

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

GENOMIC PREDICTION, INC.,
Plaintiff,

Case No. 2:25-cv-16850-SDW-
AME

vs.

District Judge Susan D. Wigenton

NATHAN TREFF, TALIA METZGAR
and NUCLEUS GENOMICS, INC.,

Magistrate Judge Andre M.
Espinosa

Defendants.

Motion Date: None Set

**DECLARATION OF RICHARD J. REIBSTEIN IN RESPONSE TO
DEFENDANTS NUCLEUS GENOMICS, INC. AND NATHAN TREFF’S
EMERGENCY MOTION TO SEAL**

I, Richard J. Reibstein, of full age, hereby declare as follows:

1. I am a member of the law firm Troutman Pepper Locke LLP, counsel for plaintiff Genomic Prediction, Inc. (“GP”) in this matter.

2. I make this declaration in opposition to defendants Nucleus Genomics, Inc.’s and Nathan Treff’s Emergency Motion to Seal pursuant to Local Civil Rules 5.3(c) and 7.1(d)(4) [ECF No. 25]. I have personal knowledge of the facts set forth in this declaration.

3. On the afternoon of Monday, November 3, 2025, GP filed reply papers in further support of its application for a preliminary injunction with temporary restraining order and for expedited discovery, including the Declaration of Stephen Hsu (ECF No. 18-5).

4. The Hsu Declaration attaches as Exhibit A an email chain that was sent by Nucleus to GP by being addressed to Nathan Treff's unmonitored email address at GP after his resignation on August 12, 2025. Hsu Decl. ¶ 9. The email chain contains a science board advisory meeting agenda. As Hsu noted in his Declaration (at ¶¶ 10 - 12), after GP became aware of that email, Hsu reviewed it and concluded from his review of the meeting agenda that Nucleus is planning to genotype embryos.

5. GP submitted this exhibit because, in GP's view, it contains material facts that directly contradict Nucleus' and Treff's statements in their declarations opposing GP's application for injunctive relief. Specifically, as Hsu explains in paragraphs 11-21, the agenda shows Nucleus is and has been developing products that compete with GP's and that Nucleus appears to perform certain "wet lab" functions.

6. Later on November 3, 2025, Matthew Bruno, counsel for Nucleus and Treff, emailed the undersigned, asserting that Exhibit A to the Hsu Declaration is confidential and demanding that GP remove it from the docket and refile it under seal.

7. About 90 minutes later, my colleague Jeffrey Kramer responded to Mr. Bruno's email noting that we would "review any proposed motion to seal Nucleus wishes to make" and asking for "legal authority for the proposition that GP is

obligated to file the document under seal immediately while any such motion is pending.” Mr. Kramer noted that Local Civil Rule 5.3(c)(4) provides for, but not does not require, such temporary sealing pending a motion. A true and correct copy of that email is attached as **Exhibit A**.

8. In that email we also reserved GP’s right to contest Nucleus’s designation of the document as confidential and pointed out that the document was disclosed to GP, a third party, which generally destroys confidentiality. *Id.*

9. However, we stated that we would work with Nucleus on this issue and were inclined to consent to a sealing motion, as long as we were provided with the legal authority for the motion. *Id.*

10. Defendants never provided us with such legal authority.

11. Instead, prior to the hearing on November 4, 2025, Defendants’ counsel conferred with us about the sealing issue. We took the position that we had no objection to temporary sealing while the parties negotiated or briefed permanent sealing of the Exhibit per Local Civil Rule 5.3(c)(4), as we had stated in Mr. Kramer’s email (Ex. A hereto).

12. That is also the position we took during the hearing. We understood the Court to direct the parties to submit a consent order to provisionally seal the document per Local Civil Rule 5.3(c)(4).

13. On the evening of November 4, 2025, after the hearing, Defendants' counsel provided us with a draft consent order. The draft consent order sought to seal Exhibit A **permanently**, not temporarily, and did not provide any good cause for such sealing.

14. We provided comments on the proposed consent order yesterday afternoon. Simultaneously, we sought Defendants' consent to a routine extension of the Court's October 28, 2025 Order, which temporarily restrains Defendants, until the Court decides the application for a preliminary injunction, from, among other things, using or disclosing GP's trade secrets. The extension was proposed in view of the provisions in Fed. R. Civ. P. 65(b)(2) that authorize courts to extend TROs for a period not to exceed 14 days, unless the adverse party consents to a longer extension. ECF No. 7. We asked for that consent.

15. Despite the fact that Plaintiff previously consented to Defendants' motion with proposed order to file surreply papers and was also willing to consent to Defendants' proposed order to seal the Hsu Declaration temporarily under Local Civil Rule 5.3(c)(4), Defendants were unwilling to consent to Plaintiff's proposed order extending the TRO.

16. Defendants then filed this emergency motion. In response, we told Defendants' counsel that we intended to oppose the motion, that we previously had reserved GP's rights to contest the confidentiality of Exhibit A to the Hsu

Declaration, and that we had agreed only to *provisional* sealing of Exhibit A as provided in Local Civil Rule 5.3(c)(4), not *permanent* sealing as Defendants' proposed consent order contemplated. We also noted that the TRO that had been entered by the Court specifically stated that it was in effect pending *the Court's decision on the preliminary injunction application by Plaintiff*, and that we expected Defendants to afford to Plaintiff the same courtesies that Plaintiff afforded to Defendant so as not to burden the Court with motions to which the parties routinely consent (as contemplated in the language of Rule 65(b)(2)). We ended the communication urging Defendants to withdraw their motion, which has not occurred.

17. The Court should deny Defendants' motion to **permanently** seal Exhibit A.

18. Federal courts discourage the permanent sealing of documents from public view and require a showing of good cause that overcomes the presumption of a right of public access. *Securimetrics, Inc. v. Iridian Techs., Inc.*, 2006 WL 827889 (D.N.J. Mar. 30, 2006).

19. Therefore, a movant seeking to seal a document must *show* that good cause exists based on at least four factors: "(a) the nature of the materials or proceedings at issue; (b) the legitimate private or public interest which warrant the relief sought; (c) the clearly defined and serious injury that would result if the relief

sought is not granted; and (d) why a less restrictive alternative to the relief sought is not available.” *China Falcon Flying Ltd. v. Dassault Falcon Jet. Corp.*, 2017 WL 3718108, at *2 (D.N.J. Aug. 29, 2017) (citing L. Civ. R. 5.3(c)).

20. Defendants’ only argument that good cause exists here is because the document contains “business information,” which they argue satisfies each of these four factors. But this is not enough. First, the authority relied upon by Defendants is entirely inapposite here. In *Novak*, there was a confidentiality order in place and the material at issue had been designated as confidential accordingly. *Novak v. Home Depot U.S.A., Inc.*, No. 3:06-cv-04841, 2008 WL 11510377 (D.N.J. Apr. 25, 2008). The confidential material sealed in *Overton* was the subject of a prior, unopposed motion to seal that the court had granted. *Overton v. Sanofi-Aventis U.S., LLC*, 2014 WL 1554718 (D.N.J. Apr. 9, 2014); *see also Overton v. Sanofi-Aventis U.S., LLC*, No. Civ. A. 13–05535 DEA at ECF No. 12. And the movant in *China Falcon Flying Ltd.* sought to seal “detailed pricing information,” contracts “which contain confidentiality provisions,” and “net income statements,” not an email widely shared throughout Nucleus and disclosed to a third party. 2017 WL 3718108, at *2.

21. Second, Defendants still cannot provide any authority, even to this Court, supporting their position that the document somehow retained its confidentiality after Nucleus sent the document to a third party (GP) on August 19,

2025. The disclosure of purportedly confidential information destroys any designation of confidentiality over that material.

22. The document in question that contained an agenda for Nucleus Genomics was emailed to Genomic Prediction by Lasse Folkerson, the Chief Science Officer of Nucleus Genomics. Importantly, this was not the only email sent to the email address of Mr. Treff at Genomic Prediction by senior management at Nucleus. As noted in the Declaration of Kelly Ketterson, (ECF No. 1-2, ¶ 144) an email was sent to Treff at his Genomic Prediction email address by Nucleus Genomics' president, Matt Lanter, on October 7, 2025, at 4:55 PM, copying the CEO of Nucleus, Kian Sadeghi. That was the email that contained the Statement of Work (SOW) with Sampled involving the use of the exact same model of Illumina SNP microarray that was the subject of GP's confidential research project. One of the recipients on that October 7 email from Mr. Lanter was a representative of Sampled, who then responded by email to Mr. Lanter and also copied Mr. Treff on the same email at his Genomic Prediction email address with the SOW.

23. Another email was sent from Simon Fishel, a new member of the Nucleus Genomics Science Advisory Board, dated August 28, 2025, to Matt Lanter, with a copy to Kian Sadeghi and Lasse Folkerson at Nucleus as well as a copy to Nathan Treff at his former GP email address. That email from Simon Fishel

responded to an email from Matt Lanter, who had copied Nathan Treff at his GP email address.

24. In short, Defendants cannot credibly argue that disclosure of the document will “cause a clearly defined and serious injury” when they have already disclosed it themselves and have clearly been aware of repeated instances of such disclosures for months without asking GP to destroy or delete those materials. *See Bracco Diagnostics, Inc. v. Amersham Health, Inc.*, 2007 WL 2085350, at *2-3 (D.N.J. July 18, 2007); *see e.g. Ferko v. Nat’l Ass’n for Stock Car Auto Racing, Inc.*, 218 F.R.D. 125, 134 (E.D. Tex. 2003) (“disclosure of confidential documents directly to a third party destroys confidentiality.”). In any event, Defendants have not articulated to the Court any such clearly defined and serious injury that would result from the public filing of that email.

Dated: November 6, 2025

/s/ Richard J. Reibstein

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