THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**
15 **COVERED BY A PROTECTIVE ORDER.**

16 Applicable law, including Civil Local Rule 141, governs the filing of documents under seal with
17 the District Court. Confidential Discovery Material and other papers filed provisionally under
18 seal shall be available to the Court, to counsel of record, and to all other persons entitled to
19 receive the confidential information contained therein under the terms of this Order.

20 17. Confidential Discovery Material may be introduced by any party at the time of
21 trial or at any court hearing, provided it is submitted under seal initially by the party seeking to
22 use Confidential Discovery Material. At the time that such material is introduced, the Court
23 shall issue such Order as it deems appropriate for maintaining the confidentiality of such
24 material.

25 18. If a receiving party learns that, by inadvertence or otherwise, it has disclosed any
26 Confidential Discovery Materials to any person or in any circumstance not authorized under this
27 Protective Order, the receiving party must immediately (a) notify the producing party in writing
28 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Confidential

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1 Discovery Materials, (c) inform the person or persons to whom the unauthorized disclosures
2 were made of all the terms of this Protective Order, and (d) request such person or persons to
3 execute the non-disclosure agreement attached hereto as Exhibit A.

4 19. If a receiving party is served with a subpoena or an order issued in other litigation
5 that would compel disclosure of any Confidential Discovery Materials, the receiving party must
6 so notify the producing party immediately, in writing, and no more than three court days after
7 receiving the subpoena or order. Such notification must include a copy of the subpoena or court
8 order. The receiving party must also immediately, in writing, inform the party who caused the
9 subpoena or order to issue in the other litigation that some or all the material covered by the
10 subpoena or order is the subject of this Protective Order. In addition, the receiving party must
11 deliver a copy of this Protective Order promptly to the party in the other action who caused the
12 subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties
13 to the existence of this Protective Order and to afford the producing party an opportunity to try
14 to protect its confidentiality interests in the court from which the subpoena or order issued. The
15 producing party shall bear the burdens and the expenses of seeking protection of its confidential
16 material in the other court – and nothing in these provisions should be construed as authorizing
17 or encouraging the receiving party to disobey a lawful directive from another court. If the
18 producing party timely seeks a protective order in the other court, the receiving party served
19 with the subpoena or court order shall not produce any Confidential Discovery Materials before
20 a determination by the court from which the subpoena or order issued, unless the receiving party
21 has obtained permission from the producing party.

22 20. The Parties shall confer in good faith prior to trial in an attempt to devise
23 protective procedures to be applicable at trial that are satisfactory to the Court.

24 21. At the conclusion of this litigation, including any appeals from any judgment or
25 order entered by the Court and any retrial, at the request of the producing party, the receiving
26 party shall forward all executed non-disclosure agreements to the producing party within thirty
27 (30) days, retrieve all Confidential Discovery Materials from testifying experts, consulting
28 experts, and any other person or entity to whom the receiving party has disclosed Confidential

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1 Discovery Materials, and, at its option, within thirty (30) days either: (1) destroy all received
2 Confidential Discovery Materials by such party and shall certify in writing that such destruction
3 has occurred; or (2) return all received Confidential Discovery Materials to the producing party
4 and certify in writing that all such discovery materials have been returned. If the producing
5 party is not notified of which option the discovering party has chosen, it will be presumed that
6 option (1) was chosen. Upon written request of the producing party, the discovering party shall
7 confirm that one of the foregoing options has been implemented. However, notwithstanding
8 any other provision of this paragraph, all Confidential Discovery Materials shall remain subject
9 to this Order.

10 22. This Order shall be without prejudice to the right of the parties or any third person
11 to request additional protection under applicable laws for discovery requests hereafter served by
12 any party or to seek modification of this Order upon a showing of good cause.

13 23. The terms of this Order shall not be construed as any limitation upon the right of
14 any party to offer into evidence any documents, response, or information designated as
15 confidential.

16 24. This Order shall be binding upon the parties hereto, counsel for the parties, and
17 upon the parties' and their counsels' successors, executors, personal representatives,
18 administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents,
19 independent contractors, and other persons or organizations over which they have control. The
20 parties, their counsel and employees of such counsel, and their expert witnesses, consultants and
21 representatives retained in connection with this action each expressly stipulates to the personal
22 jurisdiction of this Court for purposes of any proceeding brought by a party to this action to
23 enforce this Order.

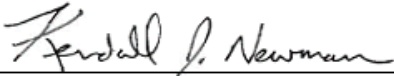
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4. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of the terms of this stipulated protective order after the action is terminated.

IT IS SO ORDERED

Dated: July 9, 2020


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TOBY HENRY,)	CASE NO. 2:17-CV-20593-TLN-KJN
)	
Plaintiff,)	
)	
vs.)	
)	
ANGELINI PHARMA, INC., et al.,)	
)	
Defendants.)	

I, _____, hereby certify my understanding that Confidential Discovery Materials are being provided to me pursuant to the terms and restrictions of an Order entered by the United States District Court for the Eastern District of California in connection with the action entitled *Toby Henry v. Angelini Pharma, Inc., et al.*, Case No. 2:17-cv-02593-TLN-KJN.

I further certify that I have been provided a copy of and have read the Order. I understand that the Order prohibits me from either using or disclosing Confidential Discovery Materials for any purpose other than as set forth in and pursuant to the Order entered by the Court. I hereby agree to subject myself to the jurisdiction of the Court for purposes of enforcement of the terms and restrictions of the Order. I understand that violation of the Order is punishable as contempt of court.

Date: _____ Signature _____

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