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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

<p>AMGEN INC. and          AMGEN MANUFACTURING LIMITED,            Plaintiffs,            vs.            SANDOZ INC., SANDOZ INTERNATIONAL          GMBH, SANDOZ GMBH, and LEK          PHARMACEUTICALS, D.D.            Defendants.</p>
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Case No. 3:16-cv-02581-RS  
**STIPULATION AND ~~[PROPOSED]~~  
 ORDER REGARDING DISCOVERY OF  
 ELECTRONICALLY STORED  
 INFORMATION**

1 Upon the stipulation of Amgen Inc., Amgen Manufacturing Limited, Sandoz Inc., and Lek  
2 Pharmaceuticals, d.d. (collectively, “the parties”), the Court ORDERS as follows:

3 **Purpose**

4 1. This Order supplements all other discovery rules and orders. It streamlines  
5 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive  
6 determination of this action, as required by Federal Rule of Civil Procedure 1.” Nothing in this Order  
7 shall waive in whole or in part any objection raised by a party in its written responses to specific  
8 discovery requests served in this action.

9 **Cooperation**

10 2. The parties are aware of the importance the Court places on cooperation and commit to  
11 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the Discovery  
12 of ESI.

13 **Modifications**

14 3. This Order may be modified in the Court’s discretion or by stipulation.

15 **Cost Shifting**

16 4. As in all cases, costs may be shifted for disproportionate ESI production requests  
17 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory  
18 discovery tactics are cost-shifting considerations.

19 5. A party’s meaningful compliance with this Order and efforts to promote efficiency and  
20 reduce costs will be considered in cost-shifting determinations.

21 **Preservation**

22 6. The parties have discussed their preservation obligations and needs and agree that  
23 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and  
24 burdens of preservation and to ensure proper ESI is preserved, the parties agree that ESI from certain  
25 data sources will be considered not reasonably accessible because of undue burden or cost pursuant to  
26 Fed. R. Civ. P. 26(b)(2)(B), and for purposes of this litigation, the parties agree they need not preserve  
27 the following: (i) recorded voice messages; (ii) instant messaging communications that are not  
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1 ordinarily retained in a server dedicated to instant messaging; (iii) draft email or electronic  
2 communications that are not sent; (iv) temporary data stored in a computer's random access memory  
3 (RAM), or other ephemeral data that are difficult to preserve without disabling the operating system;  
4 (v) online access data such as temporary Internet files, history, cache, cookies, and the like; (vi)  
5 device-to-device (pin-to-pin) messages sent to or from mobile devices (e.g., Android, iPhone, and  
6 Blackberry devices); (vii) other electronic data stored on a mobile device, such as calendar or contact  
7 data or notes; (viii) logs of calls made from mobile devices; (ix) server, system or network logs; (x)  
8 electronic data temporarily stored by laboratory equipment or attached electronic equipment, provided  
9 that such data is not ordinarily preserved as part of a laboratory report; (xi) backup tapes intended for  
10 data-recovery purposes (xii) deleted data remaining in fragmented form only accessible by forensics.

11 7. Documents in this litigation will be produced in single-page TIFF format with full-text  
12 extraction and Concordance load files. If there is no extractable text, the producing party shall perform  
13 Optical Character Recognition ("OCR") on the document and provide the associated text file. All text  
14 files should be produced as document level text files with a path to the text file included in the  
15 Concordance load file; extracted text/OCR should not be embedded in the load file itself. A party that  
16 receives a document produced in a format specified above may make a reasonable request to receive  
17 the document in its native format, and upon receipt of such a request, the producing party shall produce  
18 the document in its native format to the extent reasonably accessible. Additionally, where production  
19 of a document in TIFF image file format would be impracticable (such as Excel spreadsheets), the  
20 producing party shall produce such document in native format.

21 **Email**

22 8. General ESI production requests under Federal Rule of Civil Procedure 34 and 45 shall  
23 not include email or other forms of electronic correspondence (collectively "email"). Email production  
24 requests shall be governed by the search term process outlined below. To obtain email parties must  
25 propound specific email production requests.

26 9. Email production requests shall only be propounded for specific issues, rather than  
27 general discovery of a product or business.

1           10.     A requesting party shall limit its email production requests to a total of eight custodians  
2 per producing party for all such requests. The parties may jointly agree to modify this limit without  
3 the Court’s leave. The Court shall consider contested requests for additional custodians, upon showing  
4 a distinct need based on the size, complexity, and issues of this specific case. Cost-shifting may be  
5 considered as part of any such request. The parties shall meet and confer as soon as possible to  
6 identify the custodians who are most likely to have responsive or relevant emails.

7           11.     Each requesting party shall limit its email production requests to a total of ten search  
8 terms per custodian. The parties may jointly agree to modify this limit without the Court’s leave. The  
9 Court shall consider contested requests for additional search terms per custodian, upon showing a  
10 distinct need based on the size, complexity, and issues of this specific case. The search terms shall be  
11 narrowly tailored to particular issues. Indiscriminate terms, such as the producing company’s name or  
12 its product name, are inappropriate unless combined with narrowing search criteria that sufficiently  
13 reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g.,  
14 “computer” and “system”) narrows the search and shall count as a single search term. A disjunctive  
15 combination of multiple words or phrases (e.g., “computer” or “system”) broadens the search, and thus  
16 each word or phrase shall count as a separate search term unless they are variants of the same word. A  
17 disjunctive string of patent numbers that are asserted in this litigation shall only count as a single  
18 search term. Use of narrowing search criteria (e.g., “and,” “but not,” “w/x”) is encouraged to limit the  
19 production and shall be considered when determining whether to shift costs for disproportionate  
20 discovery. Should a party serve email production requests with search terms beyond the limits agreed  
21 to by the parties or granted by the Court pursuant to this paragraph, this shall be considered in  
22 determining whether any party shall bear all reasonable costs caused by such additional discovery.

23           12.     As with the production of any other documents in this litigation, production of email  
24 shall be subject to and may be limited by the producing party’s objections, pursuant to Federal Rule of  
25 Civil Procedure 34, and nothing in this Order shall be construed to the contrary.

26           **Other ESI**

27           13.     For all other ESI that must be preserved and searched, reviewed and produced, and  
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1 which does not qualify as email ESI as set forth above, a producing party shall be subject to its general  
2 obligation to conduct a reasonable search to locate and produce any responsive information (subject to  
3 its objections) pursuant to Federal Rule of Civil Procedure 34. Such search may include using search  
4 terms to search ESI on central databases, servers, or individual hard drives, or producing all ESI from  
5 particular electronic folders or files likely to contain responsive information, and/or any other  
6 appropriate method to capture the responsive information.

7 **Metadata**

8 14. For email production, the following metadata shall be included, if available:

9 <b>FIELDNAME</b>	<b>DESCRIPTION</b>
10 PRODBEG	Beginning production number
11 PRODEND	Ending production number
12 PRODVOL	Production volume (e.g., MF-PD001)
13 BEGATTACH	Beginning production family number
14 ENDATTACH	Ending production family Number
15 CUSTODIAN	Human custodian whose email was searched
16 PGCOUNT	Total page count per document
17 DOCTYPE	“EMAIL” (for email), “ATT” (for attachment)
18 DOCEXT	File extension of original document
19 TITLE	Subject of e-mail or Title of Attachment or Electronic Loose File
20 DESIGNATION	Confidentiality designation
21 DOCDATE	Document Last Modified Date or Document Sent Date, Use Sent 22 Date of Parent Email if Attachment
23 DOCTIME	Document Last Modified Time or Document Sent Time, Use 24 Sent Time of Parent Email if Attachment
25 TEXT	Text of email/attachment
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1	FILESIZE	Document file size in bytes
2	FILENAME	Attachment or electronic loose filename
3	AUTHOR	Author of document
4	APPNAME	File Type, such as Word 6.0, Excel 2000, etc.
5	FROM	Email sender
6	RECIPIENT	Email recipient or paper recipients
7	CC	Email CC or paper CC
8	BCC	Email BCC or paper BCC
9	CONVERSATIONID	Identification of a message chain
10	CONVERSATIONINDEX	Position of the message in a conversation
11	CONVERSATIONTOPIC	Text topic of the conversation without RE, FW, etc.
12		
13	MD5/SHA VALUE	Facilitates de-duplication

14 15. For production of all other ESI, the following metadata shall be included, if available:

15	<b>FIELDNAME</b>	<b>DESCRIPTION</b>
16	PRODBEG	Beginning production number
17	PRODEND	Ending production number
18	PRODVOL	Production volume (e.g., MF-PD001)
19	CUSTODIAN	Human custodian whose files were searched
20	PGCOUNT	Total page count per document
21	DOCEXT	File extension of original document
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23	TITLE	Title of original document
24	DESIGNATION	Confidentiality designation
25	CREATEDATE	Document Creation Date
26	DOCDATE	Document Last Modified Date
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DOCTIME	Document Last Modified Time
TEXT	Text of document
FILESIZE	Document file size in bytes
FILENAME	Attachment or electronic loose filename
AUTHOR	Author of document
APPNAME	File Type, such as Word 6.0, Excel 2000, etc.
MD5/SHA VALUE	Facilitates de-duplication

16. Should additional metadata exist that if provided would significantly aid a receiving party in understanding or using a particular document(s), if requested, the producing party shall not unreasonably withhold such metadata if such metadata is reasonably accessible.

17. Nothing in this Order prevents the parties from agreeing to use technology assisted review and other techniques insofar as their use improves the efficacy of discovery.

1 **IT IS SO STIPULATED**, through Counsel of Record.

2 DATED: April 19, 2017

3 By: /s/ Stephen A. Maniscalco

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**ECF ATTESTATION**

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from any other signatory to this document.

Dated: April 19, 2017

By: /s/ James Warren Beard  
James Warren Beard

**PURSUANT TO STIPULATION, IT IS SO ORDERED**

Dated: April 24, 2017

