



3. By responding that it will produce documents or information responsive to a particular Request, Baxter does not assert that it has any responsive documents or information in its possession, custody, or control or that such materials exist, only that it will conduct a reasonable search and produce responsive, non-objectionable, non-privileged documents or information in its possession, custody, or control. No objection made herein, or lack thereof, is an admission by Baxter as to the existence or non-existence, or Baxter's possession or lack of possession, of any documents or information.

4. The responses made herein are based on Baxter's investigation to date of those sources within its control where it reasonably believes responsive information may exist. These answers are made based upon the typical or usual interpretation of words contained in Plaintiff's Requests, unless a specific definition or instruction has been provided and/or agreed upon.

5. Baxter's answers to Plaintiff's Requests contain information subject to the Protective Order entered on November 29, 2005 in this matter, and must be treated accordingly.

6. The provision of documents or information pursuant to these Requests shall not be construed as a waiver of the confidentiality of any such information.

### **GENERAL OBJECTIONS**

Baxter expressly incorporates all of the General Objections set forth below into the specific objections and responses to each Request. Any specific objections provided below are made in addition to these General Objections and failure to reiterate a General Objection below does not constitute a waiver of that General Objection or any other objection.

## **A. GENERAL OBJECTIONS TO PLAINTIFF'S REQUESTS**

Baxter makes the following General Objections to Plaintiff's First Set of Consolidated Discovery Requests to All Defendants (collectively, the "Requests"):

1. Baxter objects to the Requests as overly broad and unduly burdensome to the extent that they call for the identification of "each," "any" or "all" documents or items of information when relevant information can be obtained from fewer than "each," "any" or "all" documents or information. Baxter objects to the Requests to the extent 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 reasonably can be expected to be found.

2. Baxter objects to the Requests to the extent that they purport to seek information relating to NDCs other than those Baxter NDCs listed in the TDL Stipulation between the State and Baxter.

3. Baxter objects to the Requests to the extent that they call for the production of documents or information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, are overbroad, unduly burdensome, vague, ambiguous, oppressive and/or duplicative. Baxter will not make such documents or information available for inspection.

4. Baxter objects to the Requests to the extent that they demand production of any document or information covered by the attorney-client privilege, work-product doctrine, accountant-client privilege, joint defense/prosecution privilege, consulting expert rule, common-interest doctrine, or any other legally recognized privilege, protection, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to the Requests, the disclosure of such documents or information shall not constitute a waiver of Baxter's right to assert the applicability of any privilege or immunity to the documents or information. Any such

inadvertently produced documents or information shall be returned to Baxter's counsel immediately upon discovery thereof.

5. Baxter objects to the Requests to the extent that they seek documents or information outside the knowledge, possession, custody, or control of Baxter, its agents, or employees, that are publicly available, that are otherwise equally accessible to Plaintiff, that have been made available to Plaintiff, or that are more appropriately sought from third parties to whom requests have been or may be directed.

6. Baxter objects to the disclosure, under any circumstance, of trade secret information where the probative value of such information in this litigation is exceeded by the potential harm to Baxter if the information were to fall into the hands of its competitors (including certain co-defendants), and further asserts each and every applicable privilege and rule governing confidentiality of this information to the fullest extent provided by the law.

7. Baxter objects to the Requests to the extent they seek documents or information relating to Baxter's activities other than those which concern the State of Wisconsin, 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.

8. Baxter objects to the Requests to the extent that they may be construed as calling for the production of confidential documents or information relating to a patient. Baxter will not produce any such documents or information to the extent it is under any obligation to maintain the patient information in confidence. Baxter will not disclose such material unless the patient grants permission to do so.

9. Baxter objects to these Requests to the extent that they seek documents or information that Baxter obtained from third parties and cannot disclose without prior approval of such third parties.

10. Baxter objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues in the Requests. Any response by Baxter is not intended to indicate that Baxter agrees with any such implications or characterizations, or that such implications or characterizations are relevant to this litigation.

11. Baxter objects to the Requests to the extent that they seek documents or information relating to a period of time outside any applicable statute of limitations.

12. Baxter objects to the Requests to the extent they seek documents or information already in the possession, custody, or control of the State of Wisconsin or its agencies or attorneys, or that have already been made produced to the State of Wisconsin or its agencies or attorneys.

13. Baxter objects to the Requests to the extent that they seek information not contained in documents that currently exist at Baxter and that would require Baxter to create, compile, or develop new documents. In particular, Baxter objects to the Requests to the extent they call for Baxter to restore and produce archived data that presently exists on media no longer utilized by Baxter and which requires the use of equipment and/or software no longer used or maintained by Baxter, on the grounds that the request is overly broad, unduly burdensome, duplicative, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter 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.

14. Baxter objects to the Requests to the extent that they seek information or documents publicly available.

15. Baxter objects to the Requests to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law, including, but not

limited to, the Wisconsin Rules of Civil Procedure. Baxter responds to these Requests, subject to other objections, as required by applicable law.

16. Baxter hereby 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 such objection or reservation of rights is not inconsistent with Baxter's position in this litigation.

**B. GENERAL OBJECTIONS TO PLAINTIFF'S DEFINITIONS AND INSTRUCTIONS**

Baxter makes the following General Objections to the Definitions and Instructions set forth in the Requests:

1. Baxter objects to Plaintiff's "Definitions" and "Instructions" in the Requests to the extent Plaintiff seeks to expand upon or alter Baxter's obligations under the Wisconsin Rules of Civil Procedure. Baxter will comply with the applicable rules of civil procedure in providing its objections and responses to the Requests.

2. Baxter objects to the definition of "document" to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Baxter's obligations under the Wisconsin Rules of Civil Procedure. Baxter will comply with the Wisconsin Rules of Civil Procedure. Baxter further objects to this definition to the extent that it calls for Baxter to search for information that was not generated in the form of written or printed records, or to create or re-create printouts from electronic data compilations, on the grounds that such a request would be unduly burdensome and oppressive. Baxter also objects to this definition to the extent that it requires or seeks to require Baxter to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different file format; (c) produce data fields, records, or reports about produced documents or data; (d) produce documents or data on any particular medium; (e) search for and/or produce any documents or data on back-up tapes; (f) produce any proprietary software, data, programs, or databases; or (g) violate a

licensing agreement or copyright laws. The production of any documents or data or the provision of other information by Baxter as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. Baxter objects to Plaintiff's definition of "identify" on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Definition to the extent it calls for information not within Baxter's possession, custody, or control.

4. Baxter objects to Plaintiff's definition of "incentive" on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence.

5. Baxter objects to Plaintiff's definitions of "you," "your," and "your company," to the extent they purport to imply any control by Baxter over any other entity or seek to impose discovery obligations that are broader than, or inconsistent with, Baxter's obligations under the Wisconsin Rules of Civil Procedure. The definitions are overbroad, unduly burdensome, and vague because they seek the production of information not in the control or custody of Baxter, require Baxter to search the files of third parties, and require Baxter to speculate as to the identities of individuals and business entities encompassed within the definitions.

**RESPONSES AND SPECIFIC OBJECTIONS  
TO FIRST SET OF CONSOLIDATED DISCOVERY REQUESTS**

Subject to the General Objections, and without waiving and expressly preserving all such objections, which are hereby incorporated into the responses to each Request, Baxter responds to Plaintiff's individually numbered Requests as follows:

## 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:**

Baxter objects to Request for Admission No. 1 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Request on the grounds that it is vague and ambiguous, particularly with respect to the phrases "explicitly approved" and "true average prices." Baxter also objects to the Request on the ground that the term "AWP" is vague, ambiguous, and undefined. Baxter further objects to the Request to the extent that it seeks information outside the knowledge, possession, custody, or control of Baxter, its agents, or employees, and that is equally if not more accessible to Plaintiff, that has been made available to Plaintiff, or that is more appropriately sought from third parties to whom requests have been or may be directed. Baxter also objects to the Request to the extent it purports to seek information regarding NDCs not listed in the Targeted Drug List Stipulation between the State and Baxter. Baxter further objects to this Request to the extent it mischaracterizes the facts of this case or assumes facts that are not in evidence, specifically to the extent it incorrectly implies that "the State of Wisconsin, its Department of Health and Family Services, or any employee thereof" was directed, authorized, or required to "approve" the AWPs reported to First DataBank, and to the extent it incorrectly implies that AWP was intended to equal an average price charged by wholesalers to their customers and that Baxter had access to such information.

Denied. This Request is based on the incorrect premise that Baxter provided "AWPs" to First DataBank and assumes, despite public knowledge to the contrary, that the "AWPs" published by First DataBank were supposed to be actual averages of prices charged by wholesalers to their customers. Notwithstanding and without waiving its objections, Baxter

further responds that it is not a wholesaler and, therefore, does not sell its drugs or therapies to its customers at the prices charged by wholesalers nor does it generally sell its drugs or therapies to retail pharmacies. Baxter further responds that it is without knowledge or information as to the prices charged by wholesalers to customers who do not have a contract with Baxter. Baxter also responds that the public record available to the State since the late 1980s and throughout the 1990s, which includes numerous government reports, and First DataBank's own documents demonstrate that it was public knowledge that the prices that First DataBank chose to publish as "AWPs" were not an average of actual transaction prices; nevertheless, the State chose to utilize the information that First DataBank labeled as "AWPs" as one of the bases for determining the reimbursement rates for drugs. The State of Wisconsin continued to use the AWP's published by First DataBank, notwithstanding that it had in its possession, among other information, PHS prices and actual contract prices for certain Baxter therapies, revised AWP's sent to the State of Wisconsin by the United States Department of Justice and National Association of Medicaid Fraud Control Units, and average manufacturer prices and best prices for certain Baxter therapies. Moreover, the State continued to reimburse providers who participate in its Medicaid Program, for pharmaceuticals based on published AWP's, even after filing its Complaint in this matter. As a result, the State explicitly approved of whatever pricing source and methodology First DataBank chose to use as the basis for the "AWPs" it published.

**INTERROGATORY NO. 1:** If your response to Request for Admission No. 1 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 made 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;
- (j) identify all documents relating to the communication of the approval to you.

**RESPONSE:**

Baxter objects to Interrogatory No. 1 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Interrogatory on the grounds that it is vague and ambiguous, particularly with respect to the term “approval.”

Notwithstanding, and without waiving its objections, Baxter responds to Interrogatory No. 1 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin from which the answer to this Interrogatory may be derived or ascertained. Baxter further responds that non-privileged, responsive documents can be found in the document productions of the State and First DataBank. *See also* Response to Request For Admission No. 1, above; Defendants’ briefing and attached exhibits filed in response to Plaintiff’s motions for summary judgment.

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

**RESPONSE:**

Notwithstanding, and without waiving its objections, Baxter responds to Request for Production No. 1 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin. *See also* Response to Request For Admission No. 1, Response to Interrogatory No. 1, above.

**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") for your drugs that were not the true average prices charged by wholesalers to their customers for your drugs.

**RESPONSE:**

Baxter objects to Request for Admission No. 2 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Request on the grounds that it is vague and ambiguous, particularly with respect to the phrases "explicitly approved" and "true average prices." Baxter also objects to the Request on the grounds that the term "SWP" is vague, ambiguous, and undefined. Baxter further objects to the Request to the extent that it seeks information outside the knowledge, possession, custody, or control of Baxter, its agents, or employees, and that is equally if not more accessible to Plaintiff, that has been made available to Plaintiff, or that is more appropriately sought from third parties to whom requests have been or may be directed. Baxter also objects to the Request to the extent it purports to seek information regarding NDCs not listed in the Targeted Drug List Stipulation between the State and Baxter. Baxter further objects to the Request on the ground that it is misleading because the State of Wisconsin did not use "SWPs" as a basis for reimbursement in the Wisconsin Medicaid Program. Baxter further objects to this Request to the extent it mischaracterizes the facts of this case or assumes facts that are not in evidence, specifically to the extent it incorrectly implies that "the State of Wisconsin, its Department of Health and Family Services, or any employee thereof" was directed, authorized, or required to "approve" any SWPs reported to First DataBank, and to the extent it incorrectly implies that SWP was intended to equal an average price charged by wholesalers to their customers and that Baxter had access to such information.

Denied. This Request is based on the incorrect premise that Baxter provided "SWPs" to First DataBank and assumes, contrary to First DataBank's assertions, that the "SWPs" published by First DataBank were supposed to be actual averages of prices charged by wholesalers to their customers. Notwithstanding and without waiving its objections, Baxter further responds that it is

not a wholesaler and, therefore, does not sell its drugs or therapies to its customers at the prices charged by wholesalers nor does it generally sell its drugs or therapies to retail pharmacies. Baxter further responds that it is without knowledge or information as to the prices charged by wholesalers to customers who do not have a contract with Baxter. Baxter also responds that the State of Wisconsin did not use "SWPs" as a basis for reimbursement in the Wisconsin Medicaid Program. Baxter further responds that to the extent the State chose to utilize the information that First DataBank labeled as "SWPs" in its Medicaid reimbursement system, the State explicitly approved of whatever pricing source and methodology First DataBank chose to use as the basis for the "SWPs" it published.

**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 made 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;
- (j) identify all documents relating to the communication of the approval to you.

**RESPONSE:**

Baxter objects to Interrogatory No. 2 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Interrogatory on the grounds that it is vague and ambiguous, particularly with respect to the term "approval." Baxter further objects to the

Request on the ground that it is misleading because the State of Wisconsin did not use “SWPs” as a basis for reimbursement in the Wisconsin Medicaid Program.

Notwithstanding, and without waiving its objections, Baxter responds to Interrogatory No. 2 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin from which the answer to this Interrogatory may be derived or ascertained. Baxter further responds that non-privileged, responsive documents can be found in the document productions of the State and First DataBank. *See also* Response to Request For Admission No. 2, above; Defendants’ briefing and attached exhibits filed in response to Plaintiff’s motions for summary judgment.

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

**RESPONSE:**

Notwithstanding, and without waiving its objections, Baxter responds to Request for Production No. 2 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin. *See also* Response to Request For Admission No. 2, Response to Interrogatory No. 2, above.

**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”) for your drugs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs.

**RESPONSE:**

Baxter objects to Request for Admission No. 3 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Request on the grounds that it is vague and ambiguous, particularly with respect to the phrases “explicitly approved” and “true average

prices” as well as the term “incentives.” Baxter also objects to the Request on the grounds that the term “WACs” is vague, ambiguous, and undefined. Baxter further objects to the Request to the extent that it seeks information outside the knowledge, possession, custody, or control of Baxter, its agents, or employees, and that is equally if not more accessible to Plaintiff, that has been made available to Plaintiff, or that is more appropriately sought from third parties to whom requests have been or may be directed. Baxter also objects to the Request to the extent it purports to seek information regarding NDCs not listed in the Targeted Drug List Stipulation between the State and Baxter. Baxter further objects to this Request to the extent it mischaracterizes the facts of this case or assumes facts that are not in evidence, specifically to the extent it incorrectly implies that “the State of Wisconsin, its Department of Health and Family Services, or any employee thereof” was directed, authorized, or required to “approve” Baxter’s WACs, and to the extent it incorrectly implies that WAC was intended to equal the net amount paid by wholesalers.

Denied. This Request assumes, contrary to First DataBank’s assertions and public knowledge, that the “WACs” published by First DataBank were supposed to be actual averages of prices. Notwithstanding and without waiving its objections, Baxter responds that, to the extent the State chose to utilize the information that First DataBank labeled as “WACs” in its Medicaid reimbursement system, the State explicitly approved of whatever pricing source and methodology First DataBank chose to use as the basis for the “WACs” it published.

**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; made verbally or in writing;
- (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 made 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;
- (j) identify all documents relating to the communication of the approval to you.

**RESPONSE:**

Baxter objects to Interrogatory No. 3 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Interrogatory on the grounds that it is vague and ambiguous, particularly with respect to the term “approval.”

Notwithstanding, and without waiving its objections, Baxter responds to Interrogatory No. 3 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin from which the answer to this Interrogatory may be derived or ascertained. Baxter further responds that non-privileged, responsive documents can be found in the document productions of the State and First DataBank. *See also* Response to Request For Admission No. 3, above.

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

**RESPONSE:**

Notwithstanding, and without waiving its objections, Baxter responds to Request for Production No. 3 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin. *See also* Response to Request For Admission No. 3, Response to Interrogatory No. 3, above.

**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 AWPs 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:**

Baxter objects to Request for Admission No. 4 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Request on the grounds that it is vague and ambiguous, particularly with respect to the phrases, “true average prices.” Baxter also objects on the grounds that the term “AWPs” is vague, ambiguous, and undefined. Baxter further objects to the Request to the extent it purports to seek information regarding NDCs not listed in the Targeted Drug List Stipulation between the State and Baxter. Baxter also objects to the Request to the extent it is duplicative of Request For Admission No. 1.

Denied. This Request is based on the incorrect premise that wholesalers charge their customers “true average prices.” Notwithstanding and without waiving its objections, Baxter further responds that although Baxter is without knowledge or information as to the prices charged by wholesalers to customers who do not have a contract with Baxter, for Baxter’s contract customers, wholesalers did not charge a “true average price.”

**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.

**RESPONSE:**

Baxter objects to Interrogatory No. 4 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome.

Notwithstanding, and without waiving its objections, Baxter responds to Interrogatory No. 4 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin from which the answer to this Interrogatory may be derived or ascertained. *See also* Response to Request For Admission No. 4, above.

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

**RESPONSE:**

Notwithstanding, and without waiving its objections, Baxter responds to Request for Production No. 4 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin. *See also* Response to Request For Admission No. 4, Response to Interrogatory No. 4, above.

**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:**

Baxter objects to Request for Admission No. 5 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Request on the grounds that it is vague and ambiguous, particularly with respect to the phrase “true average prices.” Baxter also objects on the grounds that the term “SWPs” is vague, ambiguous, and undefined. Baxter further objects to the Request to the extent that it seeks information outside the knowledge, possession, custody, or control of Baxter, its agents, or employees, and that is equally if not more accessible to Plaintiff, that has been made available to Plaintiff, or that is more appropriately sought from third parties to whom requests have been or may be directed. Baxter further objects to the Request on the ground that it is misleading because the State of Wisconsin did not use “SWPs” as a basis for reimbursement in the Wisconsin Medicaid Program. Baxter also objects to the Request to the extent it is duplicative of Request For Admission No. 2.

Denied. This Request is based on the incorrect premise that wholesalers charge their customers “true average prices.” Notwithstanding and without waiving its objections, Baxter

further responds that although Baxter is without knowledge or information as to the prices charged by wholesalers to customers who do not have a contract with Baxter, for Baxter's contract customers, wholesalers did not charge a "true average price."

**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.

**RESPONSE:**

Baxter objects to Interrogatory No. 5 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome. Baxter further objects to the Request on the ground that it is misleading because the State of Wisconsin did not use "SWPs" as a basis for reimbursement in the Wisconsin Medicaid Program.

Notwithstanding, and without waiving its objections, Baxter responds to Interrogatory No. 5 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin from which the answer to this Interrogatory may be derived or ascertained. Baxter further states that, as indicated by the information on pharmacy acquisition costs to which Wisconsin Medicaid had access (including information from the other state entities that purchased pharmaceuticals, pharmacists, rebate information, reports by federal agencies and third parties, information supplied by manufacturers and wholesalers, information supplied by pharmacies, and many other sources), the State was aware that the prices charged by wholesalers were less than the AWP's published by First DataBank. *See also* Response to Request For Admission No. 5, above.

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

**RESPONSE:**

Notwithstanding, and without waiving its objections, Baxter responds to Request for Production No. 5 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin. *See also* Response to Request For Admission No. 5, Response to Interrogatory No. 5, above.

**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:**

Baxter objects to Request for Admission No. 6 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to the Request on the grounds that it is vague and ambiguous, particularly with respect to the phrase “true average prices.” Baxter also objects to the Request on the grounds that the term “WAC” is vague, ambiguous, and undefined. Baxter further objects to the Request to the extent that it seeks information outside the knowledge, possession, custody, or control of Baxter, its agents, or employees, and that is equally if not more accessible to Plaintiff, that has been made available to Plaintiff, or that is more appropriately sought from third parties to whom requests have been or may be directed. Baxter also objects to the Request to the extent it is duplicative of Request For Admission No. 3.

Denied. Notwithstanding and without waiving its objections, Baxter responds that wholesalers did not pay Baxter “true average prices” when they purchased Baxter drugs and therapies.

**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.

**RESPONSE:**

Baxter objects to Interrogatory No. 6 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome.

Notwithstanding and without waiving its objections, Baxter responds that wholesalers did not pay Baxter “true average prices” when they purchased Baxter drugs and therapies. Baxter further responds that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin from which the State can determine the prices at which wholesalers purchased Baxter drugs and from which the answer to this Interrogatory may be derived or ascertained. *See also* Response to Request For Admission No. 6, above.

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

**RESPONSE:**

Notwithstanding, and without waiving its objections, Baxter responds to Request for Production No. 6 by stating that it has produced or will produce non-privileged, responsive documents to the State of Wisconsin. *See also* Response to Request For Admission No. 6, Response to Interrogatory No. 6, above.

Dated: June 16, 2008

By: /s/ Merle M. Delancey  
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BAXTER HEALTHCARE CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of Defendant Baxter Healthcare Corporation's Responses and Objections to Plaintiff State of Wisconsin's First Set of Consolidated Discovery Requests To All Defendants to be served on all counsel of record electronically, via Lexis-Nexis File & Serve, on June 16, 2008.

/s/ Charles V. Mehler III

Charles V. Mehler III