

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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

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.

---

**UNOPPOSED MOTION TO RESTRICT DEFENDANTS' RESPONSE  
IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY  
INJUNCTION AND SPECIFIED EXHIBITS**

---

Pursuant to Local Rule 7.2(c), Defendants seek leave from this Court to restrict their Response in Opposition to Plaintiffs' Motion for Preliminary Injunction ("Response") and Exhibits 21, 24-26, 29, 30, and 47 attached thereto, under a Level 1 restriction, limiting access to the parties and the Court. In support, Defendants state as follows:

1. Pursuant to the Court's December 5, 2025, Order, Defendants' Response is due four weeks after the completion of expedited discovery (ECF 37). On March 11, 2026, the Court ordered expedited discovery to conclude on March 31, 2026 (ECF 52). Defendants' Response is thereby due on April 28, 2026.

2. To govern the exchange of confidential information during discovery, the Parties entered the Joint Protective Order (ECF 50).

3. On January 23, 2026, Plaintiffs and Defendants exchanged discovery responses, including documents designated by Plaintiffs as confidential pursuant to Paragraph 7 of the Joint Protective Order.

4. Pursuant to Paragraph 8 of the Joint Protective Order, only certain persons may view information designated as confidential, including the parties and their attorneys.

5. Pursuant to Paragraph 12 of the Joint Protective Order, depositions or portions thereof may be designated as confidential. Such designation can be made on the record or within thirty (30) days after notice by the court reporter of the completion of the transcript. All deposition testimony shall be treated as confidential until the thirty-day period has expired.

6. Pursuant to Paragraph 19 of the Joint Protective Order, “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.”

7. In presenting the Court with facts of the case and legal arguments in support of their Response, Defendants must provide the Court with information that Plaintiffs labeled confidential in discovery pursuant to the Joint Protective Order. Specifically, Defendants rely on proprietary drug pricing data Plaintiffs provided to the federal government as part of the Medicare Drug Price Negotiation Program (Ex. 26), distribution and management contracts between Plaintiffs and prescription drug supply chain entities (Ex. 21, 24), and detailed interrogatory responses and deposition

testimony from Plaintiffs and third-party wholesaler McKesson<sup>1</sup> about their prices and contracts (Ex. 25, 29, 30).

8. These facts and documents will be introduced into the record for the first time following expedited discovery related to Plaintiffs' Motion for Preliminary Injunction (ECF 18). Plaintiffs sought a similar Level 1 restriction for a declaration attached to its Motion for Preliminary Injunction, claiming such restriction was "necessary to protect business information that could harm Amgen's competitive standing." ECF 24, ¶ 5. "[A] party may overcome the presumption in favor of public access to judicial records by demonstrating the [portions of the record] contain sources of business information that might harm a litigant's competitive standing." *Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 847 F.3d 1221, 1246 (10th Cir. 2017) (citing *Deherrera v. Decker Truck Line, Inc.*, 820 F.3d 1147, 1162 n.8 (10th Cir. 2016)). At this stage of the proceedings, the public's interest in accessing the confidential information Defendants obtained from Plaintiffs during discovery does not outweigh the Parties', specifically Plaintiffs, privacy interest in this sensitive, competitive business information related to drug pricing and contract negotiations.

---

<sup>1</sup> Third-party McKesson's deposition was completed on March 20, 2026. The Parties received the deposition transcript on March 30, 2026. Amgen's deposition was completed on March 31, 2026. The parties received the deposition transcript on April 7, 2026. As of the due date of Defendants' Response on April 28, 2026, thirty days has not passed since the Parties received either of these deposition transcripts, and the Parties have not had the full opportunity to review and designate all or portions of the transcripts as confidential pursuant to Paragraph 12 of the Joint Protective Order. Defendants therefore seek to restrict the entirety of each deposition transcript (Ex. 29 and 30) for purposes of their Response.

9. Additionally, Defendants seek restriction of Exhibit 47. Exhibit 47 includes information that Plaintiffs confidentially submitted to the Board during its affordability review of Enbrel. The Board redacted this information from the public version of the Enbrel Affordability Review Report, *see* Ex. 32, pursuant to section 10-16-1406(5), C.R.S. Statute thereby prevents Defendants from disclosing the information that Plaintiffs labeled confidential for purposes of the affordability review. The Board could face a potential legal violation if it must produce this information publicly, thereby outweighing the public's interest in accessing the information.

10. There is no practicable alternative to restriction of the Response and Exhibits 21, 24-26, 29, 30, and 47. Defendants are unable to effectively litigate Plaintiffs' Motion for Preliminary Injunction and submit their Response without explicit reference to and discussion of this specifically identified confidential information. The confidential information is so integral to Defendants' Response that Defendants are unable to simply redact or summarize the information while still preserving the arguments in the Response. To ensure the most minimal restrictions, Defendants have requested only to restrict exhibits that contain the designated confidential information and that Defendants relied on for their arguments in their Response. Without the restriction, otherwise non-public information covered by the Joint Protective Order will be publicly disclosed.

11. Defendants have conferred with Plaintiffs' counsel, and counsel does not object to this motion to the extent Defendants' Response contains or references information that was designated confidential.<sup>2</sup>

12. For the foregoing reasons, Defendants respectfully move to restrict public access to their Response and attached Exhibits 21, 24-26, 29, 30, and 47, with a Level 1 restriction.

DATED at Denver, Colorado this 28<sup>th</sup> day of April, 2026.

PHILIP J. WEISER  
Attorney General

*s/ Sara Stultz*

---

SARA STULTZ, 54357\*  
PAWAN NELSON, 49462\*  
Senior Assistant Attorneys General  
NICHOLAS DEPETRO, 45287\*  
REBECCA WALKER, 55290\*  
Assistant Attorneys General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 8<sup>th</sup> Floor  
Denver, CO 80203  
720-508-6419 (Stultz)  
720-508-6578 (Nelson)  
720-508-6413 (DePetro)  
720-508-6394 (Walker)  
[Sara.Stultz@coag.gov](mailto:Sara.Stultz@coag.gov)  
[Pawan.Nelson@coag.gov](mailto:Pawan.Nelson@coag.gov)  
[Nick.DePetro@coag.gov](mailto:Nick.DePetro@coag.gov)  
[Rebecca.Walker@coag.gov](mailto:Rebecca.Walker@coag.gov)  
\* *Counsel of Record*

---

<sup>2</sup> Plaintiffs have designated the information contained in each of the restricted exhibits as confidential through either discovery or as part of the Board's affordability review for Enbrel.