

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
Denver**

AMGEN INC., *et al.*,
Plaintiffs,

v.

GAIL MIZNER, MD, in her official capacity
as Chair of the Colorado Prescription Drug
Affordability Review Board, *et al.*,
Defendants.

Civil Action

No. 1:25-cv-3452-DDD-STV

JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER

1. *Generally*. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Under Federal Rule of Civil Procedure 26(c), a Court may issue a protective order regarding discovery for good cause to prevent the disclosure of sensitive information obtained in discovery to third parties, and to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. *See Rohrbough v. Harris*, 549 F.3d 1313, 1321 (10th Cir. 2008) (citation omitted). Accordingly, Plaintiffs Amgen Inc., Immunex Corporation, and Amgen Manufacturing Limited LLC (collectively “Amgen”) and Defendants Gail Mizner, Sami Diab, Amarylis Gutierrez, Catherine Harshbarger, James Justin VandenBerg, Michael Conway, and Philip Weiser (collectively “Defendants”) hereby stipulate under Federal Rule of Civil Procedure 26 to the attached Protective Order. *See* Ex. 1.

2. *Background.* The parties have met and conferred regarding the attached Protective Order. *See* Ex. 1. The parties negotiated in good faith and agreed to this finalized version of the Protective Order.

3. *Purpose.* Each party seeks to avoid undue harm by preventing disclosure of sensitive proprietary or confidential information to the public or other parties. The parties accordingly propose the attached Protective Order to facilitate discovery and pretrial preparation processes by avoiding the need for seriatim motions to the Court regarding these issues.

The parties therefore respectfully request that this Court enter the Proposed Protective Order.

Respectfully submitted this 4th day of February, 2026.

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Exhibit 1

**UNITED STATES DISTRICT COURT
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JOINT PROTECTIVE ORDER

Upon a showing of good cause in support of the entry of a protective order to protect the discovery and dissemination of certain confidential information, it is hereby ORDERED:

1. This Protective Order shall apply to all documents, materials, and information, including without limitation, documents produced, answers to interrogatories, responses to requests for admission, and deposition testimony disclosed pursuant to the disclosure or discovery duties created by the Federal Rules of Civil Procedure.

2. As used in this Protective Order, the following terms shall be defined as:

- a. “Receiving party” refers to a party or non-party that receives disclosure or discovery material from a producing party.
- b. “Designating party” refers to a party or non-party that designates information or items that it produces in disclosures or in responses to

discovery as “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

- c. “Producing party” refers to a party or non-party that produces disclosure or discovery material in this action.
- d. “Challenging party” refers to a party or non-party that challenges the designation of information or items under this Order.

3. All discovery material designated CONFIDENTIAL produced in this proceeding shall be used by the receiving party solely for purposes of this proceeding and shall not be disclosed by the receiving party to anyone other than those set forth in Paragraph 8. Other than this case, the receiving party shall not use or introduce into any other litigation or proceeding, including but not limited to any administrative or non-judiciary proceeding, the contents of information designated CONFIDENTIAL.

4. The protections conferred by this Protective Order also apply to (1) any information copied or extracted from information designated as CONFIDENTIAL; (2) all copies, excerpts, summaries, translations, reflections or compilations of CONFIDENTIAL information; and (3) any oral, written, or electronic communications, testimony, conversations, or presentations by Parties or their Counsel that reveal CONFIDENTIAL information. Any use of CONFIDENTIAL information in court shall be governed by the orders of the trial judge and other applicable authorities.

5. The protections conferred by this Protective Order also apply to any non-party that produces or receives discovery material in this action. A party may designate as CONFIDENTIAL discovery material produced by any non-party, including document

productions, discovery responses, and deposition testimony only if the non-party's discovery material qualifies as "CONFIDENTIAL" information under Paragraph 7. A party's designation of non-party discovery material is subject to challenge under Paragraph 14.

6. As used in this Protective Order, "document" is defined as provided in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

7. Information designated "CONFIDENTIAL" shall be information that is confidential and implicates the privacy, competitive or business interests of the parties or non-parties producing discovery, including but not limited to: medical and personal financial information, private personnel information, trade secrets, information whose disclosure may cause competitive harm, business and financial information, information that is received in confidence from third parties, other proprietary business information and information that the designating party otherwise believes in good faith is entitled to protection under the Federal Rules of Civil Procedure. Subject to Paragraph 8 below, CONFIDENTIAL information shall not be disclosed or used for any purpose except the preparation and trial of this case.

8. CONFIDENTIAL documents, materials, and/or information (collectively, "CONFIDENTIAL information") shall not, without the consent of the designating party or further Order of the Court, be disclosed except that such information may be disclosed to:

a. attorneys actively working on this case and persons regularly employed or associated with said attorneys whose assistance is required by said attorneys

in the preparation for trial, at trial, or at other proceedings in this case;

- b. the parties, including their designated representatives and counsel;
- c. expert witnesses and consultants retained in connection with this proceeding to whom disclosure is reasonably necessary for this litigation;
- d. the Court and its employees (“Court Personnel”) and the jury at trial;
- e. stenographic and video reporters who are engaged in proceedings necessarily incident to the conduct of this action;
- f. deponents, witnesses, or potential witnesses in this case;
- g. anyone as otherwise required by law; and
- h. other persons by written agreement of the parties and/or non-party designator of CONFIDENTIAL information.

9. Prior to disclosing any CONFIDENTIAL information to designated representatives identified in sub-paragraph 8(b) or any person identified in sub-paragraph 8(c) (expert witnesses and consultants) or sub-paragraph 8(f) (deponents, witnesses, or potential witnesses), counsel shall provide such person with a copy of this Protective Order and obtain from such person a written acknowledgment stating that he or she has read this Protective Order and agrees to be bound by its provisions consistent with Attachment A to this Protective Order. All such acknowledgments shall be retained by counsel and shall be subject to *in camera* review by the Court if good cause for review is demonstrated by counsel making the request.

10. In the event of disclosure of information designated CONFIDENTIAL to any person not authorized to access such information under this Protective Order, the party

responsible for having made such disclosure, and each party with knowledge thereof, shall inform counsel for the party whose information designated CONFIDENTIAL has been disclosed of all known relevant information concerning the nature and circumstances of the disclosure within 48 hours of such disclosure. The party responsible for improperly disclosing such information designated CONFIDENTIAL shall also promptly take all reasonable measures to retrieve the improperly disclosed information designated CONFIDENTIAL and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

11. Documents are designated as CONFIDENTIAL by placing or affixing on them (in a manner that will not interfere with their legibility) the following or other appropriate notice: “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” For documents where placing or affixing a CONFIDENTIAL designation would be impractical (e.g. native files including Excel, audio, video, and multimedia files, etc.), the producing party shall produce a slipsheet indicating the production number of the native file, any CONFIDENTIAL designation to be applied to the native file, and language on the slipsheet stating “File Provided Natively” (or substantially similar).

12. Whenever a deposition involves the disclosure of CONFIDENTIAL information, the deposition or portions thereof shall be designated as CONFIDENTIAL and shall be subject to the provisions of this Protective Order. Such designation shall be made on the record during the deposition whenever possible, but a party may designate portions of depositions as CONFIDENTIAL after transcription, provided written notice of the designation is promptly given to all counsel of record within **thirty days** after notice by

the court reporter of the completion of the transcript. All testimony shall be treated as CONFIDENTIAL information until the thirty-day period has expired. The designating party may request of a court reporter that transcript pages containing CONFIDENTIAL information be separately bound with the “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” designation affixed to the relevant pages, and may request a copy of the transcript wherein the portions of testimony deemed CONFIDENTIAL shall be redacted. These protections also extend to any corresponding video recording of any deposition involving CONFIDENTIAL information.

13. If corrected within **7 calendar days** of discovery of an inadvertent failure to designate qualified information or items, such inadvertent failure does not, standing alone, waive the designating party’s right to secure protection under this Order for such material and such materials shall be treated as CONFIDENTIAL upon written notice by the producing party, unless and until a challenging party successfully challenges such designation pursuant to Paragraph 14 below. The producing party shall, within **7 calendar days** of providing written notice of the inadvertent failure to designate qualified information or items, re-produce the information or items with the appropriate designations (and, if applicable, using the same Bates number as the original production). Upon timely correction of a designation, the receiving party must make reasonable efforts to return all copies of the information or items produced without designation and assure that all such material is treated in accordance with the provisions of this Order. The designating party may request that the receiving party confirm that all such information and materials previously produced that lacked appropriate CONFIDENTIAL designation have been

returned or destroyed and upon such request the receiving party shall provide confirmation.

14. A party may object to the designation of particular CONFIDENTIAL information by giving written notice to the party or non-party designating the disputed information. The written notice shall identify the information to which the objection is made and the basis for that objection. Pursuant to D.C.COLO.MJ VI.2, the Parties, including any non-parties that designated as CONFIDENTIAL the at-issue information, shall meet and confer in good faith in accordance with D.C.COLO.LCivR 7.1(a). If the parties, including any non-parties that designated as CONFIDENTIAL the at-issue information, cannot resolve the discovery dispute within **ten business days** after the time the notice is received, the parties, including any non-parties that designated as CONFIDENTIAL the at-issue information, shall **jointly** contact Chambers pursuant to the discovery dispute procedures set forth in D.C.COLO.MJ VI.3–4. If this procedure is timely pursued, the disputed information shall be treated as CONFIDENTIAL under the terms of this Protective Order until the Court issues a ruling on the dispute. If this procedure is not timely pursued, the disputed information shall lose its designation as CONFIDENTIAL and shall not be treated as CONFIDENTIAL in accordance with this Protective Order. The party or non-party designating the information as CONFIDENTIAL shall bear the burden of establishing that good cause exists for the disputed information to be treated as CONFIDENTIAL.

15. Pursuant to Fed. R. Evid. 502(d) and Fed. R. Civ. P. 26(b)(5), the production of documents subject to the attorney-client privilege or the work-product immunity, or any other privilege or immunity, will not waive the attorney-client privilege, work-product

immunity, or other privilege or immunity in this proceeding or in any other federal, state or foreign proceeding. Further, the fact that information was produced shall not be used in any manner as evidence in support of any such alleged waiver. If a party has produced information subject to a claim of privilege or immunity, upon request identifying such information (“Recalled Information”), the information and all copies thereof shall be returned promptly, or a signed verification by counsel for the receiving party certifying that all such information and copies have been destroyed shall be provided to counsel for the producing party no later than ten (10) days (as calculated by Fed. R. Civ. P. 6) after a request is made by the producing party, as required by Fed. R. Civ. P. 26(b)(5)(B). The designating party may request that the receiving party confirm that all such information and materials produced subject to a claim of privilege or immunity have been returned or destroyed and upon such request the receiving party shall provide confirmation. Moreover, any notes or summaries referring to or relating to any Recalled Information subject to a claim of privilege or immunity shall be destroyed and such destruction shall also be subject to confirmation as set forth in the preceding sentence. Nothing herein shall prevent the receiving party from preparing a record for its own use containing the date, author, address(es), and such other non-substantive information (i.e., as would typically be included on a privilege log) as is reasonably necessary to identify the Recalled Information and generally describe its nature and subject matter sufficient to support a motion to compel production of the alleged nonprivileged information, if appropriate. Such a record of the identity, nature, and subject matter of such information may not be used for any purpose other than preparation of an application to compel the Recalled Information in this

litigation and shall not be shared with anyone except counsel for the parties.

16. A receiving party shall not use CONFIDENTIAL information in any Public AI Tool. To the extent a receiving party uses CONFIDENTIAL information with any Non-Public AI Tool, any output or learning from those tools shall be deemed CONFIDENTIAL information of the producing party. For these purposes:

- “AI Tool” means any model, software, system, technology, tool or similar that uses any artificial intelligence, natural language processing, deep learning, or machine learning algorithms to produce or predict outputs; including any that use computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.
- “Public AI Tool” means any AI Tool that is accessible to individuals or entities outside of a specific contractual agreement. Public AI Tools include but are not limited to AI Tools that have open access, provide broad non-exclusive benefits, or allow any user the benefit of knowledge accumulated from user interactions, prompts, and content.
- “Non-Public AI Tool” means any AI Tool where a party can control the retention of prompts and the learning or non-learning of the AI Tool, the party is contractually responsible for the use of AI Tool, and the AI Tool is not a Public AI Tool. A NonPublic AI Tool should have access restricted only to persons authorized under Paragraph 8.

17. Unless other arrangements are agreed upon in writing by the parties, within **thirty days** of the final determination of this action, each person or party who has received

CONFIDENTIAL information shall be obligated to return the CONFIDENTIAL information, including any copies, to the designating party, or the receiving party may elect to destroy the CONFIDENTIAL information, including any copies, and certify that it has been destroyed. Final determination of this action shall not be deemed to have occurred until the entry of final judgment herein and the completion of all appeals, including but not limited to any requests for discretionary review, or expiration of the time limits for seeking the same. The receiving party, however, need not destroy or return (a) any CONFIDENTIAL information that it is required by law to maintain or (b) one archival copy of all deposition transcripts and all materials filed with the Court, regardless of whether such materials (including exhibits and appendices) contain or refer to CONFIDENTIAL information. The archival copy shall be kept securely without general access and should be treated with the same protections the receiving party uses to maintain the confidentiality of its own information.

18. The termination of this action shall not relieve counsel or other persons obligated hereunder from their responsibility to maintain the confidentiality of CONFIDENTIAL information pursuant to this Protective Order. The Court will retain jurisdiction of enforcing this Protective Order once the case is closed.

19. Any request to restrict public access to materials designated as CONFIDENTIAL pursuant to this Protective Order must comply with the requirements of D.C.COLO.LCivR 7.2. The party seeking to restrict a document filed with the Court shall bear the burden of establishing that the document should be restricted.

20. This Protective Order may be modified by the Court at any time for good

cause shown following notice to all parties and an opportunity for them to be heard.

DATED: ____ of _____, 20_

BY THE COURT:

United States Magistrate Judge

ATTACHMENT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order dated in the case captioned *Amgen Inc., et al., v. Mizner, et al.*, 1:25-cv-3452-DDD-STV (D. Colo.), and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Colorado in matters relating to this Protective Order and understands that the terms of the Protective Order obligate him/her to use materials designated as Protected Material in accordance with the order solely for the purposes of the above-captioned action, and not to disclose any such Protected Material to any other person, firm, or concern, except in accordance with the provisions of the Protective Order.

The undersigned acknowledges that violation of the Protective Order may result in penalties from the court enforcing the Protective Order.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____

Signature: _____