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12 Counterclaimant IMMUNEX CORPORATION

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

17 EMPLOYERS INSURANCE COMPANY
18 OF WAUSAU,

19 Plaintiff,

20 v.

21 IMMUNEX CORPORATION, AMGEN,
22 INC. and DOES 1 through 10,

23 Defendant.

CASE NO. 3:10-cv-02316-SC

**STIPULATION AND ~~PROPOSED~~
ORDER FOR DISMISSAL OF ACTION**

**Honorable Samuel Conti
Courtroom: 1, 17th Floor**

24
25 IT IS HEREBY STIPULATED by and between plaintiff and counter-defendant
26 EMPLOYERS INSURANCE COMPANY OF WAUSAU (“Wausau”) and defendants and
27 counter-claimants AMGEN, INC. (“Amgen”) and IMMUNEX CORPORATION, by and through
28 their respective counsel of record stipulate as follows:

1 1. Immunex Corporation and Amgen (collectively referred to herein as “Immunex”)
2 hereby withdraw any and all of their claims for defense and/or indemnity coverage under the
3 commercial general liability insurance policies issued by Wausau to Immunex Corporation: (1)
4 Policy No. 2326-00-056983, effective September 1, 1995 to September 1, 1996; (2) Policy No.
5 2327-00-056983, effective September 1, 1996 to September 1, 1997; (3) Policy No. 2328-00-
6 056983, effective September 1, 1997 to September 1, 1998; and (4) Policy No. 2339-04-056983,
7 effective September 1, 1998 to September 1, 1999. (hereinafter "the Policies") for the Average
8 Wholesale Pricing Litigation (“AWP Litigation”) that has been filed against Immunex. For
9 purposes of this stipulation, AWP litigation refers to the lawsuits and Qui Tam claims listed
10 below and any other such claims or suits that have been filed up until the date of this Stipulation
11 anywhere against Immunex, known or unknown, alleging that Immunex falsely and fraudulently
12 promulgated an average wholesale price (“AWP”) for several drug products it manufactured and
13 sold, and that this AWP was higher than the actual average price that Immunex charged its
14 customers, including but not limited to those listed below:

15 (1) *Qui Tam Complaint* Under Federal False Claims Act in Florida and subpoena from
16 Office of Inspector General of the U.S. Department of Health & Human Services served on
17 Immunex in/about October 1997 in connection with a *Qui Tam Complaint filed in U.S.D.C. for*
18 *the Southern District of Florida (under seal)*;

19 (2) *Action Alliance of Senior Citizens of Greater Philadelphia v. Immunex*, U.S.D.C.
20 for the Western District of Washington, Case No. CV-01-1917R (Filed on/about November 27,
21 2001);

22 (3) *California Attorney General Subpoena* from the California Office of Attorney
23 General, served on Immunex on or about September 29, 2000, in connection with a *Qui Tam*
24 *Complaint* (Filed in San Diego County, California, under seal in/about July 1998);

25 (4) *Citizens for Consumer Justice, et al. v. Abbott Labs, et al.*, U.S.D.C. for the
26 District of Massachusetts, Case No. 01-12257 PBS (Filed on/about December 19, 2001);

27 (5) *Commonwealth (or State) of Kentucky v. Alpharma, et al.*, Kentucky State Court
28 Case No. 04-C1-1487 (Filed on/about November 4, 2004);

1 (6) *Commonwealth of Pennsylvania v. Tap Pharmaceutical Products, Inc. et al.*,
2 Pennsylvania Case No. 212 M.D. 2004 (Filed on/about March 10, 2005);

3 (7) *Congress of California Seniors v. Abbott Laboratories, Inc., et al.*, Los Angeles
4 County, California Superior Court Case No. BC282102 (Filed on/about September 24, 2002);

5 (8) *County of Erie v. Abbott Labs, et al.*, Supreme Court of the State of New York,
6 County of Erie Court. Case No. 12005-2459 (Filed on/about March 8, 2005);

7 (9) *County of Nassau v. Abbott Labs, et al.*, U.S.D.C. for the Eastern District of New
8 York, Case No. 04-CV-5126 (Filed on/about November 24, 2004);

9 (10) *County of Orange v. Abbott Laboratories, Inc., et al.*, U.S.D.C. for Southern
10 District of New York, Case No. 07 CV 2777 (Filed on/about April 5, 2007);

11 (11) *County of Oswego v. Abbott Labs, et al.*, County of Oswego, Supreme Court of the
12 State of New York, County of Oswego, Case No. 06-0697 (Filed on/about May 9, 2006);

13 (12) *County of Rockland, New York v. Abbott Laboratories, Inc., et al.*, Case No. 03 CV
14 7055, S.D.N.Y. Sept. 2003 (Filed on/about September 19, 2003);

15 (13) *County of Schenectady v. Abbott Labs, et al.*, Supreme Court of the State of New
16 York, County of Schenectady, Case No. 200619789 (Filed on/about May 9, 2006);

17 (14) *County of Suffolk v. Abbott Labs, et al.*, U.S.D.C. for the Eastern District of New
18 York, Case No. 03-229 (Filed on/about January 14, 2003);

19 (15) *County of Westchester v. Abbott Laboratories, Inc.*, U.S.D.C. for the Southern
20 District of New York, Case No. 03 03 CV 6178 (CM), S.D.N.Y. Aug. 2003 (Filed on/about
21 August 13, 2003);

22 (16) HHS Region III Subpoena from Department of Health & Human Services Region
23 III Inspector General for Investigations, served on Immunex on or about September 18, 2000;

24 (17) *In Re Pharmaceutical Industry Average Wholesale Price Litigation*, U.S. District
25 Court for the District of Massachusetts (Boston), MDL No. 1456, Civ. No. 01-CV-12257-PBS
26 (Filed on/about April 26, 2007) (J. Patti B. Saris);

27 (18) *International Union of Operating Engineers, Local No. 68 Welfare Fund v.*
28 *AstraZeneca PLC, et al.*, New Jersey Superior Court Case No. C.A. 03-0226 (JEI) (Filed on/about

1 June 30, 2003);

2 (19) *John Rice v. Abbott Laboratories, Inc.*, Alameda Superior Court, California Case
3 No. 2002057720 (Filed on/about July 12, 2002);

4 (20) *Qui Tam Complaint* Under Texas Medicaid Fraud Prevention Act and a Civil
5 Investigative Demand (“CID”) by Medicaid Fraud Section of the Office of the Attorney General
6 (“OAG”) of Texas;

7 (21) *State of Alabama v. Abbott Labs, et al.*, In the Circuit Court of Montgomery
8 County, Alabama, Circuit Court Case No. CV 05-219 (Filed on/about January 30, 2005);

9 (22) *State of Alaska v. Abbott Labs., et al.*, In the Superior Court for the State of
10 Alaska, Third Judicial District at Anchorage, Case No. 3 AN-06-12026-CI (Filed on/about
11 October 6, 2006);

12 (23) *State of Arizona v Abbott Labs, et al.*, In the Superior Court of the State of
13 Arizona, Maricopa County, AZ Case No. CV2005-018711 (Filed on/about December 6, 2005);

14 (24) *State of California Qui Tam Complaint, ex. rel. Ven-A-Care of the Florida Keys,*
15 *Inc.*, Central District of California Case No. 03-CV-2238; MDL No. 1456 in Master File No. 01-
16 12257-PBS;

17 (25) *State of Illinois v. Abbott Labs, et al.*, Cook County Circuit, Illinois Ct. Case No.
18 05 CH 02474 (Filed on/about February 7, 2005);

19 (26) *State of Iowa v. Abbott Labs, et al.*, U.S.D.C. for the Southern District of Iowa,
20 Central Division, Case No. (Filed on/about October 9, 2007);

21 (27) *State of Kansas, ex. rel. Steve Six v. Aventis, et al.*, In District Court of Wyandotte
22 County Civil Court Department, Case No. 08CV2191, Kansas (Filed on/about November 3,
23 2008);

24 (28) *State of Kentucky v. Alpharma et al.*, Kentucky State Court Case No. 04-C1-1487
25 (Filed on/about November 4, 2004);

26 (29) *State of Mississippi v. Abbott Labs, et al.*, In the Chancery Court of the First
27 Judicial District of Hinds County, Mississippi, Case No. G2005-2021 S/2 (Filed on/about October
28 20, 2005);

1 (30) *State of Montana ex rel. McGrath v. Abbott Labs, et al.* (Filed on/about March 8,
2 2002);

3 (31) *State of Montana ex rel. McGrath v. Abbott Labs, et al.*, 1st Judicial District Court,
4 Lewis & Clark County, Montana Cause No. CV-02-09-H-DWM (Filed on/about February 25,
5 2002);

6 (32) *State of Montana v. Abbott Laboratories, Inc., et al.*, Case No. CV-02-09-H-
7 DWM;

8 (33) *State of Nevada v. Abbott Laboratories, et al.*, Case No. CV02-01340;

9 (34) *State of Nevada v. American Home Products Corp., et al.*, Second Judicial District
10 Court of the State of Nevada in and for the County of Washoe (Filed on/about March 8, 2002);

11 (35) *State of Wisconsin v. Amgen, et al.*, Dane County, Wisconsin State Court Case No.
12 04-CV-1709 (Filed on/about June 3, 2004);

13 (36) *Swanston v TAP Pharmaceuticals, et al.*, Maricopa County, Arizona State Court
14 Case No. CV2002-004988 (Filed on/about December 20, 2002);

15 (37) *Thompson v Abbott Labs, et al.*, San Francisco County, California Superior Court
16 Case No. CGC-02-411813 (Filed on/about August 23, 2002);

17 (38) *Turner v. Abbott Laboratories, et al.*, San Francisco County, California Superior
18 Court Case No. 412357 (Filed on/about September 9, 2002);

19 (39) *City of New York v. Abbott Labs, Consolidated into MDL Proceeding with 30*
20 *County cases, U.S. District Court, Southern Division of New York, Case No. 04 CV 06054;*

21 (40) *County of Nassau v. Abbott Laboratories, Inc., et al.*, United States District Court,
22 *District of Massachusetts, Civil Action No. 05-10179-PBS;*

23 (41) *County of Orange v. Abbott Laboratories, Inc., et al.*, United States District Court,
24 *Southern District of New York, Civil Action No. 07-CV-2777;*

25 (42) *Rice v Abbott Laboratories, Inc., et al.*, Superior Court of the State of California,
26 *County of Alameda, Case No. 2002-05772;*

27 (43) *State of California v. Abbott Laboratories, Inc., et al.*, MDL No. 1456, United
28 *States District Court, District of Massachusetts, Master File No. 01-12257-PBS;*

1 (44) *State of Montana v. Abbott Labs, MDL No. 1456, Case No. 01-cv-12257-PBS.*

2 2. Immunex agrees to dismiss with prejudice its counter-claim in this action against
3 Wausau for breach of contract regarding the duty to pay defense fees and costs, breach of contract
4 regarding the duty to indemnify settlements, tortious breach of the implied covenant of good faith
5 and fair dealing, and declaratory relief, which pertains to the AWP Litigation as set forth in this
6 stipulation.

7 3. Wausau agrees to dismiss the present declaratory relief action seeking an
8 adjudication and declaration from the court as to its rights and obligations under the Policies
9 issued by Wausau to Immunex for the AWP Litigation.

10 4. Each party shall bear its own fees and costs.

11 5. All signatories to this Stipulation, and all parties on whose behalf the filing is
12 submitted, agree to the Stipulation's content and have authorized its filing.

13 IT IS SO STIPULATED.

14
15 Dated: November 21, 2013

ROPERS, MAJESKI, KOHN & BENTLEY

17 By: /S/ Jennifer E. Acheson

18 PAMELA E. COGAN
19 JENNIFER E. ACHESON
20 Attorneys for Plaintiff EMPLOYERS
INSURANCE COMPANY OF WAUSAU

21 Dated: November 21, 2013

KASOWITZ, BENSON, TORRES &
FRIEDMAN LLP

23 By: /S/ Linda D. Kornfeld

24 LINDA D. KORNFELD
25 Attorneys for Defendants AMGEN INC.
26 and IMMUNEX CORPORATION

