

No. B296563

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION ONE**

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**AMGEN, INC.,**

*Plaintiff and Respondent,*

**v.**

**THE CALIFORNIA CORRECTIONAL HEALTH CARE  
SERVICES, AN AGENCY OF THE STATE OF CALIFORNIA,**

*Appellant.*

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Appeal from the Superior Court of County of Los Angeles

Case No. 18-STCP-03147

The Honorable Mitchell L. Beckloff

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**APPLICATION FOR LEAVE TO FILE AMICI CURIAE  
BRIEF; [PROPOSED] ORDER GRANTING LEAVE TO  
FILE; AND AMICI CURIAE BRIEF OF THE CHAMBER OF  
COMMERCE OF THE UNITED STATES OF AMERICA  
AND NATIONAL ASSOCIATION OF MANUFACTURERS  
IN SUPPORT OF RESPONDENT AMGEN, INC.**

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**TO BE FILED IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Court of Appeal Case            B296563  
Number: \_\_\_\_\_

Superior Court Case            18-STCP-03147  
Number: \_\_\_\_\_

Case Name: *Amgen, Inc. v. The California Correctional Health  
Care Services*  
\_\_\_\_\_

Please check the applicable box:

- ☒ There are no interested entities or parties to list in this  
Certificate per California Rules of Court, Rule 8.208(d)(3).
- ☐ Interested Entities or Parties are Listed Below:

Name of Interested Entity or Person	Nature of Interest
1.	
2.	

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**APPLICATION FOR LEAVE  
TO FILE AMICI CURIAE BRIEF**

The Chamber of Commerce of the United States of America (the “Chamber”) and the National Association of Manufacturers (“NAM”) request permission under California Rules of Court, Rule 8.200(c), to file the attached *amici curiae* brief in support of plaintiff and respondent Amgen, Inc.<sup>1</sup>

The Chamber is the world’s largest business federation. It directly represents 300,000 members and indirectly represents more than three million businesses, state and local chambers of commerce, and professional organizations. Thousands of the Chamber’s members are California businesses, and thousands more do business in the State. The Chamber regularly advocates for the interests of its members by filing *amicus curiae* briefs in cases involving issues of significance to the California business community.

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<sup>1</sup> No party or counsel for a party in the pending appeal authored this proposed brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than *amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, Rule 8.200(c)(3).)

NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all fifty states. Manufacturing employs more than twelve million men and women, contributes \$2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than two-thirds of all private-sector research and development in the nation. NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. NAM regularly files *amicus curiae* briefs in cases that raise issues important to manufacturers.

This appeal concerns whether, and under what circumstances, a trade secret owner may preclude the government from disclosing trade secret information in response to a California Public Records Act request. This issue is of extreme importance to businesses and manufacturers that invest resources in developing valuable technologies and know-how that benefit the public, and thus rely on robust trade secret protection. Affirming the trial court's sound decision would preserve these reliance interests, while reversing would expose trade secrets to public disclosure at



the whim of government officials simply because they have been provided to the government in the regulatory process. Such a result would strip businesses and manufacturers of their investments, discourage transparency with government officials, and ultimately deprive the public of the benefits of innovation.

For these reasons, and those more fully expressed in their brief, the Chamber and NAM respectfully request leave to file their *amici curiae* brief in support of Amgen.

DATED: September 25, 2019 Respectfully Submitted,

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of America and National  
Association of Manufacturers

**[PROPOSED] ORDER GRANTING  
LEAVE TO FILE AMICI CURIAE BRIEF**

On reviewing the Application to File *Amici Curie*'s Brief on behalf of The Chamber of Commerce of the United States of America (the "Chamber") and the National Association of Manufacturers ("NAM") under California Rules of Court, Rule 8.200(c), the attached *amici curiae* brief in support of plaintiff and respondent Amgen, Inc. may be filed by the Clerk of this Court.

DATED: \_\_\_\_\_, 2019

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Justice Frances Rothschild

## **INTRODUCTION**

Robust trade secret protection is necessary to the investment in developing new technologies and know-how that benefit the public. Recognizing this, the trial court enjoined the California Correctional Health Care Services (the “State”) from unilaterally disclosing pursuant to a Public Records Act (“PRA”) request Amgen’s confidential, trade secret pricing information that Amgen provided to the State solely to comply with Senate Bill 17 (“SB 17”). The trial court correctly relied on Government Code section 6254(k) and Evidence Code section 1060—the PRA exemption for privileged trade secret materials—and its decision should be affirmed.

The plain language of section 6254(k) and Evidence Code section 1060 establishes that a rights holder may preclude disclosure under the trade secret exemption where the rights holder claims the privilege by filing a reverse-PRA action, establishes that the information at issue is protectable as a trade secret, and shows that nondisclosure would not conceal fraud or work injustice. All three elements are met here, so the trial court properly enjoined the State from disclosing Amgen’s confidential pricing information.

The State argues that the trade secret exemption does not apply because SB 17 strips all pricing information of trade secret protection, but nothing in the text, structure, or purpose of SB 17 supports the State's strained interpretation. The State further argues that even if the trade secret exemption applies, it applies only where the rights holder "clearly shows" that nondisclosure is in the public interest. But the "clearly shows" requirement stems from an entirely separate provision of the Evidence Code, and nothing in Evidence Code section 1060 supports imposing such a requirement here.

Interpreting the trade secret exemption according to its plain language is not only correct, it is also good policy. The State's contrary interpretation would cause irreparable harm to businesses and manufacturers that rely on maintaining the secrecy of their trade secret information; discourage transparency between businesses and manufacturers, on the one hand, and regulators, on the other hand, to the detriment of the administrative state; and upend the incentives necessary to foster innovation, which ultimately harms the public. Accordingly, the trial court's decision should be affirmed.

## ARGUMENT

### **I. Trade Secrets Are Exempt From Disclosure Unless Nondisclosure Would Conceal Fraud or Work Injustice**

The California Public Records Act (“PRA”) was modeled after the federal Freedom of Information Act (“FOIA”) (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425), and the statutes share a common purpose—“to increase freedom of information by providing public access to information in the possession of public agencies” (*Nat’l Conference of Black Mayors v. Chico Comm. Publ’g, Inc.* (2018) 25 Cal.App.5th 570, 578 (*Nat’l Conference*)). Thus, “federal ‘legislative history and judicial construction of the FOIA’ may be used in construing California’s Act.” (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1017 (*City of San Jose*) [quoting *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338].) But as in all cases of statutory interpretation, where “the statute’s text evinces an unmistakable plain meaning,” the Court “need go no further.” (*Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 507–08; see also *Food Mktg. Inst. v. Argus Leader Media* (2019) 139 S. Ct. 2356, 2364 (*Food Mktg.*) [“judges must stop” where a statute’s text and structure “yields a clear answer”].)

The PRA “embodies a strong policy in favor of disclosure” (*Nat’l Conference, supra*, 25 Cal.App.5th at p. 579), but “the public’s right to disclosure of public records is not absolute” (*City of San Jose, supra*, 74 Cal.App.4th at p. 1017). Section 6254 “contains over two dozen express exemptions” (*Nat’l Conference, supra*, 25 Cal.App.5th at p. 579; Gov. Code § 6254), and section 6255 contains a “catch-all exception” applicable where the public interest served by nondisclosure “clearly outweighs the public interest served by disclosure” (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652 [quoting Gov. Code § 6255]).

This case concerns section 6254(k), which provides that “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege,” are exempt from disclosure under the PRA. (Gov. Code § 6254(k).) Evidence Code section 1060 is one such provision, and its terms are incorporated into section 6254(k). (*Uribe v. Howie* (1971) 19 Cal.App.3d 194, 206.) Section 1060 provides that “[i]f he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, *and to prevent another from disclosing it*, if the allowance of the privilege *will not*

*tend to conceal fraud or otherwise work injustice.”* (Evid. Code § 1060, emphasis added.)

Where, as here, a state agency threatens to disclose a trade secret pursuant to a PRA request, the rights holder may “claim[] the privilege,” and prevent disclosure, through a reverse-PRA action by filing a writ of mandate under Code of Civil Procedure section 1085. (See *Nat’l Conference, supra*, 25 Cal.App.5th at pp. 575 n.2, 580; *Pasadena Police Officers Ass’n v. Superior Court* (2015) 240 Cal.App.4th 268, 274–75.) And if the rights holder establishes during those proceedings that the information the state agency seeks to disclose is subject to trade secret protection, and that nondisclosure would not conceal fraud or work injustice, then the rights holder may “prevent [the state agency] from disclosing” the trade secret. (Evid. Code §§ 1060, 1061; see also *McDonnell Douglas Corp. v. U.S. Dep’t of the Air Force* (D.C. Cir. 2004) 375 F.3d 1182, 1185–86 (*McDonnell Douglas*) [“whenever a party succeeds in demonstrating that its materials fall within [FOIA’s trade secret exemption], the government is precluded from releasing the information”].) California courts have held that nondisclosure would tend to conceal fraud or work injustice where the party invokes the privilege to cover up its wrongful conduct.

(E.g., *State Farm Fire & Cas. Co. v. Superior Court* (1997) 54 Cal.App.4th 625, 634–35, 647–49, 651 [intentional spoliation of evidence]; *Agric. Labor Relations Bd. v. Richard A. Glass Co.* (1985) 175 Cal.App.3d 703, 708–11, 715 [unlawful labor practices].)

Thus, under the plain language of section 6254(k) and Evidence Code section 1060, once a rights holder claims the privilege through a reverse-PRA action to prevent disclosure of trade secret information, and establishes that the information is protectable as a trade secret, the rights holder may *prevent* the state agency from disclosing the information, unless there is evidence that the rights holder invoked the privilege to shield its wrongful conduct from coming to light. (See *McDonnell Douglas, supra*, 375 F.3d at pp. 1185–86.)

Ignoring the plain language of the relevant provisions, the State argues that (A) SB 17 strips all pricing information of trade secret protection, and (B) the trade secret exemption applies only where the rights holder makes a clear showing that nondisclosure is in the public interest. Each argument lacks merit.



**A. SB 17 Does Not Strip Pricing Information of Trade Secret Protection**

Pricing information is subject to trade secret protection if it “[d]erives independent economic value ... from not being generally known to the public,” and “[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” (Civ. Code § 3426.1(d); see *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1455–56 (*Whyte*).) The State argues that even if the pricing information in Amgen’s notice satisfies both requirements, the trade secret exemption is unavailable to Amgen and all other prescription drug manufacturers because SB 17 strips all pricing information of trade secret protection. That is wrong, and contrary to the text, structure, and purpose of SB 17. (See *Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1040 [“statutory language is generally the most reliable indicator of [legislative] intent,” and courts should “constru[e] [the statute’s] words in context and harmoniz[e] its various parts”].)

1. Nothing in SB 17’s text deprives pricing information of trade secret protection. SB 17 requires manufacturers of certain prescription drugs to provide certain purchasers advance notice if a planned increase in a drug’s “wholesale acquisition cost”

(“WAC”), together with any “cumulative increases that occurred within the previous two calendar years,” exceeds 16 percent. (Health & Safety Code § 127677(a).) The Notice must include “the date of the increase, the current [WAC] of the prescription drug, and the dollar amount of the future increase in the [WAC] of the prescription drug.” (Health & Safety Code § 127677(c)(1).)

The State argues that SB 17 strips pricing information of trade secret protection because it does not expressly preclude disclosure. But that is backwards, as the sole case the State cites in support establishes that the PRA’s default disclosure rules and exemptions apply absent an *express* statement to the contrary—a statement that is wholly lacking in SB 17.

In *State Farm Mutual Automobile Insurance Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043–44 (*Garamendi*), the California Supreme Court held that the PRA’s trade secret exemption did not prevent disclosure of certain financial information submitted to the Insurance Commissioner, because the relevant statute’s “first clause broadly requires public disclosure of ‘[a]ll information provided to the commissioner,’” and the statute’s second clause—which stated that Government Code

section 6254(d) does not apply—merely “make[s] clear” that the listed exemptions “do not apply.”

On the contrary, nothing in SB 17 expressly provides that “all information” submitted pursuant to it “shall be available for public inspection.” (*Garamendi, supra*, 32 Cal.4th at p. 1043.) In fact, SB 17 makes no mention of the PRA whatsoever. Thus, under the plain language of SB 17, the PRA’s default rules and exemptions continue to apply.

Insisting that the trade secret exemption does not apply, the State argues that nothing in SB 17 obligates recipients to keep the pricing information in the notices confidential. (AOB 11, 28–29.) But the critical question is not whether *statutory recipients* are *obligated* to keep the information confidential; rather, it is whether the *rights holder* undertakes “[r]easonable efforts” to maintain the information’s secrecy (*Whyte, supra*, 101 Cal.App.4th at p. 1454, emphasis added) despite “limited disclosure to noncompetitors” (*Masonite Corp. v. Cty. of Mendocino Air Quality Mgmt. Dist.* (1996) 42 Cal.App.4th 436, 451 n.11). Filing a reverse-PRA action to prevent widespread disclosure of trade secret information is certainly “reasonable.” (Civ. Code § 3426.1(d)(2); see *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 992.)

2. The structure of SB 17 demonstrates that the Legislature did not intend to deprive prescription drug manufacturers of their valuable trade secret information. Health & Safety Code section 127679 requires drug manufacturers to provide certain information for publication on the Office of Statewide Health Planning and Development's website, but subdivision (b) expressly permits manufacturers to "limit the information" they provide to "that which is ... in the public domain or publicly available." (Health & Safety Code § 127679(b).) Thus, even where SB 17 requires disclosure of a manufacturer's information, it limits the disclosure to information that is already in the public domain. The State invokes the principle of *expressio unius est exclusio alterius*, but that canon is inapplicable because SB 17's text "is not ambiguous" and does not expressly override the PRA's default disclosure rules and exemptions. (*Garamendi, supra*, 32 Cal.4th at p. 1046.)

3. The purpose of SB 17 confirms that the Legislature did not intend to deprive drug manufacturers of their valuable investments. *Garamendi* is again instructive. There, the provision at issue required the Insurance Commissioner to

approve all insurance rate increases, and “established a public hearing process for reviewing insurance rate changes” for the express purpose of “fostering consumer participation in the rate-setting process.” (*Garamendi, supra*, 32 Cal.4th at pp. 1035, 1045.) The Court held that “giving the public access to all information provided to the Commissioner” “comports with the purpose behind” the statute. (*Id.* at p. 1045.)

But here, SB 17 does not involve the public in setting prescription drug prices. Nor does the State contend that it must be able to disclose a manufacturer’s pricing information to “provide accountability to the state for prescription drug pricing.” (Health & Safety § 127676(b)(2).) On the contrary, the express “intent” of SB 17 is “to permit a manufacturer of a prescription drug to *voluntarily* make pricing decisions regarding a prescription drug.” (*Id.* § 127676(b)(1), emphasis added.) Thus, SB 17’s purpose, like its text and structure, confirm that the PRA’s default rules and exemptions apply.

**B. A Rights Holder May Invoke The Privilege Without Showing That Disclosure Is Against The Public Interest**

Relying on *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 777 (*San Gabriel*), the State next argues that,

even if SB 17 does not strip pricing information of trade secret protection, the PRA's trade secret exemption applies only where the rights holder makes a "clear showing that disclosure is against the public's interest." (AOB 33–35.) But the "clear showing" requirement applies *only* where a party invokes the privilege under Evidence Code section 1040 for "official information."

In *San Gabriel, supra*, a newspaper filed a writ of mandamus to compel disclosure of a disposal company's financial information in the city's possession. (143 Cal.App.3d at p. 767.) The Court of Appeal held that the information was not exempt from disclosure under section 6254(k), because there had been no "clear showing that disclosure is against the public's interest." (*Id.* at 777.) But in adopting that requirement, the Court relied *exclusively* on Evidence Code section 1040—which is also incorporated into section 6254(k), and which expressly requires a showing that "[d]isclosure of the information is against the public interest." (*Id.* at pp. 775 n.10, 776; see also *Uribe, supra*, 19 Cal.App.3d at p. 213 n.2 [similarly limiting "clear showing" requirement to claimed exemption under Evidence Code section 1040].)

Nothing in the text of Evidence Code section 1060 requires a rights holder invoking the trade secret exemption to clearly show

that disclosure is against the public interest. And absent an express requirement that a rights holder clearly show disclosure is against the public interest, courts have no authority to “engraft[]” onto section 6254(k) or Evidence Code section 1060 such a requirement. (See *Food Mktg.*, *supra*, 139 S. Ct. at pp. 2361, 2364–66 [party invoking FOIA exemption for “trade secrets” and confidential “commercial or financial information” need not show that disclosure would result in “competitive harm,” as that phrase appears nowhere in “the terms of the statute”].) Indeed, just as courts “cannot properly *expand* [the trade secret exemption] beyond what its terms permit,” courts “cannot arbitrarily *constrict* it either by adding limitations found nowhere in its terms.” (*Food Mktg.*, *supra*, 139 S. Ct. at p. 2366.)

The “clear showing” requirement adopted in *San Gabriel* applies *only* where a party invokes Evidence Code section 1040—not where, as here, a rights holder invokes Evidence Code section 1060. As explained above, all a party invoking the trade secret exemption must show is that the information sought to be protected is a trade secret, and that nondisclosure would not conceal fraud or work injustice.

## **II. The Trade Secrets Exemption Protects The Legitimate Interests of Businesses, Administrative Agencies, and The Public**

Sound policy confirms that a plain language reading of the trade secret exemption is correct. Under the State's atextual interpretation, however, a competitor could obtain a rights holder's trade secret information through a PRA request, even though the competitor would be liable in tort had it obtained the secrets without the rights holder's permission. Adopting the State's view would harm businesses, the administrative state, and the public.

1. Protecting the confidentiality of trade secrets is essential to commerce and the business and manufacturing communities. "[P]rivate parties invest extensive sums of money" in research and development (*DVD Copy Control Ass'n, Inc. v. Bunner* (2003) 31 Cal.4th 864, 880 (*Bunner*)), and "the large and growing importance of trade secrets to the U.S. economy" is well established (David S. Almeling, *Four Reasons to Enact a Federal Trade Secrets Act*, 19 Fordham Intell. Prop., Media & Ent. L.J. 769, 783 (2009)).

But "once a trade secret is disclosed, especially to a competitor," the cat is out of the bag—"the value of his property right is destroyed," "the competitive advantage it affords the owner" is extinguished (S. Shawn Stephens, *Is the "Good Cause"*



*Standard Inadequate to Protect Trade Secrets in Discovery Disputes?*, 52-APR Hous. Law. 20, 20 (2015)), and the “trade secret status is lost forever with irreparable harm” (*Wallis v. PHL Assocs., Inc.* (2008) 168 Cal.App.4th 882, 888; Catherine Holland et al., *Intellectual Property: Patents, Trademarks, Copyrights and Trade Secrets* 2015 (Jere L. Calmes ed., Entrepreneur Press, 2007) [“Once disclosure of a trade secret is made, it cannot be unmade; the ‘cat [is] out of the bag.’”]).

Public disclosure of trade secrets in response to a PRA request causes the same injury as unlawful misappropriation by a competitor—except that a rights holder has no recourse against the State to recoup the substantial investment that has been lost. The Legislature seemingly recognized as much in adopting the trade secret exemption in the first place, and its decision to protect trade secrets in this manner must be respected, absent an express legislative statement to the contrary.

The State argues that neither the business community nor any individual manufacturer would be harmed, because each manufacturer would have access to the trade secret information of the other. (AOB 45–46.) But under the State’s rationale, there would be no need for trade secret protections to exist at all, which

is obviously wrong. Rather, sound public policy and experience confirm that innovators should be rewarded for their investments, while free-riders should be discouraged from piggybacking on the investments of others. (See *Bunner, supra*, 31 Cal.4th at p. 880 [a trade secret owner should be permitted to “reap the fruits of its labor”].)

2. In many (if not most) sectors, businesses interact regularly with administrative agencies on matters touching the full scope of their operations, and in such interactions they may be asked to disclose trade secrets, as Amgen was here. But adopting the State’s interpretation would hinder its ability to carry out its police powers and “to provide accountability ... for prescription drug pricing.” (Health & Safety Code § 127676(b)(1).) Indeed, the State’s interpretation would produce a chilling effect that would discourage business from sharing sensitive information with regulators out of reasonable fear that the information could become public through PRA requests. This, in turn, would undermine, rather than advance, the interests of administrative agencies, yet that is precisely the result that the State’s interpretation invites. California law should foster a cooperative,

not confrontational, approach by administrative agencies to the businesses they regulate. An active and open exchange between the two redounds to the benefit of both, so that companies can engage with the government on matters such as licensing, zoning, and taxation, and so that agencies can be trusted not to disclose on a whim the trade secrets shared in confidence with regulators.

3. “Trade secret law promotes the sharing of knowledge[] and the efficient operation of industry” (*Kewanee Oil Co. v. Bicron Corp.* (1974) 416 U.S. 470, 493 (*Kewanee*)), and “maintains important standards of commercial ethics,” by “promot[ing] and reward[ing] innovation and technological development” (*Bunner, supra*, 31 Cal.4th at p. 878; see also *id.* at p. 880 [“trade secret law acts as an incentive for investment in innovation”]; Nancy J. White & Kenneth J. Sanney, *Managing the Risks of FOIA-able Trade Secrets*, 14 Wake Forest J. Bus. & Intell. Prop. L. 316, 326 (2014) [trade secret law “advance[es] innovation by incentivizing certain intellectual endeavors”]). For these reasons, trade secret law is “universally recognized as *necessary* to foster innovation.” (Arthur R. Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427, 501 (1991), emphasis added.)

Adopting the State's interpretation, and permitting the State to unilaterally determine when a rights holder's trade secret information may be disclosed to the public, would upend these incentives and discourage innovators from investing substantial resources, thereby depriving the public of "technological and scientific advancement [that would otherwise benefit] the Nation." (*Kewanee, supra*, 416 U.S. at p. 493.) Indeed, for businesses and innovators, the risk that their trade secret information will be disclosed by a government actor that has no interest in maintaining its secrecy is simply too great to justify the upfront investment necessary to develop the trade secret in the first place. (See Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. at 473 ["the risk of disclosure of [trade secret] property undermines a business's willingness to incur the often enormous expenses of developing information-based assets"].)

By contrast, a plain language interpretation of the PRA's trade secret exemption would provide rights holders with reasonable assurance that their trade secret information will be protected, and encourage businesses to invest in developing new technologies that benefit the public. Maintaining the proper

balance of incentives is more important than ever in today's information age: "As the United States continues its shift to a knowledge- and service-based economy, the strength and competitiveness of domestic firms increasingly depends upon their know-how and intangible assets." (John R. Thomas, Cong. Research Serv., R41391, The Role of Trade Secrets in Innovation Policy 2 (2010).) Robust trade secret protection is therefore essential.

### **CONCLUSION**

This Court should affirm the trial court's decision.

DATED: September 25, 2019 Respectfully Submitted,

GIBSON, DUNN & CRUTCHER  
LLP

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**CERTIFICATION OF WORD COUNT**

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; [PROPOSED] ORDER GRANTING LEAVE TO FILE; AND AMICI CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF RESPONDENT AMGEN, INC. contains 4,153 words, excluding the tables and this certificate, according to the word count generated by the computer program used to produce this document.

Dated: September 25, 2019

/s/ Blaine H. Evanson

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of Commerce of the United States  
of America and National  
Association of Manufacturers

## **PROOF OF SERVICE**

I, Marjorie Peck, declare as follows. I am employed in the County of Orange, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 3161 Michelson Drive, Irvine, CA 92612-4412, in said County and State. On September 25, 2019, I served the following document(s)

**APPLICATION FOR LEAVE TO FILE AMICI  
CURIAE BRIEF; [PROPOSED] ORDER  
GRANTING LEAVE TO FILE; AND AMICI  
CURIAE BRIEF OF THE CHAMBER OF  
COMMERCE OF THE UNITED STATES OF  
AMERICA AND NATIONAL ASSOCIATION OF  
MANUFACTURERS IN SUPPORT OF  
RESPONDENT AMGEN, INC.**

on the parties stated below, by the following means of service:

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**By U.S. Mail**


The Honorable Mitchell L. Beckloff  
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Executed on September 25, 2019.

  
\_\_\_\_\_  
Marjorie Peck