

1 Pursuant to Rule 33 of the Alaska Rules of Civil Procedure, Defendant
2 Boehringer Ingelheim Roxane, Inc. f/k/a Roxane Laboratories, Inc. requests that the
3 State of Alaska answer the Interrogatories below under oath within 30 days after
4 service.

5 **INSTRUCTIONS**

6 These Interrogatories are subject to the following instructions:

7 A. The Interrogatories are not limited to information in the possession of the
8 State of Alaska's Medicaid Program, but include information in the possession of
9 Alaska's executive, administrative, and legislative offices and agencies as well as
10 contractors and agents of the State, including, but not limited to, the fiscal agent for the
11 State's Medical Assistance Programs.

12 B. If You find the meaning of any term in the Interrogatories to be unclear,
13 then You should assume a reasonable meaning, state what the assumed meaning is,
14 and answer the Interrogatory on the basis of that assumed meaning.

15 C. The responses, under oath, to each Interrogatory shall include all
16 information within Your custody, possession, or control, or that of Your attorneys,
17 investigators, agents, employees, experts retained by You, Your attorneys, or other
18 representatives.

19 D. To the extent that the answer to any Interrogatory varies for any of the
20 agencies defined as the "State," each agency should answer separately.

21 E. If You cannot answer an Interrogatory after exercising due diligence to
22 secure the information to do so: (i) answer to the extent possible; (ii) state the basis for
23 Your inability to answer the remainder; (iii) state whatever information or knowledge
24 You have concerning the unanswered portion; and (iv) specify the type of information
25 that You contend is not available, the reason the information is not available to You,
26 and what You have done to locate such information.

27 F. If You decline to answer all or part of an Interrogatory based on a claim of
28 privilege or immunity: (i) answer to the extent possible, and (ii) state the specific
29 grounds for not answering in full and the facts You contend support Your assertion of a

1 privilege or immunity, providing sufficient information to enable the claim of privilege or
2 immunity to be adjudicated.

3 G. When an Interrogatory asks You to “state the basis” of or for a particular
4 claim, assertion, allegation, or contention, please

- 5 (i) identify each and every Document (and, where pertinent, the
6 section, article, or subparagraph thereof), which forms any part of
7 the source of the party’s information regarding the alleged facts or
8 legal conclusions referred to by the Interrogatory;
- 9 (ii) identify each and every Communication, which forms any part of the
10 source of the party’s information regarding the alleged facts or legal
11 conclusions referred to by the Interrogatory;
- 12 (iii) state separately the acts or omissions to act on the part of any
13 Person (identifying the acts or omissions to act by stating their
14 nature, time, and place and identifying the Persons involved) which
15 form any part of the party’s information regarding the alleged facts
16 or legal conclusions referred to in the Interrogatory; and
- 17 (iv) state separately any other facts, which form the basis of the party’s
18 information regarding the alleged facts or conclusions, referred to in
19 the Interrogatory.

18 **DEFINITIONS**

19 1. As used herein, the phrases “Actual Acquisition Cost” or “AAC” mean the
20 net price (after discounts or rebates) that a healthcare provider or pharmacist pays to
21 purchase a prescription drug intended for resale.

22 2. As used herein, the phrase “Alaska Medicaid” refers to Alaska’s Medicaid
23 program administered by the Alaska Department of Health and Social Services.

24 3. As used herein, the phrase “AMP” means “Average Manufacturer Price”
25 and shall have the meaning set forth in 42 U.S.C. § 1396r-8(k)(1).

26 4. As used herein, the phrase “APHSA” means the American Public Human
27 Services Association.

1 5. As used herein, the phrase "Assurance Letters" refers to correspondence
2 from the State to the federal government representing that its calculation of EAC is its
3 best estimate of the price generally and currently paid by providers for a drug pursuant
4 to 42 CFR § 447.301.

5 6. As used herein, "AWP" means "Average Wholesale Price".

6 7. As used herein, the phrase "Best Price" shall have the meaning set forth in
7 42 U.S.C. § 1396r-8(c)(1)(C).

8 8. As used herein, "CMS" means the United States Centers for Medicare and
9 Medicaid Services and all its agents, employees, commissioners, and anyone else
10 acting on its behalf and its sub-agencies and departments, any of its predecessors,
11 including the Health Care Finance Administration, the Social Rehabilitative Service, and
12 the Department of Health, Education & Welfare.

13 9. As used herein, the term "Communication" means any form of written or
14 oral Communication, including, without limitation, letters, memoranda, electronic mail,
15 voicemail, telegrams, invoices, telephone conversations, face-to-face meetings and
16 other similar forms of Communication or correspondence. All such communications in
17 writing shall include, without limitation, printed, typed, handwritten, or other readable
18 documents, whether in hardcopy, electronic mail or stored electronically on a computer
19 disk or otherwise, contracts, correspondence, diaries, drafts (initial all and subsequent),
20 forecasts, invoices, letters, logbooks, memoranda, minutes, notes, reports, statements,
21 studies, surveys and any and all non-identical copies thereof.

22 10. As used herein, the word "Complaint" and the phrase "Amended
23 Complaint" both mean the October 27, 2006 Amended Complaint filed by the State of
24 Alaska in this case, Case Number 3AN-06-12026 CI.

25 11. As used herein, the phrases "Concern", "Concerning", "Relate to",
26 "Regarding", or "Relating to" mean directly or indirectly referring to, relating to,
27 regarding, constituting, comprising, containing, setting forth, summarizing, reflecting,
28 stating, describing, recording, noting, embodying, mentioning, studying, analyzing,
evidencing, discussing, or evaluating.

1 12. As used herein, "Congress" means the legislative branch of the U.S.
2 Government, individual members of Congress, and any congressional committees or
3 subcommittees, including, but not limited to, the Congressional Budget Office, Senate
4 Finance Committee, the House Committee on Ways and Means, the House Committee
5 on Energy and Commerce, the Subcommittee on Oversight and Investigations of the
6 House Committee on Energy and Commerce, and all other branches, agencies,
7 committees, or departments, including the administrators, staff, employees, agents,
8 consultants, accountants, or attorneys of any of the foregoing.

9 13. As used herein, the phrase "Defendants" means the defendants identified
10 in the caption of the Amended Complaint as the defendants in this matter, Case No.
11 3AN-06-12026, that have not been dismissed from this action and that have entered an
12 unqualified appearance in this action.

13 14. As used herein, the word "Describe" means to describe fully by reference
14 to underlying facts rather than by ultimate facts or conclusions of facts or law and to
15 particularize as to time, place and manner.

16 15. As used herein, the phrases "DP", "Direct Price", or "List Price" means any
17 figures so categorized and periodically published by a Publisher.

18 16. As used herein, "DHSS" means the Alaska Department of Health and
19 Social Services (as well as its predecessor agencies).

20 17. As used herein, the phrases "EAC" or "Estimated Acquisition Cost" shall
21 have the meaning ascribed to that term pursuant to 42 C.F.R. § 447.301.

22 18. As used herein, the phrase "Federal Agencies" means CMS, Health Care
23 Financing Administration and all its predecessors, including the Social Rehabilitative
24 Service and the Department of Health, Education & Welfare, the United States
25 Department of Health and Human Services, the Office of the Inspector General, or the
26 United States Department of Justice and all their agents, employees, commissioners,
27 and anyone else acting on their behalf.

28 19. As used herein, the term "Findings" means any conclusions or statements
of fact or rationale supporting a determination, proposal regulation, or statute

1 concerning reimbursement for any pharmaceutical product, including, but not limited to,
2 findings pursuant to 42 C.F.R. § 447.333.

3 20. As used herein, "FUL" means "Federal Upper Limit," the ceiling
4 established by the U.S. Government for reimbursement of certain drugs dispensed to
5 Medicaid beneficiaries, and shall have the meaning ascribed to that term pursuant to 42
6 C.F.R. § 447.332.

7 21. As used herein, "GAO" means "General Accounting Office" and all its
8 employees, agents, attorneys, agencies, committees, or affiliates.

9 22. As used herein, "HCFA" refers to the "Health Care Financing
10 Administration," its predecessor and successor agencies and all branches, agencies,
11 committees, or departments, including the administrators, staff, employees, agents,
12 consultants, accountants, or attorneys of any of the foregoing. "CMS" and "HCFA"
13 mean the same agency and are used interchangeably throughout the requests.

14 23. As used herein, "HCPCS" means the "Healthcare Common Procedural
15 Coding System," the medical code set used by CMS that identifies health care
16 procedures, equipment, and supplies for claim submissions purposes.

17 24. As used herein, "HHS" means the United States Department of Health and
18 Human Services, including all its agents, employees, commissioners, and anyone else
19 acting on its behalf and its sub-agencies and departments, and any of its predecessors,
20 with respect to drug pricing or reimbursement.

21 25. As used herein, the phrase "J Code" refers to the subset of HCPCS code
22 set with a high-order value of "J" that has been used to identify certain drugs and other
23 items.

24 26. As used herein, the phrases "MAC" or "Maximum Allowable Cost" shall
25 have the meaning set forth in 42 C.F.R. § 50.504 and shall include, but is not limited to,
26 any MAC used by a PBM or Third Party Payor, and shall include any MAC which
27 preceded the FUL instituted by statute in 1986.

28 27. As used herein, the phrase "Medicaid" means the jointly funded federal-
state health insurance program enacted in 1965 under Title XIX of the Social Security
Act to pay for the costs of certain healthcare expenses of eligible Beneficiaries.

1 28. As used herein, the phrase "Medicare Carrier" means any private
2 insurance company contracted by CMS to administer Medicare benefits to
3 beneficiaries.

4 29. As used herein, the phrase "Medicaid Drug Rebate Program" means and
5 refers to the program established by the Omnibus Budget Reconciliation Act of 1990,
6 42 U.S.C. § 1396r-8, as amended by the Veterans Health Act of 1992, whereby drug
7 manufacturers have national drug rebate agreements with HHS and a pricing
8 agreement with HHS for the Public Health Service Section 340B Drug Pricing Program.

9 30. As used herein, the phrase "Medicaid Intermediary" means and refers to
10 any insurance company or other entity that has contracted with any State Medicaid
11 Program to process claims for reimbursement of drugs, develop preferred drug lists,
12 provide guidance on changes to reimbursement methodologies, or provide advice on
13 cost savings, including its administrators, staff, employees, agents, consultants,
14 accountants, or attorneys.

15 31. As used herein, the phrase "Medicaid Rebate" means the rebate described
16 in 42 U.S.C. § 1396r-8 or any agreement thereunder.

17 32. As used herein, the phrase "Medicaid State Plans" shall have the meaning
18 set forth in 42 C.F.R. § 447.333.

19 33. As used herein, the phrase "Multiple Source Drug" means a drug marketed
20 or sold by two or more manufacturers or labelers or a drug marketed or sold by the
21 same manufacturer or labeler under two or more different proprietary names or both
22 under a proprietary name and without such a name.

23 34. As used herein, the phrases "National Drug Code" or "NDC" means the
24 unique 11-digit code assigned to each prescription drug product sold in the United
25 States by the U.S. Food and Drug Administration.

26 35. As used herein, "PBM" means pharmacy benefits manager.

27 36. As used herein, the phrase "Person" means any natural person or any
28 business, corporation, partnership, proprietorship, association, organization,
governmental entity, group of Persons, or other entity of whatever nature.

1 37. As used herein, the terms "Plaintiff," "You," "Your," "State," or "Alaska"
2 refer to the State of Alaska, including, but not limited to, the legislative and executive
3 branches and all their specific agencies such as the Alaska Department of Health and
4 Social Services, Alaska Medical Care Advisory Committee, Office of the Governor,
5 Department of Corrections, Department of Revenue, the Department of Law, the
6 Department of Administration, and any other agencies that purchase or pay for
7 prescription drugs and any other administrative bodies, legislative agencies, all
8 successors and predecessors, and officials, agents, employees, commissions, boards,
9 divisions, departments, agencies, instrumentalities, administrators and other Persons or
10 entities acting on their behalf and/or involved in administering, overseeing, or
11 monitoring any State program, including Medicaid, that provides reimbursement for
12 pharmaceutical products.

12 38. As used herein, the phrase "Pricing Data" means any information relating
13 to pharmaceuticals drug products, including, but not limited to, AWP, AMP, WAC, Direct
14 Price, Best Price and actual acquisition cost.

15 39. As used herein, the phrases "Provider" or "Providers" means and refers to
16 any and all persons or entities that render health care services to whom Plaintiff
17 provides reimbursement for drugs dispensed to a Medicaid Participant or Beneficiary,
18 including, but not limited to, pharmacists, physicians, nurses, nurse practitioners,
19 physicians' assistants, specialty pharmacy, nursing home personnel, laboratory
20 technicians, x-ray and other medical equipment technicians, and other hospital or
21 physician-office personnel.

22 40. As used herein, the phrases "Publisher," "Publishers," or "Pricing
23 Compendia" means any pharmaceutical data publishing service, including, but not
24 limited to, Red Book, First Data Bank, Blue Book, and Medi-Span, their predecessors
25 and successors, and all employees, agents, consultants, accountants, or attorneys of
26 any of the foregoing.

27 41. As used herein, "PSSC" means Pharmacy Services Support Center, which
28 provides assistance to the Health Resources and Services Administration's Pharmacy
Affairs Branch ("PAB") in administering the Public Health Service 340B Drug Discount

1 Program, including its administrators, staff, employees, agents, consultants,
2 accountants, or attorneys.

3 42. As used herein, the phrases "Reimbursement Rate" or "Reimbursement
4 Methodology" mean the formula used by Alaska (including all individual Alaska
5 government agencies) to calculate the amount of payment designated by Medicaid or
6 DHSS to reimburse healthcare providers for administering or dispensing
7 pharmaceutical drug products to a beneficiary.

8 43. As used herein, the phrase "Relevant Claim Period" refers to the time
9 period for which the State of Alaska seeks damages from the defendants for the alleged
10 conduct in the Amended Complaint.

11 44. As used herein, the term "Roxane" refers to defendant Boehringer
12 Ingelheim Roxane, Inc. f/k/a Roxane Laboratories, Inc.

13 45. As used herein, the phrase "Subject Drugs" means all drugs You contend
14 are at issue in this lawsuit, viz., those drugs You identified in Your June 1, 2007 Target
15 Drug List, for which You contend the AWP or WAC was inflated or manipulated, or upon
16 which You otherwise contend that You are entitled to obtain relief (whether damages or
17 other relief) in this lawsuit.

18 46. As used herein, the phrase "Third Party Administrator" means any entity
19 that provides administrative services to You concerning any medical benefit provided to
20 any Participant or Beneficiary.

21 47. As used herein, the phrase "Utilization Data" means the information that
22 each state agency is required to report to drug manufacturers pursuant to 42 U.S.C. §
23 1396r-8(b)(2)(A).

24 48. As used herein, the phrases "Wholesale Acquisition Cost" or "WAC"
25 means any price represented by any Defendant as a price to any entity that purchases
26 pharmaceutical products from a Manufacturer and resells such pharmaceutical products
27 to any other Person and/or Provider, or any price periodically published as WAC by a
28 Publisher, or WAC as used by You in the Complaint or any amendment thereto.

49. In these Interrogatories, the singular of any word is meant to also include
the plural of that word and vice versa.

1 **INTERROGATORIES**

2 **INTERROGATORY NO. 1:**

3 Identify all departments and agencies of the State of Alaska that purchased or
4 reimbursed a Provider for prescription drugs from 1995 to the present.

5 **INTERROGATORY NO. 2:**

6 Identify all reimbursement methodologies You have ever used or considered
7 using to reimburse for physician-administered drugs under the Alaska Medicaid
8 Program with the dates for each methodology. (For implemented methodologies, the
9 dates should reflect the dates each Reimbursement Methodology was in effect; for
10 those methodologies considered but not implemented, the dates should reflect the time
11 frame in which the methodology was being considered.)

12 **INTERROGATORY NO. 3:**

13 For each reimbursement methodology identified in response to the previous
14 interrogatory, identify the Person(s) most knowledgeable about the methodology (both
15 considered methodologies and implemented methodologies).

16 **INTERROGATORY NO. 4:**

17 Identify all reimbursement methodologies that You have ever used or considered
18 using to reimburse for pharmacy claims under the Alaska Medicaid Program with the
19 dates for each methodology. (For implemented methodologies, the dates should reflect
20 the dates each Reimbursement Methodology was in effect; for those methodologies
21 considered but not implemented, the dates should reflect the time frame in which the
22 methodology was being considered.)

23 **INTERROGATORY NO. 5:**

24 For each reimbursement methodology identified in response to the previous
25 interrogatory, identify the Person(s) most knowledgeable about each methodology (both
26 considered methodologies and implemented methodologies).

27 **INTERROGATORY NO. 6:**

28 Please describe in detail Your use of the DOJ Medicaid AWP's (including when
they were used, how they were used, who used them, and the purpose of the use).

1 **INTERROGATORY NO. 7:**

2 Identify all Persons involved in any way since 1995 in Your preparation of
3 Assurance Letters to any piece of the U.S. Government representing that Your EAC, as
4 calculated, was the best estimate of the prices that Providers were, at the time,
5 currently and generally paying for drugs.

6 **INTERROGATORY NO. 8:**

7 Identify all Persons with any knowledge that, at any time, Alaska's AWP based
8 reimbursement to Providers for pharmaceutical products might result in reimbursement
9 amounts in excess of Providers' Actual Acquisition Costs.

10 **INTERROGATORY NO. 9:**

11 Explain in detail, and identify all documents Relating to, how and when You first
12 became aware that Providers could obtain prescription drugs at prices lower than
13 published AWP.

14 **INTERROGATORY NO. 10:**

15 Identify any State medical assistance program (including, but not limited to, any
16 program within the Alaska Department of Health Services, the Alaska Department of
17 Public Health, the Alaska Department of Social Services, the Alaska Department of
18 Mental Health, the University of Alaska, and the Alaska Department of Corrections and
19 Rehabilitation) that has used AWP in its Reimbursement Methodology for Providers and
20 for which the State seeks damages in this case.

21 **INTERROGATORY NO. 11:**

22 Identify any State medical assistance program (including, but not limited to, any
23 program within the Alaska Department of Health Services, the Alaska Department of
24 Public Health, the Alaska Department of Social Services, the Alaska Department of
25 Mental Health, the University of Alaska, and the Alaska Department of Corrections and
26 Rehabilitation) that has used a reimbursement methodology for pharmaceutical
27 products other than AWP.

28 **INTERROGATORY NO. 12:**

Identify the date on which the State of Alaska began seeking rebates for
physician-administered drugs administered under its medical assistance programs.

1 **INTERROGATORY NO. 13:**

2 Identify all departments, state agencies, federal agencies, boards, commissions,
3 organizations, consultants, accountants, task forces, or any other entity, including the
4 members of such entities, that have reviewed or analyzed, at any time, Your
5 reimbursement of or expenditures for pharmaceutical products or dispensing fees,
6 including, but not limited to, any State "medical care advisory committee" (42 C.F.R. §
7 431.12(b)).

8 **INTERROGATORY NO. 14:**

9 For each reimbursement amount based on a percentage adjustment from a
10 benchmark (such as AWP) that the State of Alaska has used or considered using to
11 reimburse Providers for pharmaceutical products, explain the policy or other reasons for
12 the percentage adjustment, and any Findings Regarding the impact of any such
13 adjustments on Medicaid Beneficiaries, including, but not limited to, any assessments,
14 studies, analyses, reviews, plans, reports, or audits conducted on the possible effect
15 various reimbursement amounts or methodologies could potentially have, or were
16 having, on beneficiary access to medicine or medical treatment, and all Persons who
17 were involved in the assessments, studies, analyses, reviews, plans, reports, or audits.

18 **INTERROGATORY NO. 15:**

19 Identify each Third Party Administrator, fiscal agent, Benefits Consultant, other
20 consultant, or PBM that was contacted, considered, retained, or hired by You to perform
21 any services for You Concerning pharmaceutical product prices, costs, reimbursement,
22 utilization, or benefits, and Describe the activity that Person performed or was
23 considered for, and the period of time during which that Person was contracted,
24 considered, retained, or hired by You.

25 **INTERROGATORY NO. 16:**

26 For each of Roxane's Subject Drugs, identify any drugs "with greater medicinal
27 value," as that phrase is used in paragraph 58 of the Complaint.
28

1 **INTERROGATORY NO. 17:**

2 For Roxane's Subject Drugs, identify those for which You contend Roxane used
3 AWP in any way to obtain (a) increased sales; (2) market share; or (3) profits at the
4 expense of Alaska, as alleged in paragraph 91 of the Complaint.

5 **INTERROGATORY NO. 18:**

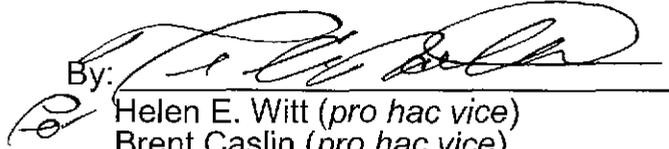
6 For any of Roxane's Subject Drugs identified in response to the previous
7 Interrogatory, state the original market share, the increased market share, and the
8 competitor(s) whose market share(s) were decreased.

9 **INTERROGATORY NO. 19:**

10 Identify the name, title, telephone number, address, and email address of any
11 present or former employee(s) of the State of Alaska who assisted in responding to any
12 of these Interrogatories or any of the Requests for Production in the Defendants' First
13 Set of Requests for Production of Documents to Plaintiff State of Alaska, specifying the
14 dates each such person was employed by the State and which Interrogatories or
15 Requests for Production each such person assisted in preparing.

16 DATED: November 28, 2007

Respectfully submitted:

17
18 By: 
19 Helen E. Witt (*pro hac vice*)
20 Brent Caslin (*pro hac vice*)
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