

1 ROB HENNIG (STATE BAR NO. 174646)
 2 ALIREZA ALIVANDIVAVA (STATE BAR NO. 255730)
 3 LAW OFFICES OF ROB HENNIG
 1875 CENTURY PARK EAST, SUITE 1770
 4 LOS ANGELES, CA 90067-2518
 TELEPHONE: (310) 843-0020
 FAX: (310) 843-9150

VENTURA
 SUPERIOR COURT
 FILED

AUG 26 2008

- D.C.M./TRACK ASSIGNMENT
 UNLAWFUL DETAINER
 ECONOMIC
 STANDARD
 UNINSURED MOTORIST
 TRACT COORD TO NOTIFY

READ THE VENTURA COUNTY
 LOCAL RULES THAT GOVERN
 COMPLIANCE WITH EAST TRACT

BY: A. GREWAL Deputy
ARCHAEL D. H. GREWAL
 Executive Officer and Clerk

Attorneys for Plaintiff Darrell G. Dotson

ASSIGNED COURT 42

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF VENTURA, UNLIMITED CIVIL JURISDICTION**

DARRELL G. DOTSON, an individual,
 Plaintiff,

vs.

AMGEN, INC., a corporation; and DOES 1
 through 50, inclusive,
 Defendants.

CASE NO. 56-2008-00325938-CU-WT-VTA

COMPLAINT FOR:

1. **DECLARATORY RELIEF;**
2. **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;**
3. **UNFAIR COMPETITION IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 FOR RESTITUTION AND INJUNCTIVE RELIEF;**
4. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; AND**

DEMAND FOR JURY TRIAL

GENERAL ALLEGATIONS

Introduction

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

Parties and jurisdiction

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

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

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

5. Plaintiff is a former exempt employee of Defendant Amgen and a resident of Ventura County in the State of California.

6. At all relevant times alleged herein Plaintiff was employed by Defendant Amgen under an employment agreement that was partly written, partly oral, and partly implied.

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

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

///

///

1 **Facts**

2 9. Plaintiff Dotson worked for Amgen as an attorney specializing in
3 intellectual property issues. Part of Dotson's duties were to serve as Amgen's liaison with outside
4 legal counsel in the *Amgen, Inc. v. F. Hoffmann-La Roche Ltd.* litigation.

5 10. Plaintiff Dotson brings this complaint based upon his attempts to prevent
6 ethical and legal violations at Amgen and to make Amgen's supervisors and agents aware of past
7 ethical and legal violations and the ongoing duty to take corrective action as well as to disclose
8 these violations fully.

9 11. Plaintiff Dotson resisted many of Amgen's unethical and illegal practices.
10 As a result, despite Dotson's laudatory employment record, he began to experience retaliation.
11 Indeed, Dotson was terminated within three weeks of his again reporting serious ethical and legal
12 violations – this time to human resources.

13 12. Dotson alleges that his termination was motivated by his reporting of
14 ethical and legal violations and that therefore, his termination was in violation of public policy.

15
16 **FIRST CAUSE OF ACTION**
17 **FOR DECLARATORY RELIEF**

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

23 14. Plaintiff Dotson, as part of his employment with Amgen, was forced to sign
24 a mandatory arbitration contract of adhesion. This contract was signed close to his beginning
25 employment with Amgen in or around November, 2004.

26 15. This arbitration agreement is properly interpreted based upon the California
27 Arbitration Act as well as California contract law that has been extensively commented upon in
28 and since *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83.

1 16. Plaintiff maintains by and through this cause of action that the mandatory
2 arbitration agreement that he was forced to sign – indeed that all Amgen employees are forced to
3 sign – was and is unconscionable and, therefore, unenforceable.

4 17. Amgen’s mandatory arbitration agreement signed by Dotson and other
5 Amgen current and former employees was signed as required by Amgen as a condition of
6 employment and is, thus, procedurally unconscionable.

7 18. Amgen’s mandatory arbitration contract of adhesion is substantively
8 unconscionable under California law.

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

13 20. A judicial declaration is necessary and appropriate at this time under the
14 circumstances in order that Plaintiff may ascertain his rights and duties under the mandatory
15 arbitration contract of adhesion.

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

22 22. Plaintiff is not seeking to avoid the contract to arbitrate if that agreement is
23 not subject to rescission or is otherwise unenforceable. If this Court finds that Amgen’s
24 mandatory arbitration contract of adhesion is not unconscionable and can be enforced, then
25 Plaintiff seeks an order compelling arbitration and the arbitration of all claims contained in this
26 Complaint herein. If, however, this Court finds that the agreement to arbitrate is void and/or
27 unenforceable, Plaintiff seeks a declaration that he is entitled to proceed in superior court against

28 ///

1 Defendant Amgen and Doe Defendants 11 through 40 as to his other Causes of Action as stated in
2 this Complaint.

3 WHEREFORE, plaintiff requests relief as hereafter provided.
4

5 **SECOND CAUSE OF ACTION**
6 **RETALIATION FOR WHISTLEBLOWER ACTIVITIES**
7 **IN VIOLATION OF LABOR CODE SECTION 1102.5**

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

13 24. Plaintiff was subjected to a rule, regulation, and/or policy of Defendants
14 preventing him or attempting to prevent him from disclosing information to a government or law
15 enforcement agency. Plaintiff had reasonable cause to believe that the information he intended to
16 disclose was and is a violation of state or federal statute, or a violation or noncompliance with a
17 state or federal rule or regulation. Plaintiff was subjected to retaliation for taking actions
18 attempting to disclose this information in contravention of Defendants' rule, regulation, and/or
19 policy.

20 25. Plaintiff was subjected to retaliation in violation of Labor Code section
21 1102.5(b) by Defendants for his disclosing what Plaintiff in good faith believed to be violations of
22 state or federal statutes or regulations including Rules of Professional Conduct by attorneys at
23 Amgen and attorneys representing Amgen. Plaintiff was subjected to retaliation in violation of
24 Labor Code section 1102.5 by Amgen for his disclosing of this information.

25 26. Plaintiff was subjected to retaliation in violation of Labor Code section
26 1102.5(c) by Defendants for his refusal to participate in activity that he believed, in good-faith,
27 would be a violation of federal and state laws and regulations. Plaintiff was subjected to

28 ///

1 retaliation in violation of Labor Code section 1102.5 by Amgen for his refusal to participate in
2 activity that was, in fact, in violation of federal and state laws and regulations.

3 27. Plaintiff did in fact suffer adverse employment actions up to and including
4 his termination by Amgen in retaliation for Plaintiff's disclosure and refusal to participate as
5 stated herein.

6 28. Defendants intentionally created or knowingly permitted these working
7 conditions wherein Plaintiff was directed to commit actions in violation of federal and state laws
8 and regulations and retaliated against for the reporting of actions in violation of federal and state
9 laws and regulations of others.

10 29. As a proximate result of Defendants' retaliation against Plaintiff in
11 violation of Labor Code section 1102.5, Plaintiff has sustained and continues to sustain
12 substantial losses in earnings and other employment benefits.

13 30. As a proximate result of Defendants' retaliation against Plaintiff in
14 violation of Labor Code section 1102.5, Plaintiff has suffered and continues to suffer general
15 damages including mental and physical pain and anguish, all of the character that Plaintiff might
16 normally suffer given the circumstances Plaintiff has encountered and in a sum according to
17 proof.

18 31. Plaintiff is entitled, per Labor Code section 1102.5(f) for a civil penalty not
19 exceeding \$10,000 for each instance of violation of Labor Code section 1102.5 (a), (b) and/or (c)
20 by Defendants.

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

26 WHEREFORE, plaintiff requests relief as hereafter provided.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

3 **BUSINESS AND PROFESSIONS CODE SECTION 17200 *ET SEQ.***

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

9 34. Business and Professions Code section 17200 *et seq.* defines unfair
10 competition to include any "unfair," "unlawful" or "deceptive" business practice. California's
11 Unfair Competition Law also provides for injunctive relief and restitution for violations.

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

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

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

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

23 39. Under Business and Professions Code section 17200 *et seq.*, Plaintiff and is
24 entitled to restitution of all funds, which lawfully should have been paid as wages, civil penalties,
25 or other penalties to Plaintiff by Defendants, for the last four years, together with interest thereon,
26 as well as costs and reasonable attorneys fees pursuant to statute.

27 40. Under Business and Professions Code section 17200 *et seq.*, Defendants
28 may be compelled to disgorge any and all ill-gotten profits and benefits received from the conduct

1 described herein together with payment of civil penalties, or other penalties, for the last four years,
2 together with interest thereon, as well as costs and reasonable attorneys fees pursuant to statute.

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

6 WHEREFORE, plaintiff requests relief as hereafter provided.

7
8 **FOURTH CAUSE OF ACTION**

9 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

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

15 43. Plaintiff was employed by Defendants from on or around November, 2004
16 until August, 2008.

17 44. Plaintiff was terminated by Defendants in August, 2008.

18 45. Plaintiff's attempting to report and document what Plaintiff reasonably
19 believed to be ethical and legal violations of others and/or his resistance to directions to commit
20 what Plaintiff reasonably believed to be ethical and legal violations himself were motivating
21 reasons for Plaintiff's termination.

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

24 47. As a proximate result of Defendants' termination of him, Plaintiff has
25 suffered and continues to suffer general damages including mental and physical pain and anguish,
26 all of the character that Plaintiff might normally suffer given the circumstances Plaintiff has
27 encountered and in a sum according to proof.

- 1 e. For costs of suit incurred; and
2 f. For such other and further relief as this Court deems appropriate.
3

4 **As to the Second Cause of Action:**

- 5 a. For restitution of all monies due Plaintiff including back pay, front pay, lost
6 employment benefits and other compensation, and other special damages
7 according to proof;
8 b. For general damages to compensate Plaintiff for his past, present, and
9 future emotional distress, pain and suffering, and loss of pleasure and
10 enjoyment of life;
11 c. For all civil penalties as specified in Labor Code section 1102.5(f) of up to
12 \$10,000 for each violation;
13 d. For punitive damages as allowed by law;
14 e. For an award of interest, including prejudgment interest, at the legal rate;
15 f. For an award of attorney fees as allowed by law;
16 g. For costs of suit incurred; and
17 h. For such other and further relief as this Court deems appropriate.
18

19 **As to the Third Cause of Action:**

- 20 a. That Defendant Amgen be found to have violated Business and Professions
21 Code section 17200 *et seq.* by engaging in unfair and unlawful business
22 practices;
23 b. For Defendant to provide restitution to Plaintiff of all monies owed;
24 c. For Defendant to be ordered to disgorge all profits obtained or tainted by its
25 unlawful and/or unfair activities pursuant to Business and Professions Code
26 section 17200 *et seq.*;
27 d. For Defendant to be enjoined from engaging in unlawful and unfair
28 competition and that they be further enjoined from retaliating against any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and all whistleblowers pursuant to statute and further cease and desist in all ethical and legal violations that were the subject matter of Plaintiff's reporting;

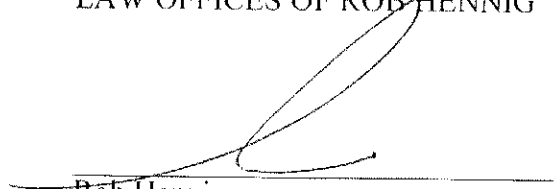
- e. For attorney's fees pursuant to statute;
- f. For costs of suit incurred; and
- g. For such other and further relief as this Court deems appropriate.

As to the Fourth Cause of Action:

- a. For restitution of all monies due Plaintiff including back pay, front pay, lost employment benefits and other compensation, and other special damages according to proof;
- b. For general damages to compensate Plaintiff for his past, present, and future emotional distress, pain and suffering, and loss of pleasure and enjoyment of life;
- c. For punitive damages as allowed by law;
- d. For an award of interest, including prejudgment interest, at the legal rate;
- e. For an award of attorney fees as allowed by law;
- f. For costs of suit incurred; and
- g. For such other and further relief as this Court deems appropriate.

Dated: August 25, 2008

LAW OFFICES OF ROB HENNIG



Rob Hennig
Attorneys for Plaintiff Darrell G. Dotson

///
///
///

1 **DEMAND FOR JURY TRIAL**

2
3 Plaintiff demands trial by jury in this matter.

4
5 Dated: August 25, 2008

LAW OFFICES OF ROB HENNIG

6
7
8 
9 _____
10 Rob Hennig
11 Attorneys for Plaintiff Darrell G. Dotson
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28