

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,
STATE OF CALIFORNIA,
STATE OF ILLINOIS,
STATE OF MINNESOTA,
STATE OF NEW YORK,
STATE OF WASHINGTON
and
STATE OF WISCONSIN,

Plaintiffs,

v.

AMGEN INC.
and
HORIZON THERAPEUTICS PLC,

Defendants.

Case No. 1:23-cv-03053

Judge John F. Kness

**PLAINTIFFS AND DEFENDANTS' JOINT MOTION FOR ENTRY OF STIPULATION,
STAY OF ALL DEADLINES PENDING DISMISSAL OF THIS ACTION, AND ORDER
DISSOLVING TEMPORARY RESTRAINING ORDER**

Plaintiffs and Defendants respectfully move this Court for an order entering the parties' proposed Stipulated Order, staying all deadlines pending the dismissal of this action, and dissolving the temporary restraining order ("TRO") entered on June 2, 2023. ECF No. 60. In support, the parties state as follows:

PROCEDURAL HISTORY

Plaintiff Federal Trade Commission (the "FTC") filed a complaint in this matter on May 16, 2023, seeking, among other relief, a TRO and preliminary injunction enjoining the acquisition of Defendant Horizon Therapeutics plc ("Horizon") by Defendant Amgen, Inc. ("Amgen")

(hereinafter referred to as the “Acquisition”). The FTC sought this relief solely to prevent Defendants from closing the Acquisition pending the resolution of the FTC’s challenge to the Acquisition in its pending administrative proceeding. *See* 15 U.S.C. 53(b)(2). The FTC then filed an amended complaint in this matter on June 22, 2023, to add as co-Plaintiffs the States of California, Illinois, New York, Minnesota, Washington, and Wisconsin (collectively, “Plaintiff States”). On that same day, the FTC filed a related administrative complaint, *In re: Amgen Inc., et al.*, Dkt. No. 9414 (June 22, 2023) (the “underlying administrative matter”).

CONSENT AGREEMENT

On August 23, 2023, the FTC ordered that the underlying administrative matter is “withdrawn from adjudication under Part 3 of the FTC Rules of Practice, 16 C.F.R. Part 3, until September 18, 2023, for the purpose of considering the proper resolution of this matter.” On August 30, 2023, FTC Staff, Plaintiff States, and Defendants executed an Agreement Containing Consent Order (“Consent Agreement”) to resolve the underlying administrative matter,¹ attached as Exhibit 1, which was submitted for the Federal Trade Commission’s consideration pursuant to 16 C.F.R. § 3.25. And on August 31, 2023, the FTC voted unanimously to approve the Consent Agreement which contains a proposed Decision and Order (“D&O”) which terms were agreed upon by the Defendants, and will soon publish the Consent Agreement and the proposed D&O in the Federal Register for public comment. Federal Trade Commission, <https://www.ftc.gov/legal-library/browse/cases-proceedings/231-0037-amgen-inc-horizon-therapeutics-plc-matter> (September 1, 2023). The Consent Agreement and the proposed D&O include provisions, agreed to by Plaintiff States, Defendants, and the FTC, that grant the Plaintiff States as Interested Parties

¹ Approval by the State of Wisconsin remains pending. Even so, the State of Wisconsin joins this motion.

to the Consent Agreement access to information relating to Defendants' compliance with the proposed D&O, e.g., Compliance Reports, Monitor Reports and information contained therein.

The purpose of the Consent Agreement and accompanying proposed D&O is, among other things, to address the theories of harm to competition alleged by the Plaintiffs in their Amended Complaint in this matter, and by the FTC in the underlying administrative matter, by formalizing Amgen's commitment not to bundle its products with TEPEZZA[®] or KRYSTEXXA[®]. Defendants' agreement to resolve the case and enter into a Consent Agreement and proposed D&O does not constitute an admission by Defendants that the law has been violated as alleged in the underlying administrative complaint and the Amended Complaint, or that the facts as alleged in the underlying administrative complaint and the Amended Complaint, other than jurisdictional facts, are true.

Accordingly, Plaintiffs and Defendants have agreed as follows:

The FTC, the Plaintiff States, and Defendants all agree to abide by the provisions of the Consent Agreement and proposed D&O.

Similar to the commitments in the Consent Agreement and proposed D&O, and subject to the proposed Stipulated Order the parties are requesting be entered by this Court, the FTC, the Plaintiff States, and Defendants may not disclose any confidential materials received pursuant to the proposed D&O (e.g., Compliance Reports, Monitor Reports, associated documents, and information therein, etc.).

The Consent Agreement and proposed D&O resolve all allegations made by any party in this matter, including in Plaintiffs' Amended Complaint and Defendants' Counterclaims.

The Consent Agreement and proposed D&O, paired with the Court's entry of the proposed Stipulated Order, will render the TRO unnecessary.

CONCLUSION

Therefore, the parties move for the Court to enter the parties' proposed Stipulated Order, stay all deadlines pending the dismissal of this action, and dissolve the TRO as soon as is practicable so that Amgen and Horizon may take steps to consummate their transaction without further delay. A proposed Stipulated Order is submitted with this motion via email pursuant to this Court's case procedures.

Dated: September 1, 2023

Respectfully submitted,

/s/ Nathan Brenner
Nathan Brenner (IL Bar 6317564)

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