

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

SCHEDULE 14D-1

TENDER OFFER STATEMENT PURSUANT TO SECTION 14(D)(1)  
OF THE SECURITIES EXCHANGE ACT OF 1934

(AMENDMENT NO. 1)

SYNERGEN, INC.  
(NAME OF SUBJECT COMPANY)

AMGEN ACQUISITION SUBSIDIARY, INC.

AMGEN INC.  
(BIDDER)

COMMON STOCK, \$.01 PAR VALUE  
(TITLE OF CLASS OF SECURITIES)

871594107

(CUSIP NUMBER OF CLASS OF SECURITIES)

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## TENDER OFFER

Amgen Acquisition Subsidiary, Inc., a Delaware corporation ("Purchaser") and Amgen Inc., a Delaware corporation ("Parent") hereby amend and supplement their Tender Offer Statement on Schedule 14D-1 (the "Statement") originally filed on November 23, 1994 with respect to Purchaser's offer to purchase all outstanding shares of Common Stock, par value \$.01 per share, of Synergen, Inc., a Delaware corporation (the "Company"), including the associated preferred stock purchase rights at a price of \$9.25 per Share, net to the seller in cash, upon the terms and subject to the conditions set forth in Purchaser's Offer to Purchase dated November 23, 1994 and in the related Letter of Transmittal. Terms not defined herein have the meanings set forth in the Statement.

## ITEM 10. ADDITIONAL INFORMATION.

(c) The information set forth in the Press Release attached hereto as Exhibit 99.(a)(10) is incorporated herein by this reference.

(e) On Wednesday, November 23, 1994, one stockholder filed a putative class action and derivative actions suit in the District Court, County of Boulder, State of Colorado against the Company, certain of its officers and directors and Parent. The case is captioned Bruce Livergood v. Synergen, Inc., et al., Case No. 94-CV1347 (Dist. Ct., Boulder County Ct., Colo., Nov. 23, 1994). The complaint alleges, among other things, that certain of the defendants breached their fiduciary duties and committed fraud by omission with respect to the transactions contemplated by the Offer and the Merger. Plaintiff seeks an injunction, both preliminarily and permanently, enjoining the consummation of the Offer and the Merger or, in the alternative, an award of compensatory and punitive damages.

On Tuesday, November 29, 1994, two stockholders filed a putative class action and derivative action suit in the District Court, County of Boulder, State of Colorado against the Company, certain of its officers and directors and Parent. The case is captioned John Weld, Sr. and Gerald Topiel v. Amgen, Inc., et al., Case No. 94-CV1370 (Dist. Ct., Boulder County Ct., Colo., Nov. 29, 1994). The complaint alleges, among other things, that certain of the defendants breached their fiduciary duties and committed fraud by omission with respect to the transactions contemplated by the Offer and the Merger. Plaintiffs seek an injunction, both preliminarily and permanently, enjoining the consummation of the Offer and the Merger or, in the alternative, an award of compensatory and punitive damages.

The foregoing summaries, as well as the summary of the litigation captioned Anna Stanley and Len Kahn v. Larry Soll, et al., set forth in the Statement, are qualified in their entirety by reference to the respective complaints attached hereto as Exhibits 99.(a)(11)-99.(a)(13), which complaints are incorporated herein by this reference.

## ITEM 11. MATERIAL TO BE FILED AS EXHIBITS.

- 99.(a)(10) Press Release issued by Parent on December 2, 1994.
- 99.(a)(11) Complaint captioned Anna Stanley and Len Kahn v. Larry Soll, et al., Case No. 13892 (Del. Ch. Nov. 18, 1994).
- 99.(a)(12) Complaint captioned Bruce Livergood v. Synergen, Inc., et al., Case No. 94-CV1347 (Dist. Ct., Boulder County Ct., Colo., Nov. 23, 1994).
- 99.(a)(13) Complaint captioned John Weld, Sr. v. Amgen, Inc., et al., Case No. 94-CV1370 (Dist. Ct., Boulder County Ct., Colo., Nov. 29, 1994).

SIGNATURE

After due inquiry and to the best of the undersigned's knowledge and belief, the undersigned certifies that the information set forth in this statement is true, correct and complete.

AMGEN ACQUISITION SUBSIDIARY, INC.

By /s/ Thomas E. Workman, Jr.  
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Chief Executive Officer

Dated: December 2, 1994

SIGNATURE

After due inquiry and to the best of the undersigned's knowledge and belief, the undersigned certifies that the information set forth in this statement is true, correct and complete.

AMGEN INC.

By /s/ Gordon M. Binder  
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Chief Executive Officer and  
Chairman of the Board

Dated: December 2, 1994

EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION	SEQUENTIALLY NUMBERED PAGE
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AMGEN

NEWS RELEASE

## AMGEN FILES REVISED PREMERGER FORM

Investor Contact:  
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Director, Investor Relations and  
Corporate Communications  
(805) 447-1659

Media Contact:  
David Kaye  
Manager, Product  
Communications  
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FOR IMMEDIATE RELEASE

THOUSAND OAKS, Calif., December 2, 1994 -- Amgen today announced that in connection with its pending acquisition of Synergen, Inc., it has filed a revised Premerger Notification and Report Form under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, ("HSR Act") with the Antitrust Division of the Justice Department and the Federal Trade Commission. This filing recommences the 15-calendar day waiting period applicable to Amgen's purchase of Synergen shares pursuant to its \$9.25 cash tender offer commenced on November 23, 1994. The original waiting period was to expire at 11:59 p.m., New York City time, on December 3, 1994. Under the revised filing, the waiting period will expire at 11:59 p.m., New York City time, on December 15, 1994, unless the waiting period is earlier terminated by the FTC and the Antitrust Division or extended by a request by the FTC or the Antitrust Division for additional information or documentary material prior to the expiration of the waiting period.

The new filing was made for the purpose of providing the Antitrust Division and the FTC with a limited amount of additional time in which to complete their review of Amgen's filing. Pursuant to the HSR Act, Amgen has requested early termination of the waiting period applicable to its pending tender offer.

If either the FTC or the Antitrust Division were to request additional information or documentary material with respect to the offer, the waiting period would expire at 11:59 p.m., New York City time, on the 10th calendar day after the date Amgen substantially complies with such request for documents or information. Thereafter, the waiting period could be extended only by court order.

Once the waiting period (and any extension thereof) under the HSR Act shall have expired or been terminated, and other conditions set forth in the Merger Agreement with Synergen have been met, Amgen will consummate the purchase of Synergen shares pursuant to the pending cash tender offer.

Amgen (NASDAQ:AMGN) is a global biotechnology company that discovers, develops, manufactures and markets human therapeutics based on advanced cellular and molecular biology.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

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ANNA STANLEY and      :
LEN KAHN              :
                      :
                Plaintiffs, :
                      :
    - against -      :
                      :
LARRY SOLL, GREGORY B. ABBOTT, :
ROBERT C. THOMPSON, ARTHUR H. :
HAYES, DAVID I. HIRSH, BARRY  :
MACTAGGART, GLENN S. UTT,    :
ROBERT F. HENDRICKSON        :
and SYNERGEN INC.,          :
                      :
                Defendants. :
-----X

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C.A. NO. 13892

CLASS ACTION COMPLAINT  
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Plaintiffs, by their attorneys, allege upon personal knowledge as to their own acts and upon information and belief as to all other matters, as follows:

1. Plaintiffs bring this action individually and as a class action on behalf of all persons, other than defendants, who own the securities of Synergen, Inc. ("Synergen" or the "Company") and who are similarly situated (the "Class") for injunctive and other relief. Plaintiffs seek the injunctive relief herein, inter alia, to enjoin the consummation of a proposed offer (the "Offer") announced on November 18, 1994, pursuant to which Amgen Inc. ("Amgen") will acquire Synergen for approximately \$239 million cash, or \$9.25 a share of Synergen stock. Shares not purchased in the tender offer will be acquired in a subsequent merger at the same price after the merger. Alternatively, in the event that the transaction is consummated, plaintiffs seek to recover damages caused by the breach of fiduciary duties owed by the individual

defendants.

2. The proposed transaction and the acts of the individual defendants, as more particularly alleged herein, constitute a breach of the defendants' fiduciary duties to plaintiffs and the Class.

3. The Offer is being advanced at an unfair price and does not constitute a maximization of stockholder value.

4. The individual defendants' authorization to engage in the Offer was given in breach of their fiduciary duties owed to Synergen's stockholders to take all necessary steps to ensure that the stockholders will receive the maximum value realizable for their shares in any sale of the Company. In the context of this action, defendants were required to take all reasonable steps to assure the maximization of stockholder value, including the implementation of a bidding mechanism to foster a fair auction of the Company to the highest bidder or the exploration of strategic alternatives that will return greater or equivalent short-term value to plaintiffs and the Class.

PARTIES

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5. Plaintiffs are and, at all relevant times, have been the owner of shares of Synergen common stock.

6. Synergen is a corporation duly organized and existing under the laws of the State of Delaware. The Company is a biopharmaceutical company engaged in the discovery, development and manufacture of protein-based pharmaceuticals. The Company's research is targeted at products for inflammatory diseases and



neurological disorders. Synergen maintains its principal executive offices at 1885 33rd Street, Boulder, Colorado. Synergen has approximately 25,767,289 shares of common stock outstanding and approximately 2,550 stockholders of record. Synergen stock trades on the NASDAQ national system.

7. Defendant Larry Soll ("Soll") is Chairman of the Board of Directors. Soll's annual compensation is \$163,334.

8. Defendant Gregory B. Abbott ("Abbott") is President, Chief Executive Officer, and a director of Synergen. Abbott's annual compensation is \$197,414.

9. Defendant Robert C. Thompson ("Thompson") is the Executive Vice President and a director of Synergen. Thompson's annual compensation is \$197,914.

10. Defendants Arthur H. Hayes, David I. Hirsh, Barry Mactaggart, Glenn S. Utt and Robert F. Hendrickson are directors of Synergen.

11. The defendants named in paragraphs 7 through 10 are hereinafter referred to as the "Individual Defendants."

12. Because of their positions as officers/directors of the Company, the Individual Defendants owe a fiduciary duty of loyalty and due care to plaintiffs and the other members of the Class.

13. Each defendant herein is sued individually as a conspirator and aider and abettor, as well as in his capacity as an officer and/or director of the Company, and the liability of each

arises from the fact that he has engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

CLASS ACTION ALLEGATIONS

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14. Plaintiffs bring this action in their own behalf and as a class action, pursuant to Rule 23 of the Rules of the Court of Chancery, on behalf of all stockholders of the Company, except defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the defendants, who will be threatened with injury arising from defendants' actions as is described more fully below.

15. This action is properly maintainable as a class action.

16. The class is so numerous that joinder of all members is impracticable. The Company has approximately 2,550 stockholders of record.

17. There are questions of law and fact common to the Class including, inter alia, whether:

a. the proposed offer is grossly unfair to Synergen's public stockholders;

b. defendants have engaged and are continuing to prevent plaintiffs and the Class from receiving the maximum value per share that could be received in an unfettered market for control;

c. defendants willfully and wrongfully failed or

refused to obtain or attempt to obtain a purchaser for the assets of Synergen at a price higher than the tender offer;

d. defendants have breached or aided and abetted the breach of the fiduciary and other common law duties owed by them to plaintiffs and the members of the Class; and

e. plaintiffs and the other members of the Class would be irreparably damaged were the transaction complained of herein consummated.

18. Plaintiffs are committed to prosecuting the action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class and plaintiffs have the same interests as the other members of the Class. Plaintiffs are adequate representatives of the Class.

19. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

20. The defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf

of the Class as a whole is appropriate.

SUBSTANTIVE ALLEGATIONS

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21. By the acts, transactions, and courses of conduct alleged herein, defendants, individually and as part of a common plan and scheme and/or aiding and abetting one another in total disregard of their fiduciary duties, are attempting to deprive plaintiffs and the Class unfairly of their investment in Synergen.

22. On November 18, 1994, the Dow Jones News Wire reported that Synergen had entered into a definitive merger agreement for Amgen to acquire Synergen for approximately \$239 million cash or \$9.25 a share of Synergen stock. Under the terms of the merger agreement, Amgen has indicated that it will begin a cash tender offer no later than November 29, 1994 for all outstanding shares of Synergen. Shares not purchased in the tender offer will be acquired in a subsequent merger at the same price after the completion of the tender offer.

23. Defendants chose to pursue this transaction at a time when Synergen is believed to be poised to significantly increase future earnings and when its value is believed to be far in excess of the consideration offered in the Offer.

24. Indeed, Synergen's revenues have increased over last year's results. For the second quarter of 1994, Synergen reported revenues of \$5,213,200, as compared to \$3,636,100 for the same period in 1993, an increase of approximately 30 percent.

25. Defendants' knowledge and economic power and that of the investing public is unequal because they are in possession of

material non-public information concerning the Company's assets, businesses, and future prospects. This disparity makes it and [sic] inherently unfair for them to transfer ownership of Synergen from its public stockholders to Amgen at such an unfair and grossly inadequate price.

26. The consideration to be paid to the public shareholders in the Offer is grossly unfair, inadequate, and substantially below the fair or inherent value of the Company. The intrinsic value of the equity of Synergen is materially greater than the consideration being considered, taking into account Synergen's asset value, liquidation value, its expected growth, the strength of its business, and its revenues and cash flow and earnings power.

27. Defendants, in violation of their fiduciary obligations to maximize stockholder value, have not considered seriously other potential purchasers of Synergen or its stock in a manner designed to obtain the highest possible price for Synergen's public stockholders.

28. The proposed Offer is wrongful, unfair, and harmful to Synergen public stockholders, and will deny Class members their right to share proportionately in the true value of Synergen's valuable assets, profitable business, and future growth in profits and earnings, while usurping the same for the benefit of the defendants at an unfair and inadequate price.

29. By reason of all of the foregoing, defendants herein have participated in unfair dealing toward plaintiffs and the other

members of the Class and have engaged in and substantially assisted and aided and abetted each other in breach of the fiduciary duties owed by them to the Class.

30. Defendants have violated fiduciary and other common law duties owed to the plaintiffs and the other members of the Class in that they have not and are not exercising independent business judgment, and have acted and are acting to the detriment of the Class.

31. As a result of defendants' action, plaintiffs and the Class have been and will be damaged by the breaches of fiduciary duty, and, therefore, plaintiffs and the Class will not receive the fair value of Synergen's assets and businesses.

32. Unless enjoined by this Court, defendants will continue to breach their fiduciary duties owed to plaintiffs and the Class, and will succeed in their plan to exclude plaintiffs and the Class from the fair proportionate share of Synergen's valuable assets and businesses, all to the irreparable harm of the Class.

33. Plaintiffs and the Class have no adequate remedy of law.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

a. declaring that this lawsuit is properly maintainable as a class action and certifying plaintiffs as representatives of the Class;

b. declaring that the defendants and each of them have committed or aided and abetted a group abuse of trust and have

breached their fiduciary duties to plaintiffs and the other members of the Class;

c. preliminarily and permanently enjoining defendants and their counsel, Agents, employees, and all persons acting under, in concert with, or for them, from proceeding with, consummating or closing the transaction;

d. in the event the transaction is consummated, rescinding it and setting it aside;

e. ordering defendants, jointly and severally, to account to plaintiffs and the Class for all profits realized and to be realized by them as a result of the transaction complained of and, pending such accounting, to hold such profits in a constructive trust for the benefit of plaintiffs and other members of the Class;

f. ordering defendants to permit a stockholders' committee consisting of class members and their representatives to participate in any process undertaken in connection with the sale of the Company in order to ensure a fair procedure, adequate procedural safeguards, and independent input by plaintiffs and the Class in connection with any transaction for the public shares or Synergen;

g. awarding compensatory damages against defendants, jointly and severally, in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law;

h. awarding plaintiffs and the Class their costs

and disbursements and reasonable allowances for plaintiffs' counsel and experts' fees and expenses; and

i. granting such other and further relief as may be just and proper.

Dated: November 18, 1994

Respectfully submitted,

ROSENTHAL MONHAIT GROSS  
& GODDESS, P.A.

By: /s/ [Name illegible]

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(302) 656-4433

Attorneys for Plaintiffs

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DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

CASE NO. 94CV1347 Div. 3.

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VERIFIED CLASS ACTION AND DERIVATIVE ACTION COMPLAINT AND JURY DEMAND  
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BRUCE LIVERGOOD on Behalf of himself and all others Similarly Situated, and  
Derivatively on Behalf of Synergen, a Delaware Corporation

Plaintiff,

v.

SYNERGEN, INC., AMGEN, INC., ROBERT F. HENDRICKSEN, GREGORY B. ABBOTT, LARRY  
SOLL, ROBERT C. THOMPSON, DAVID I. HIRSH, ARTHUR HAYS JR., KENNETH J. COLLINS,  
BARRY MAC TAGGART, GLENN S. UTT JR.

and

SYNERGEN, INC., a Delaware Corporation, a Nominal Defendant

Defendants.

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Plaintiff, by and through his attorneys, hereby complains and alleges as  
follows:

I. PARTIES  
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1. Plaintiff Bruce Livergood is and was at the time of the commission  
of the wrongful acts complained of herein a shareholder of Synergen inc. [sic]  
On May 31, 1990, plaintiff purchased 8,000 shares of defendant Synergen, Inc.  
("Synergen") at the price of \$13.50 per share. Mr. Livergood has held these  
shares continuously since that date. Plaintiff brings this action derivitively  
[sic] on behalf of and for the benefit of Synergen (or it's [sic] successor),  
named as a nominal defendant herein as a class action for the other minority  
shareholders of Synergen.

2. Defendant Synergen is a Delaware corporation with its principal place of business in Boulder, Colorado. Synergen is a biopharmaceutical company engaged in the discovery, development and manufacture of protein-based pharmaceuticals.

3. Defendant Amgen, Inc. is a corporation with its principal place of business in Thousand Oaks, California. Amgen, the world's largest biotechnical company, discovers, develops, manufactures and markets human therapeutics based upon advanced cellular and molecular biology.

4. Defendant Larry Soll is at all times relevant hereto, the Chairman of the Board and Chief Executive Officer of Synergen.

5. Defendants Robert F. Hendricksen, Gregory B. Abbott, Robert C. Thompson, David I. Hirsh, Arthur Hays, Jr., Kenneth J. Collins, Barry Mac Taggart and Glenn S. Utt, Jr. are at all times relevant hereto, officers and\or directors of Synergen.

6. The defendants referenced in paragraphs 4 and 5 above will be referred to collectively herein as the "Individual Defendants."

7. Because of the Individual Defendants' positions with Synergen as officers and directors, said individuals are in a fiduciary relationship with plaintiffs and other public stockholders of Synergen and owe plaintiffs and other members of the Class the highest obligations of fidelity, good faith, prudence, fair dealing, and full, candid and adequate disclosure.

II. CLASS ACTION AND DERIVATIVE ALLEGATIONS  
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8. Plaintiffs bring all claims herein as class claims and or derivative claims pursuant to Rules 23 and 23.1 of the Colorado Rules of Civil Procedure. The requirements of subparts 23(a) and (b)(1), (b)(2) and (b)(3) are met with respect to the class defined below.

9. The class consists of all Synergen securities holders or their successors in interest. Excluded from the class are the named defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any of the defendants.

10. Synergen is a publicly traded company with about 25.9 million shares outstanding. The members of the class are so numerous that joinder of all members is impracticable. The exact number of class members can be determined by appropriate discovery.

11. There are common questions of law which predominate over questions affecting any individual class members, including the following:

- a. Whether defendants have engaged in conduct constituting unfair dealings to the detriment of the class;
- b. Whether the transaction is grossly unfair to the class;
- c. Whether the transaction is unlawful or fraudulent regarding the class;
- d. Whether defendants are engaging in self-dealing;

- e. Whether plaintiff and the class would be irreparably damaged were the transactions complained of consummated; and
- f. Whether defendants have breached or aided and abetted the breach of a fiduciary duty and other common law duties owed by them to plaintiffs and other members of the class.

12. The prerequisites to maintaining a class action for injunctive relief exist:

- a. If injunctive relief is not granted, great harm and irreparable injury to plaintiffs and the members of the class will continue.
- b. Plaintiff and the members of the class have no adequate remedy at law for the injuries which are threatened, in that absent action from this court, a proposed transaction may be consummated to the detriment of the class members.

13. Plaintiff has the same interests in this matter as all other members of the class, and their [sic] claims are typical of all members of the class.

14. Plaintiff is committed to pursuing this action and have [sic] retained competent counsel experienced in class action litigation. Plaintiff will fairly and adequately represent the interests of the class members.

15. The prosecution of separate actions by members of the class would create a risk of establishing incompatible standards

of conduct for the defendants -- for example, one court might decide that defendants' actions were a breach of fiduciary duty, whereas another court might decide that those same actions were not. Individual actions may, as a practical matter, be dispositive of the interests of the class.

16. Defendants' actions are generally applicable to the class as a whole, and plaintiff seeks, inter alia, equitable remedies with respect to the class as a whole.

17. The common questions of law and fact enumerated above predominate over questions affecting only individual members of the class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. To plaintiff's knowledge, no similar litigation is currently pending by other members of the class. Plaintiff's counsel, highly experienced in class actions, foresee little difficulty in the management of this case as a class action.

18. Plaintiff has made no attempt to obtain the action sought in this lawsuit though a demand upon the Board of Directors in that the proposed transaction has already been approved by the Board of Directors of Synergen and any demand would therefor be futile.

III. GENERAL ALLEGATIONS

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19. In late 1992, Synergen was engaged in the development of a drug called Antril. Antril was an interleukin-1 receptor

antagonist (IL-1ra) intended for use in the treatment of sepsis. In reliance upon several public statements concerning the viability of Antril, stock rose as high as \$65.372 per share.

20. On February 22, 1993, Synergen announced that, contrary to previous publicity, Antril's benefits were limited to only patients who had the highest risk of death from sepsis. Due to that news, Synergen stock plummeted to \$13.50 per share, a 67% drop in price.

21. Worse yet, on July 19, 1994, Synergen announced another failure of Antril. Previously believed to aid mortally ill patients; "double blind" tests of Antril showed little or no improvement upon patients who were administered a placebo. Stock in Synergen dipped to \$4.50 per share. At that time, defendant Abbott declared Synergen a "good candidate for a merger."

22. At the same time, Antril was by no means Synergen's only product. Synergen was also conducting clinical trials for a drug called Ciliary Neurotrophic Factor ("CNTF"), a possible cure for Lou Gehrig's disease. The possibilities of success of CNTF are hopeful.

23. In addition to its interest in CNTF, Amgen has stated that it is "particularly enthusiastic" about Glial Derived Neutrophic [sic] Factor ("GDNF"), which is in development as a cure for Parkinson's disease. Synergen is actively engaged in the development of this product.

24. Synergen also possesses some \$120 million in cash, and a manufacturing plant in Boulder, Colorado worth at least \$45

million. With a reduced work force, the possibilities of Synergen's recovery are good.

25. On November 18, 1994, Amgen agreed to buy Synergen for the sum of \$251 million, or \$9.25 per share. The sum represents one-eighth of Synergen's peak share price. The deal is valued at approximately \$250 million, despite the fact that Synergen's hard assets alone as of September 30, 1994 were valued at approximately \$180 million, and Synergen possesses tax loss carry-forwards of approximately \$200 million. Amgen will commence a cash tender offer for Synergen no later than November 29, 1994, and the transaction is expected to be concluded by December 31, 1994 (the "Proposed acquisition").

26. The defendants' failure to reveal material facts regarding Synergen's financial status, and the true prospects and/or status regarding GDNF, Tumor Necrosis Factor Binding Protein ("TNFbp") and CNTF which is in phase three clinical trails [sic] with the results to be announced in the upcoming quarter, would result in grossly inadequate consideration being paid to class members in the Proposed Acquisition. As a result of the defendants' fraudulent nondisclosures, the Proposed Acquisition price would be unconscionable, unfair and grossly inadequate for the following reasons:

(a) the intrinsic value of Synergen's common stock is materially in excess of the amount offered for those securities in the Proposed Acquisition giving due consideration to: (i) the value of those drugs currently in Synergen's "pipeline"; and (ii)

Synergen's present and projected net asset value, and tax benefits; potential revenue and earnings.

(b) the consideration agreed upon did not result from an appropriate consideration of the value of Synergen because the Individual Defendants approved the Proposed Acquisition on the terms set forth in the Agreement without adopting proper procedures for Synergen's value to be accurately ascertained through open bidding or at least a "market check" mechanism.

27. The Defendants have thus far failed to announce any active auction or open bidding procedures best calculated to maximize shareholder value and have, instead, agreed to the definitive agreement which will only serve to inhibit the maximization of shareholder value. Synergen's stockholders will have no effective option other than to accept the unfair terms proposed in the Acquisition agreement.

28. The provisions of C.R.S. Section 7-113-102, Section 7-113-103, and Section 7-113-201 et. seq. are inapplicable to this action because the proposed merger is unlawful or fraudulent with regard to the class.

FIRST CLAIM FOR RELIEF (BREACH OF FIDUCIARY DUTY)

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29. The General Allegations are incorporated herein by this reference.

30. Synergen and the individual defendants, by virtue of their positions over the plaintiff class, have a duty of fidelity, good faith, prudence, fair dealing, and full disclosure.



31. The Defendants, aided and abetted by Amgen, have violated their fiduciary duties to Synergen and its public stockholders in that they have failed to maximize stockholder value by failing to reveal material information regarding certain drugs in Synergen's pipeline, failing to apprise the market of the real benefits of Synergen's tax loss carry-forwards, failing to actively pursue the acquisition of Synergen by other companies or conducting an adequate market check and otherwise failing to take other steps to protect the interests of the class.

32. As a result of defendants' breach of fiduciary duty, plaintiffs have suffered damages which will be proved at trial.

SECOND CLAIM FOR RELIEF (FRAUD BY OMISSION)  
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33. The General Allegations are incorporated herein by this reference.

34. Defendants had a duty to disclose the true prospects for GDNF, CTNF, TNFbp and certain other drugs in Synergen's "pipeline," as well as the true economic and tax benefits to be derived by Amgen as a result of the Proposed Acquisition, all of which were material facts in relation to the transaction.

35. Defendants failed to disclose the facts with the intent of creating a false impression of the actual facts in the minds of the plaintiff class.

36. Defendants failed to disclose the facts with the intent that the plaintiff class would take a course of action they otherwise would not have taken, that is, refused to accept the tendered merger price.

37. While the plaintiff class has not approved the merger, it may do so, relying upon facts and impressions which are inaccurate.

38. The plaintiff class's reliance upon the misimpression is justified.

39. As a result of the plaintiff class's reliance, the plaintiff class will suffer damages, which will be proved at trial.

THIRD CLAIM FOR RELIEF (INJUNCTION)  
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40. The General Allegations are incorporated herein by this reference.

41. Plaintiff class is entitled to an injunction, both preliminarily and permanently enjoining the Acquisition of Synergen by Amgen.

42. The plaintiff class has no adequate remedy at law and will suffer irreparable damage unless defendants are enjoined from breaching their fiduciary duties and from carrying out the aforesaid plan and scheme.

WHEREFORE, plaintiff prays for the following relief:

1. That the court certify this action as a class action pursuant to Rule 23 and/or Rule 23.1 of the Colorado Rules of Civil Procedure.

2. That the court issue an injunction both preliminarily and permanently enjoining the consummation of the Proposed Acquisition of Synergen by Amgen.

3. Alternatively, that the court award the plaintiff class compensatory and punitive damages which will be proved at trial.

4. That the court award cost disbursements, attorney fees, and such other relief as the court deems just and equitable.

PLAINTIFFS REQUEST TRIAL TO A JURY ON ALL ISSUES.

Respectfully submitted this 23rd day of November, 1994.

DYER DONNELLY & LILLEY

By /s/ F. James Donnelly

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ATTORNEYS FOR PLAINTIFFS

CASE NO.

VERIFICATION

BRUCE LIVERGOOD on Behalf of Himself and all others Similarly Situated, and Derivatively on Behalf of Synergen, a Delaware Corporation

Plaintiff,

v.

SYNERGEN, INC., AMGEN, INC., ROBERT F. HENDRICKSEN, GREGORY B. ABBOTT, LARRY SOLL, ROBERT C. THOMPSON, DAVID I. HIRSH, ARTHUR HAYS, JR., KENNETH J. COLLINS, BARRY MAC TAGGART, GLENN S. UTT JR.

and

SYNERGEN, INC., a Delaware Corporation, A Nominal Defendant

Defendants.

F. James Donnelly hereby states and deposes as follows:

1. I am one of the Plaintiff's attorneys in this case.

2. I have read the Verified Class Action and Derivative Action Complaint and Jury Demand and have along with my co-counsel investigated the facts alleged therein.

3. Upon information and belief all factual allegations stated are true and correct.

/s/ F. JAMES DONNELLY

F. James Donnelly

Dated: Nov. 23, 1994

STATE OF COLORADO )
) ss.
COUNTY OF DENVER )

Subscribed and sworn to this 23rd day of November, 1994 by F. James Donnelly.

Witness my hand and official seal. My commission expires .

/s/ CARRIE J. GORDON

-----  
Notary Public

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

CASE NO.

-----  
VERIFIED CLASS ACTION AND DERIVATIVE ACTION COMPLAINT AND JURY DEMAND  
-----

JOHN WELD, SR. and GERALD TOPIEL, on Behalf of Themselves and all others  
Similarly Situated, and Derivatively on Behalf of Synergen, a Delaware  
Corporation,

Plaintiffs,

v.

AMGEN, INC., ROBERT F. HENDRICKSEN, GREGORY B. ABBOTT, LARRY SOLL, ROBERT C.  
THOMPSON, DAVID I. HIRSH, ARTHUR HAYS JR., KENNETH J. COLLINS, BARRY MAC  
TAGGART, GLENN S. UTT JR.

and

SYNERGEN, INC., a Delaware Corportion, a Nominal Defendant.

-----  
Plaintiffs, by and through their attorneys, hereby complain and allege  
as follows:

I. PARTIES  
-----

1. Plaintiff John Weld, Sr. is and was at the time of the commission  
of the wrongful acts complained of herein a shareholder of Synergen Inc.  
Plaintiff brings this action derivatively on behalf of and for the benefit of  
Synergen (or its successor), named as a nominal defendant herein, as a class  
action for the other minority shareholders of Synergen.

2. Plaintiff Gerald Topiel is and was at the time of the commission of  
the wrongful acts complained of herein a shareholder of Synergen, Inc.  
Plaintiff brings this action derivatively on behalf of and for the benefit of  
Synergen (or its

successor), named as a nominal defendant herein, as a class action for the other minority shareholders of Synergen.

3. Defendant Synergen is a Delaware corporation with its principal place of business in Boulder, Colorado. Synergen is a biopharmaceutical company engaged in the discovery, development and manufacture of protein-based pharmaceuticals.

4. Defendant Amgen, Inc. ("Amgen") is a corporation with its principal place of business in Thousand Oaks, California. Amgen, the world's largest biotechnical company, discovers, develops, manufactures and markets human therapeutics based upon advanced cellular and molecular biology.

5. Defendant Larry Soll is at all times relevant hereto, the Chairman of the Board and Chief Executive Officer of Synergen.

6. Defendants Robert F. Hendrickson, Gregory B. Abbott, Robert C. Thompson, David I. Hirsh, Arthur Hays, Jr., Kenneth J. Collins, Barry Mac Taggart and Glenn S. Utt, Jr. are at all times relevant hereto, officers and/or directors of Synergen.

7. The defendants referenced in paragraphs 4 and 5 above will be referred to collectively herein as the "Individual Defendants."

8. Because of the Individual Defendants' positions with Synergen as officers and directors, said individuals are in a fiduciary relationship with plaintiffs and other public stockholders of Synergen and owe plaintiffs and other members of

the class the highest obligations of fidelity, good faith, prudence, fair dealing, and full, candid and adequate disclosure.

II. CLASS ACTION AND DERIVATIVE ALLEGATIONS

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9. Plaintiffs bring all claims herein as class claims and or derivative claims pursuant to Rules 23 and 23.1 of the Colorado Rules of Civil Procedure. The requirements of subparts 23(a) and (b)(1), (b)(2) and (b)(3) are met with respect to the class defined below.

10. The class consists of all Synergen securities holders or their successors in interest. Excluded from the class are the named defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any of the defendants.

11. Synergen is a publicly traded company with about 25.9 million shares outstanding. The members of the class are so numerous that joinder of all members is impracticable. The exact number of class members can be determined by appropriate discovery.

12. There are common questions of law which predominate over questions affecting any individual class members, including the following:

a. Whether defendants have engaged in conduct constituting unfair dealings to the detriment of the class;

b. Whether certain defendants have breached their fiduciary duties owed by them to plaintiffs and other members of the Class



by failing and refusing to attempt in good faith to maximize shareholder value in connection with the proposed sale of Synergen;

c. Whether the transaction is grossly unfair to the Class;

d. Whether the transaction is unlawful or fraudulent regarding the Class;

e. Whether defendants are engaging in self-dealing;

f. Whether plaintiffs and the Class would be irreparably damaged were the transactions complained of consummated;

g. Whether defendants have breached or aided and abetted the breach of a fiduciary duty and other common law duties owed by them to plaintiffs and other members of the Class; and

h. Whether plaintiffs and the other members of the class will be injured by the Proposed Acquisition, and, if so, what is the proper remedy and/or measure of damages.

13. The prerequisites to maintaining a class action for injunctive relief exist:

a. If injunctive relief is not granted, great harm and irreparable injury to

plaintiffs and the members of the class will continue.

b. Plaintiffs and the members of the class have no adequate remedy at law for the injuries which are threatened, in that absent action from this court, a proposed transaction may be consummated to the detriment of the class members.

14. Plaintiffs have the same interests in this matter as all other members of the class, and their claims are typical of all members of the class.

15. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in class action litigation. Plaintiffs will fairly and adequately represent the interests of the class members.

16. The prosecution of separate actions by members of the class would create a risk of establishing incompatible standards of conduct for the defendants.

17. Defendants' actions are generally applicable to the class as a whole, and plaintiffs seek, inter alia, equitable remedies with respect to the class as a whole.

18. The common questions of law and fact enumerated above predominate over questions affecting only individual members of the class, and a class action is the superior method for fair and efficient adjudication of the controversy. Plaintiffs' counsel,

highly experienced in class actions, foresee little difficulty in the management of this case as a class action.

19. Plaintiffs have made no attempt to obtain the action sought in this lawsuit though [sic] a demand upon the Board of Directors in that the proposed transaction has already been approved by the Board of Directors of Synergen and any demand would therefor be futile.

III. GENERAL ALLEGATIONS

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20. In late 1992, Synergen was engaged in the development of a drug called Antril. Antril was an interleukin-1 receptor antagonist (IL-1ra) intended for use in the treatment of sepsis. In reliance upon several public statements concerning the viability of Antril, stock rose as high as \$65.372 per share.

21. On February 22, 1993, Synergen announced that, contrary to previous publicity, Antril's benefits were limited to only patients who had the highest risk of death from sepsis. Due to that news, Synergen stock plummeted to \$13.50 per share, a 67% drop in price.

22. Worse yet, on July 19, 1994, Synergen announced another failure of Antril. Previously believed to aid mortally ill patients; "double blind" tests of Antril showed little or no improvement upon patients who were administered a placebo. Synergen stock dipped to \$4.50 per share. At that time, defendant Abbott declared Synergen a "good candidate for a merger."

23. At the time the Antril debacle was announced, Synergen was also conducting clinical trials for a drug called Ciliary Neurotrophic Factor ("CNTF"), a possible cure for Lou Gehrig's disease. The possibilities of success of CNTF are hopeful.

24. In addition to its interest in Synergen's development of CNTF, Amgen has stated that it is "particularly enthusiastic" about Glial Derived Neutrophic [sic] Factor ("GDNF"), which Synergen is actively developing as a cure for Parkinson's disease.

25. Synergen also possesses some \$120 million in cash, and a manufacturing plant in Boulder, Colorado worth at least \$45 million. Having reduced its work force, Synergen's possibilities of recovery are good.

26. On November 18, 1994, it was announced that Amgen agreed to buy Synergen for approximately \$250 million, or \$9.25 per share. The sum represents one-eighth of Synergen's peak share price. The deal is valued at approximately \$250 million, despite the fact that Synergen's hard assets alone as of September 30, 1994 were valued at approximately \$180 million, and Synergen possesses tax loss carry-forwards of approximately \$200 million.

27. Amgen will commence a cash tender offer for Synergen no later than November 29, 1994, and the transaction is expected to be concluded by December 31, 1994 (the "Proposed acquisition").

28. The defendants' failure to reveal material facts regarding Synergen's financial status, and the true prospects and/or status regarding GDNF, Tumor Necrosis Factor Binding

Protein ("TNFbp") and CNTF (which is in phase three clinical trials with the results to be announced in the upcoming quarter), would result in grossly inadequate consideration being paid to class members in the Proposed Acquisition. As a result of the defendants' fraudulent nondisclosure, the Proposed Acquisition price would be unconscionable, unfair and grossly inadequate for the following reasons:

a. the intrinsic value of Synergen's common stock is materially in excess of the amount pursuant to the Proposed Acquisition and fails to give due consideration to: (i) the value of those drugs currently in Synergen's "pipeline;" and (ii) Synergen's present and projected net asset value, tax benefits, potential revenue and earnings.

b. the consideration agreed upon did not result from an appropriate consideration of the value of Synergen because the Individual Defendants approved the Proposed Acquisition on the terms set forth in the Agreement without adopting proper procedures for Synergen's value to be accurately ascertained through open bidding or at least a "market check" mechanism.

29. The Defendants have thus far failed to announce any active auction or open bidding procedures best calculated to

maximize shareholder value and have, instead, agreed to the definitive agreement which will only serve to inhibit the maximization of shareholder value. Synergen's stockholders will have no effective option other than to accept the unfair terms proposed in the Acquisition agreement.

30. The provisions of C.R.S. Section 7-113-102, Section 7-113-103, and Section 7-113-201 et. seq. are inapplicable to this action because the proposed merger is unlawful or fraudulent with regard to the class.

FIRST CLAIM FOR RELIEF (BREACH OF FIDUCIARY DUTY)

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31. The General Allegations are incorporated herein by this reference.

32. Synergen and the individual defendants, by virtue of their positions over the plaintiff class, have a duty of fidelity, good faith, prudence, fair dealing, and full disclosure.

33. The Defendants, aided and abetted by Amgen, have violated their fiduciary duties to Synergen and its public stockholders in that they have failed to maximize shareholder value by failing to reveal material information regarding certain drugs in Synergen's pipeline, failing to apprise the market of the real benefits of Synergen's tax loss carry-forwards, failing to actively pursue the acquisition of Synergen by other companies or conducting an adequate market check and otherwise failing to take other steps to protect the interests of the class.

34. As a result of defendants' breach of fiduciary duty, plaintiffs have suffered damages which will be proven at trial.

SECOND CLAIM FOR RELIEF (FRAUD BY OMISSION)  
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35. The General Allegations are incorporated herein by this reference.

36. Defendants had a duty to disclose the true prospects for GDNF, CNTF, TNFbp and certain other drugs in Synergen's "pipeline," as well as the true economic and tax benefits to be derived by Amgen as a result of the Proposed Acquisition, all of which were material facts in relation to the Proposed Acquisition.

37. Defendants failed to disclose the facts with the intent of creating a false impression of the actual facts in the minds of the plaintiff class.

38. Defendants concealed the facts with the intent that the plaintiff class would take a course of action they otherwise would not have taken, that is, refused to accept the tendered merger price.

39. While the plaintiff class has not approved the merger, it may do so, relying upon facts and impressions which are inaccurate.

40. The plaintiff class's reliance upon the misimpression is justified.

41. As a result of the plaintiff class's reliance, the plaintiff class will suffer damages, which will be proven at trial.

## THIRD CLAIM FOR RELIEF (INJUNCTION)

-----

42. The General Allegations are incorporated herein by this reference.

43. Plaintiff class is entitled to an injunction, both preliminarily and permanently enjoining the Acquisition of Synergen by Amgen.

44. The plaintiff class has no adequate remedy at law and will suffer irreparable damage unless defendants are enjoined from breaching their fiduciary duties and from carrying out the aforesaid plan and scheme.

WHEREFORE, plaintiffs pray for the following relief:

1. That the court certify this action as a class action pursuant to Rule 23 and/or Rule 23.1 of the Colorado Rules of Civil Procedure.

2. That the court issue an injunction both preliminarily and permanently enjoining the consummation of the Proposed Acquisition of Synergen by Amgen.

3. Ordering the individual defendants to carry out their fiduciary duties to plaintiffs and the other members of the Class by announcing their intention to:

- a. cooperate fully with any entity or person having a bona fide interest in proposing any transaction that would maximize shareholder value, including but not limited to, a full buy-out or takeover of the Company;



b. immediately undertake an appropriate evaluation of Synergen's worth as a merger/acquisition candidate;

c. take all appropriate steps to enhance Synergen's value and attractiveness as a merger/acquisition candidate;

d. take all appropriate steps to expose Synergen to the marketplace, thereby facilitating an active auction of the Company;

e. act independently so that the interests of the Company's public shareholders will be protected; and

f. adequately ensure that no conflicts of interest exist between the individual defendants' own interest and their fiduciary obligation to maximize shareholder value or, in the event such conflict exists, to ensure that all conflicts of interest are resolved in the best interests of the public shareholders of Synergen.

4. Alternatively, that the court award the plaintiff class compensatory and punitive damages which will be proven at trial.

5. That the court award cost disbursements, attorney fees, and such other relief as the court deems just and equitable.

PLAINTIFFS REQUEST TRIAL TO A JURY ON ALL ISSUES.

Respectfully submitted this 29th day of November, 1994.

DYER DONNELLY & LILLEY

By /s/ F. James Donnelly

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ATTORNEYS FOR PLAINTIFFS

CASE NO.

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VERIFICATION  
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JOHN WELD, SR. and GERALD TOPIEL, on Behalf of Themselves and all others  
Similarly Situated, and Derivatively on Behalf of Synergen, a Delaware  
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Plaintiffs,

v.

AMGEN, INC., ROBERT F. HENDRICKSEN, GREGORY B. ABBOTT, LARRY SOLL, ROBERT C.  
THOMPSON, DAVID I. HIRSH, ARTHUR HAYS JR., KENNETH J. COLLINS, BARRY MAC  
TAGGART, GLENN S. UTT JR.

and

SYNERGEN, INC., a Delaware Corporation, a Nominal Defendant.

-----  
F. James Donnelly hereby states and deposes as follows:

1. I am one of the attorneys for plaintiffs in this case.

2. I have read the Verified Class Action and Derivative Action  
Complaint and Jury Demand and have, along with my co-counsel, investigated  
the facts alleged therein.

3. Upon information and belief, all factual allegations stated therein  
are true and correct.

DATED this 29th day of November, 1994.

/s/ F. JAMES DONNELLY

-----  
F. James Donnelly

STATE OF COLORADO                    )  
  ) ss.  
CITY AND COUNTY OF DENVER         )

Subscribed and sworn to before me this 29th day of November, 1994, by  
F. James Donnelly.

My Commission Expires: 1-24-96

/s/ Joyce A. Bickel  
-----  
Notary Public