

JM:RAB/WMP
F.#2006R00987

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

PLEA AGREEMENT

- against -

12 CR 760 (SJ)

AMGEN INC.,

Defendant.

- - - - -X

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Attorney's Office for the Eastern District of New York, the United States Attorney's Office for the Western District of Washington and the United States Department of Justice, by and through the Consumer Protection Branch (collectively, the "United States") and the defendant Amgen Inc. ("AMGEN"), acting through its counsel David S. Rosenbloom, Esq., pursuant to authority granted by its Board of Directors, conditioned as confirmed in the attached certification, agree to the following:

1. AMGEN will waive indictment and plead guilty to a single-count information to be filed in this district charging a violation of 21 U.S.C. §§ 331(a) and 333(a)(1). The count carries the following statutory penalties:

- a. Maximum fine: \$200,000 or twice the gross pecuniary gain or loss, whatever is greater. (18 U.S.C. §§ 3571(c)(5) and (d))

- b. Restitution: The United States and AMGEN agree that no restitution shall be awarded to the government in this criminal case. (18 U.S.C. §§ 3663(a)(3)). The parties further agree that the complication and prolongation of the sentencing process that would result from an attempt to fashion a restitution order under 18 U.S.C. § 3663, and other issues, including AMGEN's substantial payments, outweighs the need to provide restitution to any non-governmental victims in this case, 18 U.S.C. § 3663(a)(1)(B)(ii).
- c. Forfeiture: \$14,000,000 (as described in paragraphs 6-11 below). (21 U.S.C. §§ 334 and 853(p), and 28 U.S.C. § 2461(c))
- d. \$125 special assessment. (18 U.S.C. § 3013(a)(1)(B)(iii))

2. AMGEN understands that although imposition of a sentence in accordance with the United States Sentencing Guidelines (the "Guidelines") is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Guidelines provisions as well as other factors enumerated in 18 U.S.C. § 3553(a) to arrive at an appropriate sentence in this case. The United States will advise the Court and the Probation Department of information relevant to sentencing, including criminal activity engaged in by AMGEN, and such information may be used by the Court in determining AMGEN's sentence. The parties agree that the calculation of the fine range set forth below is correct and is consistent with the provisions of 18 U.S.C. §§ 3553 and 3572. The parties calculate that the fine range is \$136,000,000 to \$272,000,000, which is predicated on the following:

Base Fine

Base Fine: \$85,000,000, based on a pecuniary gain to AMGEN of approximately that amount
(U.S.S.G. § 8C2.4(a)(2))

Culpability Score

Base Culpability Score (U.S.S.G. § 8C2.5(a))	5
AMGEN Had 5,000 or More Employees and An Individual Within High-Level Personnel Participated In, Condoned, or Was Willfully Ignorant of the Offense (U.S.S.G. § 8C2.5(b)(1)(A)(i))	+5
AMGEN Fully Cooperated in the Investigation and Clearly Demonstrated Recognition and Affirmative Acceptance of Responsibility for its Criminal Conduct (U.S.S.G. § 8C2.5(g)(2))	<u>-2</u>
Total Culpability Score:	8

Maximum and Minimum Fine Range

Minimum Fine \$85,000,000 base fine x 1.6 multiplier (U.S.S.G. § § 8C2.6 and 8C2.7(a))	\$136,000,000
Maximum Fine \$85,000,000 base fine x 3.2 multiplier (U.S.S.G. § § 8C2.6 and 8C2.7(b))	\$272,000,000

AMGEN stipulates to this fine range.

3. The government and AMGEN agree, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, that the following constitutes an appropriate disposition of this case: (i) a criminal fine in the amount of \$136,000,000; (ii) criminal forfeiture in the amount of \$14,000,000; and (iii) a mandatory special assessment of \$125 pursuant to 18 U.S.C. §

3013(a)(1)(B)(iii)). Conditioned upon the execution of the Corporate Integrity Agreement executed contemporaneously with this plea agreement, AMGEN will not be placed on probation. The government will not object to a request by AMGEN that it be permitted to pay the criminal fine, the criminal forfeiture and the mandatory special assessment within three business days (not including any bank holidays) after the imposition of sentence.

4. AMGEN's plea will be tendered pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. AMGEN cannot withdraw its plea of guilty unless the sentencing judge rejects this agreement or fails to impose the stipulated sentence referenced above. If the sentencing judge rejects this agreement, the agreement shall be null and void at the option of either the government or AMGEN. AMGEN and the government waive the preparation of a Presentence Report and intend to seek a sentencing by the Court immediately following the Rule 11 plea hearing in the absence of a Presentence Report. AMGEN understands that the decision whether to proceed immediately following the plea hearing with the sentencing proceeding, and to do so without a Presentence Report, is exclusively that of the Court.

5. AMGEN agrees not to file an appeal or otherwise challenge by petition pursuant to 28 U.S.C. § 2255 or any other provision the conviction or sentence in the event that the Court imposes a total fine of \$136,000,000 or less. This waiver is

binding without regard to the sentencing analysis used by the Court. In the event that (a) the sentencing judge rejects this agreement, (b) AMGEN's conviction is vacated for any reason, (c) AMGEN violates this agreement, or (d) AMGEN's plea is later withdrawn, any prosecution that is not time-barred on the date that this agreement is signed, including, without limitation, prosecutions that are not time-barred by operation of any tolling agreements entered into by the parties, may be commenced against AMGEN notwithstanding the expiration of any statute of limitations or the rescission, cancellation or expiration of any tolling agreement upon or subsequent to the signing of this agreement. AMGEN waives any right to additional disclosure from the government in connection with the guilty plea. AMGEN agrees that with respect to all charges referred to in paragraphs 1 and 12(a), (a) it is not a "prevailing party" within the meaning of the "Hyde Amendment," 18 U.S.C. § 3006A note, and will not file any claim under that law, and (b) to waive any claim under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

6. As a result of this guilty plea, AMGEN consents to the entry of a forfeiture money judgment in the amount of fourteen million dollars in United States currency (the "Forfeiture Money Judgment"), pursuant to 21 U.S.C. §§ 334 and 853(p), and 28 U.S.C. § 2461(c). The Forfeiture Money Judgment shall be made payable to the "United States Marshals Service" pursuant to wire instructions provided by the United States.

7. If the Forfeiture Money Judgment is not paid within three business days (not including any bank holidays) after the imposition of sentence (the "Final Due Date"), interest shall accrue on any unpaid portion thereof at the judgment rate of interest from that date. Further, if AMGEN fails to pay any portion of the Forfeiture Money Judgment on or before the Final Due Date, AMGEN consents to the forfeiture of any other property up to the amount of the Forfeiture Money Judgment, pursuant to 21 U.S.C. § 853(p), the Federal Debt Collection Procedure Act, or any other applicable law.

8. AMGEN agrees that the value of the quantities of Aranesp which were misbranded in violation of 21 U.S.C. § 331 totaled at least \$14,000,000 in United States currency. AMGEN acknowledges and agrees that the quantities of Aranesp which were misbranded in violation of 21 U.S.C. § 331 cannot be located upon exercise of due diligence, or have been transferred or sold to, or deposited with, a third party, placed beyond then jurisdiction of the Court, substantially diminished in value, or commingled with other property which cannot be divided without difficulty. Accordingly, AMGEN agrees that the government is entitled to forfeit as substitute assets any other assets of AMGEN up to the value of the now missing directly forfeitable assets, pursuant to 21 U.S.C. § 853(p). The government and AMGEN agree that payment in full of the Forfeiture Money Judgment shall satisfy any and all

forfeiture obligations that AMGEN may have as a result of this guilty plea. AMGEN consents to the entry of an Order of Forfeiture pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure forfeiting the above-referenced Forfeiture Money Judgment.

9. AMGEN agrees to fully assist the government in effectuating the payment of the Forfeiture Money Judgment. AMGEN agrees not to file or interpose any claim or to assist others to file or interpose any claim to any property against which the government seeks to execute the Forfeiture Money Judgment in any administrative or judicial proceeding.

10. AMGEN knowingly and voluntarily waives its right to any required notice concerning the forfeiture of the assets and monies forfeited hereunder, including notice set forth in an indictment or information. In addition, AMGEN knowingly and voluntarily waives its right, if any, to a jury trial on the forfeiture of the assets and monies forfeited hereunder, and waives all constitutional, legal and equitable defenses to the forfeiture of said assets, including, but not limited to, any defenses based on principles of double jeopardy, the Ex Post Facto clause of the Constitution, any applicable statute of limitations, venue, or any defense under the Eighth Amendment, including a claim of excessive fines.

11. AMGEN agrees that the forfeiture of the above sum of money is not to be considered a fine or a payment on any income taxes that may be due.

12. The United States agrees that, subject to the acceptance of AMGEN's guilty plea by the Court:

- a. no further criminal charges will be brought against AMGEN with respect to the conduct covered by the Information filed in this case, conduct that was the subject of the investigations of AMGEN in the Eastern District of New York and the Western District of Washington, or facts otherwise known to the United States prior to the date of this Plea Agreement regarding: (i) AMGEN's marketing, sale, promotion or labeling of the drugs Aranesp, Epogen and Enbrel, (ii) AMGEN's inaccurate reporting of average sale price (ASP), Best Price, or Average Manufacturer Prices for Aranesp by failing to include remuneration or to account for price concessions to Group Purchasing Organizations, (iii) AMGEN's marketing of overfill in Aranesp vials, (iv) AMGEN's payment of kickbacks, directly or indirectly, to healthcare providers in connection with overfill, discounts or rebates relating to Aranesp, and (v) AMGEN's communications with U.S. Pharmacopeia (USP) regarding USP's Compendia concerning the use of Aranesp in patients suffering from anemia of cancer; it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 et seq.;

and, based upon information now known to the United States, it will

- b. advocate before the Court for the agreed-upon sentence set forth in paragraph 3.

If information relevant to sentencing, as determined by the United States, becomes known to the United States after the date of this agreement, the United States will not be bound by paragraph 12(b). Should it be judged by the United States that AMGEN has violated

any provision of this agreement, AMGEN will not be released from its plea of guilty but the United States will be released from its obligation under this agreement, including but not limited to the provisions of paragraphs 12(a)-(b).


13. This agreement is binding upon the Attorney General of the United States, the United States Department of Justice, and all United States Attorneys on the matters set forth in paragraph 12 but cannot and does not bind the Tax Division of the United States Department of Justice or the Internal Revenue Service of the United States Department of the Treasury. The non-prosecution provisions in this paragraph are not binding on the United States with respect to any investigations of AMGEN, its subsidiaries, affiliates, or parent that are or may be conducted in the future by the Fraud Section of the Criminal Division of the United States Department of Justice regarding possible violations of the Foreign Corrupt Practices Act and related offenses in connection with the sales and marketing of AMGEN's products to foreign customers, which investigations are specifically excluded from the release in this paragraph. AMGEN also understands that this agreement does not bind any state or local prosecuting authority.

14. No promises, agreements or conditions have been entered into by the parties other than those set forth in this agreement and none will be entered into unless memorialized in writing and signed by all parties. This agreement supersedes all

prior promises, agreements or conditions between the parties. To become effective, this agreement must be signed by all signatories listed below.

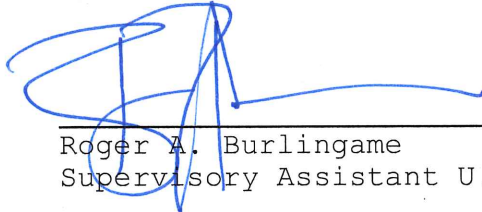
Dated: Brooklyn, New York
December 18, 2012

MARSHALL L. MILLER
Acting United States Attorney
Eastern District of New York

By: 

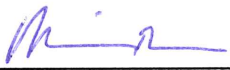
Winston M. Paes
Assistant U.S. Attorney

Approved by:



Roger A. Burlingame
Supervisory Assistant U.S. Attorney

STUART F. DELERY
Principal Deputy Assistant Attorney
General, Civil Division
U.S. Department of Justice

By: 

Michael S. Blume
Director, Consumer Protection Branch

Jenny A. Durkan
United States Attorney
Western District of Washington

On behalf of AMGEN, I am entering into this agreement knowingly and voluntarily, on the basis of express authority granted to me by

prior promises, agreements or conditions between the parties. To become effective, this agreement must be signed by all signatories listed below.

Dated: Brooklyn, New York
December 18, 2012

MARSHALL L. MILLER
Acting United States Attorney
Eastern District of New York

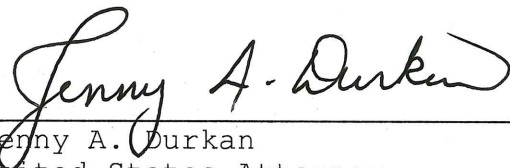
By: _____
Winston M. Paes
Assistant U.S. Attorney

Approved by:

Roger A. Burlingame
Supervisory Assistant U.S. Attorney

STUART F. DELERY
Principal Deputy Assistant Attorney
General, Civil Division
U.S. Department of Justice

By: _____
Michael S. Blume
Director, Consumer Protection Branch



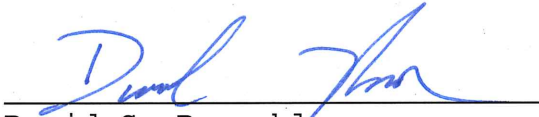
Jenny A. Durkan
United States Attorney
Western District of Washington

On behalf of AMGEN, I am entering into this agreement knowingly and voluntarily, on the basis of express authority granted to me by

AMGEN's Board of Directors, as confirmed in the attached certification.



David J. Scott
Senior Vice President,
General Counsel and
Secretary to Amgen Inc.



David S. Rosenbloom
McDermott Will & Emery
Counsel to Amgen Inc.

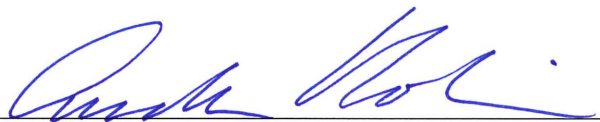
AMGEN INC.

ASSISTANT SECRETARY'S CERTIFICATE

I, Andrea A. Robinson, Assistant Secretary and Associate General Counsel of Amgen Inc., a Delaware corporation (the "Corporation") do hereby certify on behalf of the Corporation that:

1. I am the duly elected and qualified Assistant Secretary and Associate General Counsel of the Corporation.
2. Attached hereto as Exhibit A is a true and correct copy of the resolutions of the Board of Directors of the Corporation approved on October 10, 2012, and said resolutions have not been modified or rescinded, and as of the date of this Certificate are in full force and effect.

IN WITNESS WHEREOF, I have hereunto signed my name this 12th day of October, 2012



Andrea A. Robinson
Assistant Secretary and Associate General Counsel

**RESOLUTIONS OF
THE BOARD OF DIRECTORS
CONCERNING AUTHORITY TO ENTER INTO
GOVERNMENT SETTLEMENT DOCUMENTS**

WHEREAS, the Board of Directors (the "Board") of Amgen Inc. (the "Company") has previously received a number of presentations from management and engaged in numerous discussions regarding the investigations conducted by the U.S. Attorney's Offices for the Eastern District of New York and the Western District of Washington (the "Federal Investigations"), as well as the Company's global government settlement, related litigation, the Corporate Integrity Agreement and other collateral agreements associated with the Federal Investigations;

WHEREAS, the Board previously approved the Company's global government settlement terms and amounts and granted management the authority to settle related civil proceedings, negotiate the Corporate Integrity Agreement and to finalize arrangements with the government;

WHEREAS, management recommends that it is in the best interests of the Company and its stockholders for the Company to:

- (1) enter a plea of guilty to a single misdemeanor count of violation of the Food, Drug & Cosmetic Act ("FDCA") as it relates to the marketing of Aranesp®, and to execute a plea agreement and other supporting documents substantially in the form discussed at this and prior meetings of the Board;
- (2) enter into the appropriate federal and state civil settlement agreements to resolve various civil proceedings, including various qui tam proceedings, to effectuate the global settlement agreement substantially in the form discussed at this and prior meetings of the Board;
- (3) enter into a Corporate Integrity Agreement with the Office of Inspector General of the U.S. Department of Health and Human Services substantially in the form discussed at this and prior meetings of the Board; and
- (4) enter into all other agreements or take any action necessary to effectuate the above settlements and/or the Corporate Integrity Agreement (together with items (1) through (3) above, the "Government Settlement Actions and Related Documents");

WHEREAS, the Board has consulted with legal counsel, including a full discussion of the Government Settlement Actions and Related Documents; and

WHEREAS, the Board has reviewed management's recommendations and, after due consideration and further discussion, the Board has determined that it is desirable and

in the best interests of the Company and its stockholders for the Company to undertake and enter into the Government Settlement Actions and Related Documents.

NOW, THEREFORE, BE IT RESOLVED, that the Company is hereby authorized and directed to undertake and enter into the Government Settlement Actions and Related Documents;

FURTHER RESOLVED, that the General Counsel of the Company, with the assistance of outside counsel that the General Counsel may so designate, is hereby authorized and directed in the name of the Company and on its behalf, to do or to cause to be done any and all other acts, including, without limitation, entry into a plea agreement and corresponding plea of guilty to a single misdemeanor count of violating the FDCA, the payment of all amounts, fees, costs and other expenses, necessary or appropriate to effectuate the purpose and intent of the foregoing resolutions and to effectuate and implement the resolutions contemplated hereby, and to execute, deliver, and/or file any and all agreements, instruments and other documents as they shall deem necessary, appropriate or in furtherance of the full effectuation of the purposes of the foregoing resolutions and the consummation of the transactions contemplated by the preceding resolution, the execution and delivery of such agreements, instruments and documents and the taking of such actions to be conclusive evidence of such officer's or officers' authority to do so in accordance with this resolution;

FURTHER RESOLVED, that the Board hereby authorizes the Company to execute, deliver and/or file, any documents, including issuing a press release and making the required disclosures relating to this matter in the appropriate Securities and Exchange Commission filings; and

FURTHER RESOLVED, that all acts and things heretofore done by any officer, employee or agent of the Company and/or a subsidiary on or prior to the date hereof in connection with the foregoing resolutions be, and the same hereby are, ratified, confirmed and approved in all respects as the acts and deeds of the Company.