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

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**AVENTIS PHARMACEUTICALS INC.’S OBJECTIONS AND RESPONSES TO  
PLAINTIFF’S SECOND SET OF CONSOLIDATED DISCOVERY REQUESTS  
TO ALL DEFENDANTS**

Pursuant to Wis. Stat. §§ 804.08, 804.09 and 804.11, Defendant Aventis Pharmaceuticals Inc. (“Aventis”), by its attorneys, responds to Plaintiff’s Second 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, Aventis 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 Aventis as to the existence or non-existence of any information.

4. The objections and responses made herein are based on Aventis's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. Aventis 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. Aventis's responses and objections are submitted without prejudice to Aventis's right to produce evidence of any subsequently discovered fact. Aventis 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. Aventis'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. Aventis 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. Aventis objects to the Requests to the extent that they seek information not limited to Aventis's practices in Wisconsin.

3. Aventis 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 Aventis to speculate as to the information sought.

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

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

6. Aventis objects to the Requests to the extent they attempt to impose obligations on Aventis other than those imposed or authorized by the Wisconsin Rules of Civil Procedure (Chapter 804, Wisconsin Statutes) and/or any applicable order of this Court.

7. Aventis 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 Aventis, its production is inadvertent and does not constitute waiver of any privilege.

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

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

12. Aventis 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 Aventis's interest in preserving its confidentiality. Any such materials produced will be subject to the Protective Order in this matter. Aventis 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. Aventis 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. Aventis 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. Aventis objects to the Requests to the extent that they are not limited to the drugs at issue in this action.

16. Aventis 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. Aventis objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues contained in the Requests. Aventis'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 Aventis agrees with such implications or characterizations.

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

19. Aventis objects to the Requests to the extent that they call for Aventis to restore and produce archived data that presently exists on media no longer utilized by Aventis and which requires the use of equipment and/or software no longer used or maintained by Aventis, on the grounds that the Requests are overly broad, unduly burdensome, duplicative, and not reasonably calculated to lead to the discovery of admissible evidence. Aventis 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. Aventis 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. Aventis also reserves the right to object to the use of its responses at trial or other hearing or proceeding, as Aventis deems necessary and appropriate. To the extent that Aventis may provide information or documents in response to any Interrogatory or Request herein, Aventis does so without limiting or waiving any of the substantive objections it may otherwise have available.

21. Aventis 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 Aventis's position in this action.

Aventis 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. Aventis 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 Aventis other than those imposed or authorized by the Wisconsin Rules of Civil Procedure (Chapter 804, Wisconsin Statutes) and/or any applicable order of this Court.

2. Aventis 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. Aventis further objects to this definition to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Aventis's obligations under the applicable Wisconsin Rules of Civil Procedure (Chapter 804, Wisconsin Statutes). Aventis further objects to this definition to the extent that it purports to require Aventis 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 Aventis as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. Aventis 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. Aventis objects to the definition of the terms “you,” “your,” and “your company” as set forth in Plaintiff’s Definition No. 3 to the extent the Requests are directed to not only Aventis 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 [Aventis]; [Aventis’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 [Aventis]” 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. Aventis 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 Aventis’s possession, custody, or control.

**RESPONSE TO CONSOLIDATED DISCOVERY REQUEST NO. 7**

**REQUEST FOR ADMISSION NO. 7:** At no time has the State of Wisconsin and you agreed on the meaning or definition of average wholesale prices (“AWP”).

**RESPONSE:** Denied. In addition to its General Objections, Aventis objects to Request for Admission No. 7 on the grounds that the term “agreed” is vague, ambiguous, and undefined. Aventis also objects to this Request to the extent it implies that Aventis has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Finally, Aventis objects to this Request to the extent it seeks information more readily available to Plaintiff or not within Aventis's possession, custody, or control.

**INTERROGATORY NO. 7:** If your response to Request for Admission No. 7 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of AWP that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of AWP provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;
- (d) if your answer to subpart (c) is "no," identify the last date when you contend the State of Wisconsin and you agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is "yes," describe in detail the manner in which the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person's participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of AWP;
- (g) identify all documents supporting your response to request for admission no. 7;
- (h) identify all documents supporting your answer to interrogatory no. 7, including all subparts;
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 7, including subparts.

**ANSWER:** Aventis objects to Interrogatory No. 7 on the grounds that it is overly broad, unduly burdensome, and unintelligible as written. Aventis further objects to this Request

on the grounds that the terms “agreed” and “together developed” are vague, ambiguous, and undefined. Aventis also objects to this Request to the extent it implies that Aventis has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP. Finally, Aventis objects to this Request to the extent it seeks information more readily available to Plaintiff or not within Aventis’s possession, custody, or control.

Subject to and without waiving the objections set forth above, Aventis avers that the State was aware of extensive governmental reports and other materials that informed payers, such as the Department of Health & Family Services, that retail pharmacists in Wisconsin purchased prescription drugs at prices that were significantly lower than published AWPs. Armed with this knowledge, the State made an informed decision to reimburse retail pharmacists at a discount off AWP for prescription drugs dispensed to Medicaid recipients and continues to do so even after filing this suit. Throughout the relevant time period, the State knowingly and intentionally used this industry term of art as a reimbursement benchmark, despite, and in part because of, its understanding that AWP does not represent an actual average of wholesale prices.

Aventis further responds that Plaintiff is already in possession of documents from which the answer to this Interrogatory may be obtained. Aventis refers Plaintiff to Defendants’ briefing and attached exhibits filed in response to Plaintiff’s motions for summary judgment, which contain information generally responsive to this Interrogatory.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7:** Produce all documents identified in your Response to Interrogatory No. 7.

**RESPONSE:** Aventis objects to this Request on the grounds that it is overly broad and unduly burdensome. Aventis further objects to this Request to the extent it seeks documents not within Aventis’s possession, custody, or control, or documents more readily available to Plaintiff.

Subject to and without waiving the objections set forth above, Aventis states that Plaintiff is already in possession of documents generally responsive to this Request and refers Plaintiff to its Answer to Interrogatory No. 7.

**RESPONSE TO CONSOLIDATED DISCOVERY REQUEST NO. 8**

**REQUEST FOR ADMISSION NO. 8:** At no time has the State of Wisconsin and you agreed on the meaning or definition of wholesale acquisition cost (“WAC”).

**RESPONSE:** Denied. In addition to its General Objections, Aventis objects to Request for Admission No. 8 on the grounds that the term “agreed” is vague, ambiguous, and undefined. Aventis also objects to this Request to the extent it implies that Aventis has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC. Finally, Aventis objects to this Request to the extent it seeks information more readily available to Plaintiff or not within Aventis’s possession, custody, or control.

**INTERROGATORY NO. 8:** If your response to Request for Admission No. 8 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of WAC that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of WAC provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;
- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory;

- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person’s participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of WAC;
- (g) identify all documents supporting your response to request for admission no. 8;
- (h) identify all documents supporting your answer to interrogatory no. 8, including all subparts;
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 8, including subparts.

**ANSWER:** Aventis objects to Interrogatory No. 8 on the grounds that it is overly broad, unduly burdensome, and unintelligible as written. Aventis further objects to this Request on the grounds that the terms “agreed” and “together developed” are vague, ambiguous, and undefined. Aventis also objects to this Request to the extent it implies that Aventis has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC. Finally, Aventis objects to this Request to the extent it seeks information more readily available to Plaintiff or not within Aventis’s possession, custody, or control.

Subject to and without waiving the objections set forth above, Aventis avers that the State was aware of extensive governmental reports and other materials that informed payers, such as the Department of Health & Family Services, that WAC was a “list price” to wholesalers that did not include discounts. Aventis further states that Plaintiff is already in possession of documents from which the answer to this Interrogatory may be obtained. Such documents include, but are not limited to, federal statutes, reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies at the State of Wisconsin. Additionally, Aventis refers Plaintiff to Defendants’ briefing and

attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information generally responsive to this Interrogatory.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8:** Produce all documents identified in your Response to Interrogatory No. 8.

**RESPONSE:** Aventis objects to this Request on the grounds that it is overly broad and unduly burdensome. Aventis further objects to this Request to the extent it seeks documents not within Aventis's possession, custody, or control, or documents more readily available to Plaintiff.

Subject to and without waiving the objections set forth above, Aventis states that Plaintiff is already in possession of documents generally responsive to this Request and refers Plaintiff to its Answer to Interrogatory No. 8.

Dated: August 11, 2008.

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ATTORNEYS FOR DEFENDANT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of August, 2008, a true and correct copy of Aventis Pharmaceuticals Inc.'s Objections and Responses to Plaintiff's Second Set of Consolidated Discovery Requests to All Defendants was served on counsel of record by Lexis Nexis File & Serve.

/s/ Joseph G. Matye \_\_\_\_\_  
Joseph G. Matye, Esq.