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VIA E-MAIL

Steven Lieberman, Esq.
Rothwell, Figg, Ernst & Manbeck, P.C.
607 14th Street, N.W.
Suite 1800
Washington, D.C. 20005

Re: *In re Amgen Inc. Securities Litigation*, Case No. 07-cv-2536 PSG (PLAx) (C.D. Cal.)

Dear Mr. Lieberman:

Thank you for your letter dated May 14, 2015 confirming that you represent Mr. Goldberg in connection with his deposition in the above-referenced matter, and for accepting service of Mr. Goldberg's deposition subpoena.

We disagree with your contention that Mr. Goldberg enjoys "absolute protection" from testifying regarding any information or knowledge he has concerning *The Cancer Letter* article titled "Danish Researchers Post Long-Awaited Aranesp Results – Ever So Discreetly" (the "Article"), which he authored. Indeed, the law is clear that the reporter's privilege is *not* absolute. *See Lee v. Dep't of Justice*, 401 F. Supp. 2d 123, 141 (D.D.C. 2005) (noting that there is a "*qualified* reporter's privilege in civil actions"). This is particularly true where the information sought is not from a confidential source. *See Estate of Klieman v. Palestinian Auth.*, 293 F.R.D. 235, 242 (D.D.C. 2013) ("[T]he showing needed to overcome a reporter's privilege when the information sought is nonconfidential is 'less demanding than the showing required where confidential materials are sought.'" (quoting *In re Slack*, 768 F. Supp. 2d 189, 194 (D.D.C. 2011))); *see also SEC v. Seahawk Deep Ocean Tech. Inc.*, 166 F.R.D. 268, 271 (D. Conn. 1996) (requiring journalist to testify where SEC did "not seek any documents at all, but simply seeks the movant's testimony to confirm the accuracy of his story . . . ."); *United States v. Markiewicz*, 732 F. Supp. 316, 319 (N.D.N.Y. 1990) ("[T]he privilege does not carry as much weight when the reporter himself is subpoenaed to testify, as opposed to when a party seeks to compel the reporter to produce unpublished documents." (citing *Maughan v. NL Industries*, 524 F. Supp. 93, 95 (D.D. C. 1981))).

In this case, the Plaintiff asserts that the Article is a corrective disclosure resulting in liability for Amgen. It is therefore highly relevant and is properly subject to deposition testimony. *See NLRB v. Mortenson*, 701 F. Supp. 244, 250 (D.D.C. 1988) ("The reporter's interest in refusing to testify for the sole purpose of verifying the statements, not disclosing the sources, is rather attenuated and must yield to the need for confirmation as presented here."). Further, there is precedent for courts compelling journalists to testify regarding news articles that form part of a plaintiff's securities fraud complaint, as is the case here. *See Application of Waldholz*, No. 87 CIV. 4296 KMW, 1996 WL 389261 (S.D.N.Y. July 11, 1996) (denying motion to quash and requiring

journalist to testify regarding newspaper article that disseminated defendant's allegedly fraudulent statement).[1]

We do not seek at this time the production of unpublished documents. We also do not seek at this time discovery of the specific identities of confidential sources, to the extent they exist. Although we do not wish to unnecessarily inconvenience Mr. Goldberg, he does have important, highly relevant, non-confidential knowledge concerning the DAHANCA 10 study and the Article. That information is uniquely within his possession and cannot reasonably be obtained from any other source. For example, Mr. Goldberg best knows how and when he learned about the DAHANCA 10 results on which he reported in the Article. As another example, Mr. Goldberg best knows how and when the Article was publicly disseminated. These are not the only examples of relevant, non-confidential information that is indisputably the proper subject of discovery.

Given that Mr. Goldberg possesses relevant, non-confidential knowledge concerning DAHANCA 10 and the Article that forms a basis for the Plaintiff's allegations, we have no choice but to seek deposition testimony to discover that knowledge. Mr. Goldberg, of course, retains the right to assert objections to particular questions at deposition, but we do not think a blanket motion to quash preceding the deposition is the proper approach. *See Richardson v. Sugg*, 220 F.R.D. 343, 347 (E.D. Ark. 2004) ("The appropriate way for a reporter to respond to [a] subpoena commanding him to appear at a deposition is to appear for the deposition and assert his privileges in response to specific questions . . . ."); *Solargen Elec. Motor Car Corp. v. Am. Motors Corp.*, 506 F. Supp. 546, 552 (N.D.N.Y. 1981) (denying motion to quash and holding that reporters "must instead respond to the subpoenas and assert whatever privilege they may invoke in response to particular questions"). Accordingly, we look forward to working with you to identify a mutually acceptable date for Mr. Goldberg's deposition.

Very truly yours,

Doug Dixon

[1] Moreover, your invocation of and reliance upon D.C. Code § 16-4702 is misplaced. As we have previously noted to you, "evidentiary privileges in cases arising under federal substantive law in federal court are governed exclusively by the federal law of privilege." *Lee v. Dep't of Justice*, 287 F. Supp. 2d 15, 17 (D.D.C. 2003). D.C. Code § 16-4702 is therefore inapplicable.