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Federal Trade Commission v. Amgen, Inc., et al., No. 23-cv-03053 (N.D. Ill.)

Dear Judge Kness:

This Firm represents Amgen Inc. in the above-captioned case. On behalf of all parties to this matter, I write to request a modest adjustment to the current preliminary injunction hearing schedule, which is set to begin on Monday, September 11, 2023 and conclude by Friday, September 22, 2023.

At the initial case management conference, my client Amgen and Horizon asked the Court to hold 10 days for the preliminary injunction hearing in this matter. Although Plaintiff Federal Trade Commission (FTC) represented that it thought the hearing could be conducted in a shorter time period, Plaintiff requested equal time of whatever amount the Court set aside for the hearing. The Court then set the case down for a hearing beginning on September 11, 2023, allowing for the possibility of 10 trial days.

Thereafter, the United States Court of Appeals for the Fifth Circuit scheduled oral argument in *Illumina, Inc. v. Federal Trade Commission*, No. 23-60167, for September 12, 2023, at 9:00 am in New Orleans, Louisiana. The Fifth Circuit had previously ruled that the case, which is relevant to this case and cited in Plaintiffs' motion papers, be expedited. The parties to the *Illumina* case are the FTC, Illumina, Inc. and Grail, Inc. I am lead counsel for Illumina, Inc. and will be arguing the case in the Fifth Circuit for all petitioners on all issues (antitrust and constitutional).

Upon being notified of the oral argument date by the Fifth Circuit, I explored with Fifth Circuit court personnel and appellate counsel for the FTC whether the oral argument could be moved to the previous week, which was the only realistic possibility given the expedited schedule. I was informed by court staff it would be nearly impossible. But I nonetheless explored with counsel for the FTC whether the argument might be moved to the prior week. Unfortunately, the FTC was unable to move the argument to the prior week.

The parties to this case have met and conferred about whether the schedule here could be modified to address the Illumina scheduling conflict, subject to this Court's approval. The parties now expect that the preliminary injunction hearing here can be concluded in no more than nine days, so that if the Court is agreeable, the parties could begin the evidentiary hearing on Monday, September 11 as planned, be in recess on Tuesday, September 12 (the day of the Fifth Circuit argument) and resume the hearing on Wednesday, September 13. (If as we get

closer to trial it appears that only eight trial days will be required, the parties may propose simply that the hearing begin on September 13, 2023.)

For the foregoing reasons, we respectfully request that opening statements take place on Monday, September 11, the hearing be adjourned on Tuesday, September 12, and the hearing resume on Wednesday, September 13. As we get closer to the hearing, the parties propose to raise with this Court whether it will be possible to begin witness testimony on September 11 or whether witness testimony should be deferred to September 13. In any case, Plaintiffs and Defendants would continue to have equal time at the evidentiary hearing. All parties—Amgen, Horizon, the FTC and the States—are amenable to this change.

Thank you for your consideration of and attention to this matter. A proposed order reflecting the aforementioned schedule will be submitted forthwith.

Respectfully submitted,

/s/ David R. Marriott

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Honorable John F. Kness
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Copy to:

All counsel of record (via ECF)