

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

AMGEN INC., et al.,

Defendants.

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**IMMUNEX CORPORATION'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S  
THIRD SET OF INTERROGATORIES AND FOURTH REQUEST  
FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

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Pursuant to Secs. 804.08 and 804.09, Wis. Stats., defendant Immunex Corporation ("Immunex"), by its attorneys, objects and responds to Plaintiff's Third Set of Interrogatories and Fourth Request for Production ("Plaintiff's Requests") as follows:

**PRELIMINARY STATEMENT**

1. These responses and objections are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such Plaintiff's Requests were asked of, or statements contained herein were made by, a witness present and testifying in Court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Immunex's responses shall not be deemed to constitute admissions:
- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or

- b. that any statement or characterization in Plaintiff's Requests is accurate or complete.

3. Immunex's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and Immunex reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses are made based upon the typical or usual interpretation of words contained in Plaintiff's Requests, unless a specific definition or instruction has been provided and/or agreed upon.

4. Immunex's responses to Plaintiff's Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

5. Immunex is responding on its own behalf, and not on behalf of Amgen Inc., the parent company of Immunex, which has been named as a separate defendant in these proceedings and is separately represented by counsel.

6. Immunex's responses to Plaintiff's Requests are submitted without prejudice to Immunex's right to produce evidence of any subsequently discovered fact. Immunex accordingly reserves its right to provide further responses and answers as additional facts are ascertained.

#### **GENERAL OBJECTIONS**

Immunex objects generally to Plaintiff's Requests as follows:

1. Immunex objects to Plaintiff's "Definitions" to the extent Plaintiff seeks to expand upon or alter Immunex's obligations under Wisconsin law, in responding to Plaintiff's Requests. Immunex will comply with Wisconsin law in providing its responses to Plaintiff's Requests.

2. Immunex objects to the definition of the word "Document(s)" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by applicable Wisconsin law. Immunex further objects to this definition to the extent

that it purports to require Immunex to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Immunex as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. Immunex objects to Plaintiff's Requests to the extent they call for the identification or production of documents or information not relevant to the issues in this action or not reasonably calculated to lead to the discovery of admissible evidence.

4. Immunex objects to Plaintiff's Requests to the extent they seek information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, any common interest or joint defense agreement, or any other applicable privilege or protection.

5. Immunex objects to Plaintiff's Requests to the extent they call for information not within Immunex's possession, custody or control. In responding to Plaintiff's Requests, Immunex has undertaken or will undertake a reasonably diligent and reasonable search of documents and information within Immunex's current possession, custody or control.

6. Immunex objects to Plaintiff's Requests to the extent they call for information that is confidential, proprietary, and/or a trade secret of a third-party or is protected from disclosure by an agreement with a third-party.

7. Immunex objects to Plaintiff's Requests to the extent they seek disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

8. Immunex expressly incorporates the above General Objections into each specific response to Plaintiff's Requests set forth below as if set forth in full therein. A response to Plaintiff's Requests shall not operate as a waiver of any applicable specific or general objection.

### **ANSWERS AND OBJECTIONS TO INTERROGATORIES**

**INTERROGATORY NO. 6:** With respect to any allegation of the Amended Complaint which you denied in your Answer state each fact that supports each such denial.

**ANSWER:** Immunex objects to Interrogatory No. 6 on the grounds that it is compound, overly broad, and unduly burdensome. Immunex further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work-product doctrine. Immunex also objects to this Interrogatory to the extent it seeks information related to Immunex's denials that are based in whole or part on the application of applicable laws or legal conclusions. Moreover, Immunex objects to this Interrogatory to the extent that it seeks information relating to Plaintiff's Amended Complaint, which Immunex did not answer, although it did answer Plaintiff's Second Amended Complaint.

Immunex further objects to this Interrogatory as it calls for contentions regarding issues or potential issues in this litigation. To the extent such an interrogatory is proper at any time in the lawsuit, it is nonetheless premature at this point in the case. Immunex has not yet fully identified all facts that may support its denials since investigation and discovery remain ongoing. Immunex also objects to this Interrogatory to the extent it essentially would require Immunex to identify facts and information designed to prove a negative. Immunex will not object to appropriately narrowed contention interrogatories near the end of the discovery period.

Immunex objects, however, to being put to the unnecessary and extreme burden of stating and restating its contentions as discovery proceeds. Immunex expressly reserves the right to supplement this Interrogatory Answer in the future.

**INTERROGATORY NO. 7:** Identify each document that supports each such denial.

**ANSWER:** Immunex objects to Interrogatory No. 7 on the same grounds as those set forth in its Answer to Interrogatory No. 6 and incorporates those objections herein. In addition, Immunex objects to Interrogatory No. 7 to the extent it seeks information that is publicly available or outside Immunex's possession, custody and control. Immunex expressly reserves the right to supplement this Interrogatory Answer in the future.

**INTERROGATORY NO. 8:** With respect to each affirmative defense you assert in your Answer to the Amended Complaint state the facts which support that defense.

**ANSWER:** Immunex objects to Interrogatory No. 8 on the grounds that it is compound, overly broad, and unduly burdensome. Immunex further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or word-product doctrine. Immunex also objects to this Interrogatory to the extent it seeks information related to Immunex's denials that are based in whole or part on the application of applicable laws or legal conclusions. Moreover, Immunex objects to this Interrogatory to the extent that it seeks information relating to Plaintiff's Amended Complaint, which Immunex did not answer, although it did answer Plaintiff's Second Amended Complaint.

Immunex further objects to this Interrogatory as it calls for contentions regarding issues or potential issues in this litigation. To the extent such an interrogatory is proper at any time in the lawsuit, it is nonetheless premature at this point in the case. Immunex has not yet fully identified all facts that may support its denials since investigation and discovery remain ongoing. Immunex also objects to this Interrogatory to the extent it essentially would require Immunex to

identify facts and information designed to prove a negative. Immunex will not object to appropriately narrowed contention interrogatories near the end of the discovery period.

Immunex objects, however, to being put to the unnecessary and extreme burden of stating and restating their contentions as discovery proceeds. Immunex expressly reserves the right to supplement this Interrogatory Answer in the future.

**INTERROGATORY NO. 9:** Identify each document that supports the facts upon which you base each such affirmative defense

**ANSWER:** Immunex objects to Interrogatory No. 9 on the same grounds as those set forth in its Answer to Interrogatory No. 8 and incorporates these objections herein. In addition, Immunex objects to this Interrogatory to the extent it seeks information that is publicly available or outside Immunex's possession, custody and control. Immunex expressly reserves the right to supplement this Interrogatory Answer in the future.

**INTERROGATORY NO. 10:** Have you ever communicated directly with any official of the State of Wisconsin about the prices of any of your drugs, including AWP's, WAC's, or any other prices irrespective of the nomenclature used?

**ANSWER:** Immunex objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Immunex further objects to this Interrogatory because the phrase "any official of the State" is vague and undefined as is the timeframe of this Interrogatory. Immunex further objects to this Interrogatory because the information requested is readily available to Plaintiff.

Notwithstanding Immunex's general and specific objections, and without waiving them, Immunex answers that it is currently searching for documents from which the answer to Interrogatory No. 10 may be obtained and will make such documents available, if any exist, once it has gathered them. Immunex expressly reserves the right to supplement this Interrogatory Answer in the future.

**INTERROGATORY NO. 11:** If the answer to Interrogatory No. 10 is yes, identify all such communications by date, time, and purpose, the persons who communicated this information, the persons to whom this information was communicated, who said what to whom or who wrote what to whom, and identify any documents containing or describing the information communicated to Wisconsin officials.

**ANSWER:** Immunex objects to Interrogatory No. 11 on the ground that it is overly broad and unduly burdensome. Immunex further incorporates its answer and objections to Interrogatory No. 10.

**RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION**

**REQUEST NO. 12:** Produce each document identified in response to Interrogatory Nos. 7, 9 and 11.

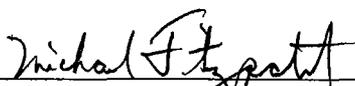
**RESPONSE:** Immunex objects to Request No. 12 on the ground that it is overly broad and unduly burdensome. Immunex further objects to this Request to the extent it seeks documents that are publicly available or outside Immunex's possession, custody and control.

**REQUEST NO. 13:** Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.)

**RESPONSE:** Immunex objects to this Request to the extent it seeks documents produced in the Brand Name Prescription Drugs Antitrust Litigation because Immunex was not a party to that litigation. In addition, Immunex objects to this Request because it is duplicative of Request No. 3 in Plaintiff's First Set of Requests for Production of Documents to Immunex. Immunex further objects to this Request to the extent it seeks information in the possession of Plaintiff or more appropriately sought from the third party wholesalers. Immunex further objects to Request No. 13 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it reports to require information relating to "drugs" without specification as to which "drugs," thus including products

that are not manufactured, marketed, or distributed by Immunex and/or products not at issue in this litigation.

Dated this 13<sup>th</sup> day of March, 2007.

  
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