

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—
GENERAL

Case No. 2:24-cv-00264-JWH-E Date January 23, 2024

Title Regeneron Pharmaceuticals, Inc. v. Amgen, Inc.

Present: The Honorable JOHN W. HOLCOMB, UNITED STATES DISTRICT JUDGE

Clarissa Lara

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S *EX PARTE* APPLICATION [ECF No. 38]**

Before the Court is the *ex parte* application of Plaintiff Regeneron Pharmaceuticals, Inc. for an order setting a schedule for preliminary injunction proceedings.¹ The Court finds this matter appropriate for resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support and in opposition,² the Court orders that the Application is **GRANTED in part** and **DENIED in part**, for the reasons set forth herein.

As an initial matter, the Court addresses the timing of Regeneron's Application by reminding the parties of the Court's Standing Order:

¹ Pl.'s *Ex Parte* App. for Scheduling Order Setting Schedule for Preliminary Injunction Proceedings or, in the alternative, an Emergency Status Conference (the "**Application**") [ECF No. 38].

² The Court considered the documents of record in this action, including the following papers: (1) Application (including its attachments); and (2) Def.'s Opp'n to the Application (the "**Opposition**") [ECF No. 39].

The other parties' opposition . . . to an *ex parte* application is due 24 hours—*not* the next *court day*—after the other parties' receipt of the *ex parte* application. ***In view of that 24-hour deadline for opposition papers, in the absence of a true emergency, the Court takes a dim view of applicants who file their ex parte applications on Fridays or on the day before a court holiday.***³

“The opportunities for legitimate *ex parte* applications are extremely limited.” *Lum v. Mercedes-Benz USA, LLC*, 2012 WL 13012454, at *4 (C.D. Cal. Jan. 5, 2012) (citation omitted). To justify *ex parte* relief, the moving party must make two showings: (1) “the evidence must show that the moving party’s cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures”; and (2) “it must be established that the moving party is without fault in creating the crisis that requires *ex parte* relief, or that the crisis occurred as a result of excusable neglect.” *Mission Power Engineering Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).

Regeneron argues that *ex parte* relief is warranted because the Court should “urgently” enter a scheduling order to keep this action on track with four other cases pending in the United States District Court for the Northern District of West Virginia against drug manufacturers seeking to commercialize biosimilar versions of Eyelea.⁴

A preliminary injunction schedule will indeed promote judicial economy. But Regeneron has not made a sufficient showing regarding why this Court should adopt the same schedule set in the West Virginia cases. In view of the fact that this case was filed after the Western Virginia cases, the Court concludes that it is appropriate for this case to trail the Western Virginia cases.

³ Standing Order [ECF No. 48] 13:7-12 (emphasis in original). The Court hastens to note that its Standing Order was entered after Regeneron filed its Application. Nevertheless, Defendant Amgen, Inc. complied with the Court’s requirement. *See* Opposition 1:7-10 (“Amgen apologizes for burdening the Court with this filing on a Saturday evening. Amgen understands that a response to an *ex parte* application is typically due within 24 hours, so it responds today to ensure compliance with the Court’s procedures.”).

⁴ *See generally* Application.

The Court appreciates Amgen’s willingness “to discuss a reasonable schedule,”⁵ and, therefore, the Court **SETS** a Scheduling Conference on April 5, 2024, in this case to discuss preliminary injunction proceeding briefing.

The parties agree that the Application discusses information that Amgen has designated as confidential under 42 U.S.C. § 262(l)(1).⁶ Accordingly, the Court **ORDERS** that the Application for Leave to File Under Seal [ECF No. 37] and the Application (including its attachments) are **SEALED**.

Therefore, for the foregoing reasons, the Court **ORDERS** as follows:

1. The Application is **GRANTED in part**, to the extent it requests setting a preliminary injunction proceeding schedule, and the Application is **DENIED in part**, to the extent it requests the specific schedule proposed by Regeneron.

2. The Court **SETS** a Scheduling Conference on April 5, 2024, at 11:00 a.m. in Courtroom 9D of the Ronald Reagan Federal Building and U.S. Courthouse, 411 W. 4th Street, Santa Ana, California, to discuss the preliminary injunction proceedings.

3. The Application for Leave to File Under Seal and the Application (including its attachments) are **SEALED**.

IT IS SO ORDERED.

⁵ Opposition 2:25.

⁶ App. for Leave to File Under Seal Unredacted *Ex Parte* App (the “Application for Leave to File Under Seal”) [ECF No. 37] 2:9-12; Opposition 2:10-12.