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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

21 AMGEN INC. and
22 AMGEN MANUFACTURING, LIMITED,

23 Plaintiffs,

24 vs.

25 SANDOZ INC., SANDOZ
26 INTERNATIONAL GMBH, and
27 SANDOZ GMBH,

28 Defendants.

Case No. 3:14-cv-04741-RS

**NOTICE OF MOTION AND
JOINT MOTION TO LIFT STAY
OF PATENT PROCEEDINGS**

1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that Plaintiffs Amgen Inc. and Amgen Manufacturing,
3 Limited (together, “Amgen”) and Defendant Sandoz Inc. (“Sandoz”) hereby jointly move for an
4 order from the Court lifting the current stay in the case as to Amgen’s claims of patent
5 infringement and Sandoz’s related counterclaims. This Motion is based on this Notice of
6 Motion, the accompanying Memorandum of Points and Authorities, and the proposed order
7 submitted herewith, all papers and pleadings on file in this action, and all matters of which the
8 Court may take judicial notice. Pursuant to Civil Local Rule 7-1(b), the parties request that this
9 Motion be determined without oral argument.

10 **STATEMENT OF REQUESTED RELIEF**

11 The parties move the Court for an order lifting the current stay of Amgen’s patent
12 infringement claims and Sandoz’s related counterclaims, and scheduling a case management
13 conference on October 1, 2015.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 The parties seek to lift the current stay of these proceedings so that they can reach an
16 adjudicated resolution of Amgen’s patent infringement claims and Sandoz’s related
17 counterclaims.

18 On March 19, 2015, the Court issued its order on the parties’ cross-motions for
19 judgment on the pleadings and Amgen’s motion for a preliminary injunction, dismissing
20 Amgen’s claims under the California unfair competition laws and for conversion. Dkt. No. 105.
21 On March 25, at the parties’ request, the Court stayed all proceedings not addressed by the
22 Court’s March 19 Order, pending the Federal Circuit’s opinion on appeal. The circuit issued a
23 panel opinion on July 21, 2015, finding that Sandoz did not violate the Biologics Price
24 Competition and Innovation Act of 2009 (“BPCIA”) by failing to disclose its aBLA by the
25 statutory deadline, and that Sandoz’s pre-approval notice of commercial marketing was
26 ineffective. *Amgen Inc. v. Sandoz Inc.*, No. 2015-1499, 2015 WL 4430108 (Fed. Cir. Jul. 21,
27 2015). The parties are each currently seeking *en banc* review of aspects of that opinion.
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1 The Federal Circuit has now ruled on the BPCIA issues and state law claims raised in
2 Amgen's appeal. Accordingly, the parties respectfully request the Court lift the stay on the
3 proceedings in this case so that the parties may resolve Amgen's patent infringement claims and
4 Sandoz's related counterclaims.

5 The district court has discretion to lift a stay of litigation. *Ho Keung Tse v. Apple, Inc.*,
6 No. C 06-06573 SBA, 2013 WL 5302587, at *2 (N.D. Cal. 2013). If the circumstances
7 originally supporting a stay have changed, a stay is appropriately lifted. *Id.* That is the case here.
8 The parties sought a stay of the patent infringement claims in this case to allow the Federal
9 Circuit to review the parties' claims and counterclaims relating to the interpretation of the
10 BPCIA, which are separable from and not intertwined with the patent infringement and validity
11 claims and counterclaims. The Federal Circuit previously issued an injunction pending appeal
12 preventing Sandoz from launching its product, and the panel opinion extended that injunction
13 through September 2, 2015. *Amgen v. Sandoz*, 2015 WL 4430108, at *13. The parties agree
14 that, in light of the Federal Circuit's resolution of the appeal, the stay may be lifted and
15 Amgen's patent infringement claims should proceed.

16 The parties request the Court lift the stay and schedule a case management conference
17 on October 1, 2015, when the Court has indicated it is available. The parties also propose that
18 they submit a case management statement with a proposed case schedule ten days prior to the
19 case management conference. Except for the date for Sandoz International GmbH and Sandoz
20 GmbH to move, answer, or otherwise respond to the complaint for either entity, the parties
21 propose that all pending or previously-set deadlines in this matter, including but not limited to
22 the date for the Invalidity Contentions and accompanying document production under Patent
23 L.R. 3-3 and 3-4, be tolled until new dates to be set by the Court in a further scheduling order.
24 The parties further agree and propose that, to ensure an orderly start to the case and to enable
25 the Court to discuss all procedural matters with the parties, no discovery will be served and no
26 motions will be filed (except for any motion on behalf of Sandoz International GmbH or
27 Sandoz GmbH in response to the complaint) until after the case management conference, and
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1 each party will describe in the case management statement its plans for discovery and any
2 motions it intends to bring at the initial stages of the case.

3 A proposed order accompanies this motion.
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1 Date: September 4, 2015

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ATTESTATION

I, Vernon M. Winters, am the ECF user whose user ID and password are being used to file the foregoing document. Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from Rachel Krevans.

Dated: September 4, 2015

/s/ Vernon M. Winters

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AMGEN INC. and
AMGEN MANUFACTURING, LIMITED,

Plaintiffs,

vs.

SANDOZ INC., SANDOZ
INTERNATIONAL GMBH, and
SANDOZ GMBH,

Defendants.

Case No. 3:14-cv-04741-RS

**[PROPOSED]
ORDER GRANTING JOINT MOTION
TO LIFT STAY OF PATENT
PROCEEDINGS**

1 Amgen brought this action, asserting claims of unfair competition and conversion under
2 California state law and patent infringement; Sandoz counterclaimed. The Court dismissed
3 Amgen's claims under California state law. Dkt. No. 105. The Court then granted Rule 54(b)
4 judgment on the dismissed claims and stayed all remaining claims in this action, pending the
5 Federal Circuit's resolution of Amgen's appeal. Dkt. No. 111. The circuit issued a panel
6 opinion on July 21, 2015. *Amgen Inc. v. Sandoz Inc.*, No. 2015-1499, 2015 WL 4430108 (Fed.
7 Cir. Jul. 21, 2015). The parties are each currently seeking *en banc* review of aspects of that
8 opinion. The parties now jointly request that the Court lift the stay on the remaining claims.

9 Having considered the parties' joint motion to lift the stay of patent proceedings in this
10 case, and good cause appearing therefore, the Court GRANTS the motion and ORDERS as
11 follows:

- 12 • The stay on all remaining proceedings in this case (*see* Dkt. No. 111) is lifted.
- 13 • A case management conference is scheduled for October 1, 2015, at 10:00 AM.
- 14 • The deadline for Sandoz International GmbH and Sandoz GmbH to move,
15 answer, or otherwise respond to the complaint for either entity remains tolled
16 until twenty days after the entry of this Order. *See* Dkt. No. 111, at 3.
- 17 • The parties shall submit a case management statement by September 21, 2015,
18 proposing a new schedule for this case, including new dates for the Invalidity
19 Contentions and accompanying document production under Patent L.R. 3-3 and
20 3-4. These deadlines and any other pending or previously-set deadlines under
21 the Federal Rules of Civil Procedure, Civil Local Rules, Patent Local Rules, or
22 any order of this Court, except for the deadline for Sandoz International GmbH
23 and Sandoz GmbH to move, answer, or otherwise respond to the complaint, shall
24 be tolled until new dates to be set by the Court in a further scheduling order.
- 25 • No discovery shall be served and no motions shall be filed (except for any
26 motion on behalf of Sandoz International GmbH or Sandoz GmbH in response to
27 the complaint) until after the case management conference. Each party shall

1 describe in the case management statement its plans for discovery and any
2 motions it intends to bring at the initial stages of the case.

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4 **IT IS SO ORDERED.**

5 Date: September __, 2015

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8 HONORABLE RICHARD SEEBORG
9 UNITED STATES DISTRICT JUDGE
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