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STATE OF WISCONSIN,	)	
	)	
Plaintiff,	)	Case No.: 04-CV-1709
	)	
v.	)	
	)	
AMGEN INC., et. al.,	)	
	)	
Defendants.	)	
	)	

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**AVENTIS BEHRING, L.L.C., N/K/A ZLB BEHRING, L.L.C.’S OBJECTIONS AND  
RESPONSES TO PLAINTIFF’S FIRST SET OF CONSOLIDATED DISCOVERY  
REQUESTS TO ALL DEFENDANTS**

Pursuant to Wis. Stat. §§ 804.1, 804.8, 804.9 and 804.11, Defendant Aventis Behring LLC, n/k/a ZLB Behring LLC (“Behring”), by its attorneys, responds to Plaintiff’s First Set of Consolidated Discovery Requests to All Defendants (“Requests”) as follows.

**PRELIMINARY STATEMENT**

1. The information and documents supplied herein are for use in this litigation and for no other purpose.

2. By responding to these Requests, Behring does not waive or intend to waive: (a) any objections as to the competency, relevancy, materiality, privilege, status, or admissibility as evidence, for any purpose, of any documents or information produced in response to the Requests; (b) the right to object on any ground to the use of the documents or information produced in response to the Requests at any deposition, hearing, trial or other proceeding, or to

their use in any pleading or submission; or (c) the right to object on any ground at any time to a demand for further responses to the Requests.

3. No objection made herein, or lack thereof, is an admission by Behring as to the existence or non-existence of any information.

4. The objections and responses made herein are based on Behring's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. Behring reserves the right to amend or supplement these objections and responses in accordance with the applicable rules and court orders and based on results of its continuing investigation.

5. Behring's responses and objections are submitted without prejudice to Behring's right to produce evidence of any subsequently discovered fact. Behring accordingly reserves its right to provide further responses and objections as additional facts are ascertained.

6. The provision of information in response to these Requests shall not be construed as a waiver of the confidentiality of such information. Behring's responses and objections to these Requests contain information that will be subject to the Protective Order in place in this case.

7. Unless expressly admitted, each and every Request for Admission is hereby denied.

### **GENERAL OBJECTIONS**

1. Behring objects to the Requests to the extent that they seek information, documents, or admissions that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

2. Behring objects to the Requests to the extent that they seek information not limited to Behring's practices in Wisconsin.

3. Behring objects to the Requests to the extent that they are overly broad, unduly burdensome, ambiguous, or vague, are not described with reasonable particularity, lack a readily discernible meaning, and/or require Behring to speculate as to the information sought.

4. Behring objects to the Requests on the grounds that they are unduly burdensome to the extent that they purport to require Behring to compile, analyze, compose, and/or summarize voluminous data or information for Plaintiff.

5. Behring objects to the Requests to the extent that responding would involve unreasonable expense.

6. Behring objects to the Requests to the extent they attempt to impose obligations on Behring other than those imposed or authorized by the Wisconsin Supreme Court Rules, the Wisconsin Rules of Civil Procedure and/or any applicable order of this Court.

7. Behring objects to the Requests to the extent that they demand production of any document covered by the attorney-client privilege, work product privilege, or any other applicable privilege. In the event any privileged document is produced by Behring, its production is inadvertent and does not constitute waiver of any privilege.

8. Behring objects to the Requests to the extent that they seek admissions as to legal conclusions.

9. Behring objects to the Requests to the extent that they call for the production of information or documents not within its possession, custody, or control or that are more appropriately sought from third parties to whom requests have been or may be directed.

10. Behring objects to the Requests to the extent that they are unreasonably cumulative or that they call for documents that are publicly available, already in the possession, custody, or control of the Plaintiff, have already been made available to the Plaintiff, or are obtainable from some other source that is more convenient, less burdensome, or less expensive, on the grounds that such production is duplicative and unduly burdensome.

11. Behring objects to the Requests to the extent that they request admission of matters not within Behring's knowledge and to the extent that they request admission of matters for which Plaintiff bears the burden of proof.

12. Behring objects to the Requests to the extent that they call for the disclosure of proprietary, commercially sensitive, or other confidential information, the probative value of which is outweighed by Behring's interest in preserving its confidentiality. Any such materials produced will be subject to the Protective Order in this matter. Behring further objects to the disclosure, under any circumstance, of trade secret information and hereby asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by law.

13. Behring objects to the Requests as overly broad and unduly burdensome to the extent that they call for the identification of "each," "any," or "all" when relevant information can be obtained from fewer than "each," "any," or "all."

14. Behring objects to the Requests to the extent that they seek information or documents other than information or documents that can be located upon a search of files or other sources where such information or documents can reasonably be expected to be found.

15. Behring objects to the Requests to the extent that they are not limited to the drugs at issue in this action.

16. Behring objects to the Requests to the extent that they seek information or documents from outside the statute of limitations applicable to the claims in this action or beyond the time period relevant to this action.

17. Behring objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues contained in the Requests. Behring's response that it will identify or produce documents in connection with a particular Interrogatory or Request, or that it has no responsive documents, does not indicate that any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatory or Request is accurate, relevant to this litigation, or that Behring agrees with such implications or characterizations.

18. Behring objects to the Requests to the extent that they are argumentative.

19. Behring objects to the Requests to the extent that they call for Behring to restore and produce archived data that presently exists on media no longer utilized by Behring and which requires the use of equipment and/or software no longer used or maintained by Behring, on the grounds that the Requests are overly broad, unduly burdensome, duplicative, and not reasonably calculated to lead to the discovery of admissible evidence. Behring further objects to the Requests to the extent that they seek production of any data that does not reside in complete form in an active and readily acceptable format, is presently unreadable or unusable, or cannot be verified as accurate.

20. Behring reserves the right to assert additional objections to the Requests as appropriate and to amend or supplement these responses and objections in accordance with the applicable rules and court orders. Behring also reserves the right to object to the use of its responses at trial or other hearing or proceeding, as Behring deems necessary and appropriate.

To the extent that Behring may provide information or documents in response to any Interrogatory or Request herein, Behring does so without limiting or waiving any of the substantive objections it may otherwise have available.

21. Behring incorporates by reference, as if fully set forth herein, any objection or reservation of rights made by any co-defendant in this action to the extent that such objection or reservation of rights is not inconsistent with Behring's position in this action.

Behring expressly incorporates these General Objections into each specific response to the Requests set for below as if set forth in full therein. The response to an Interrogatory or Request shall not operate as a waiver of any applicable specific or general objection to an Interrogatory or Request.

### **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. Behring objects to the "Definitions" and "Instructions" to these Requests on the grounds that they are unduly burdensome, vague, and ambiguous and to the extent they attempt to impose obligations on Behring other than those imposed or authorized by the Wisconsin Supreme Court Rules and/or any applicable order of this Court.

2. Behring objects to the definition of the term "document" as set forth in Plaintiff's Definition No. 1 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous. Behring further objects to this definition to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Behring's obligations under the applicable Wisconsin Supreme Court Rules and Wisconsin Rules of Civil Procedure. Behring further objects to this definition to the extent that it purports to require Behring to identify or produce documents or data in a particular form or format, to convert documents or data into a particular

media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Behring as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. Behring objects to the definition of the term “identify” as set forth in Plaintiff’s Definition No. 2 on the grounds that it is overly broad and unduly burdensome.

4. Behring objects to the definition of the term “incentive” as set forth in Plaintiff’s Definition No. 3 on the grounds that it is overly broad, vague, ambiguous, and argumentative. Behring further objects to the terms “chargeback” and “pharmaceutical” on the ground that, despite Plaintiff’s suggestion otherwise, these terms are not defined in the Definitions portion of its Requests. Behring further objects on the ground that defining “payments or proposed payments in cash or in kind; chargebacks (see definition above); credits; discounts such as return-to-practice discounts, prompt-pay discounts, volume discounts, on-invoice discounts, or off-invoice discounts; rebates such as market-share rebates, access rebates, or bundled-drug rebates; free goods or samples; administrative fees or administrative-fee reimbursements; marketing fees; stocking fees; conversion fees; patient education fees; off-invoice pricing; educational or other grants; research funding; payments for participation in clinical trials; honoraria; speaker’s fees or payments; patient education fees; or consulting fees” as *per se* “incentives” is argumentative and each of those terms included in the definition is overly broad, vague and ambiguous. Behring further objects to this definition to the extent that it seeks information outside the time period relevant to this action.

5. Behring objects to the definition of the terms “you,” “your,” and “your company” as set forth in Plaintiff’s Definition No. 4 to the extent the Requests are directed to not only Behring but to its “its domestic or foreign parents, and any other affiliated company, subsidiary, division, joint venture or other entity having at least 10% ownership interest in [Behring]; [Behring’s] agents, independent contractors, directors, employees, officers, and representatives; and merged, consolidated or acquired predecessors; and any other person or entity acting on behalf of [Behring]” on the grounds that such an expansive Definition is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and calls for the production of documents or information that are not relevant to the subject matter of the pending action. Behring will conduct a reasonable search for responsive documents, but does not undertake any responsibility to search for documents in the possession of other persons or separate corporate entities, which are not in Behring’s possession, custody, or control.

## **RESPONSES TO CONSOLIDATED DISCOVERY REQUESTS**

### **CONSOLIDATED DISCOVERY REQUEST NO. 1**

**REQUEST FOR ADMISSION NO. 1:** At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank average wholesale prices (“AWPs”) for your drugs that were not the true average prices charged by wholesalers to their customers for your drugs.

**RESPONSE:** Denied. Behring objects to this Request because the phrases “explicitly approved your practice” and “true average prices” are vague, ambiguous and undefined. Behring also objects to this Request because it is argumentative; there are no “true” AWPs other than those published by pricing publications. Behring also objects to this Request because it assumes facts that are material and disputed by the parties. Behring further objects to this Request because it inaccurately assumes both that Behring provided AWPs to First DataBank for the

entirety of the applicable time period and that Behring knew the prices charged by its customers in connection with sales in Wisconsin.

Subject to and without waiving these objections, Behring believes that the State was aware of extensive governmental and other materials that informed payers such as the Department of Health & Family Services that providers in Wisconsin purchased prescription drugs at prices that were significantly lower than published AWP. Armed with this knowledge, the State made an informed decision to reimburse providers at a discount off AWP for prescription drugs dispensed to Medicaid recipients. Throughout the relevant period, the State knowingly used this industry term of art as a reimbursement benchmark regardless of whether it “approved” or “disapproved” the process by which First DataBank set AWP.

INTERROGATORY NO. 1: If your response to Request for Admission No. 1 is anything other than an unqualified admission, state all bases for your responses, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;
- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (i) identify all documents relating to the approval of the practice; and
- (j) identify all documents relating to the communication of the approval to you.

ANSWER: Behring objects to this Interrogatory because the phrase “approved the practice” is vague, ambiguous, and undefined. Subject to and without waiving this objection, Behring refers Plaintiff to its Response to Request for Admission No. 1.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1: Produce all documents identified in your Response to Interrogatory No. 1.

RESPONSE: Behring refers Plaintiff to its Response to Request for Admission No. 1 and Answer to Interrogatory No. 1. By way of further response, Behring states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's custody or control.

### **CONSOLIDATED DISCOVERY REQUEST NO. 2**

REQUEST FOR ADMISSION NO. 2: At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank suggested wholesale prices ("SWPs") that were not the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE: Denied. Behring objects to this Request because the phrases "explicitly approved your practice" and "true average prices" are vague, ambiguous and undefined. Behring also objects to this Request because it is argumentative; there are no "true" SWPs other than those published by pricing publications. Behring further objects to this Request because it assumes facts that are material and disputed by the parties. Behring objects to this Request because it inaccurately assumes both that Behring provided SWPs to First DataBank and that Behring knew the prices charged by its customers in connection with sales in Wisconsin. Behring objects that SWP is not relevant to this litigation because the State chose not to use SWP for reimbursement in the Wisconsin Medicaid Program. Finally, Behring incorporates herein its response to Request for Admission No. 1.

INTERROGATORY NO. 2: If your response to Request for Admission No. 2 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;

- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (i) identify all documents relating to the approval of the practice; and
- (j) identify all documents relating to the communication of the approval to you.

ANSWER: Behring objects to this Interrogatory because the phrase “approved the practice” is vague, ambiguous, and undefined. Subject to and without waiving this objection, Behring refers Plaintiff to its Response to Request for Admission No. 2.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2: Produce all documents identified in your Response to Interrogatory No. 2.

RESPONSE: Behring refers Plaintiff to its Response to Request for Admission No. 2 and Answer to Interrogatory No. 2. By way of further response, Behring states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff’s custody or control.

### **CONSOLIDATED DISCOVERY REQUEST NO. 3**

REQUEST FOR ADMISSION NO. 3: At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank wholesale acquisition costs (“WACs”) that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you.

RESPONSE: Denied. Behring objects to this Request because the phrases “explicitly approved your practice” and “true average prices” are vague, ambiguous and undefined. Behring incorporates its objection to Plaintiff’s definition of the terms “chargebacks” and “incentives.”

Subject to and without waiving these objections, Behring states that it did not provide WACs to First DataBank during the applicable time period.

INTERROGATORY NO. 3: If your response to Request for Admission No. 3 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;
- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (i) identify all documents relating to the approval of the practice; and
- (j) identify all documents relating to the communication of the approval to you.

ANSWER: Behring objects to this Interrogatory because the term “approved the practice” is vague, ambiguous, and undefined. Subject to and without waiving this objection, Behring refers Plaintiff to its Response to Request for Admission No. 3.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3: Produce all documents identified in your Response to Interrogatory No. 3.

RESPONSE: Behring refers Plaintiff to its Response to Request for Admission No. 3 and Answer to Interrogatory No. 3. By way of further response, Behring states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff’s custody or control.

**CONSOLIDATED DISCOVERY REQUEST NO. 4**

REQUEST FOR ADMISSION NO. 4: The average wholesale prices (“AWPs”) that you reported to First DataBank for your drugs were not the true average prices charged by wholesalers to their customers for your drugs. Rather, the AWP’s that you reported to First DataBank for your drugs were more than the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE: Denied. Behring objects to Request for Admission No. 4 on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. Behring also objects to this Request, because the phrase “true average prices” is vague, ambiguous, and undefined. Behring also objects to this Request because it assumes facts that are material and disputed by the parties.

Behring objects to this Request because it inaccurately assumes both that Behring provided AWP's to First DataBank for the entirety of the applicable time period and that Behring knew the prices charged by its customers in connection with sales in Wisconsin.

Subject to and without waiving these objections, Behring refers the State to the documents Behring has produced or will produce in this litigation, which include but are not limited to documents reflecting communications between Behring and First DataBank, including but not limited to communications in which Behring expressly stated that it was submitting to First DataBank its systems price to wholesalers without regard to prompt pay or other discounts, rebates or chargebacks. This systems price to wholesalers without regard to prompt pay or other discounts, rebates or chargebacks presumably would have differed from the average prices charged by Behring's customers to their customers.

Further responding, Behring believes that the State was aware that providers in Wisconsin purchased prescription drugs at prices that were significantly lower than published AWP's. Armed with this knowledge, the State made an informed decision to reimburse providers at a discount off AWP for prescription drugs dispensed to Medicaid recipients.

INTERROGATORY NO. 4: If your response to Request for Admission No. 4 is anything other than an unqualified admission, state all bases for your response and identify all documents that support or relate to your response.

ANSWER: Behring refers Plaintiff to its Response to Request for Admission No. 4.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4: Produce all documents identified in your Response to Interrogatory No. 4.

RESPONSE: Behring refers Plaintiff to its Response to Request for Admission No. 4 and Answer to Interrogatory No. 4.

**CONSOLIDATED DISCOVERY REQUEST NO. 5**

REQUEST FOR ADMISSION NO. 5: The suggested wholesale prices (“SWPs”) that you reported to First DataBank for your drugs were not the true average prices charged by wholesalers to their customers for your drugs. Rather, the SWPs that you reported to First DataBank for your drugs were more than the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE: Denied. Behring objects to Request for Admission No. 5 on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. Behring also objects to this Request, because the phrase “true average prices” is vague, ambiguous, and undefined. Behring also objects to this Request because it assumes facts that are material and disputed by the parties. Behring objects to this Request because it inaccurately assumes both that Behring provided SWPs to First DataBank and that Behring knew the prices charged by its customers in connection with sales in Wisconsin. Behring objects that SWP is not relevant to this litigation because the State chose not to use SWP for reimbursement in the Wisconsin Medicaid Program. Finally, Behring incorporates herein its response to Request for Admission No. 4.

INTERROGATORY NO. 5: If your response to Request for Admission No. 5 is anything other than an unqualified admission, state all bases for your response and identify all documents that support or relate to your response.

ANSWER: Behring refers Plaintiff to its Response to Request for Admission No. 5.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5: Produce all documents identified in your Response to Interrogatory No. 5.

RESPONSE: Behring refers Plaintiff to its Response to Request for Admission No. 5 and Answer to Interrogatory No. 5.

### **CONSOLIDATED DISCOVERY REQUEST NO. 6**

REQUEST FOR ADMISSION NO. 6: The wholesale acquisition costs (“WACs”) that you reported to First DataBank for your drugs were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs. Rather, the WACs that you reported to First DataBank for your drugs were more than the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs.

RESPONSE: Denied. Behring objects to Request for Admission No. 6 on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. Behring incorporates its objection to Plaintiff's definition of the terms "chargebacks" and "incentives."

Subject to and without waiving these objections, Behring states that it did not provide WACs to First DataBank during the applicable time period.

INTERROGATORY NO. 6: If your response to Request for Admission No. 6 is anything other than an unqualified admission, state all bases for your response and identify all documents that support or relate to your response.

ANSWER: Behring refers Plaintiff to its Response to Request for Admission No. 6. By way of further response, Behring also refers Plaintiff to the transaction data produced by third parties, including AmerisourceBergen, McKesson, and Cardinal.

REQUEST FOR PRODUCTION OF DOCUMENTS No. 6: Produce all documents identified in your Response to Interrogatory No. 6.

RESPONSE: Behring refers Plaintiff to its Response to Request for Admission No. 6 and Answer to Interrogatory No. 6.

Dated: June 16, 2008.

By: /s/ Jonathan T. Rees  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of June, 2008, a true and correct copy of Aventis Behring LLC, n/k/a ZLB Behring LLC's Objections and Responses to Plaintiff's First Set of Consolidated Discovery Requests to All Defendants was served on counsel of record by Lexis Nexis File & Serve.

/s/ Jonathan T. Rees  
COUNSEL FOR DEFENDANT AVENTIS  
BEHRING LLC, N/K/A ZLB BEHRING  
LLC