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8:54AM

James E. Fosler
Fosler Law Group, Inc.
737 West Fifth Avenue, Suite 205
Anchorage, Alaska 99501
Telephone: (907) 277-1557
Fax: (907) 277-1657

Attorneys for Plaintiff State of Alaska

[Additional counsel appear on signature page]

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)	
)	
Plaintiff,)	Case No.: 3AN-06-12026 CI
vs.)	
)	
ALPHARMA BRANDED PRODUCTS)	
DIVISION INC., et al.)	
)	
Defendants.)	

**PLAINTIFF'S RESPONSE TO FIRST SET OF INTERROGATORIES
FROM ALL DEFENDANTS**

Plaintiff State of Alaska hereby responds to the first set of interrogatories from all Defendants in accordance with Alaska's Rules of Civil Procedure and without regard to any Instructions setting forth different, additional, or contrary obligations.

INTERROGATORY NO. 1: Identify, by Defendant, drug name, NDC and quarter, the amount You contend You overpaid for each Subject Drug during the Relevant Claim Period as a result of each Defendant's alleged misconduct, as described in the Amended Complaint.

ANSWER: Defendants are in possession of wholesaler sales information for all Subject Drugs. Defendants can calculate the amount Alaska overpaid for each Subject Drug during the Relevant Claim Period using the claims data produced by Alaska in response to Request 29 of Defendant's First Set of Requests for the Production of Documents to Plaintiff and their own records.

INTERROGATORY NO. 2: Describe in detail the manner in which the amount paid (or the amount the State allowed to be paid) was determined for the reimbursement claims for which the State seeks damages and/or penalties in this case. For Medicaid claims reimbursed through use of J Codes (or any other Reimbursement Methodology not directly tied to a Subject Drug's NDC), Your response should explain the manner in which the amount paid and/or the amount allowed was determined. In particular, Your explanation in response to this interrogatory should (1) Describe how any applicable payment amount was calculated, (2) identify the array of all prices that were used to determine each payment amount, (3) identify the source from which the AWP or other Pricing Data was obtained. Your explanation should contain responsive information applicable to the entire Relevant Claim Period for each of the Subject Drugs.

ANSWER: Alaska reimbursed for Medicaid claims for the Subject Drugs at the lower of the rate of AWP – 5%, FUL, or as billed. *See* documents produced in response to Request 29 of Defendant's First Set of Requests for the Production of Documents to

Plaintiff for identification of the reimbursement rate used for each Subject Drug during the Relevant Claim Period. For J Code drugs, Alaska reimbursed at the rate of the lower of the billed or AWP – 5%.

AWP data was obtained from First DataBank.

INTERROGATORY NO. 3: For each Subject Drug that is a Multiple source Drug, identify the period(s) of time during which Your reimbursement of that drug was based on AWP.

ANSWER: See documents produced in response to Request 29 of Defendant's First Set of Requests for the Production of Documents to Plaintiff.

INTERROGATORY NO. 4: Describe in detail each item of damage for which You seek recovery from the Defendants in this action, including (i) the amount of damages; (ii) the methodology used in calculating or deriving the amount of damages; and (iii) the facts upon which You rely to support Your claims as to the nature and extent of each item of damages.

ANSWER: Alaska seeks to recover the difference between the amount it reimbursed, under the federal Medicaid program, providers of the Subject Drugs between January 1, 1993 and October 1, 2006 and the amount it would have reimbursed those providers during that period had Defendants published or had published true average wholesale prices for the Subject Drugs. The amount of Alaska's damages can be calculated as explained in answer to Interrogatory No. 1, above. Alaska's methodology is to deduct

from the amount it actually reimbursed providers of each Subject Drug during the referenced period the amount it would have reimbursed those providers had Defendants published or had published true average wholesale prices.

INTERROGATORY NO. 5: Identify any efforts You have made to obtain “the pricing information [You] need[] to estimate accurately the providers’ acquisition cost of defendants’ drugs,” as referenced in paragraph 36 of the Complaint, including, but not limited to, the efforts that resulted in the data that is the basis for Exhibit C to the Amended Complaint.

ANSWER: Alaska retained a third party to perform a survey of provider acquisition costs in 1989. See response to request No. 25 of Defendants’ First Set of Requests for Production of Documents. Further, in the course of this litigation, Alaska’s counsel have obtained provider acquisition cost information from various drug wholesalers. Exhibit C to the Amended Complaint is based upon data from AmerisourceBergen.

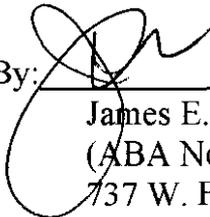
INTERROGATORY NO. 6: For your contention in paragraph 71 of the complaint that FUL “would have been lower” “had defendants reported truthful prices,” state the basis for such claims, including the date, place and manner of any conduct by any Defendant that You claim gives rise to such claims, identify the persons with knowledge of the basis of Your contention, and identify what FULs should have been lower and what the FUL should have been.

ANSWER: The price used by the federal government to establish FULs was in every instance a price higher than the true average wholesale price of a drug. Consequently, Defendants' provision of grossly inflated and false AWP's to publications such as First DataBank rather than true average wholesale prices resulted in each and every FUL being higher than the applicable EAC. Had truthful AWP's been provided or published, Alaska would have reimbursed providers using the EAC rather than the FUL. What the FUL should have been can be calculated from the documents provided to the Defendants in this and other AWP litigation.

FOSLER LAW GROUP, INC.

Attorneys for Plaintiff State of Alaska

Dated: January 31, 2008

By: 

James E. Fosler
(ABA No. 9711055)
737 W. Fifth Ave., Suite 205
Anchorage, Alaska 99501
Telephone: (907) 277-1557
Fax: (907) 277-1657

BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, PC
W. DANIEL MILES, III
CLINTON C. CARTER
218 Commerce Street (36104)
PO Box 4160
Montgomery, AL 36103-4160
Telephone: (334) 269-2343
Fax: (334) 954-7555

MINER, BARNHILL & GALLAND, PC
CHARLES BARNHILL
ELIZABETH J. EBERLE
44 East Mifflin Street, Suite 803
Madison, WI 53703
Telephone: (608) 255-5200
Fax: (608) 255-5380 (fax)

MINER, BARNHILL & GALLAND, PC
GEORGE F. GALLAND, JR.
ROBERT S. LIBMAN
14 West Erie Street
Chicago, IL 60610
Telephone: (312) 751-1170
Fax: (312) 751-0438

VERIFICATION

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

DAVID CAMPANA, being first duly sworn upon oath, deposes and says that he has reviewed the answers to interrogatories, and that they are correct to the best of his knowledge and belief.

David Campana
DAVID CAMPANA

SUBSCRIBED AND SWORN to before me this 31st day of January 2008.



Laura M. Capen
Notary Public in and for Alaska
My Commission Expires: 10-22-08

CERTIFICATE OF SERVICE

Pursuant to Case Management Order No. 1, entered by the Court in this case on December 14, 2006, the undersigned certifies that a copy of the foregoing document was served through the LexisNexis File and Serve ("LNFS") system on January 31, 2008.

James E. Fosler
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