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ASSIGNED COURT 42

VENTURA  
SUPERIOR COURT  
**FILED**

OCT 09 2009

By: MICHAEL D. PLANET  
Deputy Clerk  
M. SOFO Deputy

6 Attorneys for Plaintiff Shawn O'Brien

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA**  
9 **COUNTY GOVERNMENT CENTER**

10 SHAWN O'BRIEN,

11 Plaintiff,

12 vs.

13 AMGEN, INC., A Corporation and DOES 1 )  
14 through 50, inclusive, )

15 Defendants. )

CASE NO. 56-2009-00359610-CU-WT-VTA

[FILED VIA FAX FILING]

COMPLAINT FOR:

1. DECLARATORY RELIEF;
2. RETALIATION IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12653 (B);
3. RETALIATION IN VIOLATION OF 31 U.S.C. §3730(h)
4. UNFAIR COMPETITION IN VIOLATION OF BUSINESS & PROFESSIONS CODE §17200 FOR RESTITUTION AND INJUNCTIVE RELIEF;
5. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; AND

DEMAND FOR JURY TRIAL

23 **GENERAL ALLEGATIONS**

24 Introduction

25 1. Plaintiff Shawn O'Brien (hereinafter "Plaintiff" or "O'Brien") files this Complaint for

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 28 1. DECLARATORY RELIEF;  
 2. RETALIATION IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12653 (B);  
 3. RETALIATION IN VIOLATION OF 31 U.S.C. §3730(h)  
 4. UNFAIR COMPETITION IN VIOLATION OF BUSINESS & PROFESSIONS CODE §17200 FOR RESTITUTION AND INJUNCTIVE RELIEF;  
 5. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; AND  
 DEMAND FOR JURY TRIAL

1 Damages related to Plaintiff O'Brien's former employment with Defendant Amgen, Inc. (hereinafter  
2 "Defendant" or "Amgen"). Plaintiff O'Brien brings causes of action for wrongful termination in  
3 violation of public policy, and other causes of action against Amgen and Does 1 through 50. Plaintiff  
4 also brings this Complaint for declaratory relief against Amgen and Does 1 through 50 to enjoin  
5 enforcement of an unconscionable arbitration agreement.

6 **Parties and Jurisdiction**

7 2. At all times material to this complaint, Plaintiff is informed and believes Defendant  
8 Amgen was and is a Delaware corporation having its principle place of business in the County of  
9 Ventura.

10 3. Defendant Does 1 through 50 are sued under fictitious names pursuant to California  
11 Code of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each  
12 defendant sued under such fictitious names is in some manner responsible for the wrongs and  
13 damages as alleged below, and in so acting was functioning as the agent, servant, manager, supervisor,  
14 and/or employee of Amgen, and in doing the actions mentioned below was acting with the course and  
15 scope of his or her authority as such agent, servant, manager, supervisor, and/or employee with the  
16 permission and consent of the Defendant Amgen.

17 4. This Court is the proper court and this action is properly filed in Ventura County and  
18 in this judicial district because (a) Defendant Amgen maintains its principal place of business and  
19 transacts business in Ventura County; (b) contracts of employment between Plaintiff and Amgen were  
20 made in Ventura County; (c) work relevant to this action was performed in whole or primarily in  
21 Ventura County; and (d) material transactions between Plaintiff and Defendants took place within  
22 Ventura County.

23 5. Plaintiff is a former exempt employee of Defendant Amgen and a resident of Summit  
24 County, Utah.

25 6. At all relevant times alleged herein Plaintiff was employed by Defendant Amgen under

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1 an employment agreement that was partly written, partly oral and partly implied.

2 7. As a direct and proximate result of the unlawful acts of Defendants, Plaintiff has  
3 suffered and continues to suffer from loss of earnings and other damages in amounts not yet  
4 ascertained, but subject to proof at trial.

5 8. Plaintiff is informed and believes, and thereon alleges, that Defendant Amgen engaged  
6 in malice, fraud and/or oppression in its actions against Plaintiff.

7 **Facts**

8 9. Plaintiff O'Brien worked for Amgen in various capacities and was last employed as  
9 a Senior Project Manager, in the Ongoing Change Program. The fourteen months prior to his  
10 termination, Plaintiff worked primarily on projects responsible for improving Amgen's compliance  
11 processes with high inherent risk to public safety, major criminal and civil liability, or both within  
12 Amgen's Manufacturing and Distribution, Product Development, and Healthcare and competition  
13 business activities.

14 10. On or about April 2007, Amgen's Board of Director's Corporate Responsibility and  
15 Compliance Committee met to review a compliance assessment of Amgen's Manufacturing processes.  
16 In the assessment, Amgen's processes for meeting compliance obligations related to Post-Marketing  
17 Product Complaints were flagged as a potential issue for Amgen. On or about June 2007, Plaintiff was  
18 transferred to a new project working with the Person Responsible for Amgen's Post-marketing  
19 Product Complaints processes.

20 11. During the project Plaintiff began to uncover facts that Amgen was violating the  
21 Federal Governments False Claim Act (FCA) by making Implied and Expressed False Certification  
22 Claims in violation of its obligations under:

- 23 1. Federal Food, Drug, and Cosmetic Act (FD&A Act) Chapter V, Part A,
- 24 Sections 505 and 505-1;
- 25 2. Title 21 U.S. Code Section Numbers (USCS) 355 and 355-1; and

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1 3. Title 21 Code of Federal Regulations (CFR) Parts 601, 211, 600 and possibly  
2 Parts 310, 606, 820.

3 Plaintiff uncovered facts that Amgen was not adequately or consistently identifying  
4 phone calls or mail related to Post-Marketing Adverse Events or Product Complaints. It appeared  
5 Amgen was under reporting Post-Marketing Adverse Event data to the FDA for every product they  
6 were marketing. Plaintiff informed his managers of the work Plaintiff was doing and the seriousness  
7 of the issues, however they would not take any action or offer any support.

8 In late August, 2007, Plaintiff met with an Amgen Senior Executive/Corporate Officer,  
9 to inform him that "Amgen's systems and process were inadequate for meeting CFR 211.198 or  
10 600.80." In early September, Plaintiff's managers instructed him to "stop all work" and not discuss  
11 the issues any further with anyone.

12 Approximately 4 weeks later, October 10, 2007, Plaintiff's manager informed him that  
13 he was being terminated as part of Amgen's October 12, 2007 Reduction In Force (RIF).

14 12. O'Brien alleges that his termination was motivated by his reporting of ethical and legal  
15 violations and that therefore, his termination was in violation of public policy.

16 **FIRST CAUSE OF ACTION**  
17 **FOR DECLARATORY RELIEF**

18 13. As a separate and distinct cause of action, Plaintiff complains and realleges all the  
19 allegations contained in this complaint, and incorporates each by reference into this cause of action  
20 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of  
21 action. This cause of action is brought against Defendants Amgen and Does 1 through 10.

22 14. Plaintiff O'Brien was offered employment with defendant on February 28, 2003 which  
23 was conditioned upon, inter alia, his accepting an agreement to arbitrate claims. His anticipated start  
24 date was March 24<sup>th</sup> or 31<sup>st</sup> 2003. Plaintiff O'Brien was forced to sign a mandatory arbitration  
25 contract of adhesion. This contract was signed on March 7, 2003 the same date that he accepted

1 Amgen's offer of employment.

2 15. This arbitration agreement is properly interpreted based upon the California Arbitration  
3 Act as well as California contract law that has been extensively commented upon in and since  
4 *Armendariz v. Foundation Health Psychare Services, Inc.* (200) 24 Cal.4th 83.

5 16. Plaintiff maintains by and through this cause of action that the mandatory arbitration  
6 agreement that he was forced to signed and which, to plaintiff's knowledge all Amgen employees are  
7 forced to sign, was and is unconscionable and, therefore, unenforceable.

8 17. Amgen's mandatory arbitration agreement signed by O'Brien and other Amgen current  
9 and former employees was signed as required by Amgen as a condition of employment and is, thus,  
10 procedurally unconscionable.

11 18. Amgen's mandatory arbitration contract of adhesion is substantively unconscionable  
12 under California law.

13 19. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination  
14 of his rights and duties, and a declaration that the mandatory arbitration contract of adhesion is  
15 unconscionable and, therefore unenforceable by Amgen and Doe Defendants 1 through 10 in all  
16 circumstances.

17 20. A judicial declaration is necessary and appropriate at this time such that Amgen may  
18 also be aware of the limits of its own rights and duties under its mandatory arbitration contract of  
19 adhesion as to Plaintiff and all other employees of Amgen. Presumably, should this mandatory  
20 arbitration contract of adhesion be declared unconscionable in these circumstances, it should further  
21 be unconscionable as applied against all other current and former employees of Amgen.

22 21. A judicial declaration is necessary and appropriate at this time such that Amgen may  
23 also be aware of the limits of its own rights and duties under its mandatory arbitration contract of  
24 adhesion as to Plaintiff and all other employees of Amgen. Presumably, should this mandatory  
25 arbitration contract of adhesion be declared unconscionable in these circumstances, it should further

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1 be unconscionable as applied against all other current and former employees of Amgen.

2 22. Plaintiff is not seeking to avoid the contract to arbitrate if that agreement is not subject  
3 to rescission or is otherwise unenforceable. If this Court finds that Amgen's mandatory arbitration  
4 contract of adhesion is not unconscionable and can be enforced, then Plaintiff seeks an order  
5 compelling arbitration and the arbitration of all claims contained in this Complaint herein. If,  
6 however, this Court finds that the agreement to arbitrate is void and/or unenforceable, Plaintiff seeks  
7 a declaration that he is entitled to proceed in superior court against Defendant Amgen and Doe  
8 Defendants 11 through 40 as to his other Causes of Action as stated in this Complaint.

9 WHEREFORE, Plaintiff requests relief as hereafter provided.

10 **SECOND CAUSE OF ACTION**  
11 **RETALIATION FOR WHISTLE BLOWER ACTIVITIES IN VIOLATION OF**  
12 **CALIFORNIA GOVERNMENT CODE §12653 (B)**

13 23. As a separate and distinct cause of action, Plaintiff complains and realleges all the  
14 allegations contained in this Complaint, and incorporates each by reference into this cause of action  
15 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of  
16 action. This cause of action is brought against Defendant Amgen and Does 11 through 20.

17 24. As a result of Plaintiff's ongoing investigation he had reasonable cause to believe that  
18 the information he disclosed to his supervisors reflected fraudulent claims to both federal and  
19 California state government relating to Amgen's sale of pharmaceuticals to these governmental  
20 agencies or the reimbursement of health care providers for the sale of these pharmaceutical products  
21 to patients. Plaintiff was subject to retaliation for investigating and taking actions to disclose this  
22 information to Amgen, including advising Amgen it may lose federal contracts and be prevented from  
23 receiving federal contracts or participating in government sponsored programs, due to its failure  
24 systemically to meet compliance with Amgen's obligations under 21 CFR 211.198 and 600.80.

25 25. Plaintiff was subjected to retaliation in violation of Government Code 12653(b) by  
26 Defendant for his disclosing what Plaintiff in good faith believed to be violations of state or federal

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- 27 **COMPLAINT FOR:**  
 28 **1. DECLARATORY RELIEF;**  
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1 statutes or regulations by Amgen and Amgen's executive management staff.

2 26. Plaintiff did in fact suffer adverse employment actions up to and including his  
3 termination by Amgen in retaliation for Plaintiff's disclosures.

4 27. As a proximate result of Defendants' retaliation against Plaintiff in violation of  
5 Government Code 12653(b), Plaintiff has sustained and continues to sustain substantial losses in  
6 earnings and other employment benefits.

7 28. As a proximate result of Defendants' retaliation against Plaintiff in violation of  
8 Government Code 12653(b), Plaintiff has suffered and continues to suffer general damages including  
9 mental and physical pain and anguish, in a sum according to proof.

10 29. Plaintiff is entitled, per Government Code 12653(b) to civil penalties, attorney fees and  
11 costs of litigation.

12 30. Plaintiff is informed and believes and herein alleges that the aforesaid acts directed  
13 toward him were carried out with a conscious disregard of Plaintiff's right to be free from such illegal  
14 behavior, such as to constitute oppression, fraud, or malice pursuant to California Civil Code §3294  
15 and to Government Code 12653(c) entitling Plaintiff to punitive damages in an amount appropriate  
16 to punish and set an example of Defendants.

17 WHEREFORE, Plaintiff requests relief as hereafter provided.

18 **THIRD CAUSE OF ACTION**  
19 **RETALIATION FOR WHISTLE BLOWER ACTIVITIES**  
20 **IN VIOLATION OF 31 U.S.C. 3730 (h)**

21 31. As a separate and distinct cause of action, Plaintiff complains and realleges all the  
22 allegations contained in this Complaint, and incorporates each by reference into this cause of action  
23 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of  
24 action. This cause of action is brought against Defendant Amgen and Does 11 through 20.

25 32. As a result of plaintiff's ongoing investigation he had reasonable cause to believe that  
26 the information he disclosed to his supervisors reflected fraudulent claims to both federal and

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27 COMPLAINT FOR:  
28 1. DECLARATORY RELIEF;  
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1 California state government relating to Amgen's sale of pharmaceuticals to these governmental  
 2 agencies or the reimbursement of health care providers for the sale of these pharmaceutical products  
 3 to patients. Plaintiff was subject to retaliation for investigating and taking actions to disclose this  
 4 information to Amgen, including advising Amgen it may lose federal contracts and be prevented from  
 5 receiving federal contracts or participating in government sponsored programs, due to its failure  
 6 systemically to meet compliance with Amgen's obligations under 21 CFR 211.198 and 600.80

7 33. Plaintiff was subjected to retaliation in violation of 31 U.S.C. 3730 (h) by Defendant  
 8 for his disclosing what Plaintiff in good faith believed to be violations of state or federal statutes or  
 9 regulations by Amgen and Amgen's executive management staff.

10 34. Plaintiff did in fact suffer adverse employment actions up to and including his  
 11 termination by Amgen in retaliation for Plaintiff's disclosures.

12 35. As a proximate result of Defendants' retaliation against Plaintiff in violation of 31  
 13 U.S.C. 3730 (h), Plaintiff has sustained and continues to sustain substantial losses in earnings and  
 14 other employment benefits.

15 36. As a proximate result of Defendants' retaliation against Plaintiff in violation of 31  
 16 U.S.C. 3730 (h), Plaintiff has suffered and continues to suffer general damages including mental and  
 17 physical pain and anguish, in a sum according to proof.

18 37. Plaintiff is entitled, per Government Code 31 U.S.C. 3730 (h), to civil penalties,  
 19 attorney fees and costs of litigation.

20 38. Plaintiff is informed and believes and herein alleges that the aforesaid acts directed  
 21 toward him were carried out with a conscious disregard of Plaintiff's right to be free from such illegal  
 22 behavior, such as to constitute oppression, fraud, or malice pursuant to California Civil Code §3294  
 23 and to 31 U.S.C. 3730 (h) entitling Plaintiff to punitive damages in an amount appropriate to punish  
 24 and set an example of Defendants.

25 WHEREFORE, Plaintiff requests relief as hereafter provided.

27 **COMPLAINT FOR:**  
 28 **1. DECLARATORY RELIEF;**  
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**FOURTH CAUSE OF ACTION  
VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW  
BUSINESS AND PROFESSIONS CODE §17200, ET SEQ.**

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39. As a separate and distinct cause of action, Plaintiff complains and realleges all the allegations contained in this Complaint, and incorporates each by referenced into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action. This cause of action is brought against Defendant Amgen and Does 21 through 30.

40. Business and Professions Code §17200 et seq. Defines unfair competition to include any "unfair," "unlawful" or "deceptive" business practice. California's Unfair Competition Law also provides for injunctive relief and restitution for violations.

41. Defendants have committed numerous unfair, unlawful, or deceptive business practices described herein and these practices have worked to the detriment of Plaintiff and others. Defendants have benefitted financially from these unlawful and unfair practices.

42. Plaintiff is informed and believes and thereon alleges that Defendants continue to engage in the practices described herein and is continuing and will continue to benefit financially from these unlawful and unfair practices unless enjoined by this Court from doing so.

43. As a proximate result of Defendants' actions, Plaintiff has suffered injury in fact and lost money or property, including by and through his termination.

44. The actions of Defendants detailed herein against Plaintiff constitutes unfair, unlawful and deceptive business practices, and further, constitute actions for which injunctive relief and restitution are available.

45. Under Business and Professions Code §17200 et seq., Plaintiff was and is entitled to restitution of all funds, which lawfully should have been paid as wages, civil penalties, or other penalties to Plaintiff by Defendants, together with interest thereon, as well as costs and reasonable attorneys fees pursuant to statute.

46. Under Business and Professions Code §17200 et seq., Defendants may be compelled

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- COMPLAINT FOR:  
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1 to disgorge any and all ill-gotten profits and benefits received from the conduct described herein  
2 together with payment of civil penalties, or other penalties, for the last four years, together with  
3 interest thereon, as well as costs and reasonable attorneys fees pursuant to statute.

4 47. Under Business and Professions Code §17200 et seq., Defendants should be enjoined  
5 from any and all unfair, unlawful and deceptive business practices as described herein in the future.

6 WHEREFORE, Plaintiff requests relief as hereafter provided.

7 **FOURTH CAUSE OF ACTION**  
8 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

9 48. As a separate and distinct cause of action, Plaintiff complains and realleges all the  
10 allegations contained in this Complaint, and incorporates each by reference into this cause of action  
11 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of  
12 action. This cause of action is brought against Defendants Amgen and Does 31 through 40.

13 49. Plaintiff was employed by Defendants from on or around March 24, 2003 until October  
14 12, 2007.

15 50. Plaintiff was terminated by Defendants in October 12, 2007.

16 51. Plaintiff's attempting to report, document, and correct what Plaintiff reasonably  
17 believed to be violations of federal laws and false claims being made to both the federal and state of  
18 California were motivating reasons for Plaintiff's termination.

19 52. As a proximate result of Defendants' termination of him, Plaintiff has sustained and  
20 continues to sustain substantial losses in earnings and other employment benefits.

21 53. As a proximate result of Defendants' termination of him, Plaintiff has suffered and  
22 continues to suffer general damages including mental and physical pain and anguish.

23 54. Plaintiff has incurred and continues to incur legal expenses and attorney fees. Plaintiff  
24 is presently unaware of the precise amount of these expenses and fees and prays leave of Court to  
25 amend this Complaint when the amounts are more fully known.



- 1 3. For civil penalties as allowed by law.
- 2 4. For punitive damages as allowed by law;
- 3 5. For an award of interest, including prejudgment interest, at the legal rate;
- 4 6. For an award of attorney fees as allowed by law;
- 5 7. For costs of suit incurred; and
- 6 8. For such other and further relief as this Court deems appropriate.

7 **As to the Fourth Cause of Action:**

- 8 1. That Defendant Amgen be found to have violated Business and Professions Code
- 9 §17200 et seq. by engaging in unfair and unlawful business practices;
- 10 2. For Defendant to provide restitution to Plaintiff of all monies owed;
- 11 3. For Defendant to be ordered to disgorge all profits obtained or tainted by its unlawful
- 12 and/or unfair activities pursuant to Business and Professions Code §17200 et seq.;
- 13 4. For Defendant to be enjoined from engaging in unlawful and unfair competition and
- 14 that they be further enjoined from retaliating against any and all whistle blowers
- 15 pursuant to statute and further cease and desist in all reporting violations that were the
- 16 subject matter of Plaintiff's reporting;
- 17 5. For attorney's fees pursuant to statute;
- 18 6. For costs of suit incurred; and
- 19 7. For such other and further relief as this Court deems appropriate.

20 **As to the Fifth Cause of Action:**

- 21 1. For restitution of all monies due Plaintiff including back pay, front pay, lost
- 22 employment benefits and other compensation, and other special damages according
- 23 to proof;
- 24 2. For general damages to compensate Plaintiff for his past, present and future emotional
- 25 distress, pain and suffering, and loss of pleasure and enjoyment of life;

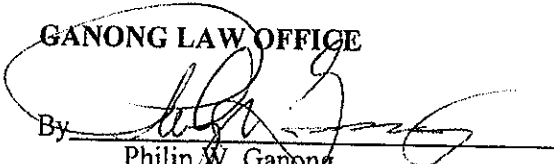
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- 1           3.     For punitive damages as allowed by law;
- 2           4.     For an award of interest, including prejudgment interest, at the legal rate;
- 3           5.     For an award of attorney fees as allowed by law;
- 4           6.     For costs of suit incurred; and
- 5           7.     For such other and further relief as this Court deems appropriate.

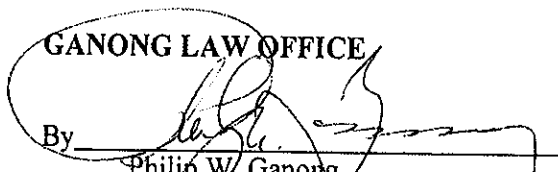
6 Dated: October 9, 2009.

**GANONG LAW OFFICE**  
  
 By \_\_\_\_\_  
 Philip W. Ganong  
 Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

11 Plaintiff demands trial by jury in this matter.

13 Dated: October 9, 2009.

**GANONG LAW OFFICE**  
  
 By \_\_\_\_\_  
 Philip W. Ganong  
 Attorneys for Plaintiff

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