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December 7, 2006

Honorable William Eich
840 Farwell Drive
Madison WI 53704

Re: *State v. Amgen, et al.*
Case No. 04-CV-1709

Dear Judge Eich:

Plaintiff has now received well over a million documents from the defendants (over one million documents from one defendant alone). It appears that almost every single document that has been produced—except a few excerpts from catalogs and reports the defendants received from the federal government—has been marked confidential or highly confidential no matter how old, how meaningless or how public the document is. (Plaintiff has not reviewed every document that has been produced but the pattern of defendants' over designation is indisputable.) Under the protective order entered in this case defendants must have a good faith belief that the documents they are marking as confidential really are confidential. The blanket designation by defendants of all their documents creates a strong presumption that they are not taking this admonition seriously (particularly in light of Judge Saris' finding that defendants are serial abusers of her confidentiality orders). The question is what to do about this.

Under the protective order Wisconsin could simply take the position that none of defendants' documents deserves confidentiality, and the parties could set about briefing the issue with the defendants having the burden of justifying their designations. See paragraph 23 of the protective order, enclosed. That is the format defendants agreed to and maybe that is the way to go. But it seemed to plaintiff that because of the breadth of the problem an open and forthright discussion before the Special Master might save everyone time and energy. Under the terms of

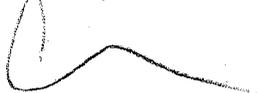
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the Special Master's appointment "The SDM shall have the power and duty to mediate discovery disputes." Paragraph 3(c) of the Order which is enclosed. Presumably this power may be exercised even though one party may be reluctant to participate.

Mr. Barley's letter was unhelpful. In light of defendants' massive over designation of documents as confidential he can't really believe that a defendant by defendant, document by document review is a reasonable means of resolving this problem.

In determining a sensible way to address defendants' confidentiality designations it shouldn't be forgotten that this isn't simply a case of two private litigants suing each other. This is a public law enforcement action brought by the Attorney General on behalf of the taxpayers. Disclosure in such a context should be the norm, not the exception. Plaintiff reaffirms its request that the Special Master mediate this dispute.

Sincerely,



Charles Barnhill

CB:jlz

Enclosures

Cc: Defense Counsel via LNFS