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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GENENTECH, INC.,

No. C 18-06582 WHA

Plaintiff,

v.

**OMNIBUS ORDER ON  
MOTIONS TO DISMISS,  
MOTION FOR PROVISIONAL  
RELIEF, AND MOTIONS TO  
STAY**

JHL BIOTECH, INC., *et al.*,

Defendants.

**INTRODUCTION**

In this action for trade secret misappropriation, computer fraud, and various state law claims, defendants move to dismiss and for a stay and plaintiff moves for provisional relief. For the reasons stated below, all motions are **GRANTED IN PART** and **DENIED IN PART**.

**STATEMENT**

This action centers on medicines called “biologics” — typically large-molecule, protein-based drugs produced by living cells and recombinant DNA technology. For the past several decades, California-based plaintiff Genentech, Inc. has sold (and continues to sell) various biologics used to treat diseases such as cancer and cystic fibrosis. Four of these — which include one of the top-selling drugs in the United States — lie at the heart of this action: Rituxan, Herceptin, Avastin, and Pulmozyme (Compl. ¶¶ 81–82, 84).<sup>1</sup>

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<sup>1</sup> Pulmozyme® (dornase alfa) is an inhalation treatment for children and young adults with cystic fibrosis. Rituxan® (rituximab) is used to treat certain cancer patients with non-Hodgkin’s lymphoma. Herceptin® (trastuzumab) is used to treat metastatic breast cancer patients with HER2 gene overexpression. Avastin® (bevacizumab) is used to treat metastatic colorectal cancer. Avastin® is now Genentech’s best-selling cancer treatment and one of the top-selling drugs in the United States (McCloskey Decl. ¶¶ 5–8).

1 With many blockbuster biologics (including the four at issue here) facing a patent cliff  
2 and encouragement from regulators in the form of abbreviated approval pathways and other  
3 initiatives, competitors today increasingly seek to enter the market with “generic” versions of  
4 biologics called “biosimilars.” Biological drug development, however, is a challenging pursuit  
5 in terms of time and resources. That is because biologics demand a complex manufacturing  
6 process based on biological processes — including genetically engineering a cell to produce a  
7 target protein, testing for quality, harvesting, purifying, and stabilizing the protein (*id.* ¶¶  
8 85–86; Eberhart Decl., Exh. 1 at 2).<sup>2</sup>

9 Unlike generic versions of small-molecule chemical drugs, which are relatively simple  
10 and well-defined, a biosimilar can never be an exact copy of the brand biologic (“reference  
11 product”) because of the complexity of the manufacturing process and the drug itself. So to  
12 gain regulatory approval, biosimilar manufacturers must demonstrate that their product is  
13 “highly similar” to the reference product in terms of quality, safety, and efficacy through a  
14 series of tests. This can be a headache for competitors who must laboriously reverse engineer  
15 the innovator’s manufacturing process. Due to the sensitive nature of the manufacturing  
16 process, even a minute change in the process can carry a downstream effect on the end  
17 product’s characteristics. Biological drug manufacturers must also pass on-site inspections by  
18 regulatory authorities who monitor the manufacturers’ facilities and equipment according to the  
19 standards set forth by “Good Manufacturing Practices” (“GMP”), which are designed to ensure  
20 that the drugs are consistently produced with the requisite quality, safety, and effectiveness  
21 (Compl. ¶¶ 17, 19–20, 88, 90).

22 Defendant JHL Biotech, Inc. is one such competitor seeking to enter the biosimilar  
23 market. A Taiwanese biotechnology startup founded in December 2012 by defendants (and  
24 former Genentech employees) Rose Lin and Racho Jordanov, JHL has set its sights on  
25 Genentech’s Rituxan, Herceptin, Avastin, and Pulmozyme biologics. JHL is currently targeting  
26 the Chinese and European market and has already made great strides in its biosimilar  
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28 <sup>2</sup> Certain background information is found in declarations and exhibits submitted in connection with  
the motion for preliminary injunction, as noted. All other facts are taken from the complaint.

1 development. For example, it is currently the only manufacturer to hold clinical trials for a  
2 Pulmozyme biosimilar — thus positioning JHL to potentially be the first to launch a biosimilar  
3 of Pulmozyme. JHL’s other three biosimilars are also marching through important regulatory  
4 milestones. The company went public in Taiwan. And, JHL has partnered with French  
5 pharmaceutical company Sanofi S.A. to produce and market the Rituxan biosimilar in a deal  
6 worth up to \$236 million (*id.* ¶¶ 32–33, 44, 46, 187, 191).

7 In October 2016, Genentech received an anonymous tip that defendant Xanthe Lam —  
8 then a principal scientist at Genentech and employee for thirty years — was consulting for  
9 another competitor in violation of the Roche U.S. Pharma Code of Conduct governing  
10 employees.<sup>3</sup> Genentech’s subsequent internal investigation (and a parallel FBI investigation)  
11 unearthed Xanthe’s secret involvement with JHL’s biosimilar development efforts. In October  
12 2017, Genentech terminated Xanthe for gross misconduct in connection with the allegations in  
13 the instant action. The investigations revealed the following facts, many of which have already  
14 been confirmed by certain defendants during voluntary interviews with Genentech’s outside  
15 counsel (*id.* ¶¶ 36, 39, 48, 51, 95, 101).

16 In mid-2013, JHL hired Xanthe’s husband defendant Allen Lam (also a former  
17 Genentech employee) to consult on its biosimilar development efforts. Starting in May 2013,  
18 Xanthe began secretly downloading confidential Genentech documents such as R&D technical  
19 reports, stabilities studies, degradation studies, validation reports, and testing protocols  
20 concerning the four biologics at issue — documents which she later admitted contained  
21 proprietary information that she otherwise would have never shared with a competitor. She  
22 saved these documents, which were marked as “confidential,” onto her Genentech-issued laptop  
23 in a folder labeled “JHL,” which in turn contained subfolders labeled “Avastin\_JHL,”  
24 “Herceptin\_JHL,” “Pulmozyme\_JHL,” and “Rituxan\_JHL.” Each subfolder contained  
25 Genentech documents alongside JHL documents related to JHL’s biosimilar development  
26 efforts (*id.* ¶¶ 127, 129, 131, 172, 254).

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<sup>3</sup> Genentech has been wholly owned by the Roche Group since March 2009 (Compl. ¶ 43).

1 In June 2013, Xanthe’s husband Allen traveled to Taiwan for six weeks to help JHL’s  
2 development of analytical assays for the Rituxan biosimilar, with Xanthe assisting in the  
3 background. He continued to consult for JHL through the fall of 2015 and for several months in  
4 2017. Allen was “deeply involved in” the development of JHL’s biosimilars. He received  
5 20,000 JHL stock options in 2013, is listed as a pre-IPO investor in JHL, and received an  
6 estimated \$10,000 per month salary from JHL (*id.* ¶¶ 22, 53–55, 138–40).

7 In October 2013, Xanthe began directly working for JHL, unbeknownst to Genentech,  
8 who was still her employer. In December 2013, she too traveled to Taiwan for four weeks (with  
9 her Genentech-issued laptop in tow) to help JHL with its Rituxan biosimilar formulation  
10 strategy, all the while telling her Genentech coworkers that she was taking a vacation. While in  
11 Taiwan, Xanthe worked closely with Jordanov and Lin on formulation strategy and analytical  
12 development efforts for JHL’s biosimilars (Compl. ¶¶ 146, 156–57).

13 In 2014, Xanthe helped the son of a family friend, defendant John Chan, land a job at  
14 JHL. This was his first job upon earning his Ph.D. At JHL, he became project leader for the  
15 Pulmozyme biosimilar development. Xanthe “coached” him and supervised his work by  
16 holding regular Skype meetings with Chan. In 2017, Chan left JHL for another  
17 biopharmaceutical company (*id.* ¶¶ 67–70, 254).

18 Xanthe continued to transmit confidential Genentech documents to JHL, usually through  
19 her husband Allen, while still serving as a principal scientist at Genentech. For example, in  
20 September 2014, she sent Allen a confidential technical report for Chan’s use, noting to Allen  
21 that he should give Chan only a hard copy of the document and should tell Chan not to show it  
22 to others. She also continued to work on various JHL documents, using information from  
23 confidential Genentech documents to “edit and improve” JHL’s protocols (*id.* ¶¶ 25, 31, 126).

24 In the summer of 2017, JHL hired defendant James Quach, another former Genentech  
25 employee, at Xanthe’s recommendation. His work focused on managing JHL’s manufacturing  
26 facility in China. On at least three occasions that summer shortly before leaving for his new job  
27 in China, Quach visited Xanthe’s home, where she allowed Quach to use her Genentech log-in  
28 credentials to access and download onto a personal USB drive hundreds of confidential

1 Genentech documents related to manufacturing policies and protocols. And, once in China,  
2 Quach again requested and received additional confidential Genentech documents from Xanthe  
3 (*id.* ¶¶ 40, 57–58, 256).

4 Genentech “promptly” notified the United States Attorney’s Office of the Lams’  
5 conduct alleged herein, and the FBI launched its own investigation thereafter. Supposedly at  
6 the government’s request, Genentech refrained from filing the instant suit or otherwise  
7 interfering with the government’s investigation and instead “closely tracked” Xanthe’s  
8 activities. In September 2017, the FBI executed a search warrant of the Lams’ home. Thirteen  
9 months later, on October 29, 2018, the indictment against Xanthe Lam, Allen Lam, James  
10 Quach, and John Chan was unsealed. Later that same day, Genentech filed the instant civil  
11 action against JHL, Racho Jordanov (CEO of JHL), Rose Lin (General Manager of JHL),  
12 Xanthe Lam, Allen Lam, James Quach, and John Chan, asserting claims of federal and state  
13 trade secret misappropriation, conspiracy to misappropriate trade secrets, violation of the  
14 Computer Fraud Abuse Act (“CFAA”), conspiracy to violate the CFAA, and various state law  
15 violations (*id.* ¶¶ 36–38, 247–48, 259–355).<sup>4</sup>

16 The claimed trade secrets generally relate to Genentech’s (1) validated analytical  
17 methods to test and ensure the stability, potency, purity, identity, and quality of the four  
18 biologics; (2) information regarding the development and selection of a formulation for those  
19 four biologics and Tecentriq (another Genentech biologic); (3) the compilation of documents  
20 Xanthe collected regarding the four biologics; (4) manufacturing and operation protocols,  
21 including GMP-compliant procedures; and (5) the compilation of documents Quach  
22 downloaded regarding manufacturing and operation protocols (*id.* ¶ 177).<sup>5</sup>

23 Genentech alleges that defendants conspired to steal Genentech’s trade secrets related to  
24 the four biologics at issue (Pulmozyme, Rituxan, Herceptin, and Avastin) in order to get an  
25 unlawful leg up in JHL’s “race[] to complete clinical trials and establish GMP-compliant

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27 <sup>4</sup> The parallel criminal action, *United States v. Lam, et al.*, Case No. 18-cr-00527-WHA, was first assigned to the undersigned judge. The instant civil suit was related soon thereafter.

28 <sup>5</sup> Genentech filed a statement of its trade secrets pursuant to California Code of Civil Procedure 2019.210 concurrently with its motion for preliminary injunction (Dkt. No. 21).

1 manufacturing facilities” in a bid to gain regulatory approval and quickly hit the global market.  
 2 It asserts that the “astonishing” rate at which JHL — a relatively young biotechnology company  
 3 with fewer than a hundred employees — has been able to develop its biosimilars is evidence  
 4 that JHL is using Genentech’s trade secrets (Compl. ¶¶ 32, 41).

5 On November 5, 2018 (soon after this action commenced), Genentech moved for  
 6 provisional relief (Dkt. No. 20). On January 4, 2019, all defendants moved to dismiss (Dkt.  
 7 Nos. 57, 59, 62, 66, 67, 69) and to stay the instant action pending resolution of the criminal  
 8 proceeding (Dkt. Nos. 56, 58, 60, 64). This order follows full briefing and oral argument.

### 9 ANALYSIS

#### 10 1. JHL’S RULE 12(B)(2) MOTION TO DISMISS FOR 11 LACK OF PERSONAL JURISDICTION.

12 JHL — which operates primarily in Taiwan and China and has no immediate plans to  
 13 market in the United States — moves to dismiss for lack of personal jurisdiction.

14 California’s long-arm statute authorizes the exercise of personal jurisdiction to the  
 15 extent consistent with due process. CAL. CIV. PROC. CODE § 410.10. Thus, the inquiry  
 16 collapses to our court of appeals’ test for the exercise of specific jurisdiction over a nonresident  
 17 defendant: “(1) the defendant must either ‘purposefully direct his activities’ toward the forum  
 18 or ‘purposefully avail himself of the privileges of conducting activities in the forum’; (2) ‘the  
 19 claim must be one which arises out of or relates to the defendant’s forum-related activities’; and  
 20 (3) ‘the exercise of jurisdiction must comport with fair play and substantial justice, *i.e.* it must  
 21 be reasonable.’ ” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir.  
 22 2017) (quoting *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)). “The  
 23 plaintiff bears the burden of satisfying the first two prongs of the test.” *Ibid.* (quoting  
 24 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). Once the  
 25 plaintiff satisfies that burden, “the burden then shifts to the defendant to ‘present a compelling  
 26 case’ that the exercise of jurisdiction would not be reasonable.” *Id.* at 1068–69.

1 “Where, as here, the defendant’s motion is based on written materials rather than an  
2 evidentiary hearing, ‘the plaintiff need only make a *prima facie* showing of jurisdictional facts  
3 to withstand the motion to dismiss.’ ” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015)  
4 (quoting *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011)).  
5 While a plaintiff “may not simply rest on the ‘bare allegations of the complaint,’ ”  
6 “uncontroverted allegations must be taken as true, and ‘conflicts between parties over  
7 statements contained in affidavits must be resolved in the plaintiff’s favor.’ ” *Ibid.* (quoting  
8 *Schwarzenegger*, 374 F.3d at 800).

9 “If personal jurisdiction exists over one claim, but not others, the district court may  
10 exercise pendent personal jurisdiction over any remaining claims that arise out of the same  
11 ‘common nucleus of operative facts’ as the claim for which jurisdiction exists.” *Picot v.*  
12 *Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (quoting *Action Embroidery Corp. v. Atl.*  
13 *Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004)).

14 This order finds that Genentech has made a *prima facie* showing that JHL, by allegedly  
15 conspiring with the Lams, purposefully directed its intentional torts to California such that JHL  
16 would be reasonably subject to the personal jurisdiction of this court. The details now follow.<sup>6</sup>

17 **A. Purposeful Direction.**

18 “Where, as here, a case sounds in tort, we employ the purposeful direction test.” *Axiom*  
19 *Foods*, 874 F.3d at 1069 (citing *Dole Food*, 303 F.3d at 1111). Under this test, the defendant  
20 must have “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing  
21 harm that the defendant knows is likely to be suffered in the forum state.” *Ibid.* (quoting  
22 *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 673 (9th Cir. 2012)). The  
23 “express aiming” requirement is satisfied by pleading that the defendant “engaged in wrongful  
24 conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state.”  
25 *Dole Food*, 303 F.3d at 1111 (quoting *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d  
26 1082, 1087 (9th Cir. 2000)).

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28 <sup>6</sup> Genentech, in its opposition, does not argue that there is general jurisdiction over JHL. This order therefore only addresses specific jurisdiction.

1 Genentech argues that JHL purposely directed its activities to California by  
2 “orchestrat[ing] and execut[ing] a scheme to steal trade secrets in California” (Dkt. No. 93 at 6).  
3 The thrust of this contention lies in the purported conspiracy involving JHL’s recruitment of the  
4 Lams to misappropriate Genentech’s trade secrets on JHL’s behalf (*id.* at 7). Genentech thus  
5 argues that there is personal jurisdiction over JHL (1) because the conduct of the Lams, JHL’s  
6 alleged agents, may be imputed to JHL, and (2) independently based on its chief officers  
7 Jordanov and Lin, who directed their alleged conduct to California.

8 JHL repeatedly contends that Genentech’s allegations of JHL’s involvement in the  
9 misappropriation are conclusory and that Genentech alleges no facts specific to JHL’s conduct.  
10 This order disagrees. The totality of the allegations herein is sufficient to support a reasonable  
11 inference that Jordanov and Lin recruited the Lams — California residents and, as to Xanthe, a  
12 Genentech employee — for the purpose of misappropriating Genentech’s trade secrets on JHL’s  
13 behalf. This order therefore finds that Genentech has made a *prima facie* showing that JHL  
14 purposely directed its activities to California.

15 Notably, JHL does not try to dispute the specific alleged activities by defendants.<sup>7</sup>  
16 Rather, it attempts to isolate those activities and attack those allegations individually. For  
17 example, JHL argues that Genentech did not specifically allege that Xanthe misappropriated  
18 trade secrets on JHL’s behalf while consulting for JHL in Taiwan in December 2013 (Dkt. No.  
19 57 at 11–12). It asserts that the fact that Xanthe “had dinner and exchanged text messages”  
20 with Jordanov and Lin is insufficient to tie JHL to Xanthe’s conduct (*id.* at 12). Nor is the fact  
21 that Lin and Jordanov knew Xanthe was still employed by Genentech indicative of JHL’s  
22 involvement in the misappropriation, according to JHL (Dkt. No. 104 at 4).

23 JHL’s attacks fall short, however, as they ignore the context of those factual allegations.  
24 When properly read in context and taken as true, those facts sufficiently support a reasonable  
25 inference of the alleged conspiracy. For example, before heading to Taiwan, Xanthe allegedly  
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27 <sup>7</sup> Genentech alleges that Xanthe and Quach “admitted to the vast majority of conduct alleged in this  
28 complaint during a series of voluntary interviews” (Compl. ¶ 39). And, the only evidence JHL submitted with  
its motion is the Lin declaration stating, *inter alia*, that JHL had no written employment contract with Xanthe  
and that its contract with Allen explicitly categorized him as an independent contractor (*see* Dkt. No. 57-1).

1 downloaded numerous confidential Genentech documents containing trade secrets regarding  
2 analytical and formulation methods (Compl. ¶ 28). She saved those documents in “JHL”-  
3 labeled folders, specifically named for each of the four Genentech biologics, onto her  
4 Genentech-issued laptop (*id.* ¶¶ 22–25, 29, 129–33). While in Taiwan, Xanthe worked closely  
5 with Jordanov and Lin on formulation strategy for JHL’s biosimilars (*id.* ¶ 157). And, while  
6 merely having dinner and exchanging text messages with Lin and Jordanov might seem  
7 innocuous enough, Xanthe’s cozy relationship with JHL’s co-founders — compounded with  
8 Allen’s JHL founder stock options — increases the plausibility that the Lams agreed to  
9 misappropriate Genentech’s trade secrets on JHL’s behalf. This inference is further supported  
10 by the fact that the Lams have known Lin since at least 2009, when they consulted for Eusol  
11 (also while Xanthe was still employed at Genentech), another Taiwanese competitor for whom  
12 Lin then served as plant manager. Xanthe had consulted for Eusol in a similar manner —  
13 downloading and saving confidential Genentech documents onto her Genentech-issued laptop  
14 into specially-created folders, consulting on-site, and continuing her consulting services back in  
15 California (*id.* ¶¶ 214–18). Lin’s prior experience with the Lams at Eusol thus goes to the  
16 inference that Lin sought them out to do the same for her own company, JHL.

17           Moreover, upon returning to the United States, the Lams allegedly continued to assist  
18 JHL’s biosimilar development efforts from their California residence by siphoning more  
19 Genentech trade secrets. For example, Xanthe discussed confidential Genentech documents  
20 with Lin, which was transmitted by Allen, regarding Genentech’s analytical methods for  
21 Rituxan (*id.* ¶ 175). Xanthe edited JHL protocols — presumably sent by JHL to Xanthe in  
22 California — by inserting specifications from confidential Genentech documents (Compl. ¶¶ 25,  
23 29, 132–37). She worked closely with Allen, who was “deeply involved” in the biosimilar  
24 development efforts, including helping him create “several internal JHL Formulation  
25 Development presentations” in 2014 and 2015 (*id.* ¶¶ 54, 141). She continued to send  
26 additional confidential Genentech information to JHL through Allen and Chan, whom Xanthe  
27 directly supervised, and allowed Quach to access additional confidential Genentech documents  
28 before he started at JHL (*id.* ¶¶ 31, 40, 165, 169).

1 Jordanov and Lin knew that Xanthe was still employed by Genentech at the time and  
2 thus knew that she could access confidential information related to the four biologics at issue.  
3 They were also aware that she was consulting for JHL in direct violation of company policy.  
4 Jordanov stated he understood Xanthe’s apprehension over holding weekly Skype calls with  
5 Chan — which she stopped having because she did not “want to get into trouble” because they  
6 were “too sensitive” — given her concurrent employment with Genentech (*id.* ¶¶ 173–74).

7 JHL’s current “Core Product Candidates” exactly target the four Genentech biologics at  
8 issue (Lin Decl. ¶ 14). Jordanov previously stated that “[c]ountless international  
9 pharmaceutical companies have attempted to develop a rituximab biosimilar” (and presumably  
10 failed) (Compl. ¶ 186). Thus as a young, small startup entering the biopharmaceutical space,  
11 JHL had the incentive to access Genentech’s proprietary documents and short circuit the reverse  
12 engineering process in order to quickly “develop a product identical in quality, safety, and  
13 efficacy to [the Genentech] reference” product (*id.* ¶¶ 17, 186).

14 Based on the totality of the foregoing allegations, JHL’s attempt to deny involvement  
15 with the alleged misappropriation strains credulity. This order therefore finds that Genentech  
16 has more than plausibly alleged that JHL reached into California based on the purported  
17 conspiracy.

18 JHL’s reliance on *Baker Hughes Inc. v. Homa*, No. C H-11-3757, 2013 WL 5775636  
19 (S.D. Tex. Oct. 25, 2013) (Judge Lee Rosenthal), a non-binding decision, is unavailing. There,  
20 the Texas-based plaintiff alleged that the Austrian defendants recruited its *Virginia*-based  
21 employees for the purpose of stealing the plaintiff’s trade secrets. *Id.* at \*18. The district court  
22 held that the alleged conduct was insufficient to establish the Austrian defendants’ minimum  
23 contacts with the Texas forum, particularly where it was “too speculative” to infer that the  
24 defendants specifically recruited the plaintiff’s employees to obtain its trade secrets. *Ibid.* It  
25 also found that the Austrian defendants’ mere email sent to the plaintiff’s Texas-based  
26 employee in an *attempt* to recruit that resident failed to show that it had reached into the forum.  
27 *Id.* at \*19. The district court further held that the Austrian defendants’ passive reception of the  
28 plaintiff’s trade secrets was insufficient contact. *Id.* at \*14.

1 Here, in contrast, Genentech has sufficiently alleged the requisite minimum contacts:  
2 JHL successfully recruited California residents specifically to steal and use California trade  
3 secrets. As Genentech points out, the instant action is more analogous to *Montana Silversmiths,*  
4 *Inc. v. Taylor Brands, LLC*, 850 F. Supp. 2d 1172 (D. Mont. 2012) (Judge Richard Cebull).  
5 There, as here, the nonresident defendant successfully recruited the plaintiff’s resident  
6 employee for the purpose of obtaining the plaintiff’s trade secrets. *Id.* at 1182. This, the district  
7 court found, was sufficient contact. And, within our district, *Way.com, Inc. v. Singh*, No. C  
8 18-04819 WHO, 2018 WL 6704464 (N.D. Cal. Dec. 20, 2018) (Judge William Orrick),  
9 similarly held that a nonresident defendant purposefully directed its conduct at the forum where  
10 the defendant stole the trade secrets of a company “it knew to be based in [the forum], causing  
11 harm it knew would be suffered [there].” *Id.* at \*8.<sup>8</sup>

12 JHL’s insistence that the aforementioned decisions are distinguishable because, unlike  
13 the defendants in *Montana Silversmiths* and *Way.com*, it does not have immediate plans to  
14 compete with Genentech in California and thus Genentech suffers no harm in the forum state, is  
15 unpersuasive (Dkt. No. 104 at 7). The focus of those holdings centered on the nonresident  
16 defendant’s forum contacts and the alleged harm within the forum, *not* on direct competition  
17 within the forum. And, our court of appeals has “repeatedly held that a corporation incurs  
18 economic loss, for jurisdictional purposes, in the forum of its principal place of business.”  
19 *CollegeSource*, 653 F.3d at 1079. As such, though JHL does not currently compete with  
20 Genentech in California, Genentech incurs any economic harm stemming from the trade secret  
21 misappropriation in California.

22 In sum, this order finds that Genentech has sufficiently alleged that JHL purposefully  
23 directed its activities to California by targeting Genentech — which JHL knew was  
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27 <sup>8</sup> For similar reasons, JHL’s citations to *Sarkis v. Lajcak*, No. C 08-01911 RMW, 2009 WL 3367069  
28 (N.D. Cal. Oct. 15, 2009) (Judge Ronald Whyte), *aff’d*, 425 F. App’x 557 (9th Cir. 2011), and *Walden v. Fiore*,  
571 U.S. 277 (2014), are unavailing because the ties between the defendant and the forum state in those cases  
were far more tenuous than those alleged here.

1 headquartered in California — when it recruited California residents Xanthe and Allen Lam to  
2 misappropriate Genentech’s trade secrets, thereby causing harm in California.<sup>9</sup>

3 **B. Relation to Forum.**

4 A claim “arises out of” the defendant’s local conduct if “but for” the contacts between  
5 the defendant and the forum state, the plaintiff’s injury would not have occurred. *Doe v. Am.*  
6 *Nat. Red Cross*, 112 F.3d 1048, 1051–52 (9th Cir. 1997). This prong is satisfied. Here, but for  
7 JHL’s express targeting of Genentech and its California trade secrets, Genentech’s alleged  
8 injuries would not have occurred. Genentech’s claims therefore arise out of JHL’s California-  
9 related activities.

10 **C. Reasonableness.**

11 “If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts  
12 to the defendant to ‘present a compelling case’ that the exercise of jurisdiction would not be  
13 reasonable.” *Schwarzenegger*, 374 F.3d at 802 (quoting *Burger King Corp. v. Rudzewicz*, 471  
14 U.S. 462, 476–78 (1985)). Our court of appeals considers seven factors in determining whether  
15 the exercise of jurisdiction over a nonresident defendant is reasonable:

- 16 (1) the extent of the defendant[’s] purposeful injection into the forum  
17 state’s affairs; (2) the burden on the defendant of defending in the forum;  
18 (3) the extent of conflict with the sovereignty of the defendant’s state; (4)  
19 the forum state’s interest in adjudicating the dispute; (5) the most efficient  
judicial resolution of the controversy; (6) the importance of the forum to  
the plaintiff’s interest in convenient and effective relief; and (7) the  
existence of an alternative forum.

20 *Dole Food*, 303 F.3d at 1114. JHL has not met its burden.

21 *First*, the extent of JHL’s purposeful injection, though not as extensive as Genentech  
22 contends, is more than minimal. As alleged, JHL specifically recruited California residents —  
23 while one was still employed by Genentech — for the purpose of stealing Genentech’s trade  
24 secrets. Though JHL does not plan to compete with Genentech in California in the immediate  
25 future, it has pointedly reached into California to commit the alleged intentional torts. This  
26 factor thus weighs in favor of Genentech.

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28 <sup>9</sup> Because this order finds that JHL, through Lin and Jordanov, directly reached into California (as  
alleged in the complaint), it does not reach the issue of whether or not the Lams were JHL’s agents.

1           *Second*, JHL argues that its burden of defending in California is substantial with respect  
2 to transporting witnesses and evidence and translating documents (Dkt. No. 57 at 15).  
3 Genentech as plaintiff, however, bears the burden of deposing witnesses and collecting relevant  
4 evidence in Taiwan. Document translation also will most likely occur to a certain degree no  
5 matter which jurisdiction Genentech brings this suit. This factor thus weighs only slightly in  
6 favor of JHL.

7           *Third*, JHL does not identify any actual interest by Taiwan in adjudicating this dispute.  
8 Moreover, in determining the amount of weight to give the third factor, courts look at the  
9 defendant’s presence or absence of connections to the United States. *Core-Vent Corp. v. Nobel*  
10 *Indus. AB*, 11 F.3d 1482, 1489 (9th Cir. 1993). Here, JHL’s chief officers Jordanov and Lin  
11 themselves maintain residences in California. In email correspondence, they list Rancho Santa  
12 Fe, California as JHL’s “U.S. Office” (Compl. ¶ 46). JHL collaborates with other  
13 biotechnology companies in San Francisco (*ibid.*). JHL hired many former Genentech and  
14 Amgen employees (*id.* ¶ 45). JHL’s connection to the United States (and California in  
15 particular) is strong. This factor thus holds little weight.

16           *Fourth*, California — Genentech’s principal place of business — has “a strong interest  
17 in providing an effective means of redress for its residents tortiously injured.” *Sinatra v. Nat’l*  
18 *Enquirer, Inc.*, 854 F.2d 1191, 1200 (9th Cir. 1988). That Genentech also operates outside of  
19 California does not negate California’s clear interest in adjudicating this dispute. This factor  
20 thus weighs in favor of Genentech.

21           *Fifth*, the location of evidence and witnesses is “no longer weighed heavily given the  
22 modern advances in communication and transportation.” *Panavision Int’l, L.P. v. Toeppen*, 141  
23 F.3d 1316, 1323 (9th Cir. 1998) (citing *Caruth v. Int’l Psychoanalytical Ass’n*, 59 F.3d 126, 129  
24 (9th Cir. 1995)). This factor is thus neutral.

25           *Sixth*, Genentech clearly has an interest in convenient and effective relief. This factor  
26 favors Genentech.

27           *Seventh*, “[w]hether another reasonable forum exists becomes an issue only when the  
28 forum state is shown to be unreasonable.” *CollegeSource*, 653 F.3d at 1080 (quoting *Bauman v.*

1 *DaimlerChrysler Corp.*, 644 F.3d 909, 929 n.19 (9th Cir. 2011)). This order finds that, on  
 2 balance, JHL has not shown “a compelling case” that exercise of jurisdiction would be  
 3 unreasonable under these circumstances. The existence of an alternative forum is thus  
 4 irrelevant.

5 \* \* \*

6 In sum, this order finds that Genentech has made a *prima facie* showing that JHL had  
 7 minimum contacts with California and that exercise of jurisdiction over JHL would be  
 8 reasonable. Accordingly, JHL’s motion to dismiss for lack of personal jurisdiction is **DENIED**.

9  
 10 **2. DEFENDANTS’ RULE 12(B)(6) MOTIONS TO DISMISS.**

11 To survive a motion to dismiss, a complaint must plead “enough facts to state a claim to  
 12 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A  
 13 claim has facial plausibility when the party asserting it pleads factual content that allows the  
 14 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.  
 15 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When ruling on a motion to dismiss, a court may  
 16 generally consider only allegations in the pleadings, attached exhibits, and matters properly  
 17 subject to judicial notice. The court accepts factual allegations in the complaint as true and  
 18 construes the pleadings in the light most favorable to the nonmoving party. *Manzarek v. St.*  
 19 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1030–31 (9th Cir. 2008). Conclusory allegations  
 20 or “formulaic recitation of the elements” of a claim, however, are not entitled to the  
 21 presumption of truth. *Iqbal*, 556 U.S. at 681.

22 **A. The DTSA and CUTSA (Claims 1–2).**

23 **(i) Actions Post-DTSA Enactment.**

24 As an initial matter, defendants Jordanov, Lin, Allen Lam, and Chan argue that  
 25 Genentech failed to state a claim under the DTSA because their alleged conduct occurred before  
 26 the enactment of the DTSA.

27 The DTSA, which Congress enacted on May 11, 2016, only applies to conduct  
 28 occurring “on or after the date of the enactment of this Act.” *See* DEFEND TRADE SECRETS ACT

1 OF 2016, Pub. L. No. 114–153, § 2, 130 Stat. 376 (2016) (codified as amended at 18 U.S.C. §  
2 1836). The DTSA gives rise to a claim for an “owner of a trade secret that is misappropriated . .  
3 . if the trade secret is related to a product or service used in, or intended for use in, interstate or  
4 foreign commerce.” 18 U.S.C. § 1836(b)(1). “Misappropriation” under the DTSA includes the  
5 (1) acquisition, (2) disclosure, or (3) use of a trade secret. *Id.* § 1839(5).

6 Here, Genentech failed to specifically allege “some relevant act” made after May 2016  
7 involving misappropriation by Jordanov, Lin, Allen, or Chan. Instead, Genentech argues that  
8 other defendants’ actions made post-DTSA enactment — such as JHL’s alleged continued use  
9 of the misappropriated trade secrets — may be imputed onto each of the moving defendants as  
10 participants of the trade secret theft conspiracy. Defendants contend that Genentech’s  
11 conspiracy allegations are deficient.

12 As other courts have found, “[n]othing suggests that the DTSA forecloses a use-based  
13 theory simply because the trade secret being used was misappropriated before the DTSA’s  
14 enactment.” *Cave Consulting Grp., Inc. v. Truven Health Analytics Inc.*, No. C 15-02177 SI,  
15 2017 WL 1436044, at \*4 (N.D. Cal. Apr. 24, 2017) (Judge Susan Illston); *see also Adams Arms,*  
16 *LLC v. Unified Weapon Sys., Inc.*, No. C 16-1503-T-33AEP, 2016 WL 5391394, at \*6 (M.D.  
17 Fla. Sept. 27, 2016) (Judge Virginia Hernandez Covington)). The “ ‘DTSA applies to  
18 misappropriations that began prior to the DTSA’s enactment if the misappropriation continues  
19 to occur after the enactment date,’ so long as the defendant took *some relevant act* after that  
20 date.” *Sonoma Pharm., Inc. v. Collidion Inc.*, No. C 17-01459 EDL, 2018 WL 3398940, at \*5  
21 (N.D. Cal. June 1, 2018) (Magistrate Judge Elizabeth Laporte) (citations omitted) (emphasis  
22 added) (quoting *Veronica Foods Co. v. Ecklin*, No. C 16-07223 JCS, 2017 WL 2806706, at \*13  
23 (N.D. Cal. June 29, 2017) (Magistrate Judge Joseph Spero)).

24 “The elements of an action for civil conspiracy are the formation and operation of the  
25 conspiracy and damage resulting to the plaintiff from an act or acts done in furtherance of the  
26 common design.” *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 511 (1994)  
27 (citing *Doctors’ Co. v. Superior Court*, 49 Cal. 3d 39, 44 (1989)). “[T]he major significance of  
28 the conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a

1 joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a  
2 direct actor and regardless of the degree of his or her activity.” *Ibid.*

3 As discussed at length above in connection with the personal jurisdiction analysis, this  
4 order finds that Genentech has pled sufficient facts suggesting (1) an agreement among JHL,  
5 Jordanov, Lin, and the Lams to misappropriate Genentech’s trade secrets; (2) that those  
6 defendants committed misappropriation; and (3) Genentech continues to suffer harm due to  
7 JHL’s continued use of its trade secrets.

8 Genentech, however, failed to adequately allege an agreement between JHL and Chan.  
9 It merely alleges that JHL hired Chan at Xanthe’s recommendation and that he, at a later point,  
10 used Genentech’s trade secret. The alleged facts center mainly on Chan’s relationship with  
11 *Xanthe*. Missing is any specific allegation allowing a reasonable inference as to Chan’s  
12 agreement with *JHL* to misappropriate trade secrets on its behalf.

13 Based on the foregoing, this order finds that JHL’s alleged continued use of the  
14 misappropriated trade secrets post-DTSA enactment may be imputed onto Jordanov, Lin, and  
15 Allen. It may *not*, however, be imputed to Chan, as Genentech’s allegations regarding his  
16 participation in the conspiracy with JHL are insufficient at this stage.

17 Accordingly, Jordanov, Lin, and Allen’s motions to dismiss the DTSA claim as to them  
18 are **DENIED** and Chan’s motion to dismiss is **GRANTED** with **LEAVE TO AMEND**.

19 (ii) ***Adequacy of Pleadings of Misappropriation Under***  
20 ***the DTSA and CUTSA as to Individual Defendants.***

21 Defendants Jordanov, Lin, and Chan next argue that Genentech failed to adequately  
22 plead trade secret misappropriation in violation of CUTSA and DTSA as to them.

23 For the purposes of this motion, the elements of CUTSA and DTSA claims are  
24 substantially the same. *Waymo LLC v. Uber Techs., Inc.*, No. C 17-00939 WHA, 2017 WL  
25 2123560, at \*7 (N.D. Cal. May 15, 2017). “To qualify as a trade secret under California Civil  
26 Code Section 3426.1, the information at issue must derive economic value from not being  
27 generally known to the public and be subject to reasonable measures to maintain its secrecy.”  
28 *Qiang Wang v. Palo Alto Networks, Inc.*, No. C 12-05579 WHA, 2013 WL 415615, at \*2 (N.D.  
Cal. Jan. 31, 2013).

1 The elements for indirect misappropriation (as applicable to Jordanov, Lin, and Chan)  
2 are as follows:

3 (1) the plaintiff is the owner of a valid trade secret;

4 (2) the defendant acquired the trade secret from someone other than  
5 the plaintiff and

6 (a) *knew or had reason to know* before the use or disclosure  
7 that the information was a trade secret and knew or had reason  
8 to know that the disclosing party had acquired it through  
9 improper means or was breaching a duty of confidentiality by  
10 disclosing it; or

11 (b) knew or had reason to know it was a trade secret and that  
12 the disclosure was a mistake;

13 (3) the defendant used or disclosed the trade secret without plaintiff's  
14 authorization; and

15 (4) the plaintiff suffered harm as a direct and proximate result of the  
16 defendant's use or disclosure of the trade secret, or the defendant  
17 benefitted from such use or disclosure.

18 *Ibid.* (emphasis added). Moreover, to be personally liable, a "corporate director or officer must  
19 have known or had reason to know of the misappropriation and then unreasonably participated  
20 in the unlawful conduct." *PMC, Inc. v. Kadisha*, 78 Cal. App. 4th 1368, 1389 (2000), *as*  
21 *modified on denial of reh'g* (Apr. 7, 2000). A "corporate director or officer's participation in  
22 tortious conduct may be shown not solely by direct action but also by knowing consent to or  
23 approval of unlawful acts." *Id.* at 1380.

24 Defendants Jordanov and Lin contend that Genentech's allegations that they knew or  
25 should have known of Xanthe's trade secret theft and that they unreasonably participated in the  
26 misappropriation are conclusory (Dkt. Nos. 59 at 6–7; 62 at 6–9). Defendants are wrong. As  
27 discussed above in connection with the personal jurisdiction analysis, the totality of  
28 Genentech's allegations support a reasonable inference that Jordanov and Lin recruited Xanthe  
to misappropriate Genentech's trade secrets. *See supra* Section 1(A). As such, Jordanov and  
Lin's reliance on *Acculmage Diagnostics Corporation v. Terarecon, Inc.*, 260 F. Supp. 2d 941  
(N.D. Cal. 2003) (Judge Marilyn Patel), is unavailing. There, the district court rejected the  
plaintiff's allegation that the defendants (consisting of a competitor, its CEO, and the plaintiff's  
former employee) conspired to steal its trade secrets as conclusory. The plaintiff's only specific

1 allegations supporting its conspiracy theory as to the CEO defendant was the CEO's expressed  
2 interest in hiring the plaintiff's then employee, the employee's laptop full of the plaintiff's trade  
3 secrets, and the defendant corporation's subsequent release of a competing product. *Id.* at  
4 950–51. The district court held that this was insufficient to state a claim as to the CEO's trade  
5 secret misappropriation.

6 Here, in contrast, much more was alleged to support the inference of Jordanov and Lin's  
7 at least knowing consent of the trade secret misappropriation (as discussed above). Like the  
8 district court in *AccuImage* explained in finding a sufficiently pled conspiracy allegation as to  
9 another defendant, “[a]n alleged conspirator’s ‘requisite concurrence and knowledge may be  
10 inferred from the nature of the acts done, the relation of the parties, the interests of the alleged  
11 conspirators, and other circumstances.’ ” *Id.* at 952 (quoting *Wyatt v. Union Mortg. Co.*, 24  
12 Cal. 3d 773, 785 (1979)).

13 Lin's additional contention that her communications with Xanthe regarding Genentech's  
14 proprietary analytical methods were merely passive reception of a trade secret is similarly  
15 misplaced (Dkt. No. 59 at 8). Unlike in *Silvaco Data Systems v. Intel Corporation*, 184 Cal.  
16 App. 4th 210, 223 (2010), *disapproved on other grounds by Kwikset Corporation v. Superior*  
17 *Court*, 51 Cal. 4th 310 (2011), where the defendant “inadvertently [came] into possession of a  
18 trade secret,” Lin, as alleged, actively sought out and discussed Genentech's trade secrets with  
19 Xanthe. Nor is Jordanov's assertion that he was unaware of Xanthe's concurrent employment  
20 at Genentech during her December 2013 consultation plausible under the alleged circumstances,  
21 especially given that he is a former longtime Genentech employee. Again, defendants attempt  
22 to isolate each allegation in a vacuum.<sup>10</sup>

23 Jordanov and Lin further argue that Genentech's conspiracy allegations are conclusory  
24 particularly in light of the fact that Xanthe's work for JHL in December 2013 related to  
25

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27 <sup>10</sup> Because this order finds that Genentech sufficiently pled that Lin and Jordanov directly participated  
28 in the alleged conspiracy that resulted in harm to Genentech, the “agent's immunity rule” does not apply. *See*  
*AccuImage*, 260 F. Supp. 2d at 947 (“[T]he agent's immunity rule does not apply in cases where directors and  
officers of a corporation ‘directly order, authorize, or participate in the tortious conduct.’ ”) (quoting *Wyatt*, 24  
Cal. 3d at 785)).

1 replicating formulations already publicly disclosed (Dkt. Nos. 62-1 at 8–9; 59 at 7).<sup>11</sup> This is a  
2 red herring. Of course the formulations of the four biologics are publicly disclosed by  
3 Genentech itself. Rather, the alleged trade secrets at issue relate to “undisclosed proprietary  
4 information regarding how Genentech came to decide upon the most suitable formulation for  
5 [the biologic], and the relative strengths and weaknesses of various formulations for [the  
6 biologic], and the relative strengths and weaknesses of various formulations for [the biologic]  
7 that Genentech considered internally” (Dkt. No. 63-1 at 3). This kind of proprietary  
8 information may come in the form of negative know-how, and JHL’s own formulation may still  
9 have benefitted from such information by avoiding costly research pitfalls. To repeat, Jordanov  
10 and Lin, as alleged, sought out Genentech’s trade secrets by hiring the Lams. That one aspect  
11 of the formulation of Genentech’s biologics may be publicly known does not by itself destroy  
12 this reasonable inference (particularly where these defendants do not specifically dispute the  
13 adequacy of Genentech’s other claimed trade secrets). Nor does it compel the conclusion that  
14 Xanthe’s work only involved non-actionable reverse engineering.<sup>12</sup>

15 Chan argues that Genentech failed to sufficiently allege that he knew that the  
16 information at issue contained alleged trade secrets or that Xanthe acquired it by improper  
17 means (Dkt. No. 101 at 4). CUTSA, however, only requires that Chan *had reason to know* that  
18 the information was a trade secret and that he *had reason to know* that it was acquired through  
19 improper means. Here, Chan allegedly received a confidential Genentech Technical Report that  
20 was “clearly labeled as ‘GENENTECH Pharm R & D Technical Report – CONFIDENTIAL’ ”  
21 and clearly marked “Confidential” and “Internal Only” at the bottom of the cover page (Compl.

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22  
23 <sup>11</sup> Jordanov and Lin request judicial notice of a portion of Genentech’s Statement Regarding Trade  
24 Secrets Pursuant to California Code of Civil Procedure 2019.210 (Dkt. No. 63). Genentech does not oppose  
25 (Dkt. No. 93 at 16). A court may judicially notice a fact that is not subject to reasonable dispute because it “can  
26 be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” FRE  
27 201(b). Accordingly, Jordanov and Lin’s request for judicial notice is **GRANTED**.

28 <sup>12</sup> This order rejects Jordanov and Lin’s contention that Genentech’s claimed “formulation” trade  
secrets are too vague at the pleading stage, as discussed below. *See infra* Section 3(A)(ii). Accordingly, their  
reliance on *Vendavo, Inc. v. Price f(x) AG*, No. C 17-06930 RS, 2018 WL 1456697, \*4 (N.D. Cal. Mar. 23,  
2018) (Judge Richard Seeborg), and *Space Data Corp. v. X*, No. 16-CV-03260-BLF, 2017 WL 5013363, at \*2  
(N.D. Cal. Feb. 16, 2017) (Judge Beth Freeman), where the district courts found the plaintiffs’ claimed trade  
secrets inadequately pled, is unavailing.

1 ¶ 169). This report concerned the stability and compatibility of Pulmozyme with Stedim bags  
2 for storage, shipping, and handling — the exact topic JHL was researching at that time (*id.* ¶  
3 171). Chan was also specifically given a hard copy (rather than an e-copy) of the report and  
4 was told not to show the document to others. Based on the foregoing, this order finds that Chan  
5 at least had reason to know that the document contained alleged trade secrets, that it was  
6 obtained through improper means, and used it.

7 Accordingly, defendants Jordanov, Lin, and Chan’s motions to dismiss the trade secret  
8 misappropriation claims for lack of adequate pleading are **DENIED**.

9 **B. Conspiracy Liability Under CUTSA, DTSA,  
10 and CFAA (Claims 3 & 9).**

11 All defendants argue that claims three and nine involving stand-alone claims of  
12 conspiracy to misappropriate trade secrets under the DTSA and CUTSA and conspiracy to  
13 violate the CFAA, respectively, fail because (1) Genentech failed to adequately plead the  
14 elements of civil conspiracy under California or federal law, and (2) California law and the  
15 federal statutes do not provide for an independent, stand-alone civil claim for conspiracy (*e.g.*,  
16 Dkt. No. 57 at 20–23). As to the former point, this order has already found the adequacy of  
17 Genentech’s conspiracy allegations in connection with the post-DTSA claim. And, as to the  
18 latter point, Genentech in its opposition does not seriously dispute defendants’ contention that  
19 neither the DTSA nor CUTSA provides for a stand-alone civil conspiracy claim.

20 “The elements of an action for civil conspiracy are the formation and operation of the  
21 conspiracy and damage resulting to plaintiff from an act or acts done in furtherance of the  
22 common design.” *Applied Equip. Corp.*, 7 Cal. 4th at 511 (citing *Doctors’ Co.*, 49 Cal. 3d at  
23 44). At the pleading stage, Genentech is only required to allege facts which “plausibly  
24 suggest[] . . . agreement.” *Twombly*, 550 U.S. at 557.

25 As discussed above, Genentech’s conspiracy allegation overreaches as to Chan. This  
26 order also finds that Genentech’s conspiracy allegation as to Quach fails for similar reasons. To  
27 repeat, the alleged facts focus mainly on Chan and Quach’s relationship with *Xanthe*.  
28 Genentech offers no specific allegation to support a reasonable inference as to Chan and  
Quach’s agreement with *JHL* to steal trade secrets on its behalf.

1 To defendants' latter point, under California law, "civil conspiracy is not a separate and  
 2 distinct cause of action." *AccuImage*, 260 F. Supp. 2d at 947 (citing *Entm't Research Group,*  
 3 *Inc. v. Genesis Creative Group, Inc.*, 122 F.3d 1211, 1228 (9th Cir.1997)). Instead, civil  
 4 conspiracy is "a legal doctrine that imposes liability on persons who, although not actually  
 5 committing a tort themselves, share with the immediate tortfeasors a common plan or design in  
 6 its perpetration." *Applied Equip. Corp.*, 7 Cal. 4th at 510–11. As such, it can be considered in  
 7 the context of other tort claims. *Yulaeva v. Greenpoint Mortg. Funding, Inc.*, No. C S-09-1504  
 8 LKK/KJM, 2009 WL 2880393, at \*5 (E.D. Cal. Sept. 3, 2009) (Judge Lawrence Karlton).

9 Defendants are therefore correct that there can be no independent civil conspiracy claim  
 10 under CUTSA. And, Genentech cites no authority suggesting that Section 1836(b) of the  
 11 DTSA provides for a stand-alone private action for conspiracy to misappropriate trade secrets  
 12 (nor does Genentech attempt to make any serious argument for such in its briefing).<sup>13</sup>

13 Moreover, as discussed in the section above, Genentech failed to adequately plead that  
 14 JHL and Quach entered into an agreement to misappropriate Genentech's trade secrets.  
 15 Therefore, even assuming (without deciding) that the CFAA provides for a conspiracy claim,  
 16 the claim as asserted against JHL is deficient.

17 Accordingly, defendants' motions to dismiss claim three regarding conspiracy to  
 18 misappropriate are **GRANTED** and the claim is **DISMISSED WITH PREJUDICE**. JHL's motion to  
 19 dismiss claim nine is **GRANTED** with **LEAVE TO AMEND**.

### 20 C. Common Law Claims (Claims 5–7).

21 JHL, Jordanov, Lin, Allen Lam, Chan, and Quach move to dismiss claims five and  
 22 seven involving intentional interference with contractual relations and aiding and abetting  
 23 breach of duty of loyalty, respectively. They argue that those claims are (1) time barred under  
 24 the two-year statute of limitations, and (2) superseded by CUTSA. Chan further argues that  
 25 Genentech failed to plead sufficient facts to state these claims as to him. Xanthe moves to  
 26 dismiss claim six involving breach of duty of loyalty, arguing that (1) it is time barred under the

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 28 <sup>13</sup> And, *Steves & Sons v. JELD-WEN, Inc.*, 271 F. Supp. 3d 835, 843 (E.D. Va. 2017) (Judge Robert Payne), has already rejected the proposition that Section 1832(a)(5), which criminalizes conspiracy to violate the DTSA, provides for a private right of action.

1 two-year statute of limitations, (2) she did not owe a fiduciary duty to Genentech, and (3) the  
2 claim is superseded by CUTSA (Dkt. No. 67 at 11).

3 The statute of limitations for claims of interference with contractual relations, breach of  
4 duty of loyalty, and aiding and abetting breach of duty of loyalty is two years. *Knoell v.*  
5 *Petrovich*, 76 Cal. App. 4th 164, 168 (1999); *Mattel, Inc. v. MGA Entm't, Inc.*, 782 F. Supp. 2d  
6 911, 1001 (C.D. Cal. 2011) (Judge David Carter) (citing CAL. CODE CIV. PROC. § 339(1)).

7 Here, Genentech alleged that it “first received notice of the allegations described herein  
8 on or about October 11, 2016, via a tip received from a Genentech employee who was  
9 concerned that Xanthe was engaged in improper consulting activities outside of Genentech”  
10 (Compl. ¶ 244). Genentech filed the instant action on October 29, 2018. Thus, according the  
11 defendants, Genentech’s common law claims fall just outside the two-year window.

12 Genentech counters that the tip concerned Xanthe’s consulting activities with AP  
13 Biosciences, Inc. (another Taiwanese competitor), not JHL (*see id.* ¶ 245; Dkt. No. 93 at 28).  
14 This alone, Genentech argues, did not give it notice of Xanthe’s activities involving JHL and  
15 the claims asserted in the instant action. Rather, Genentech did not have reason to suspect  
16 JHL’s involvement until mid-November 2016, which Genentech argues is when the clock began  
17 to run (Dkt. No. 93 at 29). This extraneous explanation, however, is found only in Genentech’s  
18 briefing rather than in the complaint itself. Without deciding the merits of Genentech’s  
19 contentions, JHL, Jordanov, Lin, Allen, Chan, and Quach’s motions to dismiss claims five and  
20 seven involving intentional interference with contractual relations and aiding and abetting  
21 breach of duty of loyalty are **GRANTED** with **LEAVE TO AMEND**.<sup>14</sup>

22 On the other hand, Genentech does not attempt to salvage claim six for breach of duty of  
23 loyalty. Nor can it, as claim six covers *all* of Xanthe’s consulting activities, including those  
24 done for AP Biosciences. Accordingly, Xanthe’s motion to dismiss claim six is **GRANTED** and  
25 the claim is **DISMISSED WITH PREJUDICE**.

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<sup>14</sup> Because this order dismisses claims five and seven without prejudice based on the statute of limitations, it does not reach defendants’ other arguments.

1                                   **D.      CDAFA and CFAA (Claims 8 & 10).**

2                   JHL contends that the CFAA and California’s Computer Data Access and Fraud Act  
3 (“CDAFA”) claims as to JHL fail because Genentech failed to adequately plead that Quach was  
4 acting as an agent of JHL in the summer of 2017 when he allegedly used Xanthe’s log-in  
5 credentials to access the confidential JHL documents. As discussed above in Section 2(B), this  
6 order agrees. Accordingly, JHL’s motion to dismiss claims eight and ten relating to violations  
7 under the CFAA and CDADA is **GRANTED** with **LEAVE TO AMEND**.

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9                                   **3.      PLAINTIFF’S MOTION FOR PROVISIONAL RELIEF.**

10                   To obtain a preliminary injunction, Genentech must establish that (1) it is likely to  
11 succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary  
12 relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest.  
13 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In our circuit, “serious questions  
14 going to the merits” and a balance of hardships that tips sharply in Genentech’s favor can  
15 support issuance of a preliminary injunction so long as Genentech also shows a likelihood of  
16 irreparable injury and that the injunction is in the public interest. *All. for the Wild Rockies v.*  
17 *Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011).

18                   Genentech relies primarily on its trade secret misappropriation claims in seeking  
19 provisional relief. JHL contends that the harm alleged is reparable. It further disputes  
20 Genentech’s showing of a likelihood of success on the merits because (1) “much” of the  
21 information at issue does not constitute trade secrets, and (2) JHL “is not currently using”  
22 Genentech’s trade secrets (Dkt. No. 77 at 5–18). All defendants also take issue with the scope  
23 of provisional relief requested by Genentech.<sup>15</sup>

24                   This order concludes that Genentech has established all four *Winter* factors as to its  
25 trade secret misappropriation claims and that certain provisional relief is warranted, as detailed  
26 below.

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<sup>15</sup> All other defendants join in JHL’s opposition to the instant motion (Dkt. Nos. 70, 71–73, 76, 78).  
Lin and Jordanov’s motions for joinder in JHL’s opposition to the motion for preliminary injunction (Dkt. Nos.  
76, 78) are **GRANTED**.

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**A. Likelihood of Success on the Merits.**

Genentech brings misappropriation claims under the California Uniform Trade Secrets Act and the federal Defend Trade Secrets Act, both of which offer essentially the same definitions for our purposes. “Misappropriation” means:

(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

“Trade secret” means “information, including a . . . compilation” that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

And, “improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain secrecy, or espionage, and excludes reverse engineering or independent derivation. CAL. CIV. CODE § 3426.1; *see also* 18 U.S.C. § 1839.

The Court has reviewed the motion record submitted by Genentech — which undoubtedly benefits from both internal and FBI investigations — and it is strong. That is, Genentech has made a compelling showing at this stage that Xanthe (and later Quach)

1 downloaded hundreds of confidential Genentech documents containing trade secrets specifically  
2 related to the four biologics at issue — which she used herself in assisting JHL’s biosimilar  
3 development and further supplied to others at JHL — and that JHL knew or at least should have  
4 known of (if not authorized) Xanthe’s conduct.

5 JHL disputes whether “much” of the information at issue qualifies as trade secrets,  
6 contending that the information was generally known, that it was not subject to reasonable  
7 efforts to maintain secrecy, and that Genentech’s trade secret descriptions filed herein are so  
8 vague that they fail to put JHL on notice (Dkt. No. 77 at 10–11). It further disputes whether  
9 JHL is “currently using” the information contained in the stolen documents (*id.* at 16).

10 That JHL studiously resorts to these qualifiers is telling. Of course, by asserting that  
11 “much” of the information at issue does not constitute trade secrets, JHL implicitly admits that  
12 at least *some* of the information qualifies as trade secrets. And, that JHL may not be *currently*  
13 using Genentech’s trade secrets says nothing about whether it *previously* used them, *i.e.*,  
14 whether JHL used them to derive its current protocols and methods. Nor does it say anything  
15 about Genentech’s contention that JHL directly *acquired* its trade secrets by conspiring with the  
16 Lams, which is a separate ground for misappropriation. As Genentech points out, JHL failed to  
17 submit any evidence showing that no Genentech document was found at JHL.

18 Rather, the evidence points to the conclusion that JHL did in fact acquire Genentech’s  
19 trade secrets. For example, Allen sent an email to Jordanov, Lin, and others at JHL on January  
20 7, 2014, in which he “[a]ttached . . . the methyl green activity assay used by the *innovator*,”  
21 observed that the innovator’s (Genentech) assay was “doable” and was at least “familiar to the  
22 FDA/EMEA, and acceptable to them,” and stated that the “materials and chemicals required in  
23 th[at] assay [were] already ordered” by JHL so that they “c[ould] try out the method”  
24 (McCloskey Decl., Exh. 16) (emphasis added). This evidence clearly links the JHL co-founders  
25 to a confidential Genentech document and shows with likely success that the document included  
26 Genentech trade secrets, at least by revealing the very assay (all steps and criteria included) that  
27 was already validated and accepted by regulators. Additionally, at oral argument, JHL’s  
28 counsel conceded that at least one of Genentech’s confidential documents had been found at

1 JHL (while claiming ignorance as to the actual number of documents found) (Dkt. No. 117 at  
2 73:16–25).

3 This order therefore finds that Genentech has established that it is more probable than  
4 not that at least some of the information at issue qualifies as trade secrets and that it was  
5 acquired and/or used by JHL. To the extent JHL actually disputes the merits, this order now  
6 addresses its most substantive arguments below (and JHL’s other arguments not specifically  
7 addressed would not alter the outcome of this order).

8 (i) ***Independent Economic Value.***

9 It is axiomatic that information in the public domain or that is generally known never  
10 qualifies as a trade secret. *Shapiro v. Hasbro, Inc.*, 653 F. App’x 568, 568–69 (9th Cir. 2016).  
11 Here, Genentech claims as trade secrets information related to how it formulates, tests,  
12 analyzes, controls, and manufactures its biologics. The information also relates to “required  
13 criteria for key” drug characteristics such as potency, purity, stability, and identity (Dkt. No. 21  
14 at 2).

15 JHL contends that “many” of Genentech’s alleged trade secrets are generally known.  
16 That is, the “trade secret” information, according to JHL, “is the subject of vast disclosures in  
17 myriad public sources,” such as regulatory requirements, country-issued guidelines, industry  
18 standards, patents, and publications by various companies (Dkt. No. 77 at 11).

19 True, some of the information JHL specifically points to within the trove of documents  
20 at issue may be publicly disclosed in various patents, publications, and standardized protocols.  
21 But pinpointing to certain aspects of the information at issue misses the forest for the trees.

22 For example, Genentech does not only claim particular information contained within the  
23 Genentech documents, in isolation, as its trade secrets. It also claims the *compilations* of that  
24 information as trade secrets, *i.e.*, certain individual documents themselves are compilations of  
25 proprietary and public information (Dkt. No. 107 at 5). This order finds that there is a  
26 likelihood that such compilations do in fact constitute trade secrets. For example, biological  
27 drug manufacturers often rely on publicly-available standard protocols, such as those provided  
28 by the United States Pharmacopeia (Tessier Decl. ¶¶ 244–45). But those standards offer general

1 guidance that serve more as jumping off points by providing only “target” quality attributes to  
 2 aim for in drug development (Balogh Suppl. Decl. ¶ 10). They do not contain Genentech’s  
 3 specifications or the exacting level of detail needed to reach those benchmarks for its *specific*  
 4 products (*ibid.*). These internal specifics (as well as public information), taken  
 5 comprehensively and conveniently placed in a single coherent document, likely qualify for trade  
 6 secret protection, as they would provide the “step-by-step” methods and acceptance criteria  
 7 used to test various aspects of the biologics. Access to these compilations would therefore  
 8 allow a competitor to accelerate its biosimilar development and — given that the whole point of  
 9 the abbreviated approval pathway is to show that the biosimilar candidate is *highly similar* to  
 10 the reference product — increase the likelihood of receiving regulatory approval (Balogh Decl.  
 11 ¶ 8; Balogh Suppl. Decl. ¶ 5; Moore Decl. ¶ 7).<sup>16</sup>

12 (ii) ***Reasonable Particularity.***

13 JHL argues that Genentech’s Statement Regarding Trade Secrets is deficient. JHL’s  
 14 main gripe with the statement is that it purportedly fails to distinguish Genentech’s trade secrets  
 15 from public knowledge. That is, JHL contends that thirty-one of the thirty-six claimed trade  
 16 secrets are described using broad categories and that additional detail provided through  
 17 subcategories or citations to example documents insufficiently describe the alleged trade secrets  
 18 with reasonable particularity (Dkt. No. 77 at 14). This, JHL asserts, fails to distinguish  
 19 Genentech’s trade secrets, such as allegedly proprietary steps or specifications in a protocol,  
 20 from matters of general knowledge or special knowledge of persons in the trade. JHL further  
 21 contends that the other five claimed trade secrets related to the compilation of documents  
 22 similarly suffer from a lack of distinction between proprietary and public information.

23 “Absent a showing that the details alone, without further explanation, are inadequate to  
 24 permit the defendant to discern the boundaries of the trade secret so as to prepare available  
 25 defenses, or to permit the court to understand the identification so as to craft discovery, the  
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27 <sup>16</sup> This, however, should in no way be construed as the Court’s blessing of *all* of Genentech’s claimed  
 28 trade secrets. For example, JHL points to specific information that is indeed publicly disclosed. And, the Court is skeptical at this stage of Genentech’s claim that compilations created by *Xanthe* and *Quach* — JHL’s supposed moles — are *Genentech’s* trade secrets.

1 trade secret claimant need not particularize how the alleged secret differs from matters already  
2 known to skilled persons in the field.” *Brescia v. Angelin*, 172 Cal. App. 4th 133, 143 (2009).  
3 “ ‘Reasonable particularity’ mandated by [S]ection 2019.210 does not mean that the party  
4 alleging misappropriation has to define every minute detail of its claimed trade secret at the  
5 outset of the litigation. Nor does it require a discovery referee or trial court to conduct a  
6 miniature trial on the merits of a misappropriation claim before discovery may commence.  
7 Rather, it means that the plaintiff must make some showing that is reasonable, *i.e.*, fair, proper,  
8 just and rational.” *Advanced Modular Sputtering, Inc. v. Superior Court*, 132 Cal. App. 4th  
9 826, 835–36 (2005) (citations omitted). A trade secret identification should be “liberally  
10 construed, and reasonable doubts about its sufficiency [should be] resolved in favor of allowing  
11 discovery to go forward.” *Brescia*, 172 Cal. App. 4th at 149.

12 Here, Genentech’s Statement Regarding Trade Secrets includes the following details for  
13 most of its claimed trade secrets. For each of the four biologics at issue, Genentech lists seven  
14 categories of trade secrets: (1) analytical methods to test and ensure the stability of the  
15 biologic; (2) analytical methods to test and ensure the potency of the biologic; (3) analytical  
16 methods to test and ensure the purity of the biologic; (4) analytical methods to test and ensure  
17 the identity of the biologic; (5) manufacturing processes and analytical methods to test and  
18 ensure the quality of the biologic; (6) information regarding development and selection of a  
19 formulation for the biologic; and (7) the compilation of documents Xanthe compiled regarding  
20 the biologic (*e.g.*, Dkt. No. 13-4 at 3–12). Genentech further states within each category that  
21 (*e.g.*, *id.* at 7):

22 because each step in the biologic manufacturing process becomes the  
23 foundation for subsequent steps . . . the trade secrets at issue comprise  
24 both each individual protocol, procedure, specification, and  
25 acceptance criterion regarding the [critical quality attribute] of [the  
26 biologic], as well as the combination of those protocols, procedures,  
27 specifications, and acceptance criteria.

26 The statement explains that Genentech memorialized the aforementioned material in various  
27 documents allegedly misappropriated by defendants, including Genentech’s Standard Operating  
28 Procedures (SOPs), Test Procedures, Validation Protocols, Validation Reports, Qualification  
Protocols, Qualification Reports, and Technical Reports (*e.g.*, *ibid.*). It then identifies

1 exemplary documents (which are attached as exhibits) that contain the trade secret information.

2 For example, Genentech identifies [REDACTED]

3 [REDACTED] as an example document containing trade secret information related to testing

4 the purity of Pulmozyme (*id.* at 8, Exh. 7). [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 JHL has failed to show why this level of specificity is not reasonable at this stage. It  
10 complains that the statement does not separate Genentech's trade secrets from public  
11 knowledge, but JHL does not sufficiently show *how* that hinders it from crafting a defense or  
12 the Court from crafting discovery. *See Brescia*, 172 Cal. App. 4th at 143. In fact, as Genentech  
13 points out, JHL in its opposition has already defended against numerous documents Genentech  
14 claims as its trade secrets, arguing that it is not "currently using" Genentech's trade secrets.  
15 *John M. Floyd & Associates, Inc. v. First Imperial Credit Union*, No. C 16-1851 DMS (WVG),  
16 2017 WL 4810223, at \*4 (S.D. Cal. Oct. 25, 2017) (Judge Dana Sabraw), is thus  
17 distinguishable, as the trade secret identification there only included a broad range of  
18 documents that the defendant argued contained *only* generally known information that was used  
19 in the relevant industry, leaving the defendant clueless as to what constituted the plaintiff's  
20 trade secrets. Here, in contrast, JHL does not contest over half of the exhibits attached to  
21 Genentech's Statement Regarding Trade Secrets (*see* Tessier Decl. ¶ 3; Rudge Decl. ¶ 8). Nor  
22 does JHL contest that the *compilations* of the supposedly public information in the form of a  
23 single document are not readily ascertainable.

24 Genentech has therefore sufficiently identified the information it claims as its trade  
25 secrets for the purpose of granting provisional relief. JHL, however, is correct that the  
26 *categories* of trade secrets within Genentech's statement risk vagueness at their outer edges.  
27 This point will be addressed in determining the scope of provisional relief, as discussed below.  
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[REDACTED]

[REDACTED] (Tessier Decl. ¶ 75).

As discussed above, this argument fails to grapple with the allegation that JHL *acquired* Genentech’s trade secrets through the Lams. It also seemingly concedes — by repeated use of qualifiers such as “many” of JHL’s protocols are not “currently” using Genentech’s trade secrets — that either at least one of JHL’s protocols are currently using trade secrets or that JHL used the trade secrets in the past (or both). Moreover, that certain JHL protocols differ in material ways from Genentech’s corresponding protocols does not foreclose JHL’s alleged use of Genentech’s negative know-how trade secrets. Such use would confer JHL the benefit of steering clear of fruitless development pathways, thereby saving precious time and resources.

Accordingly, this order finds that Genentech has shown a likelihood of success on the merits of its trade secret misappropriation claims.

**B. Irreparable Harm.**

Both parties debate whether or not a presumption of irreparable harm applies in trade secret cases. This order need not reach the issue because it concludes Genentech has shown irreparable harm without the benefit of any presumption.

Here, Genentech faces the risk of further disclosure of Genentech’s trade secrets to third parties. This harm would be irreparable. For example, JHL has already entered into a high-profile partnership with multinational pharmaceutical company Sanofi — another Genentech competitor — to develop and market the Rituxan biosimilar. Partnerships with other third parties are also likely on the horizon. This, Genentech argues, evidences JHL’s “intention to use and disclose Genentech’s trade secrets to benefit Genentech’s competitors” (Dkt. No. 20 at 25). This order agrees.

JHL’s reliance on *Faiveley Transport Malmo AB v. Wabtec Corporation*, 559 F.3d 110 (2d Cir. 2009), is unpersuasive. JHL disputes the risk of disclosure asserted by Genentech based on the United States Court of Appeals for the Second Circuit’s observation that “once a trade secret is misappropriated, the misappropriator will often have the same incentive as the originator to maintain the confidentiality of the secret in order to profit from the proprietary

1 knowledge.” *Id.* at 119. There, the defendant clearly aimed to *only* use the trade secrets  
2 “without further dissemination or irreparable impairment of value.” *Ibid.* But the appellate  
3 court also observed that, in general, “ ‘the loss of trade secrets cannot be measured in money  
4 damages’ where that secret, once lost, is ‘lost forever,’ ” and thus irreparable harm is likely  
5 shown “where there is a danger that, unless enjoined, a misappropriator of trade secrets will  
6 disseminate those secrets to a wider audience.” *Ibid.* (quoting *FMC Corp. v. Taiwan Tainan*  
7 *Giant Indus. Co.*, 730 F.2d 61, 63 (2d Cir. 1984)). While the proposition that a misappropriator  
8 would be incentivized to maintain secrecy may be sometimes true, that incentive is chipped  
9 away here by various partnerships that might require the sharing of information containing  
10 Genentech’s trade secrets in the course of dealing. Thus the risk of further disclosure is a  
11 tangible one, and JHL has not persuaded otherwise.

12 Moreover, Xanthe allegedly downloaded and provided to JHL hundreds of confidential  
13 Genentech documents filled with proprietary negative know-how. The use of such information  
14 would be “virtually untraceable,” thereby making the task of identifying (and enjoining) which  
15 of JHL’s biosimilars used Genentech’s trade secrets, if Genentech were to prevail at trial, a  
16 “bone-crushing endeavor.” *See Waymo*, 2017 WL 2123560, at \*10–11.

17 JHL further contends that the fact that Genentech filed the instant motion two years after  
18 learning of Xanthe’s alleged misconduct in October 2016 shows that harm to Genentech is not  
19 imminent, or is at least exaggerated. Even if exaggerated, this order finds that the risk of  
20 irreparable harm due to dissemination and/or the untraceable use of Genentech’s trade secrets  
21 nevertheless presently exists. Moreover, JHL’s contention ignores Genentech’s cooperation  
22 with the government investigation (*see* Peters Suppl. Decl. ¶¶ 4–11). All district court decisions  
23 JHL cites to are therefore distinguishable.

24 JHL also argues that the lack of imminent harm is further shown by the fact that its  
25 biosimilars are still undergoing regulatory review and thus there still remains at least two years  
26 before commercialization. This argument, however, is more properly addressed in fashioning  
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1 the scope of provisional relief rather than in the outright denial of any relief, as discussed  
2 below.<sup>18</sup>

3 **C. Public Interest.**

4 There is public interest in vindicating intellectual property rights and prohibiting  
5 illegitimate competition. This is particularly true where biosimilar developers must expend  
6 huge amounts of time and capital to reverse engineer the innovator's manufacturing process and  
7 undergo rigorous regulatory review. Due to the high barrier to market entry, there remains an  
8 acute need to keep the playing field level and tolerate only legitimate competition. JHL's  
9 counter to this point essentially amounts to its contention that Genentech failed to show a  
10 likelihood of success on the merits. This order disagrees with JHL, as discussed above.

11 JHL further argues that the public has an interest in more affordable life-saving  
12 medicine and that the requested provisional relief could slow public access to such medicines  
13 (Dkt. No. 77 at 25). The tailored provisional relief provided herein, however, helps ensure that  
14 access to these more affordable medicines, if ultimately vindicated, is not unduly delayed.

15 The individual defendants also contend that the public has an interest in fair and even-  
16 handed criminal proceedings and that Genentech's requested relief would thwart this interest  
17 (*e.g.*, Dkt. No. 71 at 15). This concern is also addressed in the scope of relief provided below.

18 **D. Balance of Hardships.**

19 Genentech overreaches in its requested provisional relief, which was lifted from the  
20 provisional relief granted by the undersigned in *Waymo LLC v. Uber Technologies, Inc.*, No. C  
21 17-00939 WHA, 2017 WL 2123560, at \*13–14 (N.D. Cal. May 15, 2017). Specifically,  
22 Genentech seeks to (Dkt. No. 20-1):

- 23 (1) enjoin defendants from using or disclosing the claimed trade secrets;  
24 (2) enjoin defendants from selling products developed using  
25 Genentech's trade secrets;  
26 (3) enjoin defendants from utilizing any protocols or methods using  
27 Genentech's trade secrets;

28 <sup>18</sup> The parties also debate the correct characterization of the relevant market at issue. This issue (and the consequence of loss of market share), however, need not be reached for this order to find irreparable harm.

1 (4) enjoin defendants from submitting any filings using Genentech’s  
2 trade secrets before regulatory bodies;

3 (5) require defendants to return to Genentech within fourteen days of a  
4 ruling (a) all copies of Genentech documents and information, and (b)  
5 all materials (*e.g.*, cell lines, test results, drug substances) containing any  
6 or derived from Genentech’s trade secrets;

7 (6) require JHL, Jordanov, and Lin to conduct an investigation and  
8 provide a detailed accounting under oath setting forth each individual  
9 and entity to whom defendants disclosed (a) any Genentech documents  
10 or other materials, or (b) any of Genentech’s trade secret information  
11 within thirty days of a ruling; and

12 (7) require defendants to provide a log of all oral and written  
13 communications wherein Xanthe Lam, Allen Lam, John Chan, or James  
14 Quach may have mentioned any Genentech trade secret to anyone  
15 connected to JHL.

16 But the present circumstances differ from those in *Waymo* in terms of degree of imminent harm  
17 (as demonstrated by Genentech’s one-year gap between the FBI’s execution of the search  
18 warrant and the commencement of the instant action) and the criminal proceedings against  
19 certain individual defendants. Genentech thus fails to justify the scope of its requested relief.  
20 Upon tailoring said relief as described below, however, this order finds that the balance of  
21 hardships favors Genentech.

22 JHL argues that Genentech’s trade secret descriptions are vague and overbroad such that  
23 Genentech’s requested relief “would inevitably require JHL to refrain from using public and  
24 independently derived information to assure compliance” (Dkt. No. 77 at 21). Nor has  
25 Genentech shown, JHL argues, that it is entitled to the drastic relief of effectively halting JHL’s  
26 biosimilar development (as reflected in Genentech’s second and fourth requests).

27 JHL further contends that the fifth, sixth, and seventh requests “impose  
28 disproportionately burdensome affirmative obligations on” it (*id.* at 22). For example, the fifth  
request asks that JHL return materials “containing any, or derived from any” Genentech trade  
secret, thereby potentially forcing JHL to reveal its own proprietary information. And, JHL  
argues, the sixth and seventh requests “effectively seek expedited discovery without good cause  
for doing so,” particularly when the alleged harm is not imminent (*id.* at 23).

The individual defendants Jordanov, Lin, Xanthe Lam, Allen Lam, Chan, and Quach  
join JHL’s opposition. Xanthe Lam, Allen Lam, and Chan further contend that the fifth and

1 seventh requests directly implicate their right against self-incrimination.<sup>19</sup> As the Supreme  
2 Court of the United States held in *United States v. Hubbell*, 530 U.S. 27, 36–37 (2000),

3 “the act of production” itself may implicitly communicate “statements  
4 of fact.” By “producing documents in compliance with a subpoena,  
5 the witness would admit that the papers existed, were in his  
6 possession or control, and were authentic.” Moreover . . . when the  
7 custodian of documents responds to a subpoena, he may be compelled  
8 to take the witness stand and answer questions designed to determine  
9 whether he has produced everything demanded by the subpoena. The  
10 answers to those questions, as well as the act of production itself, may  
11 certainly communicate information about the existence, custody, and  
12 authenticity of the documents.

13 Responding to Genentech’s requests to document production, they argue, will amount to  
14 testimony by each defendant that they determined for themselves that they are (or are not) in  
15 possession of Genentech materials and information. Those defendants further contend that the  
16 fifth request requiring them to return documents in turn requires them “to make extensive use of  
17 the contents of [their] own mind[s].” *Id.* at 43.

18 For their part, the Lams have proposed to turn over any responsive materials to their  
19 counsel until the criminal action is resolved and agree to be bound by orders prohibiting them  
20 from using or disclosing any Genentech trade secret ruled legitimate pending resolution of this  
21 action (Dkt. No. 71 at 12). They specifically oppose the granting of the fifth request as to JHL,  
22 however, because it would allegedly severely prejudice the Lams (as well as Chan and Quach).  
23 This is so, they argue, because the parties in the criminal proceeding lack the power to pursue  
24 criminal discovery against a foreign national located outside of the United States. JHL’s  
25 compelled disclosures under that request, according to defendants, “will provide the  
26 Government with evidence for its criminal prosecution that it could not obtain absent  
27 [Genentech’s] seeking such information through civil discovery” (*id.* at 13).

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28 <sup>19</sup> Chan further argues that he should not be bound by *any* form of provisional relief, arguing that  
Genentech failed to make a substantive showing of its claims against him, and therefore objects to all seven  
requests for relief as applied to him (Dkt. No. 70). Genentech, however, points to evidence that Chan likely  
came to some confidential Genentech documents and that he worked closely with Xanthe as head of Pulmozyme  
formulation. This is sufficient to show a likelihood of success of the merits of the CUTSA claim against Chan.  
And, any disclosure of the trade secrets by Chan would cause irreparable harm. In light of the fact that Chan  
has not shown that he would be overburdened by the tailored provisional relief provided herein, his request to  
be excluded from any provisional relief provided herein is therefore **DENIED**.

1 In considering all arguments on both sides as to the scope of provisional relief, this order  
2 hereby grants the following relief (to become effective upon the posting by Genentech of a bond  
3 or other security in the amount of **50 MILLION DOLLARS**):

4 (1) Defendants shall not disclose (including to Sanofi or any other  
5 current and/or potential business partner of JHL) or further use,  
6 directly or indirectly, any of the sixty-six Genentech documents  
7 referenced in (and appended to) Genentech’s Statement Regarding  
8 Trade Secrets (Dkt. No. 21) or any portion therein;

9 (2) Defendants shall not offer to sell, market, commercialize, or sell  
10 biologics, therapeutics, drugs, and/or products of any kind that  
11 utilize, embody, or were developed, in whole or in part, with the  
12 benefit or use of any of the sixty-six Genentech documents  
13 referenced in (and appended to) Genentech’s Statement Regarding  
14 Trade Secrets;

15 (3) JHL and any officer, director, employee, agent, supplier, or  
16 consultant of JHL shall preserve and return to Genentech (or the  
17 Court) within **TWENTY-ONE (21) CALENDAR DAYS** of the date of  
18 Genentech’s posting of bond all copies, excerpts, and summaries  
19 thereof of all Genentech documents (including those not specifically  
20 appended to Genentech’s Statement Regarding Trade Secrets),  
21 whether or not qualifying as a trade secret, and shall identify which  
22 officer, director, employee, agent, supplier, or consultant of JHL  
23 possessed said documents and/or information. Counsel of record and  
24 their litigation experts may make copies to use in defending this civil  
25 action. Jordanov, Lin, Xanthe Lam, Allen Lam, Chan, and Quach  
26 shall preserve and return the aforementioned material to their  
27 respective counsel pending resolution of the criminal proceeding, and  
28 their counsel shall certify their client’s compliance, within **TWENTY-**

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**ONE (21) CALENDAR DAYS** of the date of Genentech’s posting of bond;

(4) JHL, Jordanov, and Lin (collectively “JHL Defendants”), shall, within **FORTY-TWO (42) CALENDAR DAYS** of the date of Genentech’s posting of bond, conduct a thorough investigation and provide a detailed accounting under oath, setting forth each individual and entity to whom or to which defendants and any of them, and their employees or representatives, and all persons acting in concert or participating with them, disclosed any information within any of the sixty-six Genentech documents referenced in (and appended to) Genentech’s Statement Regarding Trade Secrets (in paper, electronic, or any other form, including, for example, cell lines, assays, test results, drug substances, or drug products), what they saw or heard, when they saw or heard it, and for what purpose. This order requires more than querying servers with keyword searches. For example, the JHL Defendants must interview personnel, particularly focusing on anyone who has communicated with Xanthe Lam, Allen Lam, John Chan, or James Quach;

(5) JHL Defendants shall, within **FORTY-TWO (42) CALENDAR DAYS** of the date of Genentech’s posting of bond, provide a detailed accounting of the extent to which, if any, the protocols, methods, and/or processes adopted by JHL track any information contained within any of the sixty-six Genentech documents referenced in (and appended to) Genentech’s Statement Regarding Trade Secrets;

(6) Defendants shall prepare, within **FORTY-TWO (42) CALENDAR DAYS** of the date of Genentech’s posting of bond, a complete and chronologically organized log of all oral and written communications — including, without limitation, conferences, meetings, phone calls,

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Skype or video-chat sessions, one-on-one conversations, texts, emails, letters, memos, and voicemails — wherein Xanthe Lam, Allen Lam, John Chan, or James Quach may have mentioned any Genentech confidential, proprietary, or trade secret information to any officer, director, employee, agent, supplier, or consultant of the JHL Defendants. The log shall identify for each such communication the time, place (if applicable), mode, all persons involved, and subjects discussed, as well as any and all notes, recordings, invoices, or other records referencing such communication. JHL shall provide this completed log to Genentech’s counsel (or the Court) within **FORTY-TWO (42) CALENDAR DAYS** of Genentech’s posting of bond. Jordanov, Lin, Xanthe Lam, Allen Lam, Chan, and Quach shall provide this completed log to their respective counsel pending resolution of the criminal proceeding, and their counsel shall certify their client’s compliance, within **FORTY-TWO (42) CALENDAR DAYS** of Genentech’s posting of bond.

This order allows all work towards regulatory approvals to continue. None of the sixty-six Genentech documents referenced in (and appended to) Genentech’s Statement Regarding Trade Secrets or any portion therein, however, may be further disclosed to any regulatory authority, hospital, or any other person or entity involved in the regulatory approval process without JHL’s first obtaining the Court’s permission. And, defendants are enjoined from any further action going towards commercialization once the regulatory approval process is completed for that biosimilar.

All of the provisional relief granted herein is without prejudice to Genentech taking discovery. For example, if the foregoing provisional relief or Genentech’s discovery reveals that any of the protocols adopted by JHL track verbatim, or almost verbatim, any of the sixty-six Genentech documents referenced in (and appended to) Genentech’s Statement Regarding

1 Trade Secrets, then the Court would likely expand the provisional relief to enjoin use of that  
2 protocol so long as the information at issue qualifies as a Genentech trade secret.

3 Further, he who seeks equity must do equity. That is, Genentech must also account for  
4 those sixty-six Genentech documents referenced in (and appended to) its Statement Regarding  
5 Trade Secrets. Within **THIRTY-FIVE (35) CALENDAR DAYS** of the date of Genentech’s posting  
6 of bond, Genentech must provide a log to JHL’s counsel (or the Court) explaining the extent to  
7 which the aforementioned documents have been disclosed by Genentech — including (1) all  
8 persons and/or entities (*e.g.*, vendors, regulatory agencies, hospitals) to whom Genentech has  
9 disclosed any of the aforementioned documents and whether those persons and/or entities were  
10 subject to a non-disclosure agreement, and (2) all articles, presentations, patents, emails, or any  
11 other similar publication by Genentech that disclosed to a third party any of the aforementioned  
12 documents or any significant portion contained therein.

13 \* \* \*

14 The Court sustained specific personal jurisdiction at the pleading stage with respect the  
15 motion to dismiss. But certain jurisdictional facts were still contested to a degree (though ruled  
16 in favor of Genentech at the pleading stage, as this order must), which must be ruled on at the  
17 motion for summary judgment or trial stage. Before granting provisional relief, the Court feels  
18 obliged to look beyond the pleadings to assure itself that it has personal jurisdiction over JHL.  
19 Having received the evidentiary record submitted on the motion for provisional relief, the Court  
20 is more than satisfied that personal jurisdiction over JHL does in fact exist in the instant action  
21 and so finds.

22  
23 **4. DEFENDANTS’ MOTIONS TO STAY.**

24 The individual defendants intend to assert their Fifth Amendment right against self-  
25 incrimination (Swanson Decl. ¶¶ 6–7; Craig Decl. ¶¶ 6–7; Divelbiss Decl. ¶¶ 5–6; Boersch  
26 Decl. ¶¶ 7–8; Schwartz Decl. ¶¶ 2–11). All defendants now move to stay the action pending the  
27 resolution of the criminal proceeding, to take effect after the ruling on Genentech’s motion for  
28 preliminary injunction.

1 “The Constitution does not ordinarily require a stay of civil proceedings pending the  
2 outcome of criminal proceedings.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324  
3 (9th Cir. 1995) (citing *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir.  
4 1989)). “[A] court may decide in its discretion to stay civil proceedings . . . when the interests  
5 of justice seem to require such action.” *Ibid.* (quoting *Sec. & Exch. Comm’n v. Dresser Indus.,*  
6 *Inc.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980)) (citations omitted). The decision whether to stay  
7 civil proceedings in the face of a parallel criminal proceeding should be made in light of the  
8 particular circumstances and competing interests involved in the case. *Ibid.* (quoting *Molinaro*,  
9 889 F.2d at 902). Our court of appeals has held that:

10 the decisionmaker should consider “the extent to which the  
11 defendant’s fifth amendment rights are implicated.” In addition,  
12 the decisionmaker should generally consider the following factors:  
13 (1) the interest of the plaintiffs in proceeding expeditiously with this  
14 litigation or any particular aspect of it, and the potential prejudice to  
15 plaintiffs of a delay; (2) the burden which any particular aspect of the  
16 proceedings may impose on defendants; (3) the convenience of the  
17 court in the management of its cases, and the efficient use of judicial  
18 resources; (4) the interests of persons not parties to the civil litigation;  
19 and (5) the interest of the public in the pending civil and criminal  
20 litigation.

21 *Id.* at 324–25 (citation omitted) (quoting *Molinaro*, 889 F.2d at 903).

22 The gravamen of the individual defendants’ arguments centers on the contention that the  
23 instant civil action, which substantially overlaps with the parallel criminal action, would put the  
24 defendants “in the untenable position of having to choose between exercising [their]  
25 constitutional right against self-incrimination and defending [themselves] in the civil action”  
26 (*see, e.g.*, Dkt. No. 56-1 at 1). JHL argues that while it has no Fifth Amendment right to  
27 invoke, it will nevertheless be inhibited in its ability to defend itself in the instant action since  
28 its key witnesses will refuse to testify (Dkt. No. 58 at 1). And, it stresses that while JHL,  
Jordanov, and Lin have not been named as defendants in the criminal action, they are  
nevertheless a focal point in that proceeding (*id.* at 2).

For its part, Genentech agrees that a partial stay is warranted as to the indicted  
defendants Xanthe Lam, Allen Lam, Quach, and Chan and proposes the following as to those  
defendants: (1) that they be required to answer Genentech’s complaint (even if to just invoke

1 the Fifth Amendment in response), and (2) Genentech be permitted to seek “non-testimonial  
2 discovery” in the form of requests for document production (Dkt. No. 92 at 2). Moreover, to  
3 purportedly level the playing field, Genentech requests that the indicted defendants be  
4 prohibited from participating in discovery in the instant civil action until the stay is lifted  
5 (*ibid.*). Genentech argues, however, that no stay is warranted as to JHL, Jordanov, and Lin.

6 **A. Plaintiff’s Interest and Defendants’ Burden.**

7 As discussed above, Genentech has already conceded that the indicted defendants’ Fifth  
8 Amendment privilege warrants a partial stay. No valid reason is offered, however, for  
9 Genentech’s proposal to require indicted defendants to answer the complaint. Genentech’s  
10 request to require them to answer is therefore denied. This order also finds that Genentech’s  
11 desire to serve indicted defendants requests for document production is outweighed by indicted  
12 defendants’ risks of adverse inference (if they invoke the Fifth Amendment) and violation of  
13 their Sixth Amendment right to counsel. Further, this order finds that extension of this partial  
14 stay as to Jordanov and Lin is proper. That is, Genentech may not depose or request document  
15 production from Lin or Jordanov. Nor are Lin or Jordanov required to answer Genentech’s  
16 complaint. All defendants, however, should still attend depositions still in play.

17 As to JHL, on the other hand, no stay will be granted. JHL complains that it would be  
18 hampered in defending itself in the action because it would not be able to rely on key witnesses,  
19 including Jordanov and Lin — JHL’s cofounders who are at center stage in the alleged scheme  
20 to misappropriate Genentech’s trade secrets — because of their Fifth Amendment privileges.  
21 But the same would be true for Genentech, who would be similarly unable to build its case  
22 without these key witnesses. Moreover, JHL has not shown that it cannot rely on any other  
23 witness of substance, such as other senior officers and/or employees at JHL.

24 Furthermore, the complete stay that JHL seeks would hinder Genentech’s ability to  
25 perform third-party discovery — third parties who may not necessarily preserve relevant  
26 evidence. Genentech has a legitimate interest in seeking timely discovery from these third  
27 parties, particularly in light of the fact that there is a risk that Genentech’s trade secrets have  
28 *already been* disclosed to others. This risk cannot be mitigated by provisional relief.

1 Defendants rightly point to Genentech’s two-year delay before filing this action from the  
2 time it first learned of Xanthe’s alleged wrongdoing. Genentech counters that it refrained from  
3 alerting Xanthe of the FBI investigation at the government’s request (Peters Suppl. Decl. ¶¶  
4 4–11). While defendants’ point is well-taken, this order finds that, overall, the two-year gap is  
5 not fatal to Genentech, as the delay does not necessarily mean that Genentech does not now  
6 have a *present* interest in expeditiously litigating this case. This is especially true given that the  
7 evidence revealed by the government to Genentech during that time directly supported  
8 Genentech’s request for provisional relief (*id.* ¶ 10).

9 Defendants further argue that allowing discovery related to JHL would allow the  
10 government to gain a more expansive scope of discovery than it otherwise would be entitled to.  
11 They argue that the civil and criminal actions have been coordinated in order to obtain evidence  
12 for both proceedings (*see, e.g.*, Tubach Decl. ¶ 3). As alluded to in connection with the scope  
13 of provisional relief, this point is not inconsequential. Defendants, however, have not shown  
14 any evidence of “bad faith or malicious governmental tactics” that rises to the level of  
15 warranting a full stay. *See Lizarraga v. City of Nogales Arizona*, No. C 06-474 TUC DCB,  
16 2007 WL 215616, at \*3 (D. Ariz. Jan. 24, 2007) (Judge David Bury) (quoting *Mainelli v.*  
17 *United States*, 611 F. Supp. 606, 615 (D.R.I. 1985)). For example, “[t]his is not a case where  
18 the civil Plaintiff is the same litigant as the criminal prosecutor, such as where the government  
19 brings a civil enforcement action against a defendant and also criminally prosecutes him.” *Ibid.*  
20 And, “[e]ven in those instances, a court will utilize the least imposing methods, in lieu of a stay,  
21 to protect a defendant’s Fifth Amendment rights.” *Ibid.*

22 Here, while there is evidence of coordination between Genentech and the government, it  
23 is clear that Genentech has its own independent interest in bringing the instant civil action  
24 against defendants — namely, to protect its alleged trade secrets and prevent illegitimate  
25 competition. To prevent potential abuse by the government to the extent possible, however,  
26 Genentech is ordered not to voluntarily provide to the government any evidence obtained  
27 during the course of discovery in the instant civil action. Moreover, while Genentech may  
28 request document production from JHL, such production must occur *in Taiwan*. That is,

1 Genentech’s counsel must go to Taiwan (or wherever the documents are located overseas) to  
 2 receive the requested documents and may bring back to the United States only its own notes and  
 3 summaries of those documents. Without further order from the Court, the requested documents  
 4 themselves shall remain in their original location. Once the criminal action is resolved,  
 5 Genentech may copy the evidence as needed (without needing the Court’s approval).

6 In light of these limitations imposed on civil discovery, JHL’s (which, to repeat, does  
 7 *not* have a Fifth Amendment right) complaint of prejudice is therefore outweighed by  
 8 Genentech’s interest in moving the case forward.<sup>20</sup> As such, this factor overall (to the extent  
 9 stated herein) weighs in favor of Genentech.

10 **B. Court’s Convenience in Managing Its Docket.**

11 Defendants offer that without a stay, defendants’ invocations of Fifth Amendment  
 12 privileges may provoke discovery disputes. *See Waymo*, 2017 WL 2123560, at \*5 (assertion of  
 13 Fifth Amendment privilege led to proliferation of contentious discovery disputes). This order  
 14 agrees that there is a very real risk of discovery disputes absent a stay that would inconvenience  
 15 the Court. This factor thus weighs in favor of at least a limited stay.

16 **C. Non-Party and Public Interests.**

17 Defendants argue that the public has an interest in a fair criminal trial. Genentech  
 18 argues that the public has an interest “in a speedy resolution of the controversy.” *Keating*, 45  
 19 F.3d at 326. Neither contention outweighs the other and this factor is therefore neutral.

20 **D. Additional Requests Made by Plaintiff.**

21 Genentech also argues that in order to make the partial stay as to the indicted defendants  
 22 “symmetrical,” those defendants should “not participate in discovery in this civil action until the  
 23 stay is lifted.” Genentech further offers that in the criminal action, those defendants will “have  
 24 access to whatever information Genentech has produced to the government in response to

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25  
 26 <sup>20</sup> This order recognizes that the Court has previously observed that “[a]llowing the civil proceedings  
 27 to continue will permit the government to gain access to discovery that it would otherwise not have under the  
 28 federal rules of criminal procedure, such as documents derived from initial disclosures, defendants’ responses to  
 interrogatories, pleadings and admissions at any depositions.” *Fed. Ins. Co. v. Laney*, No. C 12-04708 WHA,  
 2013 WL 594267, at \*3 (N.D. Cal. Feb. 14, 2013). The circumstances here, however, are distinguishable  
 because the evidence potentially discovered outside the scope of the criminal proceeding are largely directed to  
*non*-indicted parties.

1 demands for information” (Dkt. No. 92 at 2, 14). The risk of asymmetrical discovery to  
2 Genentech’s detriment, however, is largely negated by Genentech’s request for drastic  
3 provisional relief. As such, the individual defendants (including Lin and Jordanov) shall not  
4 initiate any depositions of or serve document production requests on any officer, director,  
5 employee, agent, supplier, or consultant of Genentech. They may, however, otherwise  
6 participate in depositions by others and receive documents produced by others.

7 \* \* \*

8 On balance, defendants have not shown that a full stay of the instant action is warranted.  
9 Defendants’ motions to stay are therefore **GRANTED IN PART** and **DENIED IN PART**. While  
10 Genentech may not depose, seek an answer from, serve interrogatories to, or request admissions  
11 or document production from any individual defendant (either indicted or unindicted), no stay  
12 will be imposed as to JHL. The extent of the stay granted herein, however, may be revisited  
13 after six months of the date of this order.

14 **CONCLUSION**

15 For the foregoing reasons, defendants’ motions to dismiss are **GRANTED** to the extent  
16 stated above and **DENIED** in all other respects. Genentech may seek leave to amend and will  
17 have **21 CALENDAR DAYS** from the date of this order to file a motion, noticed on the normal  
18 35-day track, for leave to file an amended pleading to the extent disputed in the instant motions.  
19 The motion must include a proposed amended pleading (and a redlined copy) and must explain  
20 why the new pleading overcomes all deficiencies, including those this order did not reach.

21 Plaintiff’s motion for provisional relief is **GRANTED** to the extent stated above and  
22 **DENIED** in all other respects.

23 Defendants’ motions to stay are **GRANTED** to the extent stated above and **DENIED** in all  
24 other respects.

25 **IT IS SO ORDERED.**

26  
27 Dated: March 1, 2019.

28   
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE