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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

WILLIAM CHRISTOPHER MOKE,

Plaintiff,

vs.

AMGEN, INC., a corporation, IMMUNEX CORPORATION, a corporation, VERNON D. WILSON, and DOES 1 to 100, inclusive,

Defendants.

Case No.: BC414541

Hon. David L. Minning

PLAINTIFF'S THIRD AMENDED COMPLAINT FOR DAMAGES BASED ON:

(1) UNFAIR COMPETITION IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200;

(2) FRAUD;

(3) FRAUD BY CONCEALMENT;

(4) NEGLIGENT MISREPRESENTATION;

(5) BREACH OF EXPRESS WRITTEN CONTRACT;

DEMAND FOR JURY TRIAL

Plaintiff, William Christopher Moke, alleges:

PARTIES

1. Plaintiff, William Christopher Moke ("plaintiff" or "Moke"), is, and at all times mentioned in this Complaint was, a resident of Los Angeles County, California.

2. Defendant Amgen, Inc. (hereafter "defendant" or "Amgen") was and is a Delaware corporation that has its principal place of business in the County of Ventura and was authorized to operate by the State of California and the United States government to do business in the County of Los Angeles.

3. Defendant Immunex Corporation (hereafter "defendant" or "Immunex") is, and at all relevant times was, a corporation wholly owned by Amgen, with its principal place of business in Seattle, Washington. Immunex does business, and at all relevant times did conduct business, in the County of Los Angeles. Immunex is a biopharmaceutical company that develops, manufacturers, and markets therapeutic products throughout the United States.

4. Defendant Vernon D. Wilson (hereafter "defendant" or "Wilson") is an individual, who conducts business at 3445 Pacific Coast Highway, Suite 220, Torrance, California, 90505. For all times relevant, Wilson was acting both in an individual capacity, and as a representative on behalf of Amgen and Immunex. Wilson was authorized to act on behalf of both Amgen and Immunex with respect to (1) obtaining information for Amgen and Immunex, (2) making representations on behalf of Amgen and Immunex with respect to the drug Enbrel, (3) selling and/or providing Enbrel to patients, (4) disclosing or intentionally not disclosing information regarding Enbrel, its side effects; and (5) making other representations and/or disclosures that might benefit Amgen and/or Immunex.

5. Defendants Does 1 through 100 are sued under fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the defendants sued under fictitious names is in some manner respon-

sible for the wrongs and damages alleged below, in so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and in taking the actions mentioned below was acting within the course and scope of his or her authority as such agent, servant, partner, and employee, with the permission and consent of the co-defendants.

6. This Court is the proper court, and this action is properly filed in Los Angeles County and in this judicial district on the basis of the facts that (a) plaintiff and defendants entered their contract(s) in Los Angeles, County; (b) work relevant to this action was performed wholly or primarily in Los Angeles, County; (c) Wilson maintains his principal place of business and transacts business in Los Angeles County; (d) all other material transactions between plaintiff and defendant took place within Los Angeles, County; and (e) Amgen and Immunex both regularly and consistently conduct business throughout Los Angeles County.

INTRODUCTORY ALLEGATIONS

7. Amgen is a publicly traded company, with sales of approximately $14 billion in 2008. In terms of sales, Amgen is the world's largest biotechnology company.

8. Enbrel, generically known as etanercept, is a recombinant-DNA drug made by fusing two proteins. Enbrel is used to treat the symptoms of rheumatoid arthritis, psoriatic arthritis, and ankylosing spondylitis and to prevent joint damage caused by these conditions. Enbrel has been designed to interfere with an individual's TNF receptor by decreasing certain proteins produced by an individual's immune system. Released for commercial use in 1998, Enbrel is a product marketed, sold, and distributed by Amgen throughout North America. It is one of the most widely used anti-TNF drugs for its intended purposes. Defendants held themselves out as having special expertise in the biopharmaceutical industry. Therefore, defendants owed plaintiff a duty to use reasonable care in Enbrel's testing and marketing, as well as in the disclosure of potential dangers and/or side effects arising from the use of Enbrel.

9. Under the Food, Drug, and Cosmetics Act ("FDCA"), 21 U.S.C. sections 301

through 297, pharmaceutical drugs can be marketed only if they have been approved as safe and effective for each and every intended use. The FDA's approvals are narrowly defined, and approvals are not given outside the indications of a specific condition.

10. Marketing of a drug is done under the provisions of the Food and Drug Administration Modernization Act of 1997 ("FDMA"), which requires supplemental trials in the event that a drug is marketed for a purpose or use outside the originally approved use. Uses absent such approval are "off-label" uses, and, although the FDA does not specifically restrict a physician from prescribing drugs for off-label purposes, the FDA does restrict and prohibit off-label marketing, under 21 U.S.C. sections 331 and 352.

11. The FDA has licensed Enbrel for limited use, including moderate to severe rheumatoid arthritis, moderate to severe polyarticular juvenile idiopathic arthritis, ankylosing spondylitis, moderate to severe plaque psoriasis, and psoriatic arthritis.

12. In an effort to maintain its sales, Amgen initiated numerous studies to explore alternate uses. Hundreds of studies have been sponsored by Amgen to explore new, potential uses for Enbrel.

13. Plaintiff, a 40-year-old male, was a participant in an Enbrel clinical study (hereafter "study") initiated, sponsored, and conducted by defendants for psoriasis treatment, beginning in May of 2004. This study was done in Los Angeles County.

14. Prior to plaintiff's participation in the study, plaintiff did not meet the moderate-to-severe criteria necessary to be involved in the study. His condition was considered too slight to be exposed to Enbrel in the manner contemplated by the study.

15. Just before the study began, defendants' representatives gained access to plaintiff's medical information without plaintiff's knowledge or consent. Defendants' representatives conspired with plaintiff's health care provider, Wilson, to cull information from plaintiff's file to determine whether plaintiff would be a suitable candidate for their study.

16. Thereafter, defendants' representatives approached plaintiff and solicited him to

participate in the study. Defendants' representatives were not licensed health care providers entitled to practice medicine or to solicit plaintiff's participation in any clinical study. Defendants' representatives were not employed by plaintiff's health care provider, although they initially held themselves out to be so employed.

17. Thereafter, defendants, through their representatives and/or agents, altered plaintiff's medical records to indicate that plaintiff's condition was more severe than it was in order to permit plaintiff to participate in the study. Plaintiff's medical records were altered by, at the request of, or with the knowledge of defendants. Plaintiff's records were not altered with plaintiff's permission or knowledge. Plaintiff did not discover that his records had been altered until October 31, 2008 and again in November, 2008.

18. At the time of the study, defendants had a practice in place to provide financial rewards, spiffs, bonuses, and/or other compensation to their employees and outside health care providers to encourage and enroll employees in their Enbrel studies, regardless of whether or not the patient enrollees were appropriate candidates for those studies.

19. Prior to plaintiff's agreement to be a participant in the study, plaintiff was assured that he was an appropriate candidate for the study and that the use of Enbrel was appropriate for his condition, was safe, and would not lead to any serious side effect.

20. At no time prior to plaintiff's participation in the Enbrel study was plaintiff advised that alopecia universalis (loss of all body hair) or heart damage was a possibility or a side effect resulting from the use of Enbrel; in fact, plaintiff had had concerns over the use of a competitor's medicine that had as a side effect the potential for serious hair loss. Defendants' representatives were aware of plaintiff's refusal to use the competitor drug because of the side effect. Alopecia was not described in the agreement as a risk.

21. Prior to plaintiff's participation in the study, plaintiff reviewed material provided by defendant concerning Enbrel and relied upon that material in making the decision to participate in the study. Television ads for Enbrel extolled the benefits of

Enbrel, but did not disclose the potential for alopecia universalis or heart problems.

22. On the basis of the false representations and assurances of defendants, plaintiff consented to participate in the study and, in fact, participated in the study.

23. On or about June 2, 2004, plaintiff and defendants entered a written agreement that required defendants to compensate plaintiff for the reasonable medical expenses directly related to the study's use of Enbrel.

24. During the course of the study, plaintiff was provided with significant doses of Enbrel.

25. In November 2004, at the conclusion of the primary phase of the study, plaintiff was encouraged to continue using Enbrel. Plaintiff continued to use Enbrel through May, 2005. In June of 2005, all of plaintiff's hair fell out completely, except for small amounts on his eyebrows. On or about August 19, 2004, January 18, 2005, and April 25, 2006 Defendant Wilson advised Plaintiff that his hair loss was genetic, prescribed a cortisone treatment, and advised Plaintiff that Plaintiff should simply accept his condition as genetic. Even after Plaintiff lost his hair, Wilson continued to prescribe Enbrel, and Plaintiff continued to take it, unaware of the connection between his condition and the drug. Plaintiff currently is without any hair on his body. He has no body hair, nose hair, eyebrows, or eyelashes.

26. In July of 2005, plaintiff received a comprehensive medical examination at the Mayo Clinic, where he was diagnosed with connective tissue disorder, psoriasis, a heart condition with aortic regurgitation and trivial stenosis, and alopecia totalis. At the conclusion of his examination Plaintiff was advised by the doctors at the Mayo Clinic that his condition did not require treatment with pharmaceutical drugs because his inflammatory levels, as determined through blood tests and an examination by a Mayo rheumatologist, did not appear to warrant such treatment. Plaintiff was advised that because his overall physical condition did not warrant the use of medication, he was advised to stop the use of any and all medications, including blood pressure medication. Plaintiff was further advised to make significant changes to his diet and his exercise

regimen. Plaintiff was also placed on a vitamin regimen.

27. In April 2006, a member of Defendants' medical information personnel contacted Plaintiff and informed him that Defendants were making a routine call pursuant to the terms of his June 2, 2004 Agreement with Amgen. Defendants reminded Plaintiff that he was required to update Defendants regarding changes to his physical condition. During the course of the interview, Plaintiff notified the caller of his hair loss, his visit to the Mayo Clinic, and the degradation of his physical condition. Plaintiff further offered to provide additional information. The caller advised Plaintiff that Defendants would be following up with him shortly thereafter to obtain further information. They did not do so, despite this representation, and despite the fact that Plaintiff's written agreement with Defendants specifically provided that Immunex would be contacting Plaintiff approximately every six months for two and a half years following his last dose of the drug.

28. Plaintiff's June 2, 2004 agreement with Defendants expressly provided that in the event new information was discovered regarding side effects that could affect Plaintiff's willingness to participate, Plaintiff would be given the information. However Defendants did not attempt to obtain any information from Plaintiff regarding the change in his physical condition until October 26, 2006. At that time, Defendant's employee and representative Harry Varv spoke to Plaintiff about Plaintiff's status. After discussing Plaintiff's condition, Varv assured Plaintiff that they had no knowledge of any connection between Enbrel and Plaintiff's hair loss or other physical ailments, and advised Plaintiff that his physical condition was genetic. Plaintiff's agreement further did not disclose Alopecia as a side effect. In fact, alopecia known to Defendants as a side effect, and current Enbrel warning labels list alopecia as a side effect. Information concerning this side effect has been systematically and intentionally withheld from Plaintiff.

29. In October of 2008, plaintiff received from the Mayo Clinic a written medical opinion indicating that plaintiff's condition was related to his use of Enbrel.

30. In late October of 2008, plaintiff attempted to obtain his medical records from Dr. Wilson, who had acted as both plaintiff's health care provider and defendants' representative with respect to the study. Plaintiff repeatedly requested medical records concerning his treatment with Dr. Wilson; Dr. Wilson refused to provide those records, stating that defendants did not permit him to disclose them.

31. After repeated requests, Wilson provided plaintiff with records that did not include plaintiff's treatment with Wilson prior to the study, nor did he provide plaintiff with all records prepared during the study. Importantly, Wilson refused to provide dosage amounts which would have indicated the amount of exposure Plaintiff had to Enbrel. Such information is and will be critical to his treatment, but is being intentionally withheld from him.

32. Information gained from the study that would have revealed significant side effects suffered by plaintiff was not reported in study literature, official results, state and federal filings, or other reports or memoranda where such information would be expected to be reported. Such information was either disregarded or destroyed by defendants. This information includes, but is not limited to, data regarding hair loss, as well as treatment provided during the study for such hair loss; during the course of the study, plaintiff was given cortisone shots in his scalp for localized hair loss. This information was known to defendants, but was not reported, and medical records regarding this treatment were destroyed.

33. Defendant has increased its sales of Enbrel by touting it as a potential use for physiological conditions without appropriate data proving the drug's efficacy. Defendants have, for several years, coordinated studies that would produce results they could portray as favorable, even though the studies were compromised and/or otherwise inadequate to support the propositions claimed. Defendants have ignored plaintiff's and others' physical degradation as unrelated and, in doing so, have skewed the results of their studies.

34. The destruction and/or intentional withholding of such information from official

study data violated and continues to violate business practices, acceptable medical/scientific practices, and related state and federal FDA, FTC, and HIPAA requirements and/or provisions. These practices resulted in an improper skewing of results that favored defendants and gave defendants an unfair, illegal, and/or improper advantage over their competitors. Such practices resulted in inaccurate results, which were then provided to plaintiff and similarly situated consumers, who relied upon such results in making the decision to purchase, use, or continue to purchase or use Enbrel.

35. Defendants continue to use the skewed results in their marketing of Enbrel and continue to claim that Enbrel does not have certain side effects, when it does.

36. In November of 2008, defendants were requested to provide plaintiff with reimbursement and/or treatment in accordance with the terms of their CTA, and they refused to do so.

37. As a result of defendants' conduct, plaintiff has suffered serious physical, mental, and emotional harm, including connective tissue disorder, a bicuspid aortic valve and trivial stenosis, and alopecia totalis. Plaintiff has also been forced to pay for medical costs arising from the treatment of his degraded physical condition. Further, plaintiff has suffered, and is expected to continue to suffer, emotional distress.

38. In order to avoid sanctions and regulations by the FDA, as well as detection of their conduct by plaintiff and/or consumers, defendants concealed their involvement in many of the actions related to the marketing and studies described herein. Despite plaintiff's numerous, repeated attempts to obtain information concerning defendants' practices and study results, defendants refuse to provide plaintiff with information and have advised plaintiff to stop contacting Amgen.

39. Given defendants' conduct, plaintiff could not have discovered the conduct alleged herein earlier in the exercise of reasonable diligence. Any applicable statute of limitations has been tolled by defendants' knowing and active concealment and denial of the facts alleged herein. Plaintiff, having no medical or scientific background, training, or experience, did not know of the dangers created by the use of Enbrel and did not have

the sophisticated knowledge and skill to discover the dangers created by the use of Enbrel. Plaintiff has been kept in ignorance of vital information essential to the pursuit of these claims, without any fault or lack of diligence on his part. Plaintiff could not reasonably have discovered the fraudulent and/or misleading nature of defendants' conduct. Accordingly, defendants are estopped from relying on any statute of limitations to defeat any of plaintiff's claims.

FIRST CAUSE OF ACTION

(Unfair Competition in Violation of Business and Professions Code § 17200—Against All Defendants)

40. The allegations set forth in paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

41. Business and Professions Code section 17200, *et seq.*, defines unfair competition as including any "unfair," "unlawful," or deceptive" business practice. California's Unfair Competition Law also provides for injunctive relief and restitution for violations of this law.

42. Defendants have committed numerous unfair, unlawful, and deceptive business practices described herein, and these practices have worked to the detriment of plaintiff and others. Defendants have benefited financially from these unlawful and unfair practices. Plaintiff has been harmed by Defendants as a consequence of his purchase of Defendants' products directly from Defendant.

43. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, improperly and/or illegally soliciting individuals to participate in studies used to determine the effectiveness, side effects, and/or other qualities of Enbrel.

44. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, training, instructing, and/or encouraging defendants' representatives to cull the patient rosters of health care providers for potential Enbrel purchasers. Such training, instruction, and/or encouragement included coercing and/or encouraging

doctors and/or nurses to divulge private patient medical information, including the conditions of patients and the types of treatment being provided to specific patients. Defendants' representatives were trained, instructed, and/or encouraged to gain access to doctors and nurses in areas in which HIPAA protected information is kept.

45. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, improperly including in Enbrel studies individuals who did not meet study threshold requirements and/or were not suitable study candidates. By doing so, defendants were able to skew results to present Enbrel in a more favorable light.

46. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, hiding, ignoring, or destroying during Enbrel studies facts and/or findings that would cast Enbrel in a bad light, including the hiding, ignoring, and/or destruction of facts showing that Enbrel caused hair loss and that patients during Enbrel studies received treatment for hair loss.

47. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, the destruction of medical records prepared during Enbrel studies, in the knowledge that the destruction of such records was illegal and improper and otherwise would skew results in favor of Enbrel.

48. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, defendants' refusal to investigate, report, or disclose side effects and/or complaints suffered by study participants or individuals who have taken Enbrel.

49. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, defendants' coercion and complicity in preventing study participants and/or individuals taking Enbrel from viewing their medical records and/or files.

50. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, providing an experimental drug to a third party in an effort to appease plaintiff and to persuade plaintiff to release defendants from liability. In October 2006, In exchange for Plaintiff's assurance that he would not pursue further inquiry into the connection between Plaintiff's condition and Enbrel, Defendants, through employees

Harry Varav and Greg Bales, provided an acquaintance of Plaintiff access to an experimental drug, AMG 531 after the acquaintance had been denied approval for the experimental drug.

51. Defendants' unfair, unlawful, and/or deceptive business practices include, but are not limited to, designing studies to avoid failure and to ensure that the studies would reveal successes where successes otherwise might not be warranted. In plaintiff's case, plaintiff was expected to skew the results of the study by revealing significant improvement. This was to be accomplished by including plaintiff in the study with a physical condition report that inaccurately described plaintiff as more physically degraded than he actually was.

52. In order to compete and/or conduct business unfairly and/or unlawfully in California, defendants' sales managers promoted to health care providers manipulated or skewed data that ignored: studies showing hair loss (including alopecia universalis) and worsening of congestive heart failure among patients who were prescribed Enbrel, that sales managers promoted prescriptions for mild cases of psoriasis by reinterpreting them as more severe, and that representatives were asked to look inside patient files for insurance data they asked doctors to use to write to insurers to pay for Enbrel.

53. Defendants further attempted to bolster their sales by providing study participants with more Enbrel than necessary in an effort to increase the dosage requirements that were expected to be adopted by the FDA.

54. Plaintiff is informed and believes and on that basis alleges that defendants continue to engage in the practices described herein and are continuing and will continue to benefit financially from these unlawful and unfair practices unless enjoined by this Court from doing so.

55. As a proximate result of defendants' actions, plaintiff has suffered injury in fact and lost money, including costs associated with medical treatment necessary to treat, suspend, or cure (if possible) the physical ailments that arose as a result of defendants' conduct.

56. The actions of defendants detailed herein against plaintiff constitute unfair, unlawful, and deceptive business practices and, further, constitute actions for which injunctive relief and restitution are available.

57. Under Business and Professions Code section 17200, *et seq.,* plaintiff is entitled to restitution of all funds that he paid out for the purchase of Enbrel and the resulting health care costs of maintaining his normal physical condition for the last four years, together with interest thereon, as well as costs and reasonable attorneys' fees pursuant to statute.

58. Under Business and Professions Code section 17200, *et seq.,* defendants may be compelled to disgorge any and all ill-gotten profits and benefits received from the conduct described herein together with payment of civil penalties, or other penalties, for the last four years, together with interest thereon, as well as costs and reasonable attorneys' fees pursuant to statute.

SECOND CAUSE OF ACTION

(Fraud—Against All Defendants)

59. The allegations set forth in paragraphs 1 through 58 are re-alleged and incorporated herein by reference.

60. From September 2008 up through the filing of Plaintiff's complaint, Defendants, through their agents and/or representatives, informed Plaintiff that (1) Plaintiff was and had been an appropriate candidate for Plaintiff's study and Plaintiff need not inquire into the effect of Enbrel on his physical condition and/or causal connection to his injuries; (2) that plaintiff's side effects were not side effects of Enbrel or otherwise causally connected to his use of Enbrel, and that Plaintiff need not inquire into his exposure to Enbrel as a course of determining the cause of his injuries and/or physical condition; (3)

61. Defendants' agents/representatives, including Defendant Wilson and Moze Cowper ("Cowper") repeatedly assured plaintiff that Plaintiff had been an appropriate

candidate for an Enbrel study.

62. At the time the statements were made, Wilson was a medical doctor licensed in the State of California to practice medicine, and Plaintiff's doctor. Wilson was also authorized by Defendants to distribute Enbrel on Amgen's behalf, either by selling Enbrel or by providing the medication to Enbrel consumers free of charge. Wilson was also authorized by Defendants to provide information regarding Enbrel on behalf of Amgen and/or Immunex, including the benefits, side effects, possible uses, appropriate dosages, conditions of use, cost, and likely results. Wilson was also authorized by Amgen/Immunex to conduct studies involving exposing individuals to Enbrel, and to disclose or not disclose information regarding those studies to the study participants, depending upon whether the disclosure or non disclosure benefited Amgen and/or Immunex. Wilson took direction from Amgen regarding the distribution of Enbrel, the disclosure or non disclosure of information concerning Enbrel, the gathering of information from individuals and distribution of that information to Amgen/Immunex, and the performing of other actions to protect Amgen and/or Immunex' financial condition.

63. Cowper was, at the time his statements were made, acting as counsel for Amgen/Immunex, had power of attorney to make representations on behalf of Amgen and/or Immunex, had the authority to make representations regarding Amgen and/or Immunex' acceptance or ratification of facts or legal positions, and had the authority to bind Amgen and/or Immunex with respect to agreements and/or contracts. Cowper was in a position to obtain and distribute information on behalf of Amgen and/or Immunex regarding Enbrel's side effects and/or the companies' conclusions or findings regarding the effect of Enbrel on Plaintiff. Cowper had the authority to distribute or not distribute information relevant to Enbrel's side effects generally or specifically, in order to protect the financial condition of the company.

64. On or about October 26, 2006, Defendant's employee and representative Harry Varv spoke to Plaintiff about Plaintiff's status. After discussing Plaintiff's condition,

Varv assured Plaintiff that they had no knowledge of any connection between Enbrel and Plaintiff's hair loss or other physical ailments, and advised Plaintiff that his physical condition was genetic. In fact, Amgen had knowledge of a connection between Enbrel and Plaintiff's symptoms, and the drug was not an appropriate drug for his physical condition, but would instead degrade Plaintiff's condition and cause Plaintiff physical harm. At no time prior to plaintiff's participation in the Enbrel study was plaintiff advised that alopecia universalis (loss of all body hair) or heart damage was a possibility or a side effect resulting from the use of Enbrel. The representations made by Cowper on behalf of defendants were either known to be false or made without a sufficient basis of fact under the circumstances. Cowper, on behalf of Defendants, disregarded the harmful physical effects Plaintiff's exposure to the drug had and would continue to have on Plaintiff, and instead made the statement to Plaintiff to (1) induce Plaintiff and others to refrain from investigating the causal connection between Plaintiff's condition and Enbrel, (2) to discourage plaintiff and others from seeking redress for their injuries, (3) to prevent unwanted attention on the defects in defendants' product, and/or (4) to hide known defects in Enbrel and Amgen's test practices

65. On September 23, 2008 and thereafter, while speaking as counsel for Enbrel, Cowper stated to Plaintiff that Enbrel was and had been an appropriate drug to address plaintiff's physical condition, and that Plaintiff need not inquire into the effect Enbrel had on his physical condition and/or causal connection to his injuries. These representations were expressed as fact, not opinion. In fact, Plaintiff had not been an appropriate candidate for an Enbrel study, and the drug was not an appropriate drug for his physical condition, but would instead degrade Plaintiff's condition and cause Plaintiff physical harm. At no time prior to plaintiff's participation in the Enbrel study was plaintiff advised that alopecia universalis (loss of all body hair) or heart damage was a possibility or a side effect resulting from the use of Enbrel. The representations made by Cowper on behalf of defendants were either known to be false or made without a sufficient basis of fact under the circumstances. Cowper, on behalf of Defendants,

disregarded the harmful physical effects Plaintiff's exposure to the drug had and would continue to have on Plaintiff, and instead made the statement to Plaintiff to (1) induce Plaintiff and others to refrain from investigating the causal connection between Plaintiff's condition and Enbrel, (2) to discourage plaintiff and others from seeking redress for their injuries, (3) to prevent unwanted attention on the defects in defendants' product, and/or (4) to hide known defects in Enbrel and Amgen's test practices.

66. Thereafter, on November 14, 2008, and in late January/early February 2009 Cowper, on behalf of Defendants, told plaintiff that that there was no question, based upon the data collected by Defendants, that plaintiff's side effects were not side effects of his exposure to Enbrel or otherwise causally connected to his use of Enbrel, and that Plaintiff need not inquire into his exposure to Enbrel as a course of determining the cause of his injuries and/or physical condition. These statements were expressed as fact, not opinion. In fact, Plaintiff's side effects were causally connected to his use of Enbrel. Cowper knew the statements to be false when he made them and/or made them without a sufficient basis of fact under the circumstances. The statements were made with the intent to (1) induce Plaintiff and others to refrain from investigating the causal connection between his condition and Enbrel, (2) discourage plaintiff and others from seeking redress for their injuries, (3) to prevent unwanted attention to the defects in defendants' product, and/or (4) to hide known defects in Enbrel and Amgen's test practices. At no time prior was plaintiff advised that alopecia universalis (loss of all body hair) or heart damage was a possibility or a side effect resulting from the use of Enbrel.

67. On November 20, 2008, Cowper told Plaintiff that Defendants had not received any complaints concerning alopecia totalis/universalis (total/universal hair loss) relating to Enbrel. The representations made by Cowper on behalf of defendants were either known to be false or made without a sufficient basis of fact under the circumstances. Defendants were in fact aware of complaints and issues concerning alopecia totalis/universalis (total/universal hair loss) relating to Enbrel during the time Plaintiff's condition was discussed, but denied having such knowledge to avoid compensating

Plaintiff for his injury, to avoid bad publicity, and to avoid a reduction in sales. The statements were made with the intent to (1) induce Plaintiff and others to refrain from investigating the causal connection between Plaintiff's condition and Enbrel, (2) discourage plaintiff and others from seeking redress for their injuries, (3) to prevent unwanted attention to the defects in defendants' product, and/or (4) to hide known defects in Enbrel and Amgen's test practices.

68. On several occasions in August 2008 and September 2008, Cowper, on behalf of Defendants, promised and assured plaintiff that the cost of any medical treatment needed as a result of any illness or injury arising from the use of Enbrel would be borne by Amgen. In fact, Defendants' had no intention of compensating Plaintiff for any medical treatment arising from any illness or injury caused by Enbrel. The representations made by defendants were either known to be false or made without a sufficient basis of fact under the circumstances. The statements were made with the intent to (1) induce Plaintiff and others to refrain from investigating the causal connection between Plaintiff's condition and Enbrel, (2) discourage plaintiff and others from seeking redress for their injuries, (3) to prevent unwanted attention to the defects in defendants' product, and/or (4) to hide known defects in Enbrel and Amgen's test practices. Defendants had no intention of evaluating Plaintiff's physical condition and/or exposure to Enbrel to determine the effect of their drug on Plaintiff and the costs necessary to provide Plaintiff with medical treatment.

69. On or about January 9, 2009 Cowper instructed medical information employees at Amgen, including Nicole Visitacion, to delete communication records regarding Plaintiff. He further advised Plaintiff to stop his inquiries with Amgen at the risk of becoming embroiled in an embarrassing, ugly, and costly legal battle. On January 19, 2009, Cowper told Plaintiff that his statute of limitations had run and that he could "go fuck yourself."

70. Plaintiff justifiably relied on the representations of defendants and used Enbrel well past the time of the study.

71. Based upon plaintiff's reliance upon defendants' statements and assurances, plaintiff reasonably delayed pursuing medical opinions, treatment, and/or advice that would have revealed Enbrel to be a cause of plaintiff's medical condition, and did not pursue medical treatment that would have addressed the detrimental effects of Enbrel on his person. As a result of Plaintiff's reliance, Plaintiff reasonably delayed in receiving treatment associated with the effects of Enbrel on his person. This delay has resulted in a significant exacerbation of his injuries, has resulted in the weakening of his immune system, has resulted in irreversible physical changes to his major body systems, including his circulatory, endocrine, immune, nervous (central, peripheral, and autonomic), respiratory, muscular and skeletal systems. Treatment for his exacerbated conditions as a result will no longer be effective nor treatable. Each of these physical injuries has in turn resulted in significant emotional and physical distress.

72. As a legal and direct result of defendants' misrepresentations, plaintiff was seriously injured, suffering emotional, physical, and mental damage in an amount according to proof.

73. As a result of defendants' breach, plaintiff has suffered significant economic loss in an amount according to proof.

74. Defendants' misrepresentations to plaintiff were made intentionally, in a malicious, oppressive manner, entitling plaintiff to punitive damages.

THIRD CAUSE OF ACTION

(Fraud by Concealment—Against All Defendants)

75. The allegations set forth in paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

76. From March 2006 to the present, defendants intentionally concealed defects and/or side effects arising from the use of their product Enbrel from plaintiff and other consumers.

77. Those defects and side effects included the likelihood of alopecia universalis

and aortic valve problems in certain individuals, including plaintiff. These defects further included degradation of various body systems, including the weakening of his immune system, has resulted in irreversible physical changes to his major body systems, including his circulatory, endocrine, immune, nervous (central, peripheral, and autonomic), respiratory, muscular and skeletal systems. These defects and side effects were known or should have been known to defendants.

78. Rather than disclose the defects and side effects to plaintiff, defendants concealed them. This concealment included, but was not limited to, instructing Defendant Wilson to withhold medical records from Plaintiff that would have revealed this information, withholding information regarding Enbrel side effects similar to those experienced by Plaintiff, and providing Plaintiff with false assurances to ensure that Plaintiff would not take steps to make inquiries with other professionals about the connection between Enbrel and his condition. Defendants did so despite plaintiff's repeated requests for information regarding defects and/or side effects, despite defendants' legal obligation to reveal such defects and side effects, and despite plaintiff's expectation as a consumer of a complex pharmaceutical product that defendants would, as producers of such a product, reveal such defects and side effects.

79. Rather than disclose the defects or side effects, defendants intentionally and deliberately misled plaintiff and other similarly situated consumers into believing that no such defects or side effects existed. From June 2006 through and including May 2009, Defendants, through agent Moze Cowper, denied any connection between Plaintiff's condition and Enbrel, despite (1) knowing that such a connection have been observed in the past, and (2) not having reviewed Plaintiff's medical records, nor having a medical expert review Plaintiff's medical records. The representations by defendants were either known to be false or made without a sufficient basis of fact under the circumstances. The statements were made with the intent of inducing plaintiff and others similarly situated to participate in an Enbrel study and, later, to (1) discourage plaintiff and others from investigating the causal connection between their conditions and Enbrel,

(2) discourage plaintiff and others from seeking redress for their injuries, and/or (3) preventing unwanted attention to the defects in defendants' product.

80. Plaintiff justifiably relied on the representations of defendants and on the basis of his justifiable reliance, As a result of Plaintiff's reliance, Plaintiff reasonably delayed in receiving treatment associated with the effects of Enbrel on his person. This delay has resulted in a significant exacerbation of his injuries, has resulted in the weakening of his immune system, has resulted in irreversible physical changes to his major body systems, including his circulatory, endocrine, immune, nervous (central, peripheral, and autonomic), respiratory, muscular and skeletal systems. Treatment for his exacerbated conditions as a result will no longer be effective nor treatable. Each of these physical injuries has in turn resulted in significant emotional and physical distress.

81. As a legal and direct result of defendants' misrepresentations, plaintiff was seriously injured, suffering emotional, physical, and mental damage in an amount according to proof.

82. As a legal and direct result of defendants' misrepresentations, plaintiff suffered significant economic loss in an amount according to proof.

83. Defendants' misrepresentations to plaintiff were made intentionally, in a malicious, oppressive manner, entitling plaintiff to punitive damages.

FOURTH CAUSE OF ACTION

(Negligent Misrepresentation—Against All Defendants)

84. The allegations set forth in paragraphs 1 through 83 are re-alleged and incorporated herein by reference.

85. At all times relevant, defendants negligently concealed defects and side effects arising from the use of their product Enbrel from plaintiff and other consumers. Defendants further negligently concealed plaintiff's risks associated with the Enbrel study.

86. Those defects and side effects included the likelihood of alopecia universalis

and heart problems in certain individuals, including plaintiff. These defects and side effects should have been known to defendants and could have been known through reasonable, objective, scientific analysis. These defects could have been disclosed to plaintiff through the use of ordinary care.

87. Defendants failed to take those steps necessary to determine that alopecia universalis and certain heart conditions could arise through the use of Enbrel. Defendants also failed to take those steps necessary to provide plaintiff with accurate information concerning the potential side effects of the use of Enbrel and failed to take those steps necessary to provide plaintiff with sufficient information concerning the danger and side effects that could arise from the use of Enbrel. Despite defendants' legal and ethical obligation to reveal such defects and side effects and despite plaintiff's reasonable expectation as a consumer of a complex pharmaceutical product that defendants would, as producers of such products, reveal such defects and side effects, defendants negligently failed to provide plaintiff with such information. Defendants further disregarded plaintiff's repeated requests for information regarding defects and/or side effects.

88. Between June 2006 up to and including May 2009, Rather than disclose the defects and side effects, defendants, through their negligence, misled plaintiff and other similarly situated consumers into believing that no such defects or side effects existed. These representations were made through and including September of 2008.

89. Plaintiff justifiably relied on the representations of defendants and on the basis of his justifiable reliance, As a result of Plaintiff's reliance, Plaintiff reasonably delayed in receiving treatment associated with the effects of Enbrel on his person. This delay has resulted in a significant exacerbation of his injuries, has resulted in the weakening of his immune system, has resulted in irreversible physical changes to his major body systems, including his circulatory, endocrine, immune, nervous (central, peripheral, and autonomic), respiratory, muscular and skeletal systems. Treatment for his exacerbated conditions as a result will no longer be effective nor treatable. Each of these physical

injuries has in turn resulted in significant emotional and physical distress.

90. As a legal and direct result of defendants' misrepresentations, plaintiff was seriously injured, suffering emotional, physical, and mental damage in an amount according to proof.

91. As a legal and direct result of defendants' misrepresentations, plaintiff suffered significant economic loss in an amount according to proof.

92. Defendants' misrepresentations to plaintiff were made intentionally, in a malicious, oppressive manner, entitling plaintiff to punitive damages.

FIFTH CAUSE OF ACTION

(Breach of Express Written Contract—

Against All Defendants Except Wilson)

93. The allegations set forth in paragraphs 1 through 92 are re-alleged and incorporated herein by reference.

94. On or about June 2, 2004, plaintiff and defendants entered a contract whereby plaintiff agreed to participate in a study to test the use of Enbrel and specifically to determine how Enbrel is tolerated by people with psoriasis. In consideration for his participation, defendants agreed to provide plaintiff with certain benefits, including, but not limited to, compensation for the reasonable medical expenses for the treatment of any injury or illness directly related to Enbrel.

95. Attached hereto as Exhibit 1 is a true and correct copy of the contract entered between plaintiff and defendants.

96. In their agreement, defendants expressly acknowledge the potential for worsening heart failure in patients taking Enbrel. The agreement does not describe Alopecia as a risk.

97. Defendants' obligations under the terms of this agreement are ongoing.

98. As a result of plaintiff's use of Enbrel in the study, plaintiff has suffered significant personal injury directly related to Enbrel, including, but not limited to,

alopecia universalis and heart failure.

99. Defendants have refused to provide plaintiff with compensation for the injuries he sustained as a direct result of taking Enbrel and, in so acting, have breached the agreement.

100. As a result of defendants' breach, plaintiff has suffered significant economic loss in an amount according to proof.

WHEREFORE, plaintiff, William Christopher Moke, prays for judgment against defendants as follows:

1. For general damages according to proof (Second, Third, and Fourth, Causes of Action);

2. For economic damages according to proof (Second, Third, Fourth, and Eighth Causes of Action);

3. For exemplary damages according to proof (Second, Third, and Fourth Causes of Action);

4. For pre-judgment and post-judgment interest on all damages awarded (all causes of action);

5. For restitution (First Cause of Action);

6. For disgorgement of profits (First Cause of Action);

7. For costs of suit incurred (all causes of action);

8. For such other and further relief as the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

ADDITIONALLY, plaintiff, William Christopher Moke, demands trial of this matter by jury.

Dated: June 14, 2010

URBANIC & ASSOCIATES, INC.

By: _____
James Urbanic, Esq.

Attorneys for Plaintiff,
WILLIAM CHRISTOPHER MOKE

MOKE VS. AMGEN, et al. **LASC CASE NO.:BC414541**

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 499 North Canon Drive, Beverly Hills, California 90210.

On June 14, 2010, I served the foregoing document, described as **"PLAINTIFF WILLIAM CHRISTOPHER MOKE'S THIRD AMENDED COMPLAINT FOR DAMAGES,"** on all interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Peter Mason, Esq.
FULBRIGHT & JAWORSKI LLP
555 South Flower Street, 41ST Floor
Los Angeles, CA 90071

☒ **(BY MAIL)** As follows:

☒ I placed such envelope, with postage thereon prepaid, in the United States mail at Beverly Hills, California.

☒ I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Beverly Hills, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

☒ **(STATE)** I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

☐ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the attorney at the offices of the addressee.

☐ **(BY ELECTRONIC MAIL)** I sent such document via facsimile mail to the number(s) noted above.

Executed on June 14, 2010, at Beverly Hills, California.

James Urbanic