

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 03-CI-1134
DIVISION II**

COMMONWEALTH OF KENTUCKY
ex rel. GREGORY D. STUMBO, ATTORNEY GENERAL

PLAINTIFF

V.

ABBOTT LABORATORIES, INC.

DEFENDANT

* * * * *

**DEFENDANT ABBOTT LABORATORIES INC.'S RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to the Kentucky Rules of Civil Procedure, Defendant Abbott Laboratories Inc. (“Abbott”) asserts the following objections and responses to the First Set of Interrogatories (“Interrogatories”) from Plaintiff Commonwealth of Kentucky *ex rel.* Gregory D. Stumbo, Attorney General (the “Commonwealth”).

PRELIMINARY STATEMENT

- A. In responding to these Interrogatories, Abbott will search for and produce information and documents from the group at Abbott responsible for selling and marketing Abbott’s drugs listed in Exhibit 1 to the Amended Complaint (the “Subject Drugs”) to non-hospital customers, from the group at Abbott responsible for communicating with the Commonwealth of Kentucky, including the Kentucky Medicaid Program, regarding the Subject Drugs, and from sales representatives responsible for selling and marketing the Subject Drugs in the Commonwealth of Kentucky to non-hospital customers.

- B. Abbott's investigation for information responsive to these Interrogatories continues, and its responses to these Requests are based on information available at this time. Abbott reserves the right to supplement and/or amend these responses (and its production of documents) at any time prior to trial.
- C. Where Abbott states herein that it will produce or has produced documents in accordance with the Kentucky Rules of Civil Procedure, it will produce such documents to the extent that they exist and can be reasonably obtained. By stating that Abbott will produce any documents or things responsive to a particular interrogatory, Abbott does not represent that any such documents or things exist or are within its possession, custody or control. Abbott's responses are limited to documents within its possession, custody and control.
- D. Abbott's specific objections to each Interrogatory are in addition to the objections set forth in this and subsequent sections, which form a part of the response to each and every request and are set forth here to avoid the duplication and repetition of restating them for each response.
- E. The information and documents supplied herein are for use in this litigation and for no other purpose.
- F. To the extent that Abbott states that it will make certain documents available to the Commonwealth, such documents will be made available to the Commonwealth after the entry of an appropriate Protective Order by the Court.
- G. Abbott's responses to these Interrogatories are made without in any way waiving:
(a) the right to object, on the grounds of competency, relevancy, materiality, privilege, or other grounds of admissibility as evidence for any purpose in any

subsequent proceeding in this action or any other action; and (b) the right to object on any ground to other discovery requests involving or relating to the subject matter of these Interrogatories. Furthermore, Abbott is providing responses in an effort to expedite discovery in this action and not as an indication or admission by Abbott of the relevancy, materiality or admissibility thereof, and Abbott hereby preserves all objections to the Commonwealth's use of such responses.

GENERAL OBJECTIONS

- H. Abbott objects to these Interrogatories to the extent they seek information that is protected from disclosure by the attorney-client privilege, the Kentucky medical records privilege, the attorney work-product doctrine, the consulting expert privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule or doctrine.
- I. Abbott objects to these Interrogatories to the extent they seek confidential and/or proprietary information.
- J. Abbott objects to these Interrogatories to the extent they exceed the scope of discovery permitted under the Kentucky Rules of Civil Procedure.
- K. Abbott objects to these Interrogatories to the extent: (a) the discovery sought by any request is unreasonably cumulative or duplicative, or is obtainable from some other source (including, but not limited to, a public source) that is more convenient, less burdensome, or less expensive; and (b) compliance with any request would be unduly burdensome, unduly expensive, or oppressive.

- L. Abbott objects to these Interrogatories to the extent they seek information regarding Abbott's drugs that are not listed in Exhibit 1 to the Amended Complaint on the grounds that such documents are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence. Unless otherwise indicated, Abbott will only produce documents related to the Subject Drugs.
- M. Abbott objects to these Interrogatories as overly broad and unduly burdensome to the extent they require Abbott to search the notes of numerous Abbott field sales force employees. Abbott will search the files of the sales representatives responsible for selling and marketing the Subject Drugs in the Commonwealth of Kentucky to non-hospital customers.
- N. Abbott objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues in these Interrogatories. Any response by Abbott is not intended to indicate that Abbott agrees with any such implications or characterizations, or that such implications or characterizations are relevant to this litigation.
- O. Abbott objects to these Interrogatories to the extent they seek information concerning activities outside of the United States. Unless otherwise noted, all responses are limited to activities within the United States.
- P. Abbott generally objects to these Interrogatories to the extent they purport to require Abbott to search and/or produce all contracts relating to the Subject Drugs on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of

admissible evidence. Abbott will only produce contracts and information relating to non-hospital customers in the Commonwealth of Kentucky.

- Q. Abbott generally objects to these Interrogatories to the extent they seek information regarding the Medicaid rebate program on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence because there are no Medicaid rebate claims in the complaint. Abbott will not produce documents or information relating to the Medicaid rebate program.
- R. Abbott objects to these Interrogatories to the extent they seek information regarding “average sales price” or “ASP” on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence because the pricing benchmark of “average sales price” was not created by Congress until after the Amended Complaint was filed, when it passed the Medicare Prescription Drug, Improvement, and Modernization Act in December 2003. *See* Pub. L. No. 108-173, 117 Stat. 2066 (2003) § 303. Magistrate Judge Bowler of the United States District Court for Massachusetts ruled in a similar case that plaintiffs were not entitled to the ASP information submitted by defendants to CMS. *See In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action No. 01-CV-12257-PBS (electronic order dated 9/27/04).
- S. Abbott’s responses to these Interrogatories are made without waiving: (a) the right to object, on the grounds of competency, relevancy, materiality, privilege, or other grounds of admissibility as evidence for any purpose in any subsequent

proceeding in this action or any other action; and (b) the right to object on any ground to other discovery requests involving or relating to the subject matter of these Interrogatories. Furthermore, Abbott is providing responses in an effort to expedite discovery in this action and not as an indication or admission by Abbott of the relevancy, materiality or admissibility thereof, and Abbott hereby preserves all objections to the Commonwealth's use of such responses.

OBJECTIONS TO DEFINITIONS

- T. Abbott objects to the definition of "Actual Acquisition Price" as overly broad, vague and ambiguous.
- U. Abbott objects to the definition of "Average Manufacturer Price" or "AMP" as vague and ambiguous because 42 U.S.C. § 1396r-8 has been amended over time.
- V. Abbott objects to the definition of "Average Sales Price" or "ASP" as vague, ambiguous and confusing because the Commonwealth's definition of ASP is different than the calculation of ASP mandated by the Centers for Medicare and Medicaid Services. *See* 42 C.F.R. § 414.804.
- W. Abbott objects to the definitions of "Average Wholesale Price" or "AWP," "Wholesale Acquisition Cost" or "WAC," and "Direct Price" or "DP" as vague and ambiguous. Abbott will respond to these Interrogatories based upon its understanding of the terms "AWP," "WAC," and "DP" as used within the pharmaceutical industry and as has been commonly understood.
- X. Abbott objects to the definition of "Best Price" as vague and ambiguous because 42 U.S.C. § 1396r-8 has been amended over time.
- Y. Abbott objects to the definitions of "Document," "Communication," "You," "your," and "your company" to the extent they seek to impose discovery

obligations that are broader than or inconsistent with the requirements of the Kentucky Rules of Civil Procedure. Abbott further objects to these definitions as vague and ambiguous and to the extent they seek information protected by the attorney-client privilege, the attorney work-product doctrine, the consulting expert privilege, or any other applicable privilege, rule or doctrine.

- Z. Abbott objects to the definition of “Cabinet for Health and Family Services” because it is imprecise and overly broad in scope. Abbott further objects to the definition of “Cabinet for Health and Family Services” because it is vague and ambiguous, particularly with respect to the terms “sub-contractors,” “designees,” “agents,” and “fiscal agents.”
- AA. Abbott objects to the definition of “Chargeback” as vague, ambiguous and confusing.
- BB. Abbott objects to the definition of “Competing Pharmaceutical” because it is overly broad in scope. Abbott further objects to the definition of “Competing Pharmaceutical” because it is vague and ambiguous, particularly with respect to the phrase “compete in any way.”
- CC. Abbott objects to the definitions of “Identify,” “Regarding,” “Relate to,” and “relating to” to the extent they seek to impose discovery obligations that are broader than or inconsistent with the requirements of the Kentucky Rules of Civil Procedure. Abbott further objects to these definitions as overly broad in scope and vague and ambiguous. Abbott further objects to these definitions to the extent they seek information protected by the attorney-client privilege, the work-

product exemption, the consulting expert privilege, or any other applicable privilege, rule or doctrine.

- DD. Abbott objects to the definition of “CMS” because it is overly broad in scope. Abbott further objects to the definition of “CMS” because it is vague and ambiguous, particularly with respect to the phrase “fiscal intermediaries or carriers.”
- EE. Abbott objects to the definition of “Defined Period of Time” as overly broad, unduly burdensome, and not relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it purports to require the production of documents or seeks information created prior to the statutes of limitations applicable to the Commonwealth’s claims or after the filing of the Commonwealth’s original complaint on September 15, 2003.
- FF. Abbott objects to the definition of “Healthcare Provider” because it: (i) is overly broad in scope to the extent it seeks documents and information relating to providers outside of the Commonwealth of Kentucky; (ii) is designed to seek information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (iii) is designed to result in unduly burdensome and harassing discovery. Unless otherwise indicated, Abbott will only produce information relating to non-hospital customers in the Commonwealth of Kentucky.
- GG. Abbott objects to the definition of “Incentive” as overly broad, vague and ambiguous, particularly with respect to the term “anything of value.”

- HH. Abbott objects to the definition of “Kentucky Customer” because it: (i) is overly broad in scope to the extent it seeks documents and information relating to hospital customers and national wholesalers without regard to whether they do business in the Commonwealth of Kentucky; (ii) is designed to seek information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (iii) is designed to result in unduly burdensome and harassing discovery. Unless otherwise indicated, Abbott will only produce information relating to non-hospital customers in the Commonwealth of Kentucky.
- II. Abbott objects to the definition of “Pharmaceutical Class of Trade” as overly broad, vague, ambiguous and confusing.
- JJ. Abbott objects to the definition of “Price Representations” as overly broad, vague and ambiguous, particularly with respect to the terms “representation,” “price” “Wholesale Net Price,” “List Price,” “Contract Price,” and “Suggested Net Trade.”
- KK. Abbott objects to the definition of “Publishers” as overly broad in scope, vague and ambiguous to the extent it seeks information regarding “any person or Entity engaged in publishing drug prices.”
- LL. Abbott objects to the definition of “Spread” as overly broad, vague, ambiguous, and confusing.
- MM. Abbott objects to the definition of “Suggested Wholesale Price” or “SWP” as vague and ambiguous. Abbott further objects to this definition to the extent it

incorrectly suggests that Abbott reports, advertises, publishes, or causes to be published SWP.

OBJECTIONS TO INSTRUCTIONS

- NN. Abbott objects to Instruction No. 1 as overly broad, vague, ambiguous, and unduly burdensome. Abbott further objects to Instruction No. 1 because it exceeds the requirements and limitations of the Kentucky Rules of Civil Procedure.
- OO. Abbott objects to Instruction Nos. 3 and 4 as overly broad and unduly burdensome. Abbott further objects to Instruction No. 3 because it exceeds the requirements and limitations of the Kentucky Rules of Civil Procedure.
- PP. Abbott objects to Instruction No. 6 to the extent it calls for information for information created prior to the statutes of limitations applicable to the Commonwealth's claims or after the filing of the Commonwealth's original complaint on September 15, 2003 on the ground that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORIES

1. Identify your definition for each of the following terms as they are used in the ordinary course of your business as they relate to drug pricing or a difference in drug pricing, whether or not your working definition is the same as the plaintiff's definitions for these Interrogatories:
 - (a) AWP;
 - (b) WAC;
 - (c) DP;
 - (d) SWP;

- (e) AMP;
- (f) ASP;
- (g) Incentive;
- (h) Best Price; and
- (i) Spread.

To the extent your “course of business” definition of the above terms differs with the plaintiff’s stated Definitions of the above terms referred to on pages 2 to 8 of these Interrogatories, please respond using both definitions, identifying which definition is being used in the response thereto. To the extent your “course of business” definition has changed during the Defined Time Period, please provide each definition and identify the relevant time at which the definition changed and an explanation for such change.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome; (ii) is vague and ambiguous, particularly with respect to the terms “drug pricing,” “working definition”, “ordinary course of business” and ““course of business’ definition”; (iii) is confusing to the extent it asks Abbott to respond to the interrogatory using multiple definitions; (iv) incorrectly suggests that Abbott defines AWP, WAC, DP, SWP, AMP, ASP, and Best Price; (v) seeks definitions for terms that the Commonwealth has defined in the definitions; (vi) seeks definitions of terms that are defined by statute or regulation; (vii) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent it seeks information relating to terms used in connection with the Medicaid Rebate Program as there is no claim in the Amended Complaint relating to

the Medicaid Rebate Program; and (viii) assumes that all Abbott employees have a common understanding of each of these terms.

Subject to and without waiving any of its objections, Abbott states as follows as to the

Subject Drugs:

- (a) AWP: AWP or “Average Wholesale Price” refers to the benchmark periodically established and published by several pharmaceutical pricing compendia, including the Drug Topics Red Book (the “Red Book”), American Druggist First Databank Annual Directory of Pharmaceuticals (“First DataBank”), Essential Directory of Pharmaceuticals (the “Blue Book”) and Medi-Span’s Master Drug Database (“Medi-Span”). To the extent any other definitions are in use by Abbott for the term “AWP,” such information may be ascertained or derived from the documents to be produced by Abbott in this case
- (b) WAC: Abbott refers to 42 U.S.C. § 1395w-3a (c)(6)(B) for the current definition of WAC or “Wholesale Acquisition Cost.” Abbott’s understanding of the term WAC, prior to Congress’ adoption of 42 U.S.C. § 1395w-3a (c)(6)(B), was consistent with the statutory definition. To the extent any other definitions are in use by Abbott for the term “WAC,” such information may be ascertained or derived from the documents to be produced by Abbott in this case
- (c) DP: Abbott generally does not use the term DP in the “ordinary course” of its business, but it understands DP to be equivalent to list price. To the extent any other definitions are in use by Abbott for the term “DP” such information may be ascertained or derived from the documents to be produced by Abbott in this case
- (d) SWP: Abbott generally does not use the term SWP in the “ordinary course” of its business.
- (e) AMP: Abbott refers to 42 U.S.C. § 1396r-8(k)(1), as amended from time to time, for the definition of AMP or “Average Manufacturer’s Price.”
- (f) ASP: Abbott refers to 42 U.S.C. § 1395w-3a(c) and 44 Fed. Reg. 17,935 (Apr. 6, 2004), which were adopted in December 2003 and April 2004 respectively. The Centers for Medicare and Medicaid Services has yet to issue final

regulations on how ASP should be defined or calculated. Prior to Congress' adoption of 42 U.S.C. § 1395w-3a, Abbott generally understood average selling price to be an internally developed number for a particular product group that was generally calculated as net sales divided by total units. In addition to the ASP required by law, certain groups within Abbott continue, in certain circumstances, to calculate for internal purposes only an average selling price for a product group.

- (g) Incentive: Abbott generally does not use the term "Incentive" in the "ordinary course" of its business.
 - (h) Best Price: Abbott refers to 42 U.S.C. § 1396r-8(c)(1)(C), as amended from time to time, for the definition of Best Price.
 - (i) Spread: Abbott generally understands the term "spread" is or has been used by some to refer to the difference between the AWP of a particular drug and the actual acquisition cost of such drug. Abbott generally does not use the term "spread" in the "ordinary course" of its business. To the extent any other definitions are in use by Abbott for the term "spread," such information may be ascertained or derived the documents to be produced by Abbott in this case.
2. Identify all persons with knowledge of the matters contained in the pleadings filed in this action, and specify the subject matter about which each person has knowledge.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly in seeking "all persons" with knowledge; (ii) seeks information protected by the attorney-client privilege and/or work-product doctrine; (iii) seeks information outside of Abbott's custody, care or control; and (iv) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states:

Discovery is ongoing. For that reason, it is impossible to provide a complete response to this interrogatory at this time. Accordingly, Abbott reserves the right to modify or supplement the following response, as necessary. Subject to the foregoing, and based upon information known to date, Abbott believes that the following persons are likely to have knowledge of relevant facts:

- (a) The United States Government, including but not limited to Congress, the Office of Inspector General, the Department of Health and Human Services, and the Centers for Medicare and Medicaid Services (“CMS”) (formerly known as the Health Care Financing Administration (“HCFA”)), have knowledge about the Medicaid reimbursement system, the meaning of “AWP” as that term is used in the Medicaid reimbursement system and the health care industry, the lack of damages, and the lack of fraud on behalf of Abbott.
- (b) The Commonwealth of Kentucky, including but not limited to the Cabinet for Health and Family Services and certain of its contractors, has knowledge about the allegations in the pleadings, the benefits of Abbott’s drugs listed in the Complaint in the treatment of patients, communications with treating physicians/providers, the lack of direct transactions between the Commonwealth and Abbott, the lack of any misrepresentations to the Commonwealth by Abbott, the lack of any duty to the Commonwealth by Abbott, the lack of reliance by the Commonwealth, the lack of damages, the meaning of “AWP” as that term is used in the Kentucky Medicaid reimbursement system and the health care industry, and the lack of fraud on behalf of Abbott.
- (c) Treating physicians, providers and pharmacists have knowledge about the benefits of Abbott’s drugs listed in the Complaint in the treatment of patients, the decision to prescribe Abbott’s drugs listed in the Complaint, communications with patients and third party insurers, the amount sought for reimbursement for Abbott’s drugs listed in the Complaint from the Kentucky Medicaid Program, the lack of direct transactions between the Commonwealth and Abbott, the lack of any misrepresentations to the

Commonwealth concerning the “AWP” for Abbott’s drugs listed in the Complaint, the lack of reliance by the Commonwealth, the lack of damages, the meaning of “AWP” as that term is used in the Kentucky Medicaid reimbursement system and the health care industry, and the lack of fraud on behalf of Abbott.

- (d) Current and former employees of various industry pricing compendia, including publications such as the Red Book and First Data Bank, have knowledge about the meaning of “AWP” as that term is used in the Kentucky Medicaid reimbursement system and the health care industry, the calculation of “AWP” for pharmaceutical products, including but not limited to Abbott’s drugs listed in the Complaint, and the lack of fraud on behalf of Abbott.
- (e) Current and former employees in the pharmaceutical and health insurance industries, including but not limited to employees of other pharmaceutical manufacturers and industry groups, have knowledge about the Kentucky Medicaid reimbursement system, the meaning of “AWP” as that term is used in the Kentucky Medicaid reimbursement system and the health care industry, and the calculation of “AWP” for pharmaceutical products.
- (f) Current and former employees of Abbott, may have knowledge about the following issues: the sale, marketing and pricing of Abbott’s drugs listed in the Complaint; the benefits of Abbott’s drugs listed in the Complaint; the Kentucky Medicaid reimbursement system; the meaning of “AWP” as that term is used in the health care industry; communications between Abbott and Kentucky Medicaid; the lack of direct transactions between the Commonwealth and Abbott; the lack of any misrepresentations to the Commonwealth concerning the “AWP” for Abbott’s drugs listed in the Complaint; and the lack of fraud on behalf of Abbott. The following persons are representative of employees with such knowledge:
 - i) Michael Sellers, Vice-President, Contract Compliance and Integration (currently at Hospira, Inc.) 275 N. Field Drive Lake Forest, IL 60045-2579
 - ii) Lynn E. Leone, Manager, Contract Program Integrity (currently at Hospira, Inc.) 275 N. Field Drive Lake Forest, IL 60045-2579

- iii) Peter D. Baker, Divisional Vice President, General Manager, Commercial Service Operations (currently at Hospira, Inc.) 275 N. Field Drive Lake Forest, IL 60045-2579
- iv) Patrick B. Keely, Vice President and General Manager, Medication Management Systems (currently at Hospira, Inc.) 275 N. Field Drive Lake Forest, IL 60045-2579
- v) Robert Lyman, Manager, Major Accounts (currently at Hospira, Inc.) 275 N. Field Drive Lake Forest, IL 60045-2579
- vi) Joseph Fiske, Director, Pricing and Planning, Pharmaceutical Products Division, Abbott Laboratories, Inc., 100 Abbott Park Road Abbott, IL 60064
- vii) Debra DeYoung, Senior Manager Strategic Pricing, Government Accounts, Pharmaceutical Products Division, Abbott Laboratories, Inc., 100 Abbott Park Road Abbott, IL 60064
- viii) Cathy A. Ackerman, Director, Trade Sales & Development, Pharmaceutical Products Division, Abbott Laboratories, Inc., 100 Abbott Park Road Abbott, IL 60064.
- ix) In addition to the persons listed above, Abbott incorporates herein those current and former employees whose names appear in the documents provided to Plaintiff in connection with its request for documents to Abbott.
- (g) Such other persons who may be identified in the course of discovery during this litigation.

3. For each interrogatory, identify who prepared the response, and who in Your company is the most knowledgeable about the information contained in your responses.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome; (ii) seeks information protected by the attorney-client privilege and/or work-product doctrine; and (iii) seeks information

that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that the following persons assisted in preparing the interrogatories in conjunction with legal counsel: Joseph Fiske, Michael Sellers and Lynn Leone (identified above).

4. Please identify for each calendar year, by quarter, during the Defined Time Period, the AMP you reported to the CMS for each of the Subject Drugs. For each AMP identified, identify:
 - (a) Each employee who has knowledge of how AMP was calculated and reported; and
 - (b) Each document that relates to the AMP reported to the CMS.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it requires Abbott to identify “each document that relates to the AMP reported to the CMS”; (ii) seeks information protected by the attorney-client privilege and/or the work product doctrine; (iii) seeks confidential and/or proprietary information; (iv) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly since there are no Medicaid Rebate Claims in the Amended Complaint; and (v) seeks information protected under the Medicaid Rebate Statute and Abbott’s Medicaid Rebate agreement.

Subject to and without waiving any of its objections, Abbott states Debra DeYoung (identified above) has knowledge of how AMP generally was calculated and reported by Abbott.

5. Please identify for each calendar year, by quarter, during the Defined Time Period, the AWP each Publisher reported for each of the Subject Drugs. For each AWP identified, identify:
- (a) Each employee who has knowledge of how the AWP was determined, calculated and/or reported; and
 - (b) Each document that relates to the AWP reported by each Publisher.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it requires Abbott to identify “each document that relates to the AWP reported by each Publisher” over an eleven-year period of time; (ii) incorrectly suggests that Abbott determines, calculates or reports AWP for all of the Subject Drugs; (iii) seeks information outside of Abbott’s custody, care or control; (iv) seeks information in the public domain; (v) seeks information protected by the attorney-client privilege and/or the work product doctrine; and (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, non-privileged, responsive correspondence documents with third-party pharmaceutical pricing compendia relating to pricing of the Subject Drugs. Abbott refers the Commonwealth to First Data Bank, Redbook and MediSpan for information regarding the AWP’s those third-party pharmaceutical pricing compendia established and published for the Subject Drugs.

6. Did you make any Price Representation of AWP to any Publisher for any of the Subject Drugs? For each of the Subject Drugs for which you made a Price Representation of AWP to a Publisher, identify:
- (a) The Subject Drugs;
 - (b) The Publisher;
 - (c) The time period(s) which you reported the AWP;
 - (d) How the AWP you reported was calculated;
 - (e) Each employee whom you believe may have knowledge relating to how the AWP was calculated;

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it purports to require Abbott to search its communications with publishers over an eleven-year period of time; and (ii) seeks confidential and/or proprietary information.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, non-privileged, responsive correspondence documents with third-party pharmaceutical pricing compendia relating to pricing of the Subject Drugs.

7. If the answer to interrogatory number 6 is no, please indicate whether you made any Price Representation of AWP to any Publisher, for any of your Pharmaceuticals? For each Pharmaceutical for which you made a Price Representation of AWP to a Publisher, identify:
- (a) The Subject Drugs;
 - (b) The Publisher;
 - (c) The time period(s) which you reported the AWP;
 - (d) How the AWP you reported was calculated;

- (e) Each employee whom you believe may have knowledge relating to how the AWP was calculated;
- (f) Each employee whom you believe may have knowledge relating to the reporting of AWP to the Publisher;
- (g) Each Price Representation of AWP you made to the Publisher; and
- (h) Each document that relates to the Price Representation of AWP.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it purports to require Abbott to search its communications with publishers over an eleven-year period of time, to the extent it seeks information regarding all of Abbott's drugs over an eleven-year period and to the extent it seeks "each document that relates to the Price Representation" over an eleven-year period; (ii) is not limited to the Subject Drugs; (iii) seeks confidential and/or proprietary information; and (iv) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

8. To the extent you made any Price Representation, including, but not limited to WAC or DP, to any Publisher for any of your Subject Drugs, for each of the Subject Drugs for which you made a Price Representation to a Publisher, identify:
- (a) The Price Representation;
 - (b) How the Price Representation was calculated;
 - (c) The circumstances under which the Price Representation was made;
 - (d) Whether it was the usual practice of you or any Publisher to whom you made a Price Representation for your Subject

Drugs, to apply a certain markup to the Price Representation in order to establish the AWP;

- (e) The usual markup you or any Publisher to whom you made a Price Representation applied to each Subject Drugs to establish the AWP;
- (f) Each employee whom you believe may have knowledge relating to the reporting of any Price Representation to a Publisher for any of the Subject Drugs; and
- (g) Each document that relates to the Price Representation.

RESPONSE: In addition to its General Objections, Abbott objects to this request because it: (i) is overly broad and unduly burdensome, particularly to the extent it purports to require Abbott to search its communications with publishers and to the extent it seeks “each document that relates to the Price Representation” over an eleven-year period; (ii) is vague and ambiguous, particularly with respect to the terms “usual practice” and “usual markup”; (iii) seeks information protected by the attorney-client privilege and/or the work product doctrine; (iv) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; (v) incorrectly suggests that Abbott “establish[es] the AWP” for all Subject Drugs; (vi) seeks confidential and/or proprietary information; and (vii) seeks information outside Abbott’s custody, care or control, particularly to the extent it seeks the “usual markup” third-party “Publishers” apply.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, non-privileged, responsive correspondence

documents with third-party pharmaceutical pricing compendia relating to pricing of the Subject Drugs.

9. Did you make any Price Representation directly to the Kentucky Medicaid Program or the Cabinet for Health and Family Services, Medical Assistance Program, or to its fiscal agents, for any of the Subject Drugs? If so, identify:
- (a) Each Price Representation by Subject Drug;
 - (b) How the Price Representation was calculated;
 - (c) The circumstances under which the Price Representation was made;
 - (d) Each employee whom you believe may have knowledge relating to any Price Representation for any of the Subject Drugs made directly to the Cabinet for Health and Family Services and/or Medical Assistance Program; and
 - (e) Each document that relates to the Price Representation.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks “each document that relates to the Price Representation” over an eleven-year period; (ii) is vague and ambiguous, particularly with respect to the term “fiscal agents”; (iii) seeks information protected by the attorney-client privilege and/or the work product doctrine; (iv) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (v) seeks information equally available to the Commonwealth.

Subject to and without waiving any of its objections, Abbott states that it is not aware of any such communications concerning the Subject Drugs. Abbott’s investigation continues.

Abbott will conduct a reasonable search for such documents and will produce, to the extent they exist and are reasonably obtainable, any non-privileged, correspondence documents with Kentucky Medicaid Program, the Cabinet for Health and Family Services or the Medical Assistance Program relating to pricing of the Subject Drugs (not including correspondence relating to AMP or Best Price).

10. Identify the individuals within your company responsible for the communications with the Kentucky Medicaid Program or the Cabinet for Health and Family Services regarding the program's reimbursement for claims relating to the Subject Drugs. For each individual identified, provide:
 - (a) The dates within the Defined Time Period these individuals had these responsibilities;
 - (b) Their contact information (including the last known address and phone number for each former employee);
 - (c) Their job title and responsibilities;
 - (d) The primary individuals within the Medical Assistance Program with whom they communicated; and
 - (e) Each document that relates to any communications between you and the Medical Assistance Program or the Cabinet for Health and Family Services.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks "each document that relates to any communications between you and the Medical Assistance Program or the Cabinet for Health and Family Services" over an eleven-year period; (ii) seeks information protected by the attorney-client privilege and/or the work product doctrine; (iii) seeks information that is equally available to the

Commonwealth; and (iv) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that Debra DeYoung (identified above) was at all relevant times responsible for issues related to the Medicaid Rebate Program and, in that role, may have had some communications with the Kentucky Medicaid Program. Abbott is not aware, at this time, of any other persons who communicated with the Kentucky Medicaid Program or the Cabinet for Health and Family Services regarding the Subject Drugs. Abbott will conduct a reasonable search for such documents and will produce, to the extent they exist and are reasonably obtainable, correspondence documents with Kentucky Medicaid Program or the Cabinet for Health and Family Services relating to pricing of the Subject Drugs (not including correspondence relating to AMP or Best Price).

11. Have you calculated, used, and/or monitored the ASP for any of the Subject Drugs? For each of the Subject Drugs for which you calculated, used and/or monitored the ASP, identify:
 - (a) The year you began calculating and/or monitoring the ASP;
 - (b) The ASP, by calendar year,
 - (c) Each employee whom you believe may have knowledge of how ASPs were calculated, used, and/or monitored by you in the ordinary course of your business;
 - (d) Your purpose for calculating, using and/or monitoring the ASP for a Subject Drugs;
 - (e) Whether you made any Price Representation of ASP to any Publisher, customer, or governmental entity and identify same;
 - (f) Whether ASP was treated as confidential or commercially sensitive financial information; and
 - (g) Each document that relates to the ASPs for Subject Drugs.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks “each document that relates to the ASPs for the Subject Drugs” over an eleven-year period; (ii) is vague and ambiguous, particularly with respect to the terms “monitored,” “monitoring,” and “commercially sensitive”; (iii) seeks information protected by the attorney-client privilege and/or the work product doctrine; (iv) seeks confidential and/or proprietary information; and (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it has from time to time calculated for internal purposes only an average sales price for certain of the Subject Drugs for a particular product group and that such average sales price was calculated as net sales divided by total units. Abbott further states that such calculations were often done for purposes of determining the price/volume variance. Abbott considers such calculations to be highly confidential. Abbott will produce electronic sales data for sales of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky.

Abbott further states that pursuant to 42 U.S.C. § 1395w-3a(c) and 44 Fed. Reg. 17,935 (Apr. 6, 2004), Abbott was required to report an ASP for its drugs to CMS in 2004. Abbott will not produce such “average sales price” or “ASP” information reported to CMS on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence because the pricing

benchmark of “average sales price” was not created by Congress until after the Amended Complaint was filed and because the reporting obligations were only recently finalized by the relevant federal agency. *See* Pub. L. No. 108-173, 117 Stat. 2066 (2003), § 303. Magistrate Judge Bowler of the United States District Court the District of Massachusetts ruled in a similar case that plaintiffs were not entitled to the ASP information submitted by defendants to CMS. *See In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action No. 01-CV-12257-PBS (electronic order dated 9/27/04).

12. For each of the Subject Drugs please identify, by year and quarter during the Defined Period of Time, your sales (by dollar and by unit); total costs to research, develop, produce, distribute, market and sell; revenues; profits; and market share in the United States.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly in seeking “total costs to research, develop, produce, distribute, market and sell; revenues; profits; and market share” for the Subject Drugs over an eleven-year period; (ii) is not limited to the Commonwealth of Kentucky; (iii) is vague and ambiguous, particularly with respect to the phrase “total costs to research, develop, produce, distribute, market and sell” and the terms “revenues,” “profits,” and “market share”; (iv) seeks information protected by the attorney-client privilege and/or the work product doctrine; (v) seeks confidential and/or proprietary information; (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent it seeks documents relating to

Abbott's costs to research, develop, produce, distribute, market and sell the Subject Drugs; (vii) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests; and (viii) to the extent it seeks market share data, seeks information that is equally available to the Commonwealth.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, electronic data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky and annual sales reports related to sales of the Subject Drugs in the Commonwealth of Kentucky. Abbott further states that it does not generally collect market share data for most of the Subject Drugs. However, to the extent documents showing product-specific market share for the Commonwealth of Kentucky for the Subject Drugs exist and are reasonably obtainable, Abbott will produce them.

13. Please identify, by year and quarter during the Defined Period of Time, your sales (by dollar and by unit); total costs to research, develop, produce, distribute, market and sell; revenues; profits; and market share in Kentucky for each of the Subject Drugs.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly in seeking “total costs to research, develop, produce, distribute, market and sell; revenues; profits; and market share” for the Subject Drugs over an eleven-year period; (ii) is vague and ambiguous, particularly with respect to the phrase “total costs to research, develop, produce, distribute, market and

sell” and the terms “revenues,” “profits,” and “market share”; (iii) seeks information protected by the attorney-client privilege and/or the work product doctrine; (iv) is duplicative of Interrogatory 12 and the Commonwealth’s document requests; (v) seeks confidential and/or proprietary information; (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent it seeks documents relating to Abbott’s costs to research, develop, produce, distribute, market and sell the Subject Drugs; (viii) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests; and (ix) to the extent it seeks market share data, seeks information that is equally available to the Commonwealth.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, electronic data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky and annual sales reports related to sales of the Subject Drugs in the Commonwealth of Kentucky. Abbott further states that it does not generally collect market share data for most of the Subject Drugs. However, to the extent documents showing product-specific market share for the Commonwealth of Kentucky for the Subject Drugs exist and are reasonably obtainable, Abbott will produce them.

14. Please identify, by year and quarter during the Defined Period of Time, the market share in the United States for each Competing Pharmaceutical that competes with any of the Subject Drugs.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks the market share for each Competing Pharmaceutical; (ii) is vague and ambiguous, particularly with respect to the term “market share” and “compete”; (iii) is not limited to the Commonwealth of Kentucky; (iv) seeks information outside of Abbott’s custody, care or control; (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; (vi) is not limited to the Subject Drugs; and (vii) seeks information that is equally available to the State.

Subject to and without waiving any of its objections, Abbott states that it does not generally collect market share data for Competing Pharmaceuticals of the Subject Drugs. However, to the extent documents showing product-specific market share for the Commonwealth of Kentucky for Competing Pharmaceuticals of the Subject Drugs exist and are reasonably obtainable, Abbott will produce them.

15. For each calendar year during the Defined Period of Time, identify each Pharmaceutical Class of Trade in which any of the Subject Drugs are sold.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is not limited to the Commonwealth of Kentucky; (ii) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; (iii) seeks confidential and/or proprietary information; and (iv) seeks

information outside Abbott's possession, custody or control to the extent it is not limited to sales made by Abbott.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, electronic data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky, which will contain the class of trade for such sales.

16. For each Pharmaceutical Class of Trade identified in response to interrogatory number 15, please identify, by year during the Defined Period of Time and by Subject Drug, the fifteen (15) largest purchasers in the United States (by units sold) within each Pharmaceutical Class of Trade and identify what percent of your annual total U.S. sales per Pharmaceutical Class of Trade the fifteen (15) purchasers represents. For each purchaser identified:
 - (a) Identify your account representative(s) and their supervisors;
 - (b) Provide the price(s) you charged for each of the Subject Drugs, by NDC code;
 - (c) Provide the price(s) you charged for each of the Subject Drugs, by NDC code, net of all Incentives; and
 - (d) Identify each Incentive applied to calculate the net purchase price of each of the Subject Drugs set forth in Section (a) above.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks the "price(s) . . . charged for each of the Subject Drugs" over an eleven-year period; (ii) is not limited to the Commonwealth of Kentucky; (iii) seeks confidential and/or proprietary information; (iv) is vague and ambiguous, particularly with respect to the terms "price(s),"

“largest purchasers,” and “net purchase price”; (vi) seeks information outside of Abbott’s custody, care or control to the extent it is not limited to sales made by Abbott; (vii) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent it is not limited to the Commonwealth of Kentucky; and (viii) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, electronic data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky.

17. For each Pharmaceutical Class of Trade identified in response to interrogatory number 15 please identify, by year during the Defined Period of Time and by Subject Drug, the fifteen (15) largest Kentucky purchasers (by units sold) within each Pharmaceutical Class of Trade, and identify what percent of your total annual Kentucky sales per Pharmaceutical Class of Trade the fifteen (15) purchasers represents. For each purchaser identified:
 - (a) Identify your account representative(s) and their supervisors;
 - (b) Provide the price(s) you charged for each of the Subject Drugs, by NDC code;
 - (c) Provide the price(s) you charged for each of the Subject Drugs, by NDC code, net of all Incentives; and
 - (d) Identify each Incentive applied to calculate the net purchase price of each of the Subject Drugs set forth in Section (c) above.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly

burdensome, particularly to the extent it seeks “the price(s) . . . charged for each of the Subject Drugs” over an eleven-year period; (ii) seeks confidential and/or proprietary information; (iii) is vague and ambiguous, particularly with respect to the terms “price(s),” “largest purchasers,” and “net purchase price”; (iv) seeks information outside of Abbott’s custody, care or control to the extent it is not limited to sales made by Abbott; (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; (vi) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests; and (vii) is duplicative of Interrogatory 16 and the document requests.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, electronic data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky, from which the Commonwealth can perform the calculations requested in Interrogatory 17. Abbott also incorporates its response to Interrogatory 28 for its response to this Interrogatory.

18. Please identify, by year during the Defined Period of Time, and by Pharmaceutical Class of Trade, the percentage of your sales of any of the Subject Drugs within that Pharmaceutical Class of Trade that are:
 - (a) Sold pursuant to a contract entered into with a Group Purchasing Organization
 - (b) Sold pursuant to a contract entered into with a wholesaler or distributor

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly

burdensome; (ii) seeks confidential and/or proprietary information; (iii) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests; and (iv) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, electronic data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky.

19. Please identify, by year during the Defined Period of Time, each GPO (excluding a GPO whose membership comprises primarily hospitals) in which you entered into a contract for the sale of any of the Subject Drugs. For each contract identified, identify:
 - (a) The price(s) charged for each of the Subject Drugs by NDC code;
 - (b) The price(s) charged for each of the Subject Drugs by NDC code, net of all Incentives;
 - (c) Each Incentive applied to calculate the net purchase price of each of the Subject Drugs set forth in section (b) above;
 - (d) The account representative(s), their supervisor(s) and any other employee whom you believe may have knowledge relating to the negotiation and/or terms of each contract including how prices were established;
 - (e) Each employee whom you believe may have knowledge relating to your policies and practices regarding pricing in such contracts; and
 - (f) Each document that relates to the contract.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly

burdensome, particularly to the extent it seeks “the price(s) . . . charged for each of the Subject Drugs” and “each document that relates to the contract” over an eleven-year period; (ii) is not limited to the Commonwealth of Kentucky; (iii) is vague and ambiguous, particularly with respect to the terms “policies and practices,” “net purchase price,” “price(s)” and “pricing”; (iv) seeks confidential and/or proprietary information; (v) seeks information protected by the attorney-client privilege and/or the work product doctrine; and (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, electronic sales data and contracts relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky.

20. Please identify, by year during the Defined Period of Time, and by Subject Drug, the fifteen (15) largest Healthcare Providers in the United States to which you directly sold any of the Subject Drugs. and identify what percent of your annual direct U.S. sales the fifteen (15) providers represents. For each Healthcare Provider identified, identify:
 - (a) The price(s) charged for each of the Subject Drugs by NDC code;
 - (b) The price(s) charged for each of the Subject Drugs by NDC code, net of all Incentives;
 - (c) Each Incentive applied to calculate the net purchase price of each of the Subject Drugs set forth in section (b) above;

- (d) Whether there was a contract between you and the Healthcare Provider for the purchase of any of the Subject Drugs;
- (e) The account representative(s), their supervisor(s) and any other employee whom you believe may have knowledge relating to the negotiation and/or terms of each contract including how prices were established;
- (f) Each employee whom you believe may have knowledge relating to your policies and practices regarding pricing in such contracts; and
- (g) Each document that relates to the contract.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks “the price(s) . . . charged for each of the Subject Drugs” and “each document that relates to the contract” over an eleven-year period; (ii) is not limited to the Commonwealth of Kentucky; (iii) is vague and ambiguous, particularly with respect to the terms “policies and practices,” “net purchase price,” “price(s)” and “pricing”; (iv) seeks confidential and/or proprietary information; (v) seeks information protected by the attorney-client privilege and/or the work product doctrine; (vi) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests; and (vii) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, electronic sales data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky.

21. Please identify, by year during the Defined Period of Time, and by Subject Drug, the fifteen (15) largest Kentucky Healthcare Providers to which you directly sold any of the Subject Drugs, and identify what percent of your annual Kentucky sales the fifteen (15) providers represents. For each Healthcare Provider identified, identify:
- (a) The price(s) charged for each of the Subject Drugs by NDC code;
 - (b) The price(s) charged for each of the Subject Drugs by NDC code, net of all Incentives;
 - (c) Each Incentive applied to calculate the net purchase price of each of the Subject Drugs set forth in section (b) above;
 - (d) Whether there was a contract between you and the Healthcare Provider for the purchase of any of the Subject Drugs;
 - (e) The account representative(s), their supervisor(s) and any other employee whom you believe may have knowledge relating to the negotiation and/or terms of each contract including how prices were established;
 - (f) Each employee whom you believe may have knowledge relating to your policies and practices regarding pricing in such contracts; and
 - (g) Each document that relates to the contract.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks “the price(s) . . . charged for each of the Subject Drugs” and “each document that relates to the contract” over an eleven-year period; (ii) is vague and ambiguous, particularly with respect to the terms “policies and

practices,” “net purchase price,” “price(s)” and “pricing”; (iii) seeks confidential and/or proprietary information; (iv) seeks information protected by the attorney-client privilege and/or the work product doctrine; (v) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests; (vi) is duplicative of Interrogatory 20 and the document requests; and (vii) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, electronic sales data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky, from which the Commonwealth can perform the calculations requested in Interrogatory 21. Abbott also incorporates its response to Interrogatory 28 for its response to this Interrogatory.

22. Please describe each type of Incentive you offer in conjunction with the purchase of any of the Subject Drugs. For each Incentive identified, identify:
- (a) The type(s) of Incentive(s) offered for each of the Subject Drugs;
 - (b) The Pharmaceutical Class of Trade eligible for each Incentive; and
 - (c) The general terms and conditions required to be eligible for each Incentive.
 - (d) The time period the Incentive was offered.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) overly broad and unduly burdensome;

(ii) is not limited to the Commonwealth of Kentucky; (iii) is vague and ambiguous, particularly as to the term “Incentive”; (iv) seeks confidential and/or proprietary information; and (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it has from time to time offered certain discounts to its customers in connection with the purchase of the Subject Drugs, including but not limited to cash discounts, prompt pay discounts, rebates, and/or trade show allowances. Further answering, Abbott will produce, to the extent they exist and are reasonably obtainable, contracts for the sale of the Subject Drugs with non-hospital customers in the Commonwealth of Kentucky.

23. Please identify, by year during the Defined Period of Time and by Pharmaceutical Class of Trade, the percentage of your sales (in total units) of any of the Subject Drugs that are purchased by Healthcare Providers at or above the published AWP, WAC, SWP, or DP.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) overly broad and unduly burdensome; (ii) is not limited to the Commonwealth of Kentucky; (iii) seeks confidential and/or proprietary information; (vi) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests; and (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent it exists and is reasonably obtainable, electronic sales data relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky.

24. For each of your Subject Drugs, provide each applicable NDC code, and if applicable, the Healthcare Common Procedure Coding System (“HCPCS”) code, the NDC crosswalk by HCPCS code, and the NDC codes of any Competing Pharmaceutical billable under the HCPCS code(s) for each of the Subject Drugs. For each HCPCS code identified, identify:
- (a) All documents that relate to the HCPCS code applicable to each of your Subject Drugs; and
 - (b) All documents that relate to the HCPCS code applicable to any Competing Pharmaceutical where the HCPCS code also includes a Subject Drug.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks “all documents that relate to the HCPCS code applicable” over an eleven-year period; (ii) is vague and ambiguous as to the phrase “NDC crosswalk by HCPCS code”; (iii) is not limited to the Commonwealth of Kentucky; (iv) seeks information that is equally available to the Commonwealth; (v) seeks information in the public domain; (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; (vii) seeks HCPCS for certain drugs that are not Medicare reimbursed; and (viii) is not limited to the Subject Drugs.

Subject to and without waiving any of its objections, Abbott directs the Commonwealth to www.fda.gov and www.cms.gov, where the information requested in Interrogatory 24 is readily available.

25. For each of your Subject Drugs, identify:
- (a) The New Drug Application or Abbreviated New Drug Application identification number assigned;
 - (b) The United States Patent Numbers assigned;
 - (c) The expiration dates of all patents; and
 - (d) The new drug product exclusivity period.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome; (ii) seeks information that is available to the Commonwealth; (iii) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (iv) seeks information that precedes the time period identified in the Complaint and the Interrogatories.

Subject to and without waiving any of its objections, Abbott states:

Drug	NDC	NDA/ANDA
Sod Chl 0.9%	7101-13	19-645
Sod Chl 0.9%	7101-23	19-645
Sod Chl 0.9%	7983-02	16-366
Sod Chl 0.9%	7983-03	16-366
Sod Chl 0.9%	7983-09	16-366
5% Dex in Water	7100-13	19-479
5% Dex in Water	7100-23	19-479
5% Dex in Water	7100-02	19-479
5% Dex in Water	7922-03	16-367
5% Dex in Water	7922-09	16-367
5% Dex / NaCl 0.9%	7941-02	17-585
5% Dex / NaCl 0.9%	7941-03	17-585
5% Dex / NaCl 0.9%	7941-09	17-585
Ringers Lactate	7953-02	17-641
Ringers Lactate	7953-03	17-641
Ringers Lactate	7953-09	17-641

Drug	NDC	NDA/ANDA
Vancomycin	4332-01	62-911
Vancomycin	6535-01	62-933
Vancomycin	6533-01	62-912
Vancomycin	6509-01	63-076
Tobramycin	3577-01	63-112
Tobramycin	3469-13	63-081
Tobramycin	3254-03	63-080
Tobramycin	3470-23	63-081
Tobramycin	3583-01	63-161
Tobramycin	3578-01	63-111
Tobramycin	3255-03	63-080
Pentamidine	4548-01	73-479
Clindamycin	4053-03	62-801
Clindamycin	4050-01	62-800
Clindamycin	4054-03	62-801
Clindamycin	4051-01	62-800
Clindamycin	4197-01	62-943
Clindamycin	4055-03	62-801
Sodium Bicarbonate	6625-02	none
Amikacin	1957-01	63-264
Heparin Lock Flush	1151-78	05-264
Heparin Lock Flush	1152-78	05-264
Heparin Lock Flush	1152-70	05-264
Water for Injection	4887-20	18-801
Water for Injection	4887-10	18-801
Water for Injection	3977-03	18-802
Water for Injection	1590-05	none
Water for Injection	7990-09	18-233
Water for Injection	4887-99	18-801
Dextrose 5% / KCl / NaCl	7902-09	18-362
Erythromycin Base	6326-13	61-621
Erythromycin Base	6326-53	61-621
Erythromycin Stearate	6346-20	60-359
Erythromycin Stearate	6346-53	60-359
Erythromycin Stearate	6316-13	60-359
Erythromycin Stearate	6346-38	60-359
ERY-TAB	6304-30	62-298
ERY-TAB	6304-13	62-298
ERY-TAB	6304-11	62-298
EES/Sulfisoxazole	7156-13	50-529
EES/Sulfisoxazole	7156-43	50-529
EES/Sulfisoxazole	7156-53	50-529

Abbott further states that the following drugs were subject to patent protection: ERY-TAB, U.S. 4,340,582, NDA 62-298, expired June 20, 1999; and EES/Sulfisoxazole, U.S. 4,06,804, NDA 50-529, expired February 28, 1995.

26. Describe your corporate structure and/or organization for:
 - (a) The marketing of your Pharmaceuticals; including your Subject Drugs;

- (b) Pricing of your Pharmaceuticals, including your Subject Drugs;
- (c) Communications with Publishers;
- (d) Contracts with purchasers; and
- (e) Communications with governmental entities.

Please provide the organizational chart(s) applicable for each above-referenced function.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome in seeking information over an eleven-year period; (ii) is vague and ambiguous, particularly with respect to the terms “corporate structure” and “pricing”; (iii) is not limited to the Subject Drugs; (iv) is not limited to the Commonwealth of Kentucky; (v) seeks confidential and/or proprietary information; and (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, relevant organizational charts.

27. Identify all employees (whether current or former) who had primary, supervisory responsibility for.
- (a) The marketing of your Pharmaceuticals, including your Subject Drugs;
 - (b) Pricing of your Pharmaceuticals, including your Subject Drugs;
 - (c) Communications with Publishers;
 - (d) Contracts with purchasers; and
 - (e) Communications with governmental entities.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly in seeking identification of “all employees” over an eleven-year period; (ii) is not limited to the Subject Drugs; (iii) is vague and ambiguous, particularly with respect to the term “pricing” and the phrase “primary, supervisory responsibility”; (iv) is not limited to the Commonwealth of Kentucky; and (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, relevant organizational charts.

28. To the extent they had responsibility for Kentucky or a geographic region that included Kentucky, identify all employees (whether current or former) in your sales, marketing, promotion, contracting, customer service, price reporting departments, divisions, or units. For each of the aforementioned departments, divisions or units, please provide all organizational charts or diagrams containing such information.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly in seeking identification of “all employees” over an eleven-year period; (ii) is not limited to the Subject Drugs; (iii) is vague and ambiguous, particularly with respect to the terms “responsibility,” “price reporting,” and “promotion”; (iv) and seeks information that is not relevant nor

reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that the following Abbott employees among others had responsibility for sales of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky at certain points during the relevant time period: John Sowell, District Manager (Pharmaceutical Products Division); Royce Deaton, sales representative (Pharmaceutical Products Division); Phillip Freeman, sales representative (Pharmaceutical Products Division); Eric French, sales representative (formerly Hospital Products Division, currently in Pharmaceutical Products Division), Jenn Connell, sales representative (formerly Hospital Products Division, currently at Hospira, Inc.), Mike Ramsey, sales representative (formerly Hospital Products Division, currently at Hospira, Inc.), and Martine Cadichon, sales representative (formerly Hospital Products Division, currently at Hospira, Inc.). Abbott states will also produce, to the extent they exist and are reasonably obtainable, relevant organizational charts.

29. Regarding your Pharmaceuticals, identify the categories or types of reports, memoranda or other documents/information maintained in the ordinary course of business regarding:
 - (a) The marketing of your Pharmaceuticals, including your Subject Drugs;
 - (b) Pricing of your Pharmaceuticals, including your Subject Drugs;
 - (c) Communications with Publishers;
 - (d) Contracts with purchasers;
 - (e) Communications with governmental entities;
 - (f) AMPs, AWP, ASPs, DPs, WACs, Best Price, and Spreads; and

- (g) Sales, cost of sales, revenues, and profits by Pharmaceutical.

To the extent these types of business documents differ for the Subject Drugs, please so indicate, and identify the differences.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome; (ii) is not limited to the Commonwealth of Kentucky; (iii) is not limited to the Subject Drugs; (iv) is vague and ambiguous, particularly with respect to the terms “pricing,” “costs of sales,” “revenues,” and “profits”; (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent it seeks information relating to the Medicaid Rebate Program as there is no claim in the Amended Complaint relating to the Medicaid Rebate Program; and (vi) seeks confidential and/or proprietary information.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, the following non-privileged, responsive documents relating to the Subject Drugs: (i) electronic sales data relating to sales to non-hospital customers in the Commonwealth of Kentucky; (ii) correspondence with the third-party pharmaceutical pricing compendia relating to pricing; (iii) contracts with non-hospital customers in the Commonwealth of Kentucky; (iv) communications with Kentucky Medicaid or the Kentucky Cabinet for Health and Family Services regarding pricing (not including AMP and Best Price); and (v) price announcements to wholesalers.

- 30. Identify all electronic computer databases or files in data form maintained by you in the ordinary course of your business related to the manufacture,

sale, or marketing of pharmaceuticals during the defined time period. For each electronic computer database or file identified, identify:

- (a) The title of all such databases or data files;
- (b) The software programs necessary to access and utilize such databases or data files;
- (c) The type of information, by category, or field, contained or stored in such database or data file;
- (d) The employee whom you believe has the most knowledge of the operation of the database or data file; and
- (e) The custodian(s) of such databases or data files.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly in seeking information over an eleven-year period; (ii) is not limited to the Commonwealth of Kentucky; (iii) is not limited to the Subject Drugs; (iv) seeks confidential and/or proprietary information; and (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent it seeks databases or files in data form relating to the manufacturing of the Subject Drugs.

Subject to and without waiving any of its objections, Abbott states that over the eleven-year period it has had numerous databases and files in data form. The primary systems for managing electronic sales data are the COP system and Chargeback (“CBS”) system. The COP system contains Abbott’s corporate sales records. It records all sales by invoice line item. The CBS system contains Abbott’s indirect sales data. It records all chargeback transactions from wholesalers and distributors by wholesaler claim line. In addition, the Contract Administration

System (“CAS”) is a real time database of price and contractual commitments for Abbott applicable to any sales made.

31. Identify all lawsuits related to misrepresentation of the AWP, WAC or the marketing of the Spread for any of your Pharmaceuticals and identify all of your present and former employees who have been deposed in each lawsuit. For each lawsuit and/or individual identified provide;
- (a) The date, caption, docket number, and name of the case;
 - (b) The name and location of the court;
 - (c) The date and location of the deposition; and
 - (d) The name and address of the plaintiff’s attorney.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks the name and address of the plaintiff’s attorney; (ii) is not limited to the Commonwealth of Kentucky; (iii) is not limited to the Subject Drugs; (iv) seeks information in the public domain; and (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that the following pending lawsuits purport to relate to alleged misrepresentation of AWP, WAC or the marketing of the Spread for Abbott’s Pharmaceuticals: *In re Pharmaceutical Industry Average Wholesale Price Litigation* (MDL 1456) Civil Action No. 01-CV-12257 PBS, D. Mass, including actions transferred to MDL 1456; *Commonwealth of Kentucky ex rel. Gregory D. Stumbo, Attorney General v. Abbott Laboratories Inc.*, Civil Action No. 03-CI-1134, Franklin Circuit Court, KY; *State of Nevada v. Abbott Laboratories Inc., et al.*, Case No. CV-N-02-0080-ECR-RAM, Second

Judicial District Court, Washoe County, NV; *State of Ohio v. Dey, Inc., et al.*, Case No. A0402047, Court of Common Pleas, Hamilton County, OH; *Commonwealth of Pennsylvania v. TAP Pharmaceutical Products, Inc., et al.*, No. 212 MD 2004, Commonwealth Court of Pennsylvania; *State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories Inc., et al.*, Cause No. GV401286, District Court, Travis County, TX; *State of West Virginia v. Warrick Pharmaceuticals Corp., et al.*, Case No. 01-C-3011, Circuit Court of Kanawha County, WV; *State of Wisconsin v. Abbott Laboratories Inc., et al.*, Case No. 04 CV 1709 Unclassified-Civil: 30703, Circuit Court of Dane County, WI; *City of New York v. Abbott Laboratories Inc., et al.*, Case No. 04-CV-06504, S.D.N.Y.; *Peralta v. Abbott Laboratories Inc.*, Case No. BC 259587, Superior Court for the State of California, Los Angeles County; and *Robert J. Swanston v. TAP Pharmaceutical Products Inc., et al.*, Case No. CV-2002-004988, Superior Court of the State of Arizona, Maricopa County.

Further, Abbott states that on September 30, 2004, Abbott's former employee, Jack Miller, was deposed by the State of Texas and Ven-A-Care of the Florida Keys in connection with *State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories Inc., et al.*, Cause No. GV401286, District Court, Travis County, TX. In addition, Abbott's former employee, Michael Sellers (who is now an employee of Hospira, Inc.) was deposed as a corporate designee on October 28, 2004 in connection with *State of West Virginia v. Warrick Pharmaceuticals Corp., et al.*, Case No. 01-C-3011, Circuit Court of Kanawha County, WV.

32. Identify and describe your policies and procedures for the retention and destruction of documents.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks Abbott's "policies

and procedures for the retention and destruction of documents” over an eleven-year period without limitation to a particular group or department; (ii) is not limited to the Commonwealth of Kentucky; (iii) is not limited to the Subject Drugs; (iv) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (v) is vague and ambiguous, particularly with respect to the phrase “policies and procedures.”

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, non-privileged, responsive documents for the departments at Abbott that have responsive documents.

33. Identify each audit, study, survey, analysis or investigation of the Spreads, AWP, WACs, ASPs, DPs or prices paid by the Medicare Part B or Medicaid programs or the Medical Assistance Program for your Pharmaceuticals, including but not limited to, the date, scope, author(s), results, and actions taken in response. Additionally, identify each document that relates to any such audit, study, survey, analysis, or investigation.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly in seeking “each audit, study, survey, analysis or investigation” over an eleven-year period; (ii) is vague and ambiguous, particularly with respect to the terms “audit,” “study,” “survey,” “analysis,” and “prices”; (iii) seeks confidential and/or proprietary information; (iv) seeks information protected by the attorney-client privilege, the work product doctrine and/or the accountant-client privilege; (v) seeks information that is not

relevant nor reasonably calculated to lead to the discovery of admissible evidence; (vi) seeks information outside of Abbott's custody, care or control to the extent it seeks information regarding investigations by third parties; and (vii) seeks information equally or more available to the Commonwealth of Kentucky.

Subject to and without waiving any of its objections, Abbott states that various state and federal agencies, including the United States Department of Justice and the California, Florida, Illinois and Texas Attorneys General, have investigated Abbott's marketing and pricing practices with respect to certain Medicare and Medicaid reimbursable products. These civil investigations seek to determine whether these practices violated any laws, including the Federal False Claims Act or constituted fraud in connection with the Medicare and/or Medicaid reimbursement paid to third parties. The Office of the Inspector General of the United States departments of Health and Human Services, the General Accounting Office, the Congressional Budget Office, the Congress, many state government agencies and their contractors have also studied and reported on the use of AWP, and on Medicare Part B and Medicaid reimbursement for pharmaceutical products, and some of those studies and reports include Abbott products within their scope. To the extent the Interrogatory seeks internal audits, studies, survey, analyses or investigations relating to Abbott's pricing and the prices paid by the Medicare Part B or Medicaid programs or the Medical Assistance Program for the Subject Drugs, all such responsive information is protected by the attorney-client privilege and/or the work-product doctrine.

34. Describe your corporate structure, identifying all domestic and/or foreign parents and any other affiliated company, subsidy, division, joint venture or other entity having at least 10% ownership interest in you, or in which you have at least a 10% ownership interest.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome; (ii) is vague and ambiguous, particularly with respect to the term “corporate structure”; (iii) is not limited to the United States; (iv) is not limited to the Subject Drugs; and (v) seeks information that is not relevant nor reasonably calculated to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that Abbott Laboratories Inc., a Delaware corporation, is the subsidiary of Abbott Laboratories, an Illinois corporation.

35. Identify and describe in detail all instructions, guidance, criteria, and policies or sales materials given in written, verbal, electronic or other form, to any person or entity relating in any way to marketing, sales, advertising or promotional efforts in which the difference between Actual Price(s), WAC, AWP, AMP, DP, ASP, SWP, Best Price, or Reimbursement Price(s) were mentioned, or referred to.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it purports to require Abbott to search “all instructions, guidance, criteria and policies or sales material” over an eleven-year period for the requested information ; (ii) is not limited to the Commonwealth of Kentucky; (iii) is not limited to the Subject Drugs; (iv) is vague and ambiguous, particularly with respect to the terms, “guidance,” “Actual Price(s),” “SWP,” “promotional efforts,” and “Reimbursement Price(s)”; (v) seeks confidential and/or proprietary information;

(vi) seeks information protected by the attorney-client privilege and/or the work product doctrine; and (vii) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent it seeks information relating to the Medicaid Rebate Program as there is no claim in the Amended Complaint relating to the Medicaid Rebate Program.

Subject to and without waiving any of its objections, Abbott will produce, to the extent they exist and are reasonably obtainable, non-privileged (i) policies and procedures for sales, marketing and pricing of the Subject Drugs that reference AWP, WAC, DP or the spread; and (ii) promotional materials provided to any sales representatives for the Commonwealth of Kentucky or any non-hospital customers in the Commonwealth of Kentucky that relate to sales, marketing and pricing of the Subject Drugs and that reference AWP, WAC, DP or the spread.

36. Describe all actions taken, and identify all persons or entities taking such action, to modify AWP, AMP, WAC, or Best Price for the Subject Drugs since you became aware of any federal or -state investigations into your price reporting practices. Identify all documents relating to, discussing or referring to any such investigation or corrective action and describe those documents to the extent they are not protected by a valid privilege.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome; (ii) is not limited to the Subject Drugs; (iii) incorrectly suggests that Abbott determines AWP for the Subject Drugs; (iv) is vague and ambiguous, particularly with respect to the phrases “price reporting practices” and “corrective action”; (v) seeks information protected by the attorney-client privilege and/or work product doctrines; and (vi) seeks information that is not

relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent it seeks information relating to the Medicaid Rebate Program as there is no claim in the Amended Complaint relating to the Medicaid Rebate Program.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, correspondence documents sent to third-party pharmaceutical pricing compendia and price announcements to wholesalers that show changes in Abbott's reported prices of the Subject Drugs over the relevant time period. Abbott further states that the federal government and many state governments have taken a variety of actions over the last eleven years. That information is equally available to the Commonwealth.

37. Identify and describe all documents that relate to, refer to, or arise from any instance in which you, or a person or entity acting on your behalf, provided free Pharmaceuticals to any health care provider in Kentucky which provided services to Medicaid patients and was not a licensed physician, including any pharmacy or home care company. Identify all persons and entities participating in or with knowledge of such transfer of free Pharmaceuticals.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks "all documents" over an eleven-year period that relate to any instance in which Abbott provided "free Pharmaceuticals to any health care provider in Kentucky"; (ii) is not limited to the Subject Drugs; (iii) is vague and ambiguous, particularly with respect to the term "free Pharmaceuticals"; (iv) is confusing to the extent it can be read to suggest that Abbott provides pharmaceuticals to unlicensed physicians; (v) seeks information protected by the attorney-client

privilege and/or the work product doctrine; (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (vi) seeks confidential and/or proprietary information.

Subject to and without waiving any of its objections, Abbott states that it has participated in Health Kentucky since approximately 1991. Health Kentucky is a non-profit organization that provides physician services and pharmaceuticals at no-charge to individuals who are uninsured and have incomes of less than 100% of the Federal Poverty Level, but are ineligible for Medicaid. Health Kentucky partners with pharmaceutical companies, such as Abbott, who agree to provide medications to these qualified patients at no-charge. Patients receive these medications at no charge from retail pharmacies that contract with Health Kentucky.

38. Please identify and describe each and every instance when you provided any form of bonus, Chargeback, loyalty bonus, rebate, free goods, off invoice price arrangement, educational grants, samples, administration payment, or other thing of value to any Kentucky Customer that purchased your Pharmaceuticals within the Defined Time Period.

RESPONSE: In addition to its General Objections, Abbot objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks “each and every instance” that Abbott provide any “thing of value” to a Kentucky Customer over an eleven-year period; (ii) is not limited to the Subject Drugs; (iii) is vague and ambiguous, particularly with respect to the terms “bonus,” “loyalty bonus,” “free goods,” and the phrases “off invoice price arrangement,” “administration payment,” and “other thing of value”; (iv) seeks confidential and/or proprietary information; and (v) seeks information that is

not relevant nor reasonably calculated to the discovery of
admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it will produce, to the extent they exist and are reasonably obtainable, electronic sales data and contracts relating to sales by Abbott of the Subject Drugs to non-hospital customers in the Commonwealth of Kentucky.

39. Identify and describe arrangements, contracts, agreements, and business relationships, whether express or implied, written or oral, between you and other drug manufacturers that relate in any way to the Subject Drugs. Also identify and describe all documents relating to or referring to such relationships, including contracts, correspondence, New Drug Applications, Abbreviated New Drug Applications, FDA approvals and accounting records, worksheets, statements, reports, and other documents relating to or reflecting financial information.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seeks all “arrangements, contracts, agreements, and business relationships” with any other drug manufacturer over an eleven-year period; (ii) is not limited to the Commonwealth of Kentucky; (iii) is vague and ambiguous, particularly with respect to the terms “arrangements” and “business relationships”; (iv) seeks confidential and/or propriety information; (v) seeks information protected by the attorney-client privilege and/or work product doctrine; and (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

40. Identify and describe all communications of any kind with HCFA (CMS) regarding your Medicaid Rebate Agreement and any information or

representations about calculation of Medicaid rebates for all Subject Drugs, including any requests by you for clarification(s) regarding your obligations as to your classification of each of the Subject Drugs as a “multi-source innovator,” “single source,” or “non-innovator multi-source drug.”

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome, particularly to the extent it seek “all communications of any kind with HCFA (CMS) regarding [Abbott’s] Medicaid Rebate Agreement” and “any information or representations about calculation of Medicaid rebates” over an eleven-year period; (ii) is not limited to the Commonwealth of Kentucky; (iii) seeks information outside of Abbott’s custody, care or control; (iv) is vague and ambiguous, particularly with respect to the phrase “any information or representations about calculation of Medicaid rebates”; (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly since there is no Medicaid Rebate claims in the Amended Complaint; and (vi) seeks information protected under the Medicaid Rebate Statute, Abbott’s Medicaid Rebate agreement with CMS and/or the Medicare Statute.

41. For the Subject Drugs on a quarterly basis during the Defined Time Period, list all “net,” “dead net,” “net-net,” “wholesale net,” or any other price term or price designation which is reduced by a discount rebate, bonus, or chargeback, paid to you by the following wholesalers: Bergen Brunswig, Cardinal Health, AmeriSource, McKesson (and/or McKesson HBOC or McKesson Corporation), Bindley Western, J.J. Balan and Anda.

RESPONSE: In addition to its General Objections, Abbott objects to this interrogatory because it: (i) is overly broad and unduly burdensome; (ii) is not limited to the Commonwealth of Kentucky; (iii) is vague and ambiguous, particularly with respect to the terms “net,” “dead net,” “net-net,” “wholesale net,” “price term,” and “price designation”; (iv) seeks confidential and/or proprietary information; (v) purports to require Abbott to conduct mathematical calculations rather than simply provide factual responses to discovery requests; and (vi) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of its objections, Abbott states that it is not aware of any instances in which a discount rebate, bonus or chargeback was paid to it for the Subject Drugs by the wholesalers listed in Interrogatory 41.

VERIFICATION

My name is Joseph E. Fiske, I am currently employed by Abbott Laboratories Inc. ("Abbott") as Director, Pricing & Planning. I am authorized by Abbott to verify these interrogatory responses for Abbott. Abbott's responses were prepared from Abbott's records, files and information kept by the company in the regular and ordinary course of its business, with the assistance of persons regularly in the employ of or retained by Abbott. The persons in the employ of or retained by Abbott charged with responsibility for supervising the gathering of the information contained in these responses have reported to me that, subject to inadvertent or undiscovered errors, these responses are true and correct, being based on and necessarily limited by the records, files and information still in existence, presently recollected and thus far discovered. Subject to these limitations, I state that these responses are true and correct to the best of my knowledge, information and belief.

I declare under the penalty of perjury that the foregoing is true and correct.

Joseph E. Fiske

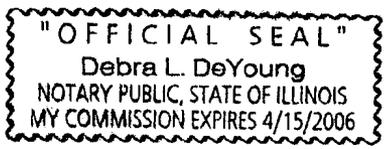
STATE OF ILLINOIS

COUNTY OF LAKE

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 12th day of November, 2004.

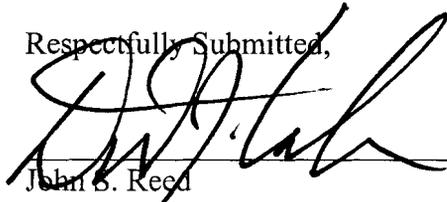
4/15/2006
My Commission Expires

Debra L. DeYoung
Notary Public for the State of Illinois



Dated: November 15, 2004

Respectfully Submitted,



John B. Reed

David J. Hale

REED WEITKAMP SCHELL & VICE PLLC

500 West Jefferson Street, Suite 2400

Louisville, Kentucky 40202

Telephone: (502) 589-1000

Facsimile: (502) 562-2200

James R. Daly

Toni-Ann Citera

Jeremy P. Cole

JONES DAY

77 West Wacker

Chicago, Illinois 60601-1692

Telephone: (312) 782-3939

Facsimile: (312) 782-8585

R. Christopher Cook

Jesse A. Witten

JONES DAY

51 Louisiana Avenue, N.W.

Washington, D.C. 20001-2113

Telephone: (202) 879-3939

Facsimile: (202) 626-1700

COUNSEL FOR ABBOTT LABORATORIES INC.