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 12 GENENTECH, INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 GENENTECH, INC.,
 17 Plaintiff,
 18 v.

19 JHL BIOTECH, INC., XANTHE LAM, an
 individual, ALLEN LAM, an individual,
 20 JAMES QUACH, an individual, RACHO
 JORDANOV, an individual, ROSE LIN, an
 21 individual, JOHN CHAN, an individual,
 and DOES 1-50,
 22 Defendants.

Case No. 3:18-cv-06582-WHA

**PLAINTIFF GENENTECH, INC.'S
 AMENDED NOTICE OF MOTION AND
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: December 13, 2018
 Time: 9:30 a.m.
 Dept: Courtroom 12 - 19th Floor
 Judge: Hon. William Alsup

Date Filed: October 29, 2018
 Trial Date: Not Set

AMENDED NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 13, 2018 at 9:30 a.m., or as soon thereafter as this matter may be heard by the above-captioned Court, at 450 Golden Gate Ave., Courtroom 12 – 19th Floor, San Francisco, CA 94102, before the Honorable William Alsup, Plaintiff Genentech, Inc. will and hereby does move this Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure and Local Rule 65-1, for a preliminary injunction against all Defendants.

As set forth in detail in the accompanying [Proposed] Order Granting Plaintiff’s Motion for Preliminary Injunction, Genentech specifically requests a preliminary injunction:

1. restraining and enjoining JHL Biotech, Inc., Xanthe Lam, Allen Lam, Racho Jordanov, Rose Lin, John Chan, and James Quach (collectively “Defendants”) from disclosing or using, directly or indirectly, Genentech’s trade secret information;
2. restraining and enjoining Defendants from making, testing, using, promoting, offering to sell, marketing, commercializing, or selling biologics, therapeutics, drugs, and/or products of any kind that utilize, embody, or were developed, in whole or in part, with the benefit or use of any of Genentech’s trade secret information;
3. restraining and enjoining Defendants from utilizing any processes or methods that are derived from, contain, or embody, in whole or in part, any of Genentech’s trade secret information;
4. restraining and enjoining Defendants from submitting to or filing with any regulatory body any documents or other materials (in paper, electronic, or any other form, including, for example, cell lines, assays, test results, drug substances, or drug products) that are derived from, contain, or embody, in whole or in part, any of Genentech’s trade secret information;
5. requiring Defendants to preserve and to return to Genentech within fourteen (14) calendar days of the date of the Court’s Order on this Motion (i) all copies of all

1 Genentech documents and information, including without limitation any trade
2 secret and other confidential or proprietary information acquired from Genentech;
3 and (ii) all copies of all materials (in paper, electronic, or any other form,
4 including, for example, cell lines, assays, test results, drug substances, or drug
5 products) containing any, or derived from any, Genentech information, trade
6 secrets, or other confidential or proprietary information;

- 7 6. requiring JHL Biotech, Inc., Racho Jordanov, and Rose Lin (collectively “JHL
8 Defendants”) to conduct, within thirty (30) calendar days of the date of the Court’s
9 Order on this Motion, a thorough investigation and provide a detailed accounting
10 under oath, setting forth each individual and entity to whom or to which
11 Defendants and any of them, and their employees or representatives, and all
12 persons acting in concert or participating with them, disclosed (i) any Genentech
13 documents or other materials (in paper, electronic, or any other form, including,
14 for example, cell lines, assays, test results, drug substances, or drug products) or
15 (ii) any of Genentech’s confidential, proprietary, and/or trade secret information;
16 and
- 17 7. requiring Defendants to provide to Genentech’s counsel and the Court, within
18 thirty (30) calendar days of the date of the Court’s Order on this Motion, a
19 complete and chronologically organized log of all oral and written
20 communications—including, without limitation, conferences, meetings, phone
21 calls, Skype or video-chat sessions, one-on-one conversations, texts, emails,
22 letters, memos, and voicemails—wherein Xanthe Lam, Allen Lam, John Chan, or
23 James Quach may have mentioned any Genentech confidential, proprietary or
24 trade secret information to any officer, director, employee, agent, supplier, vendor,
25 customer, client, partner, or consultant of the JHL Defendants.

26 As set forth in the accompanying Memorandum of Points and Authorities, this Motion is
27 made on the grounds that Plaintiff is likely to succeed on the merits of its claims, Plaintiff will
28 suffer irreparable injury and key evidence may be lost unless all Defendants are enjoined as

1 requested; the balance of equities is decidedly in Plaintiff's favor; and injunctive relief is in the
2 public interest.

3 This Motion is based on this Notice of Motion and Motion, the Complaint in this action,
4 the Memorandum of Points and Authorities filed concurrently herewith, the accompanying
5 Declarations of Daniel J. Kirshman; Jamie Moore; Paul Bezy; Doug Balogh; Paul T. French;
6 Elliot R. Peters; and Elizabeth K. McCloskey, along with supporting exhibits; the Proposed Order
7 submitted herewith, further papers and argument as may be submitted to the Court in connection
8 with the Motion, and such evidence and argument as may be presented at the hearing before this
9 Court.

10
11 Dated: November 6, 2018

KEKER, VAN NEST & PETERS LLP

12
13 By: /s/ Elliot R. Peters
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14 Attorney for Plaintiff
15 GENENTECH, INC.
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

From 2013 to 2017, Defendant JHL Biotech, Inc. (“JHL”) engineered an audacious theft of Genentech’s trade secrets and used them to build a biopharmaceutical business overseas that develops and seeks to market copycat “biosimilar” versions of Genentech’s groundbreaking medicines. JHL and its top executives relied primarily on an inside source at Genentech—senior scientist Xanthe Lam—to steal Genentech’s valuable trade secrets to help them develop, test, manufacture, and commercialize their own versions of Genentech’s Pulmozyme[®], Rituxan[®], Avastin[®], and Herceptin[®] therapies, and to enhance the chances that JHL’s versions of those medicines would win regulatory approval. Xanthe,¹ along with three of her co-conspirators—Allen Lam, James Quach, and John Chan—have now been indicted by a federal grand jury. *See United States v. Lam, et al.*, No. CR-18-527-WHA, Dkt. 1, (N.D. Cal. Oct. 29, 2018). Criminal sanctions, however warranted, will not redress Genentech’s imminent and ongoing injuries. Only injunctive relief will accomplish that.

Genentech has no objection to the development and sale of biosimilars. It objects strenuously, however, to other companies stealing its confidential, proprietary, and trade secret information to develop those biosimilars. The evidence of theft in this case is overwhelming. Emails, text messages, Skype logs, download reports, and other documents, as well as admissions by Xanthe and Quach, reveal a multi-year effort by JHL to improperly obtain and use Genentech’s trade secrets relating to its formulation data, analytical methods, and manufacturing processes. Genentech discovered much of this evidence while conducting its own internal investigation into Xanthe’s activities following an anonymous tip, and the United States government obtained additional incriminating evidence during its own investigation. A small sample of the evidence obtained to date is attached to this motion in support of Genentech’s urgent request for preliminary injunctive relief.

JHL’s scheme dates to at least mid-2013—just six months after former Genentech

¹ Because Defendants Xanthe Lam and Allen Lam are a married couple, this brief will refer to them by their first names rather than as “Mr. Lam” and “Ms. Lam” to avoid confusion.

1 employees Racho Jordanov and Rose Lin (a longtime friend of Xanthe's) co-founded JHL. At
2 that time, Xanthe was working for Genentech as a trusted senior scientist with broad access to a
3 wealth of Genentech trade secret and confidential information. Breaching her fiduciary and
4 contractual obligations to Genentech, Xanthe began helping JHL develop analytical methods and
5 formulations for its drugs, which were designed to compete directly with Genentech's medicines.
6 At Lin's and Jordanov's request, Xanthe surreptitiously traveled to JHL's headquarters in Taiwan
7 in December 2013 to work in its laboratory and direct its employees. In her work for JHL,
8 Xanthe relied not only on the trade secret information she knew and had access to by virtue of her
9 role as a Genentech senior scientist, but also on hundreds of confidential documents containing
10 and reflecting Genentech trade secrets, which she had downloaded from Genentech's password-
11 secured document repository and carefully organized on her Genentech laptop computer.

12 Xanthe's covert work continued long after her stint in Taiwan. While still employed by
13 Genentech, she secretly continued to oversee JHL's analytical method and formulation
14 development through weekly Skype calls with JHL scientist John Chan, a family friend whom
15 JHL hired at her insistence, and who acted as her "direct report." She also continued to funnel
16 Genentech trade secret information through her husband, JHL consultant Allen Lam, to JHL's top
17 executives, including Jordanov and Lin. Jordanov and Lin knowingly and eagerly received these
18 trade secrets, and used them to test, stabilize, manufacture, and obtain regulatory approval for
19 clinical trials of its biosimilars of Genentech's medicines. Then, in 2017, JHL hired former
20 Genentech employee James Quach to help establish its manufacturing facility in Wuhan, China.
21 Before Quach left the United States to begin work at JHL, Xanthe allowed him to access
22 Genentech's secure document repository using her own personal log-in credentials. With
23 Xanthe's knowledge, Quach used her credentials to download hundreds of confidential
24 Genentech manufacturing protocols and processes onto an external flash drive.

25 Based on the substantial documentary evidence already uncovered, as well as direct
26 admissions by Xanthe and Quach, Genentech is likely to succeed on the merits of its claims. The
27 irreparable harm to Genentech is likewise clear: "Once [a trade secret is] lost, it is lost forever.
28 The harm is irreparable." *Beckman Instruments, Inc. v. Cincom Sys., Inc.*, 165 F.3d 914, at *2

1 (9th Cir. 1998). What’s more, JHL’s highly-touted business trajectory is rooted in the criminal
2 theft of Genentech’s trade secrets, and JHL is using that information to develop products designed
3 to compete directly with Genentech’s medicines. To avoid further irreparable harm and preserve
4 the status quo, JHL and those acting in concert with it must be enjoined from any further use and
5 exploitation of the stolen Genentech trade secrets.

6 **II. FACTUAL BACKGROUND**

7 **A. Genentech is a global leader in developing cutting-edge biotherapies.**

8 For more than 40 years, Genentech has been discovering, developing, manufacturing, and
9 commercializing cutting-edge biopharmaceuticals, or “biologics,” to address patients’ significant
10 unmet medical needs. Decl. of Elizabeth K. McCloskey in Supp. of Mot. for Prelim. Inj.
11 (“McCloskey Decl.”) ¶¶ 3–9. Over the past several decades, Genentech has successfully
12 developed and brought to market a string of advanced biologic therapies. *Id.* These include
13 Pulmozyme[®], an inhaler treatment for cystic fibrosis, as well as the cancer treatments Rituxan[®],
14 Avastin[®], and Herceptin[®]. *Id.* Genentech has invested hundreds of millions of dollars
15 researching, developing, and bringing these drugs to doctors and patients around the world. *Id.*

16 **B. Access to proven analytical data, methods, and manufacturing protocols 17 would prove highly valuable to a biosimilar manufacturer.**

18 Biologics are notoriously difficult to develop and manufacture safely at scale. Unlike
19 small molecule drugs that are created solely using chemistry, biologics are complex proteins, such
20 as antibodies created using genetically-modified living cells. Such medicines are strictly
21 regulated by the Food and Drug Administration (“FDA”) and other regulatory authorities abroad.
22 In recent years, regulators have crafted shorter, less expensive regulatory pathways for drugs that
23 are “highly similar” to innovator-branded biologics whose patents have expired. These products
24 are called “biosimilars.” For example, to pass regulatory muster in Europe (one of JHL’s primary
25 markets), the biosimilar manufacturer must show through a complex series of tests and analyses
26 that there are “no clinically meaningful differences” between the proposed biosimilar and the
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1 innovator’s branded drug “in terms of the safety, purity, and potency” of the product.² Thus, to
2 shorten the pathway to commercialization, the manufacturer must provide robust analytical data
3 showing biosimilarity.

4 Compiling this data is no easy feat. A biosimilar manufacturer must develop and run
5 numerous comparative tests on both the innovator’s “reference product” (here, the approved
6 Genentech medicine) and the biosimilar product, producing results showing the two products are
7 “highly similar” in identity, purity, and potency. Decl. of Doug Balogh in Supp. of Mot. for
8 Prelim. Inj. (“Balogh Decl.”) ¶¶ 12. While some analytical methods are standardized, many others
9 are unique and proprietary to the innovator.

10 Having access to the innovator company’s test procedures and results would aid a
11 biosimilar manufacturer immensely. Most importantly, the competitor would know exactly how
12 to run the various tests and the unpublished acceptance criteria that supported the reference
13 product’s regulatory approval. Access to such information would save the competitor precious
14 time and expense in an industry in which time to market is crucial. *Id.* ¶¶ 13–15.

15 The same holds true for proprietary manufacturing processes, protocols, and procedures
16 designed to ensure compliance with Good Manufacturing Practices (“GMP”). Access to a
17 comprehensive set of Genentech’s key manufacturing operations procedures would provide a
18 lucrative shortcut for a biopharmaceutical manufacturer like JHL opening and developing a new
19 biologics manufacturing facility. Decl. of Paul Bezy in Supp. of Mot. for Prelim. Inj. (“Bezy
20 Decl.”) ¶¶ 5–8. The information would allow a manufacturer to mimic the procedures and
21 processes described, and thereby significantly reduce the time and expense necessary to develop
22 procedures for complying with GMP standards. It would also allow a manufacturer to
23 demonstrate to a regulatory agency, such as the FDA or the European Medicines Agency
24 (“EMA”), that its products are consistently produced and controlled according to required quality

25 _____
26 ² *Biosimilar Medicines*, European Medicines Agency, [https://www.ema.europa.eu/human-](https://www.ema.europa.eu/human-regulatory/overview/biosimilar-medicines)
27 [https://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/](https://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm580419.htm#nodiff)
28 [ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm580419.htm#nodiff](https://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm580419.htm#nodiff)
(last updated Oct. 23, 2017).

1 standards. *Id.* ¶¶ 8–9. If a competitor had access to this confidential information when opening a
2 new manufacturing facility, it could avoid the years of testing required to develop its own
3 procedures for GMP compliance, and likely would gain regulatory approval months, if not years,
4 earlier than otherwise would be possible. *Id.* ¶¶ 8–11. Indeed, biopharmaceutical companies
5 have faced costly delays and intense regulatory scrutiny when a regulatory agency deems their
6 manufacturing processes suspect or inadequate. *See* Balogh Decl. ¶ 27. Having access to time-
7 tested, already-validated procedures for compliance with GMPs from the same company that
8 developed the reference products, especially an established, successful manufacturer like
9 Genentech, would greatly reduce such risks.

10 C. The Trade Secrets at Issue

11 Because Genentech is asserting a claim under the California Uniform Trade Secrets Act
12 (“CUTSA”), Cal. Civ. Code § 3426 *et seq.*, Genentech is filing under seal a statement pursuant to
13 California Code of Civil Procedure Section 2019.210, which describes with reasonable
14 particularity the trade secrets currently at issue in this action. In general terms, the trade secrets
15 concern the following: (a) proprietary, validated analytical methods to test and ensure the
16 stability, potency, purity, identity, and quality of its Pulmozyme[®], Rituxan[®], Avastin[®], and
17 Herceptin[®] medicines; (b) proprietary information regarding the development and selection of a
18 formulation for each of those four medicines, as well as for Genentech’s Tecentriq[®] medicine;
19 (c) proprietary manufacturing and operations protocols, including procedures for complying with
20 GMP standards; and (d) the compilations of confidential Genentech documents that Xanthe,
21 Allen, and Quach downloaded and compiled specifically for JHL’s benefit.

22 Each stolen trade secret, standing alone, represents Genentech’s hard work and investment
23 and would aid a competitor looking for a shortcut to develop and market its own rival drug.
24 Taken together as a compilation, the stolen information provides a roadmap for a competitor to
25 try to achieve through theft what Genentech accomplished through diligence, trial-and-error,
26 hard-won know-how, and significant investment of time and money.

27 D. Genentech takes reasonable efforts to protect its trade secrets.

28 Because Genentech’s confidential, proprietary, and trade secret information is the

1 company's lifeblood, Genentech takes protecting that information seriously. The company has
2 implemented several controls to prevent its unauthorized disclosure or misappropriation. *See*
3 Decl. of Daniel J. Kirshman in Supp. of Mot. for Prelim. Inj. ("Kirshman Decl.") ¶¶ 26–28. *First*,
4 Genentech has implemented robust security and document-control systems. *Second*, as a
5 condition of employment, Genentech requires employees to sign a written agreement concerning
6 non-disclosure of Genentech's proprietary information. *Third*, Genentech has distributed to all
7 employees written policies regarding use, handling and non-disclosure of confidential
8 information, as well as how to avoid conflicts of interest that may compromise Genentech's
9 proprietary information. *Fourth*, Genentech ensures that employees are aware of these policies
10 by requiring employees annually to certify their compliance with these obligations. *Fifth*,
11 Genentech makes adherence with its policies—including the policies concerning nondisclosure of
12 confidential information—a condition of employment, provides procedures for employees to
13 report suspected noncompliance, and disciplines employees for violating such policies. *Id.*

14 **E. Defendants misappropriated Genentech's trade secret information.**

15 **1. Acting as JHL agents, Xanthe and Allen Lam funneled Genentech**
16 **trade secrets to JHL in person and via email.**

17 Defendant Xanthe Lam (a/k/a Mei Ling Sheung) began working at Genentech in 1986.
18 Kirshman Decl. ¶ 3. For more than 30 years, Xanthe worked in various capacities as a Genentech
19 scientist, and was entrusted with some of Genentech's most sensitive confidential, proprietary,
20 and trade secret information. *See id.* ¶¶ 3–4; Decl. of Jamie Moore in Supp. of Mot. for Prelim.
21 Inj. ("Moore Decl.") ¶¶ 2–3. Xanthe's husband, Allen Lam worked for Genentech until 1998,
22 when he resigned amid revelations that he had started working for another biopharmaceutical
23 company while still employed at Genentech. *See* Kirshman Decl. ¶¶ 21–22.

24 Just months after JHL's founding in December 2012, its co-founders Lin and Jordanov
25 recruited Xanthe and Allen to assist JHL with developing biosimilar versions of Genentech's
26 medicines by having them covertly funnel Genentech trade secrets to their fledging start-up. The
27 scheme commenced in mid-2013 when Allen signed on as a JHL consultant (in return for a
28 substantial salary and founder stock options) and Xanthe began downloading hundreds of

1 confidential and proprietary Genentech documents from Genentech’s password-protected
2 document repositories and carefully organizing them in folders on her Genentech-issued laptop.
3 Kirshman Decl. ¶¶ 5–9. Xanthe specifically selected documents containing Genentech trade
4 secret information concerning the four Genentech medicines that JHL was attempting to mimic:
5 Pulmozyme[®], Rituxan[®], Avastin[®], and Herceptin[®]. *Id.* ¶ 7. Her files included confidential
6 “Pharmaceutical R & D Technical Reports,” stability studies, mixing studies, degradation studies,
7 validation reports, testing protocols, and other confidential reports, procedures, and analyses. *Id.*

8 Xanthe had no legitimate work-related reason to compile this trove of information on her
9 laptop. Moore Decl. ¶ 4. And in fact, the manner in which Xanthe stored the documents on her
10 computer reveals that she was using them to aid JHL’s biosimilar analytical development and
11 formulation efforts. Xanthe created folders on her laptop’s hard-drive, using nomenclature
12 connecting Genentech’s medicines with JHL, and competing efforts: “Pulmozyme_JHL,”
13 “Rituxan_JHL,” “Avastin_JHL,” and “Herceptin_JHL.” Kirshman Decl. ¶ 8, Ex. 1. Each of these
14 folders contained a mixture of confidential Genentech documents and internal JHL documents.
15 In the “Rituxan_JHL” folder, for example, Xanthe had saved confidential Genentech quality
16 control documents such as Genentech’s “Validation Master Plan Report” for Rituxan[®], and
17 Genentech’s “Stability Protocol for Rituxan Drug Product,” alongside JHL Formulation
18 Development Presentations that track JHL’s efforts to create a Rituxan[®] biosimilar. *Id.*

19 After Xanthe had downloaded these Genentech trade secret materials to her “JHL” folder,
20 Allen spent six weeks at JHL during September and October of 2013, working “on analytical
21 assay development and evaluation for biosimilars.” Kirshman Decl. ¶ 9, Ex. 2. Allen was deeply
22 involved in JHL’s efforts to develop biosimilars of Genentech’s medicines, and did so with direct
23 access to the Genentech documents Xanthe had compiled in her “JHL” folders. Documentary
24 evidence reveals that before Allen traveled to Taiwan, Xanthe gave him copies of many, if not all,
25 of the Genentech documents she had downloaded. The evidence further shows that once in
26 Taiwan, Allen relied on those documents to develop analytical methods and validation protocols
27 for JHL’s drugs, with assistance from Xanthe through email, and Skype video and audio chats.

28 For example, on September 2, 2013, Allen emailed Xanthe to ask her about the ion-

1 exchange chromatography (“IEC”) specification limit for Rituxan[®]. He needed the information
2 for a validation protocol that he and David Kapitula (another former Genentech employee who
3 was JHL’s VP of Quality/Regulatory) were developing for JHL’s Rituxan[®] biosimilar, dubbed
4 “JHL1101.” McCloskey Decl. ¶ 11, Ex. 1. Xanthe responded, “Skype me to explain it to you. It
5 is difficult to explain by writing.” *Id.* Later that evening, Allen and Xanthe exchanged messages
6 concerning the IEC specification limit. Allen referenced Genentech trade secret documents that
7 Xanthe had given him, and even attached one for Xanthe to review because, she said, “I don’t
8 have those files with me at home.” *Id.* At the end of this email discussion, Allen confirmed that
9 he understood he should use the “limits *from the GNE production spec*” contained in the
10 Genentech trade secret materials Xanthe had provided. *Id.* ¶ 12, Ex. 2 (emphasis added).³

11 In late September 2013, JHL’s co-founders Jordanov and Lin asked Xanthe to come to
12 Taiwan to help with JHL’s development efforts in person. Making it clear that she was still
13 employed by Genentech, Xanthe agreed to fly to JHL for four weeks in December 2013 if she
14 could “find someone willing to cover [her] during my absence/sabbatical in this month.” *Id.* ¶ 13,
15 Ex. 3. Xanthe emailed her friend Kim Chan, a professor at the University of Sydney, telling him
16 that she would “spend 4 weeks at JHL Biotech o[n] my sabbatical until Dec. 30.” Kirshman
17 Decl. ¶ 11, Ex. 2. Xanthe repeated her plans to join JHL in an October 27, 2013 email to her
18 niece, stating that she would be “joining a biotechnology company in Taiwan as a Visiting
19 Scientist for one month.” *Id.* ¶ 11, Ex. 4.

20 Xanthe’s stint at JHL was a clear and egregious breach of her contractual obligations to
21 Genentech. Like all Genentech employees, Xanthe was subject to the company’s Code of
22 Conduct and a Proprietary Information Agreement, both of which expressly prohibited her from
23 disclosing any confidential, proprietary or trade secret information to any third party. The
24 Proprietary Information Agreement further prevented her from “engag[ing] in any employment or
25 activity other than for the Company in any business in which the Company is now or may
26 hereafter become engaged.” *Id.* ¶¶ 29–31, Exs. 20, 25. Recognizing that her moonlighting with a

27
28 ³ “GNE” is a commonly-used abbreviation for Genentech.

1 competitor represented a grave breach of her contractual obligations, Xanthe lied about it. Rather
2 than seeking permission to work at JHL as a “Visiting Scientist,” she repeatedly described her trip
3 internally as a “vacation,” during which she would be “traveling in Asia.” *Id.* ¶ 11, Exs. 5–6.

4 In the months leading up to her December 2013 trip to JHL, Xanthe worked to develop the
5 analytical methods and formulations for JHL’s drugs, consistently relying upon confidential trade
6 secret information she had access to as a senior Genentech scientist. On October 29, 2013,
7 Xanthe sent to JHL personnel, including Lin and Jordanov, a “formulation development plan for
8 JHL 1101,” JHL’s biosimilar of Genentech’s Rituxan[®]. McCloskey Decl. ¶ 14, Ex. 4.

9 In December, Xanthe traveled to Taiwan as planned to work at JHL. She was present at
10 JHL’s grand opening on December 5, 2013, and she and Allen were photographed at JHL
11 alongside Jordanov and Lin. Decl. of Paul French in Supp. of Prelim. Inj. (“French Decl.”) ¶ 13,
12 Exs. 4–5. Forensic data confirms that Xanthe connected her Genentech-issued laptop to JHL’s
13 Wi-Fi network on or about December 26, 2013. *Id.* ¶ 12. While in Taiwan, Xanthe went about
14 her work as a JHL agent, assisting JHL’s formulation and analytical development efforts.
15 Jordanov and Lin worked closely with Xanthe during that time, attending meetings together on
16 formulation strategy for JHL’s biosimilars of Genentech’s Pulmozyme[®], Rituxan[®], and
17 Herceptin[®] medicines. McCloskey Decl. ¶¶ 15–20, Exs. 5–10. Throughout December 2013, they
18 also exchanged email messages with Xanthe (through her personal email account) concerning the
19 formulation strategy for these products. *Id.* In a December 2013 email to Defendant John
20 Chan—whom she would later recruit to JHL as a formulation scientist—Xanthe stated that part of
21 her role at JHL was “to go the lab to coach and help,” and to be “in charge of the company” while
22 Jordanov and Lin flew home to the United States for the holidays. Kirshman Decl. ¶ 12, Ex. 7.

23 While in Taiwan, Xanthe aided JHL’s development efforts through direct access to the
24 Genentech trade secret materials she had downloaded prior to her trip. For example, on
25 December 23, 2013, Xanthe emailed her husband two confidential Genentech Standard Operating
26 Procedures (“SOPs”) for testing the potency and identity of Pulmozyme[®] using methyl green
27 assays. *See* McCloskey Decl. ¶ 21, Ex. 11. Xanthe had downloaded these confidential assays
28 from Genentech’s password-secured document repository DocLink in July 2013. Kirshman Decl.

1 ¶¶ 46–50, Ex. 27. Putting to rest any doubt that Xanthe was using the materials she had compiled
2 in her “JHL folder” while in Taiwan, or that she had previously given Allen those documents, she
3 wrote: “Do you have the SOP for methyl green extraction from GNE? Have I given you that? I
4 don’t see it in my Pulmozyme JHL folder.” *See* McCloskey Decl. ¶ 22, Ex. 12.

5 Xanthe continued to raid Genentech’s secure document repository for JHL’s benefit after
6 she returned from Taiwan. For example, on January 9, 2014, Genentech’s password-protected
7 document repository logs (“DocLink logs”) reveal that Xanthe downloaded a confidential
8 Genentech Test Procedure for Pulmozyme[®] entitled “Total Neutral Sugars Determination.”
9 Kirshman Decl. ¶ 50, Ex. 27. That same day, Xanthe saved the file to her “Pulmozyme_JHL”
10 folder. Later that day, Xanthe used her personal email account to send her husband an email at
11 his JHL account entitled “Total Neutral Sugars for JHL1921”⁴, attaching that same document.
12 McCloskey Decl. ¶ 23, Ex. 13. About a month later, on February 12, 2014, Allen emailed Xanthe
13 to request additional Genentech trade secret information: “I am assigned to take care of the raw
14 material management policies Having doc[s] in these topics are [sic] very helpful to me.” *Id.*
15 ¶ 24, Ex. 14. Xanthe quickly obliged. DocLink logs show that on February 13, 2014—the day
16 after Allen’s request—Xanthe downloaded eleven confidential Genentech documents, all relating
17 to raw material management. Kirshman Decl. ¶ 50, Ex. 27. The same day, she used her personal
18 email account to send all eleven confidential Genentech documents to her husband, noting:
19 “Attached are the docs related to raw material management policies that I found. Hope they are
20 useful.” McCloskey Decl. ¶ 24, Ex. 14.

21 The Lams’ illicit transfer of Genentech trade secret materials to JHL continued unabated.
22 In May 2015, Xanthe sent Allen an email attaching two documents with the subject line “1922”—
23 no doubt referring to JHL 1922, JHL’s second attempt at a Pulmozyme[®] biosimilar. McCloskey
24 Decl. ¶ 25, Ex. 15. The documents contained detailed Genentech trade secret information
25 concerning the preparation of Pulmozyme[®] samples for evaluating potential drug degradation
26 during shipping, handling, and long-term storage. *Id.*

27 _____
28 ⁴ JHL1921 was JHL’s first attempted Pulmozyme[®] biosimilar. In 2014, JHL discontinued
development of JHL1921 and began work on JHL1922, another Pulmozyme[®] biosimilar.

1 Defendants Jordanov and Lin unquestionably knew that the information Xanthe and Allen
2 were funneling to them originated at Genentech. For example, Allen converted the Genentech
3 methyl green SOP Xanthe sent him in December 2013 (as described above) into a JHL SOP.
4 Balogh Decl. ¶ 21, Ex. 5. Comparing the Genentech SOP to the JHL SOP reveals that JHL
5 copied Genentech’s trade secrets into the JHL document: both SOPs reference the same
6 equipment, concentrations of reagents, and order of steps to be taken. *Id.* On January 7, 2014,
7 Allen sent the SOP on JHL letterhead to Jordanov and Lin, among other JHL employees.
8 Leaving no doubt regarding the provenance and value of the information he was providing, Allen
9 wrote, “Attached is the methyl green activity assay *used by the innovator*. The assay is rather
10 lengthy, but is doable. *At least the assay is familiar to the FDA/EMEA, and acceptable to*
11 *them.*” McCloskey Decl. ¶ 26, Ex. 16 (emphasis added). Allen’s email demonstrates the value of
12 the trade secrets JHL stole from Genentech: because regulators had already reviewed and
13 approved the stolen Genentech protocols and processes, JHL hoped and believed that regulators
14 would be more likely to approve those same processes for JHL. Allen’s email also makes clear
15 that JHL was already using the pilfered information, noting that a JHL employee had ordered the
16 “materials and chemicals required in this assay,” such that “they will be in-house at JHL soon, so
17 she can try out the method.” *Id.*

18 Logs from Xanthe’s Genentech-issued iPhone likewise confirm that she was discussing
19 JHL matters with Rose Lin throughout the conspiracy. A text messaging log reveals several
20 communications between Xanthe and Lin on April 23, 2015, during which Xanthe suggested
21 using FaceTime to call Lin in Taiwan. Before the video-call, she asked Lin to “read the email
22 that Allen sent first.” Kirshman Decl. ¶ 17, Ex. 17. Email correspondence between Xanthe and
23 Allen on Xanthe’s personal email reveals that Xanthe was referring to an email Allen sent Lin on
24 or about April 23, 2015 regarding Genentech’s confidential analytical methods for Rituxan[®] and
25 their applicability to the stability testing and assay validation for JHL’s Rituxan[®] biosimilar.
26 McCloskey Decl. ¶ 27, Ex. 17. Xanthe’s call log shows that she spoke with Lin via FaceTime
27 for 27 minutes later that same day, April 23, 2015. Kirshman Decl. ¶ 17, Ex. 17.

28

1 **2. Xanthe recruited John Chan to JHL to serve as another conduit for**
2 **Genentech trade secret information.**

3 Shortly after returning to Genentech after her unsanctioned stint in JHL’s laboratory,
4 Xanthe set out to install a scientist at JHL who could function as another conduit for Genentech’s
5 trade secret information. On February 13, 2014, Xanthe emailed Defendant John Chan to let him
6 know that she had asked JHL to create a position of “formulation scientist” for him. Kirshman
7 Decl. ¶ 15, Ex. 9. This would be Chan’s first job after finishing his Ph.D. Chan interviewed with
8 JHL co-founder Rose Lin on February 20, 2014. When reporting back to Xanthe about the
9 interview, Chan wrote that his “[w]orking arrangement and role[]” would be “Formulation under
10 you and Allen’s guidance (*presumably I will be your direct report*).” *Id.* ¶ 15, Ex. 10 (emphasis
11 added). Again, at this time, Xanthe was employed as a Principal Scientist at Genentech, not in
12 any sanctioned capacity at JHL.

13 JHL offered Chan the position on March 5, 2014. After consulting with Xanthe about the
14 offer, Chan accepted it. Despite having no previous work experience in the field, Chan became
15 the “head of the Pulmozyme® biosimilar project” and “Group Leader, Formulation” at JHL. *Id.*
16 ¶ 15, Ex. 11–13; McCloskey Decl., Ex. 20 at 5. Shortly after Chan took the position at JHL,
17 Xanthe began holding frequent conversations with him via Skype. Skype logs found on Xanthe’s
18 laptop reveal that she spoke to Chan via Skype nearly every week between May 15, 2014 and
19 November 12, 2016. Kirshman Decl. ¶ 16, Ex. 14; French Decl. ¶ 17, Ex. 7.

20 In September 2014, Xanthe and Chan communicated via Skype weekly. Then, on
21 September 29, 2014, Xanthe sent an email to her husband at his personal account with the subject
22 line “Tech report for John.” Kirshman Decl. ¶ 16, Ex. 15. Xanthe instructed her husband to
23 “[m]ake a hard copy of the report attached for John. Don’t give him e-copy and tell him
24 don’t show it to others.” *Id.* (emphasis added). The attachment was a confidential Genentech
25 Technical Report containing detailed procedures and test results concerning the stability and
26 compatibility of Pulmozyme® with Stedim bags for storage, shipping, and handling. Moore Decl.
27 ¶ 9, Ex. 2. Allen replied, “Great!! I have printed that out and will give it to John when he comes
28 back tonight.” Kirshman Decl. ¶ 16, Ex. 16.

1 **3. With Xanthe's help, Defendant James Quach unlawfully accessed**
2 **Genentech's computer system and downloaded hundreds of**
3 **confidential documents before leaving for JHL.**

4 In 2017, Defendants' conspiracy extended to include Defendant James Quach (a/k/a Phat
5 Trang Quach). Quach worked at Genentech for 17 years, from 2000 until Genentech terminated
6 him in April 2017 for unacceptable performance. Kirshman Decl. ¶ 25. Following his
7 termination from Genentech, Xanthe helped Quach secure employment at JHL. *Id.*, Ex. 18.
8 Quach applied for a position at JHL in May 2017 and by July 2017 had accepted an offer to work
9 at JHL's manufacturing facility in Wuhan, China. *Id.*, Ex. 19.

10 As both Quach and Xanthe have admitted, Quach went to Xanthe's South San Francisco
11 home on three separate occasions in July 2017 and, with Xanthe's knowledge and consent, used
12 Xanthe's log-in credentials to access Genentech's document control system and download files
13 onto a personal USB drive. Kirshman Decl. ¶¶ 18–19; McCloskey Decl. ¶ 30. The files Quach
14 downloaded comprise Genentech's procedures for complying with regulatory GMP standards.
15 Bezy Decl. ¶ 5. Genentech developed these detailed protocols and procedures through years of
16 analysis, testing and by incorporating feedback from the FDA and other regulatory authorities,
17 and kept these materials strictly confidential. *Id.* These documents would provide a lucrative
18 shortcut for a competing biopharmaceutical manufacturer such as JHL to gain regulatory approval
19 for their manufacturing and quality assurance processes. Not coincidentally, Quach's role at JHL
20 involved managing engineering and validation activities during the start-up phase of JHL's
21 Wuhan manufacturing facility. McCloskey Decl. ¶ 31, Ex. 19. A component of this role would
22 include developing procedures for the Wuhan facility to comply with GMP standards. *Id.*

23 Genentech has reason to believe that Quach took Genentech's trade secret information
24 with him to Wuhan for JHL's benefit. And indeed, upon arriving at JHL's facility in China,
25 Quach determined that he needed additional Genentech documents. He emailed Xanthe and
26 asked her to download and send him certain additional documents from Genentech's computer
27 system. *Id.* ¶ 30. Analysis of Xanthe's downloads during August 2017 reveal that she
28 downloaded additional manufacturing facility procedures. Kirshman Decl. ¶ 18. And Quach
 admitted Xanthe emailed those documents to him while he was at JHL. McCloskey Decl. ¶ 30.

1 **F. JHL used Genentech’s trade secret information to fuel its meteoric rise as a**
2 **biotech startup.**

3 JHL has already used and benefited from Genentech’s trade secret information. In
4 addition to the wholesale conversion of Genentech’s Pulmozyme[®] methyl green assay into a JHL
5 SOP as described above, Genentech’s investigation uncovered several JHL documents on
6 Xanthe’s computer revealing that Defendants altered JHL’s internal development methods and
7 specifications so they would *exactly match* Genentech’s.⁵ Balogh Decl. ¶ 21. For example, in
8 April 2015, Xanthe edited JHL’s draft stability protocols for “JHL 1922”—JHL’s latest
9 Pulmozyme[®] biosimilar—so that JHL’s specifications would match those listed in Genentech’s
10 confidential stability protocol for Pulmozyme[®] in key ways. *Id.* Specifically, Xanthe’s revisions
11 (revealed as “tracked changes”) to JHL’s draft protocol changed the pH specifications, potency
12 criteria, and temperature for conducting stability tests so that those metrics would precisely match
13 Genentech’s own acceptance criteria. *Id.* Likewise, other emails uncovered during the
14 government’s investigation reveal the extent to which Xanthe shaped JHL’s development
15 methods to match Genentech’s. For example, in a September 2013 email to Allen, Xanthe
16 instructed Allen to share with JHL executives her critique on five assays that JHL used to assess
17 its Rituxan[®] biosimilar. *Id.* In that email, she revealed details of Genentech’s confidential
18 methods for testing Rituxan[®] and explained why Genentech’s methods were more powerful and
19 should be used instead of JHL’s. *Id.*

20 The confidential, proprietary, and trade secret information that JHL obtained gave that
21 embryonic company an unfair and illegal advantage, catapulting it to rapid success. On February
22 14, 2016—a little over three years after the company’s founding in December 2012—JHL issued
23 a press release touting that European regulatory authorities had approved a clinical trial for its
24 Rituxan[®] biosimilar. *See* PR Newswire, *JHL Biotech Receives Approval From European*
25 *Authorities to Begin Biosimilar Clinical Trial*, Feb. 14, 2016. In the release, Jordanov explained
26 how difficult it is to replicate Rituxan[®]: “Countless international pharmaceutical companies have

27 ⁵ In fact, forensic evidence from Xanthe’s Genentech-issued laptop suggests that Xanthe had
28 access to a “JHLBiotech Mail” account from that laptop, and that she printed JHL analytical test
 results from that account on her home printer on Sunday, May 11, 2014. French Decl. ¶ 15.

1 attempted to develop a rituximab biosimilar. Rituximab has a complex structure, and JHL had to
2 develop a product identical in quality, safety, and efficacy to its Roche reference.” *Id.* Jordanov
3 hailed the trial as “the beginning of an exciting new stage in JHL’s growth.” *Id.*

4 On or about December 5, 2016, JHL entered into a partnership with the French
5 multinational pharmaceutical company Sanofi to produce and market a Rituxan[®] biosimilar. As
6 industry news sources reported, the deal “put Sanofi’s commercial prowess behind JHL’s in-
7 development Rituxan copycat and, potentially, other drug candidates from the company.”⁶ The
8 JHL/Sanofi deal is reportedly worth up to \$236 million in upfront and milestone payments, with
9 \$21 million paid up front alongside an \$80 million investment in JHL stock.⁷ The Sanofi pact
10 was incredibly important to JHL, with Jordanov calling it “a turning point in JHL’s history.”⁸

11 JHL’s speedy path from nascent start-up to multinational biosimilar player depended on
12 the Genentech trade secret information that JHL misappropriated over the past several years.
13 Indeed, the rate of JHL’s development is markedly unusual: despite having been established only
14 in 2012, JHL won regulatory approval to launch clinical trials of *not one, but all four of its*
15 *biosimilars of Genentech medicines*. In March 2018, it received approval to conduct clinical
16 trials of its Pulmozyme[®] biosimilar; in April 2018, it received approval to conduct Phase I trials
17 of its Avastin[®] biosimilar in China (and already had approval in Bulgaria); in July 2018, it
18 announced that it had received approval to commence Phase III trials of its Rituxan[®] biosimilar in
19 China; in August 2018, it announced that European regulators had provided positive scientific
20 advice regarding its planned Phase III clinical trials of its Avastin[®] and Herceptin[®] biosimilars;
21 and in October 2018, it announced that it had received approval to conduct a Phase III trial of its
22 Avastin[®] biosimilar in China. McCloskey Decl. ¶ 36. This abbreviated timeline is particularly
23 unusual for a six-year-old start-up that had relatively few employees during this time period.
24 Even as of June 2015, JHL only had a “[t]otal headcount [of] ~90 (18 PhD’s).” *Id.* ¶ 32, Ex. 20.

25
26 ⁶ Eric Palmer, *Sanofi, JHL Biotech Strike Rituxan Biosimilar Pact Worth Up To \$236M*,
FiercePharma, Dec. 5, 2016.

27 ⁷ Biomark Capital, *Sanofi & JHL Announce Strategic Biologics Alliance in China*, Dec. 5, 2016.

28 ⁸ *Id.*

1 The evidence confirms JHL’s speedy development was fueled by access to Genentech’s
2 trade secrets. For example, in draft slide deck for a JHL meeting with a potential partner in May
3 2014, a copy of which was found on Xanthe’s Genentech-issued laptop, JHL touted a timeline for
4 developing analytical methods for its Pulmozyme[®] biosimilar that was six to twelve months faster
5 than expected in the industry. Balogh Decl. ¶ 22. Xanthe confirmed the basis for this accelerated
6 schedule in an email to Allen sent days prior to the meeting, noting JHL already “*should have*
7 *most of the Pulmozyme assays (GNE Q methods) listed for characterization*” such that there
8 would be no need for JHL to spend time developing its own. McCloskey Decl. ¶ 28, Ex. 18
9 (emphasis added). JHL is now attempting to parlay its theft into additional economic benefits:
10 JHL recently announced that it raised \$106 million in pre-IPO funding, which it intends to use “to
11 support clinical trials and further development of its biosimilar portfolio” and as a prelude to an
12 expected “\$250 million IPO in Hong Kong later this year.”⁹

13 **G. Following an anonymous tip, Genentech promptly launched an investigation,**
14 **alerted law enforcement, and sought relief as soon as possible.**

15 Although Defendants’ unlawful conduct has been going on for years, Genentech
16 discovered the scheme only in October 2016 thanks to an anonymous tip. Kirshman Decl. ¶ 5.
17 Genentech promptly launched an internal investigation, which helped uncover the scheme
18 described in this motion. *Id.* ¶ 6. Genentech also contacted law enforcement authorities, and
19 cooperated fully with the U.S. Attorney’s Office as it launched a criminal investigation. *See*
20 Decl. of Elliot R. Peters in Supp. of Mot. for Prelim. Inj. (“Peters Decl.”) ¶ 2.

21 The FBI executed a search warrant on Xanthe’s home early in the morning on September
22 11, 2017. Kirshman Decl. ¶ 19. Immediately thereafter, Xanthe headed to work where she
23 voluntarily met with Genentech and its attorneys to discuss the matters revealed in Genentech’s
24 internal investigation. *Id.* Xanthe sat for a second voluntary interview on September 18, 2017.
25 *Id.* Quach voluntarily met with Genentech’s counsel on October 6, 2017. McCloskey Decl. ¶ 30.

26 In their separate interviews, both Xanthe and Quach confirmed the bulk of the

27 ⁹ *JHL Biotech Raises \$106 Million in Pre-IPO Funding*, ChinaBioToday (May 29, 2018),
28 <http://www.chinabiotoday.com/articles/JHL-106-Million-Pre-IPO>.

1 wrongdoing alleged in this action. For example, Xanthe admitted that she: (a) worked in JHL's
2 lab in December 2013; (b) worked closely with John Chan while he was employed at JHL,
3 holding weekly Skype calls with him for over a year, during which time she coached him in his
4 role as JHL's formulation scientist; (c) saved Genentech documents to personal external storage
5 devices, and then emailed them from home using her personal email account; (d) created folder
6 directories on her Genentech-issued computer, organized by drug, that contained Genentech
7 information alongside JHL documents; (e) understood that the Genentech documents she
8 downloaded and stored contain confidential, proprietary, and trade secret information that
9 Genentech would never share with a competitor; and (f) allowed James Quach to use her
10 Genentech credentials to download and save hundreds of confidential Genentech documents
11 relating to Genentech's manufacturing protocols onto an external hard-drive shortly before he left
12 for JHL's manufacturing plant in China. *See* Kirshman Decl. ¶ 19.

13 For his part, Quach admitted that he: (a) visited Xanthe's home three times in July 2017,
14 after having accepted a position at JHL; (b) used Xanthe's log-in information to access
15 Genentech's secure document repository; (c) downloaded hundreds of confidential Genentech
16 documents to an external flash drive; (d) left to work at JHL's manufacturing facility in August
17 2017; and (e) asked Xanthe to send him additional Genentech documents after arriving in China,
18 which she did. *See* McCloskey Decl. ¶¶ 30–31.

19 At the government's request, Genentech took no public action that could have
20 compromised the government's investigation, including filing a civil complaint or seeking
21 preliminary injunctive relief. Peters Decl. ¶ 3. The criminal investigation led to a sealed grand
22 jury indictment on October 25, 2018, charging Xanthe, Allen, Quach, and Chan with criminal
23 trade secret theft and violations of the Computer Fraud and Abuse Act. The indictment was
24 unsealed only after the indicted individuals were arrested and made initial appearances on
25 October 29, 2018. Genentech filed its complaint seeking injunctive relief immediately following
26 the indictment's unsealing, and filed this motion that same week. *Id.* ¶ 4.

27 **III. LEGAL STANDARD**

28 A plaintiff seeking a preliminary injunction must establish that: (1) it is likely to succeed

1 on the merits; (2) it is likely to suffer irreparable harm in the absence of relief; (3) the balance of
2 equities tips in its favor; and (4) an injunction serves the public interest. *Arc of Cal. v. Douglas*,
3 757 F.3d 975, 983 (9th Cir. 2014). In this Circuit, “‘serious questions going to the merits’ and a
4 balance of hardships that tips sharply in [plaintiff]’s favor can support issuance of a preliminary
5 injunction so long as [plaintiff] also shows a likelihood of irreparable injury and that the
6 injunction is in the public interest.” *Waymo LLC v. Uber Techs., Inc.*, 2017 WL 2123560, at *6
7 (N.D. Cal. May 15, 2017) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
8 1134–35 (9th Cir. 2011)).

9 **IV. ARGUMENT**

10 **A. Genentech is likely to succeed on the merits of its DTSA and CUTSA claims.**

11 The Defend Trade Secrets Act (DTSA) allows an owner of a misappropriated trade secret
12 to bring a civil action if the “trade secret is related to a product or service used in, or intended for
13 use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1). Similarly, CUTSA provides
14 relief under substantially identical circumstances, but without any interstate or foreign commerce
15 requirement. *See* Cal. Civ. Code §§ 3426.1 *et. seq.* Based on both statutes’ plain language,
16 Genentech is likely to succeed in showing that Xanthe’s and Quach’s theft of Genentech’s trade
17 secret information and the Defendants’ wrongful receipt and misappropriation of that information
18 constituted violations of DTSA and CUTSA.

19 To begin with, the information Defendants misappropriated from Genentech are “trade
20 secrets” under both DTSA and CUTSA. Both statutes impose substantially the same three
21 prerequisites for protection as a trade secret: (1) the subject of the misappropriation must be
22 “information” (of *any* type under CUTSA, and effectively any type under DTSA); (2) the owner
23 must have made “reasonable” efforts to maintain the information’s secrecy; and (3) the
24 information must derive independent economic value from its secrecy. *See* 18 U.S.C. § 1839(3);
25 Cal. Civ. Code § 3426.1; *see also* *Waymo*, 2017 WL 2123560, at *7 (noting that both DTSA and
26 CUTSA “offer essentially the same definitions”). These three factors are satisfied here.

27 ***First***, the Defendants misappropriated scientific and technical information regarding the
28 processes by which Genentech tests, analyzes, controls, and formulates Pulmozyme[®], Rituxan[®],

1 Avastin[®], and Herceptin[®], as well as documents setting forth product quality criteria and
2 physicochemical characteristics relating to those drugs. They also stole Genentech’s proprietary
3 manufacturing processes, protocols, and procedures designed to ensure GMP compliance. Such
4 information falls squarely within the definition of “trade secret” information under both federal
5 and state law. *See* 18 U.S.C. § 1839(3); Cal. Civ. Code § 3426.1. Indeed, “confidential
6 formulas” and “manufacturing techniques”—two of the types of information at issue here—are
7 specifically identified as examples of trade secrets in DTSA’s legislative history. H.R. Rep. No.
8 114-529 at 197 (2016).¹⁰ The Ninth Circuit has likewise concluded that “specific instructions on
9 how to prepare and manufacture” a product constitute actionable trade secrets. *OTR Wheel*
10 *Eng’g, Inc. v. W. Worldwide Svcs., Inc.*, 602 F. App’x 669, 672 (9th Cir. 2015).

11 Importantly, Genentech need not prove that every single document Defendants stole
12 constitutes a trade secret. Where, as here, an employee downloads a large volume of confidential
13 information on a competitor’s behalf, it is enough to raise “serious questions going to the merits
14 concerning whether *some* information within the . . . downloaded files has been used by
15 defendants and qualifies for trade secret protection.” *Waymo*, 2017 WL 2123560, at *8. Even
16 “[t]wo examples will suffice.” *Id.* Here, Genentech’s 2019.210 Statement lists dozens of specific
17 examples of trade secrets, and identifies scores of documents containing them.

18 **Second**, Genentech took reasonable measures to keep the stolen information secret.
19 Among other things, Genentech limited access to the information, entered into confidentiality
20 agreements with all of its employees (including Xanthe, Allen, Jordanov, Lin, and Quach)
21 prohibiting unauthorized disclosure or use of Genentech’s confidential information during or after
22 their employment, and stored the information in password-protected document repositories. *See*
23 Kirshman Decl. ¶¶ 26–60. These steps more than suffice to demonstrate reasonable efforts to
24 maintain secrecy. *See, e.g., MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 521 (9th Cir.
25 1993) (holding that a company that “required employees to sign confidentiality agreements

26
27 ¹⁰ The trade secrets at issue are also “related to a product” used in “interstate or foreign
28 commerce.” 18 U.S.C. § 1836(b)(1). Genentech medicines are sold throughout the United States
and internationally by Roche, Genentech’s parent company. McCloskey Decl. ¶ 9.

1 respecting its trade secrets” took “reasonable steps” to ensure secrecy); *Henry Schein Inc. v.*
 2 *Cook*, 2016 WL 3418537, at *4 (N.D. Cal. June 22, 2016) (finding confidentiality agreements and
 3 restricted access “through password-protected programs” sufficient); *Pyro Spectaculars N., Inc. v.*
 4 *Souza*, 861 F. Supp. 2d 1079, 1090–91 (E.D. Cal. 2012) (same).

5 **Third**, Genentech has derived independent economic value from this information’s
 6 secrecy. The information includes documents that serve as blueprints for the development and
 7 quality testing of four of Genentech’s proprietary medicines: Pulmozyme[®], Rituxan[®], Avastin[®],
 8 and Herceptin[®]. *See* Moore Decl. ¶¶ 6–8. Genentech will continue to suffer economic harm if
 9 this information remains available for use by JHL or other companies in the business of
 10 developing biosimilars of these and other Genentech products.

11 Genentech is also likely to establish that Defendants misappropriated these trade secrets.
 12 DTSA defines “misappropriation” as

13 disclosure or use of a trade secret of another without express or implied consent by
 14 a person who (i) used improper means to acquire knowledge of the trade secret;
 15 [or] (ii) at the time of disclosure or use, knew or had reason to know that the
 16 knowledge of the trade secret was (I) derived from or through a person who had
 17 used improper means to acquire the trade secret; (II) acquired under circumstances
 giving rise to a duty to maintain the secrecy of the trade secret or limit the use of
 the trade secret; or (III) derived from or through a person who owed a duty to the
 person seeking relief to maintain the secrecy of the trade secret or limit the use of
 the trade secret.

18 18 U.S.C. § 1839(5)(B). “Improper means” is specifically defined to include “theft, bribery,
 19 misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage
 20 through electronic or other means.” 18 U.S.C. § 1839(6)(A). CUTSA defines “misappropriation”
 21 and “improper means” in nearly identical terms. *See* Cal. Civ. Code § 3426.1.

22 Defendants’ actions fall squarely within these definitions. As described in detail above,
 23 acting on JHL’s behalf, Xanthe compiled Genentech’s trade secret information in folders on her
 24 Genentech-issued laptop computer; provided some or all of those materials to Allen for his work
 25 for JHL; held weekly Skype calls with a JHL formulation scientist she had handpicked to work
 26 with her on JHL’s biosimilars; and relied on Genentech trade secret information while working
 27 surreptitiously for JHL. For example, Xanthe and Allen copied Genentech’s—“the
 28 innovator’s”—analytical method for Pulmozyme[®] and put it to use for JHL’s biosimilar version

1 of that same medicine, all with the knowledge and blessing of JHL’s leadership, including
2 Jordanov and Lin. For his part, Quach downloaded hundreds of manufacturing protocols that
3 would aid JHL as it established a new manufacturing facility in China just before he left the
4 United States to work there, and then he asked for and received additional trade secret materials
5 from Xanthe after arriving at JHL.

6 Genentech is also likely to succeed in showing that Defendants disclosed or used
7 Genentech’s trade secrets for the benefit of JHL knowing that they had been acquired in the scope
8 of Xanthe’s then-current employment with Genentech, i.e., circumstances giving rise to a duty to
9 maintain their secrecy. *See* 18 U.S.C. § 1839(5)(B)(ii)(II); Cal. Civ. Code § 3426.1(b)(2)(B)(ii).
10 Defendants likewise knew or had reason to know that the trade secrets were derived from a
11 person (Xanthe) who owed a duty to Genentech to maintain their secrecy. *See* 18 U.S.C.
12 § 1839(5)(B)(ii), (6)(A); Cal. Civ. Code § 3426.1(a), (b)(2)(B). Xanthe repeatedly certified her
13 compliance with Genentech’s Code of Conduct, which expressly imposes a duty to protect
14 Genentech’s confidential information. And as former Genentech employees, Allen, Jordanov,
15 Lin, and Quach likewise knew that JHL had come by the information improperly.

16 Moreover, although not required to prove a violation, there is little question that JHL
17 *actually used* Genentech’s trade secret information. Genentech information appears inside JHL’s
18 own confidential documents—with methods, protocols and specifications copied verbatim from
19 Genentech’s trade secret materials. *See* Balogh Decl. ¶ 21.

20 Courts in this district have issued preliminary injunctive relief under similar
21 circumstances. *Waymo* is particularly instructive. There, Waymo accused its competitor, Uber,
22 of knowingly hiring a former Waymo employee who downloaded 14,000 confidential Waymo
23 files regarding self-driving car technology and took them with him on the way out the door.
24 Although the court questioned whether every document downloaded constituted a trade secret, it
25 concluded that Uber hired the former Waymo employee “even though it knew or should have
26 known” that the employee possessed “confidential files containing Waymo’s intellectual
27 property,” that “at least some information from those files, if not the files themselves, has seeped
28 into Uber’s own . . . development efforts,” and “that at least some of said information likely

1 qualifies for trade secret protection.” *Waymo*, 2017 WL 2123560, at *10. This case is even
2 stronger than *Waymo*: evidence reveals that Xanthe and Allen provided Genentech trade secret
3 information directly to JHL personnel—including its CEO—explaining that the required
4 materials for Genentech’s method “will be in-house at JHL soon,” allowing JHL to “try out the
5 method.” McCloskey Decl. ¶ 26, Ex. 16.

6 *Henry Schein, Inc. v. Cook*, 191 F. Supp. 3d 1072, 1077 (N.D. Cal. 2016), is also
7 analogous. There, the court issued a preliminary injunction because the plaintiff showed that the
8 defendant had (1) emailed and downloaded to personal devices confidential information from her
9 employer before leaving employment, and (2) signed agreements containing confidentiality
10 provisions. In *Cook*, the court issued an injunction broadly preventing the former employee, “and
11 all those acting in concert or participation with her . . . from directly or indirectly accessing,
12 using, disclosing, or making available to any person or entity other than Plaintiff, any of
13 [Plaintiff]’s confidential, proprietary, or trade secret documents, data or information.” *Id.* at
14 1079. Genentech seeks similar relief here, and the Court should grant it for similar reasons.

15 Genentech’s likelihood of succeeding on its trade secret misappropriation claims is
16 sufficient to satisfy the first preliminary injunction factor. But Genentech is also likely to succeed
17 on its claims under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and California’s
18 Computer Data Access and Fraud Act, Cal. Pen. Code § 502(c)(1). Xanthe and Quach knowingly
19 and without permission accessed Genentech’s computer network to wrongfully obtain data;
20 indeed, they have both admitted that misconduct. Genentech is also likely to succeed on its state
21 law claims for breach of contract, intentional interference with contractual relations, breach of
22 duty of loyalty, and aiding and abetting the breach of that duty. The Proprietary Agreements
23 Xanthe and Quach signed are valid and enforceable in California. *See Oculus Innovative Scis.,*
24 *Inc. v. Nofil Corp.*, 2007 WL 4044867, at *3 (N.D. Cal. Nov. 15, 2007). By failing to protect
25 Genentech’s confidential information, Xanthe and Quach violated their contracts, and Xanthe also
26 violated her duty of loyalty to Genentech. Their co-defendants knowingly aided those violations.

27 **B. Genentech is suffering irreparable harm.**

28 Courts in this district and elsewhere have frequently held that threatened or continued use

1 of misappropriated trade secrets presumptively constitutes irreparable harm for purposes of
 2 granting preliminary injunctive relief. *See, e.g., Gallagher Benefits Servs., Inc. v. De La Torre*,
 3 2007 WL 4106821, at *5 (N.D. Cal. Nov. 16, 2007), *aff'd in relevant part*, 283 F. App'x 543 (9th
 4 Cir. 2008); *W. Directories, Inc. v. Golden Guide Directories, Inc.*, 2009 WL 1625945, at *6 (N.D.
 5 Cal. June 8, 2009) (“The Court presumes that Plaintiff will suffer irreparable harm if its
 6 proprietary information is misappropriated.”); *Vinyl Interactive, LLC v. Guarino*, 2009 WL
 7 1228695, at *8 (N.D. Cal. May 1, 2009) (same); *Pixon Imaging, Inc. v. Empower Techs. Corp.*,
 8 2011 WL 3739529, at *6 n.7 (S.D. Cal. Aug. 24, 2011) (“[A]n intention to make imminent or
 9 continued use of a trade secret or to disclose it to a competitor will almost always show
 10 irreparable harm.”); *Advanced Instructional Sys., Inc. v. Competentum USA, Ltd.*, 2015 WL
 11 7575925, at *4 (M.D.N.C. Nov. 25, 2015) (“In most instances, courts presume irreparable harm
 12 when a trade secret has been misappropriated.”). That presumption applies here.

13 Even beyond this presumption, Genentech will continue to suffer immediate and
 14 irreparable injury without relief. JHL misappropriated Genentech’s trade secrets, and is currently
 15 using them to develop biosimilars intended to compete directly with Genentech’s medicines.¹¹
 16 With each passing day, JHL continues to wrongfully leverage Genentech’s trade secrets to bolster
 17 its own know-how and to make progress toward marketing its own versions of Genentech’s
 18 medicines. As explained above, the threat is imminent; JHL is currently running a global Phase
 19 III clinical trial of its Rituxan[®] biosimilar (the last clinical trial phase before commercialization)
 20 and has signed a lucrative deal with Sanofi to market it.

21 Any progress Defendants make in their efforts harms Genentech in ways that cannot be
 22 repaired with money damages awarded later. For this reason, “[c]ommercial advantage is
 23 grounds for finding irreparable harm under the CUTSA.” *Brocade Commc’ns Sys., Inc. v. A10*
 24 *Networks, Inc.*, 2013 WL 890126, at *9 (N.D. Cal. Jan. 23, 2013); *see also Agency*
 25 *Solutions.Com, LLC v. TriZetto Grp., Inc.*, 819 F. Supp. 2d 1001, 1031 (E.D. Cal. 2011) (holding
 26 that harms to “competitive advantage and loss of market status . . . warrant injunctive relief

27
 28 ¹¹ JHL’s actions are also harming other biosimilar manufacturers, who are competing ethically
 and lawfully by developing biosimilar products based on their own hard work.

1 because such harms are inestimable.”). This is particularly true with respect to JHL’s efforts to
2 market a Pulmozyme[®] biosimilar. JHL has trumpeted the fact that it is the only manufacturer
3 holding clinical trials for a Pulmozyme[®] biosimilar, and is poised to launch the first biosimilar to
4 compete with Pulmozyme[®] anywhere in the world. McCloskey Decl. ¶ 33, Ex. 21.

5 Again, *Waymo* is instructive. Finding irreparable harm in that case, the court described
6 the “root problem” as the fact that a former Waymo employee had downloaded thousands of
7 confidential files that could be used to further Uber’s product development. *Waymo*, 2017 WL
8 2123560, at *10. Because Uber could always claim it came by its development breakthroughs
9 independently—a defense JHL may advance here—“misuse of Waymo’s trade secrets might be
10 virtually untraceable.” *Id.* Furthermore, the court observed, it would be a “bone-crushing
11 endeavor” to “identify and enjoin parts of defendants’ technology” that leveraged Waymo’s trade
12 secrets after the fact—and doing so probably would not “fully restore the parties to their
13 respective competitive positions if no misappropriation had occurred.” *Id.* at *11. Accordingly,
14 the court found it “far better to instead put in prophylactic measures now to prevent
15 misappropriation (or further misappropriation)” of the stolen trade secrets. *Id.* So too here.

16 Genentech suffers other irreparable harms apart from damage to its commercial position.
17 For instance, as in *Waymo*, if Defendants use Genentech trade secrets to “accelerate their own
18 progress” in drug development, “that momentum would improve their ability to attract investors
19 and talented engineers away from competitors—including [Genentech] itself.” *Id.* “That
20 poaching scenario—and the harm it entails” constitutes a cognizable irreparable harm. *Id.* Such
21 harm is hardly hypothetical in this case. JHL’s meteoric rise has attracted several well-known
22 U.S.-based investors, including the likes of Sequoia Capital and Kleiner Perkins. Moreover,
23 Jordanov and Lin publicly tout how many of their employees hail from Genentech, and JHL
24 consistently solicits talent from Genentech’s ranks. McCloskey Decl. ¶¶ 33–35, Exs. 21–23.
25 Each breakthrough JHL enjoys (thanks to Genentech’s trade secrets) enhances JHL’s standing
26 and helps to lure talent from Genentech to JHL.

27 Furthermore, Defendants are using Genentech’s trade secrets to secure partnerships and
28 other business arrangements with third parties, including the above-mentioned deal with

1 pharmaceutical giant Sanofi. These arrangements evidence Defendants' intention to use and
 2 disclose Genentech's trade secrets to benefit Genentech's competitors. Genentech's harm from
 3 such further dissemination of its trade secrets is incalculable, and could result in the total
 4 destruction of their economic value. This undoubtedly constitutes irreparable harm. *Cf. Faiveley*
 5 *Transp. Malmö AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (“[R]ebutable
 6 presumption of irreparable harm might be warranted in cases where there is a danger that, unless
 7 enjoined, a misappropriator of trade secrets will disseminate those secrets to a wider audience or
 8 otherwise irreparably impair the value of those secrets.”).

9 **C. The balance of equities and public interest favor Genentech.**

10 Defendants will suffer no prejudice if they are barred from using information they have no
 11 legitimate right to possess. Indeed, the “balance of hardships tips in favor of plaintiff seeking
 12 [an] injunction when it would do no more than require Defendant to comply with federal and state
 13 . . . laws.” *Cook*, 191 F. Supp. 3d at 1077 (internal quotation marks omitted); *see also TMX*
 14 *Funding, Inc. v. Impero Techs., Inc.*, 2010 WL 1028254, at *8 (N.D. Cal. Mar. 18, 2010) (finding
 15 the balance of hardships favors a plaintiff seeking to enjoin trade secret misuse). The public
 16 interest also favors an injunction: “safeguards imposed . . . in response to brazen misappropriation
 17 of trade secrets . . . would hardly discourage legitimate competition in a field where intellectual
 18 property rights are important to innovation.” *Waymo*, 2017 WL 2123560, at *12.

19 **V. CONCLUSION**

20 As set forth with specificity in the accompanying proposed order, Genentech respectfully
 21 requests that the Court grant this motion for a preliminary injunction, enjoining Defendants from
 22 using Genentech's trade secrets in any way and ordering them to locate, preserve, and return all
 23 relevant information.

24 Dated: November 6, 2018

KEKER, VAN NEST & PETERS LLP

25
 26 By: /s/ Elliot R. Peters
 ELLIOT R. PETERS

27 Attorney for Plaintiff
 28 GENENTECH, INC.

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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 GENENTECH, INC.,
 17 Plaintiff,
 18 v.

19 JHL BIOTECH, INC., XANTHE LAM, an
 individual, ALLEN LAM, an individual,
 20 JAMES QUACH, an individual, RACHO
 JORDANOV, an individual, ROSE LIN, an
 21 individual, JOHN CHAN, an individual,
 and DOES 1-50,
 22 Defendants.

Case No. 3:18-cv-06582-WHA

**AMENDED [PROPOSED] ORDER
 GRANTING PLAINTIFF GENENTECH,
 INC.'S MOTION FOR PRELIMINARY
 INJUNCTION**

Date: December 13, 2018
 Time: 9:30 a.m.
 Dept: Courtroom 12 - 19th Floor
 Judge: Hon. William Alsup

Date Filed: October 29, 2018
 Trial Date: Not Set

1 **TO ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 The motion for preliminary injunction by Genentech, Inc. (“Genentech”) came before this
3 Court for consideration on _____, 2018. Based upon the parties’ submissions to the Court,
4 the applicable law, the relevant pleadings and papers on file in this action, and the arguments of
5 counsel, the Court hereby **GRANTS** Genentech’s motion for a preliminary injunction and
6 **ORDERS** as follows:

7 **Preliminary Injunction**

8 The Court, for the purposes of this Preliminary Injunction, finds that Genentech has
9 demonstrated a likelihood of success on the merits of its trade secret misappropriation claims
10 against JHL Biotech, Inc., Xanthe Lam, Allen Lam, Racho Jordanov, Rose Lin, James Quach,
11 and John Chan (collectively “Defendants”) and the possibility of irreparable injury to Genentech.
12 The Court further finds that the balance of harms tips in favor of Genentech.

13 Accordingly, **IT IS HEREBY ORDERED** that:

- 14 1. Defendants shall not disclose or use, directly or indirectly, Genentech’s trade
15 secret information.
- 16 2. Defendants shall not make, test, use, promote, offer to sell, market, commercialize,
17 or sell biologics, therapeutics, drugs, and/or products of any kind that utilize, embody, or were
18 developed, in whole or in part, with the benefit or use of any of Genentech’s trade secret
19 information.
- 20 3. Defendants shall not utilize any processes or methods that are derived from,
21 contain, or embody, in whole or in part, any of Genentech’s trade secret information.
- 22 4. Defendants shall not submit to or file with any regulatory body any documents or
23 other materials (in paper, electronic, or any other form, including, for example, cell lines, assays,
24 test results, drug substances, or drug products) that are derived from, contain, or embody, in
25 whole or in part, any of Genentech’s trade secret information.
- 26 5. Defendants shall preserve and to return to Genentech within fourteen (14) calendar
27 days of the date of this Order (i) all copies of all Genentech documents and information, including
28 without limitation any confidential, proprietary, and/or trade secret information acquired from

1 Genentech; and (ii) all copies of all materials (in paper, electronic, or any other form, including,
2 for example, cell lines, assays, test results, drug substances, or drug products) containing any, or
3 derived from any, Genentech trade secrets.

4 6. JHL Biotech, Inc., Racho Jordanov, and Rose Lin (collectively “JHL
5 Defendants”), shall, within thirty (30) calendar days of the date of this Order, conduct a thorough
6 investigation and provide a detailed accounting under oath, setting forth each individual and
7 entity to whom or to which Defendants and any of them, and their employees or representatives,
8 and all persons acting in concert or participating with them, disclosed (i) any Genentech
9 documents or other materials (in paper, electronic, or any other form, including, for example, cell
10 lines, assays, test results, drug substances, or drug products) or (ii) any of Genentech’s
11 confidential, proprietary, and/or trade secret information, what they saw or heard, when they saw
12 or heard it, and for what purpose. This Order requires more than querying servers with keyword
13 searches. For example, the JHL Defendants must interview personnel, particularly focusing on
14 anyone who has communicated with Xanthe Lam, Allen Lam, John Chan, or James Quach.

15 7. Defendants shall provide to Genentech’s counsel and the Court, within thirty (30)
16 calendar days of the date of this Order, a complete and chronologically organized log of all oral
17 and written communications—including, without limitation, conferences, meetings, phone calls,
18 Skype or video-chat sessions, one-on-one conversations, texts, emails, letters, memos, and
19 voicemails— wherein Xanthe Lam, Allen Lam, John Chan, or James Quach may have mentioned
20 any Genentech confidential, proprietary, or trade secret information to any officer, director,
21 employee, agent, supplier, or consultant of the JHL Defendants. The log shall identify for each
22 such communication the time, place (if applicable), mode, all persons involved, and subjects
23 discussed, as well as any and all notes, recordings, invoices, or other records referencing such
24 communication.

25
26 **IT IS FURTHER ORDERED** that Genentech shall post a bond of \$ _____ in
27 connection with this Preliminary Injunction Order.

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IT IS SO ORDERED.

Dated: _____, 2018

Hon. William Alsup
Judge, United States District Court