



1 Pursuant to Rule 33 of the Alaska Rules of Civil Procedure, the Defendants  
2 jointly request that the State of Alaska answer the Interrogatories below under oath  
3 within 30 days after service.

4 **INSTRUCTIONS**

5 These Interrogatories are subject to the following instructions:

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

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

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

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

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

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

1 **DEFINITIONS**

2 1. As used herein, the phrase "Alaska Medicaid" refers to Alaska's Medicaid  
3 program administered by the Alaska Department of Health and Social Services.

4 2. As used herein, the phrase "AMP" means "Average Manufacturer Price"  
5 and shall have the meaning set forth in 42 U.S.C. § 1396r-8(k)(1).

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

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

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

15 6. As used herein, the phrases "Concern", "Concerning", "Relate to",  
16 "Regarding", or "Relating to" mean directly or indirectly referring to, relating to,  
17 regarding, constituting, comprising, containing, setting forth, summarizing, reflecting,  
18 stating, describing, recording, noting, embodying, mentioning, studying, analyzing,  
19 evidencing, discussing, or evaluating.

20 7. As used herein, the phrase "Defendants" means the defendants identified  
21 in the caption of the Amended Complaint as the defendants in this matter, Case No.  
22 3AN-06-12026, that have not been dismissed from this action and that have entered an  
23 unqualified appearance in this action.

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

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

10. As used herein, "FUL" means "Federal Upper Limit," the ceiling  
established by the U.S. Government for reimbursement of certain drugs dispensed to

1 Medicaid beneficiaries, and shall have the meaning ascribed to that term pursuant to 42  
2 C.F.R. § 447.332.

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

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

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

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

15 15. As used herein, the phrase "Multiple Source Drug" means a drug marketed  
16 or sold by two or more manufacturers or labelers or a drug marketed or sold by the  
17 same manufacturer or labeler under two or more different proprietary names or both  
18 under a proprietary name and without such a name.

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

22 17. As used herein, "PBM" means pharmacy benefits manager.

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

26 19. As used herein, the terms "Plaintiff," "You," "Your," "State," or "Alaska"  
27 refer to the State of Alaska, including, but not limited to, the legislative and executive  
28 branches and all their specific agencies, such as the Alaska Department of Health and  
Social Services, Alaska Medical Care Advisory Committee, Office of the Governor,  
Department of Corrections, Department of Revenue, the Department of Law, the

1 Department of Administration, and any other agencies that purchase or pay for  
2 prescription drugs and any other administrative bodies, legislative agencies, all  
3 successors and predecessors, and officials, agents, employees, commissions, boards,  
4 divisions, departments, agencies, instrumentalities, administrators and other Persons or  
5 entities acting on their behalf and/or involved in administering, overseeing, or  
6 monitoring any State program, including Medicaid, that provides reimbursement for  
7 pharmaceutical products.

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

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

18 22. As used herein, the phrases "Reimbursement Rate" or "Reimbursement  
19 Methodology" mean the formula used by Alaska (including all individual Alaska  
20 government agencies) to calculate the amount of payment designated by Medicaid or  
21 DHSS to reimburse healthcare Providers for administering or dispensing  
22 pharmaceutical drug products to a beneficiary.

23 23. As used herein, the phrase "Relevant Claim Period" refers to the time  
24 period for which the State of Alaska seeks damages from the Defendants for the  
25 alleged conduct in the Amended Complaint.

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

1           25. As used herein, the phrases "Wholesale Acquisition Cost" or "WAC" mean  
2 any price represented by any Defendant as a price to any entity that purchases  
3 pharmaceutical products from a Manufacturer and resells such pharmaceutical products  
4 to any other Person and/or Provider, or any price periodically published as WAC by a  
5 Publisher, or WAC as used by You in the Complaint or any amendment thereto.

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

### **INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

8           Identify, by Defendant, drug name, NDC, and quarter, the amount You contend  
9 You overpaid for each Subject Drug during the Relevant Claim Period as a result of  
10 each Defendant's alleged misconduct, as described in the Amended Complaint.

#### **INTERROGATORY NO. 2:**

11           Describe in detail the manner in which the amount paid (or the amount the State  
12 allowed to be paid) was determined for the reimbursement claims for which the State  
13 seeks damages and/or penalties in this case. For Medicaid claims reimbursed through  
14 use of J Codes (or any other Reimbursement Methodology not directly tied to a Subject  
15 Drug's NDC), Your response should explain the manner in which the amount paid  
16 and/or the amount allowed was determined. In particular, Your explanation in response  
17 to this interrogatory should (1) Describe how any applicable payment amount was  
18 calculated, (2) identify the array of all prices that were used to determine each payment  
19 amount, (3) identify the source from which the AWP or other Pricing Data was obtained.  
20 Your explanation should contain responsive information applicable to the entire  
21 Relevant Claim Period for each of the Subject Drugs.

#### **INTERROGATORY NO. 3:**

22           For each Subject Drug that is a Multiple Source Drug, identify the period(s) of  
23 time during which Your reimbursement of that drug was based on AWP.

#### **INTERROGATORY NO. 4:**

24           Describe in detail each item of damage for which You seek recovery from the  
25 Defendants in this action, including (i) the amount of damages; (ii) the methodology  
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1 used in calculating or deriving the amount of damages; and (iii) the facts upon which  
2 You rely to support Your claims as to the nature and extent of each item of damages.

3 **INTERROGATORY NO. 5:**

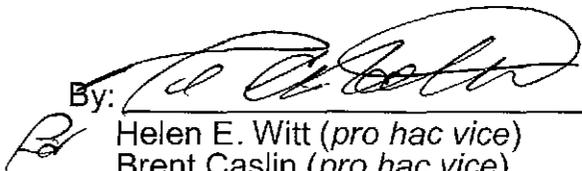
4 Identify any efforts You have made to obtain "the pricing information [You] need[]  
5 to estimate accurately the providers' acquisition cost of defendants' drugs," as  
6 referenced in paragraph 36 of the Complaint, including, but not limited to, the efforts  
7 that resulted in the data that is the basis for Exhibit C to the Amended Complaint.

8 **INTERROGATORY NO. 6:**

9 For your contention in paragraph 71 of the Complaint that FUL "would have been  
10 lower" "had defendants reported truthful prices," state the basis for such claims,  
11 including the date, place and manner of any conduct by any Defendant that You claim  
12 gives rise to such claims, identify the persons with knowledge of the basis of Your  
13 contention, and identify what FULs should have been lower and what the FUL should  
14 have been.

15 DATED: November 28, 2007

Respectfully submitted:

16  
17 By: 

18 Helen E. Witt (*pro hac vice*)  
19 Brent Caslin (*pro hac vice*)  
20 Amanda J. Wong (*pro hac vice*)  
21 Sasha K. Danna (*pro hac vice*)

KIRKLAND & ELLIS LLP

22 By: 

23 Thomas Matthews (Bar No. 8511179)  
24 Kenneth Schoolcraft (Bar No. 8310146)

MATTHEWS & ZAHARE

25 Attorneys for Defendants  
26 BOEHRINGER INGELHEIM  
27 PHARMACEUTICALS, INC.; BOEHRINGER  
28 INGELHEIM ROXANE, INC., F/K/A ROXANE  
LABORATORIES, INC.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on November 28, 2007 a copy to Lexis-Nexis for posting and notification to all parties.

  
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Joyce L. Wylie

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