

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 9

DANE COUNTY

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STATE OF WISCONSIN,

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Plaintiff,

)

)

v.

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Case No. 04-CV-1709

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ABBOTT LABORATORIES, ET AL.,

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Defendants.

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**BEN VENUE LABORATORIES, INC.’S RESPONSES  
AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN’S  
FIRST SET OF CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS**

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Defendant Ben Venue Laboratories, Inc. (“Ben Venue”) hereby responds and objects to Plaintiff’s First Set of Consolidated Discovery Requests to All Defendants (“Discovery Requests”).

**PRELIMINARY STATEMENT**

As to all matters referred to in these responses and objections to the Discovery Requests, Ben Venue’s investigation and discovery continues. The specific responses set forth below, and any production made consistent with the accompanying Discovery Requests, are based upon, and necessarily limited by, information now available to Ben Venue. Ben Venue reserves the right to modify or supplement these responses and objections, to raise any additional objections deemed necessary and appropriate in light of the results of any further review, and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial.

## **SPECIFIC RESPONSES AND OBJECTIONS TO DISCOVERY REQUESTS**

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

**REQUEST FOR ADMISSION NO. 1:** At no time has the State of Wisconsin, its Department of Health and 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:**

In addition to its General Objections set forth below, Ben Venue objects to Request for Admission No. 1 on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and the following phrases are vague and ambiguous: “explicitly approved,” “true average prices charged,” and “their customers.” Ben Venue further objects to this Request on the grounds that it falsely implies that “the State of Wisconsin, its Department of Health and Family Services, or any employee thereof” was supposed to “approve” reporting with respect to AWP. Ben Venue further objects that this Request is vague, ambiguous, and misleading to the extent it is based on the false premise that AWPs were intended to equal the “average prices charged by wholesalers to their customers.” Ben Venue further objects to this Request because it incorrectly assumes that Ben Venue: (1) is or could be aware of every communication in which the State of Wisconsin, its Department of Health and Family Services, or any employee thereof, may have “explicitly approved” Ben Venue’s reporting; (2) has or had knowledge of what wholesalers charged “their customers” for the Ben Venue drugs at issue in this case; and (3) provided AWPs to First DataBank. Ben Venue further objects to this Request to the extent that it is not limited to a particular time frame and/or seeks information relating to Ben Venue drugs other than those identified in the Stipulation Regarding the Identity of the Proper Defendant and Target Drugs Between the State of Wisconsin and Defendant Ben Venue Laboratories, Inc. filed on April 23, 2008 (“Ben Venue Drug List”).

Subject to and without waiving its objections, DENIED. Ben Venue states that it did not provide AWP's to First DataBank.

**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:**

In addition to its General Objections set forth below, Ben Venue objects to Interrogatory No. 1 on the grounds that it is overly broad and unduly burdensome.

Subject to and without waiving its objections, Ben Venue incorporates by reference its objections and response to Request for Admission No. 1. Ben Venue denied Request for Admission No. 1 because Ben Venue did not provide AWP's to First DataBank.

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

**RESPONSE:**

Ben Venue incorporates by reference its objections and response to Interrogatory No. 1.

**CONSOLIDATED DISCOVERY REQUEST NO. 2**

**REQUEST FOR ADMISSION NO. 2:** At no time has the State of Wisconsin, its Department of Health and 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:**

In addition to its General Objections set forth below, Ben Venue objects to Request for Admission No. 2 on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and the following phrases are vague and ambiguous: “explicitly approved,” “true average prices charged,” and “their customers.” Ben Venue further objects to this Request because it incorrectly assumes that Ben Venue: (1) is or could be aware of every communication in which the State of Wisconsin, its Department of Health and Family Services, or any employee thereof, may have “explicitly approved” Ben Venue’s reporting; (2) has or had knowledge of what wholesalers charged “their customers” for the Ben Venue drugs at issue in this case; and (3) provided a reference price designated “SWP” to First DataBank. Ben Venue further objects to this Request to the extent that it is not limited to a particular time frame and/or seeks information relating to Ben Venue drugs other than those identified in the Ben Venue Drug List. Ben Venue also objects to this Request on the ground that Plaintiff has no good faith basis in fact for requesting Ben Venue to admit the facts in this Request and this Request is therefore improper.

Subject to and without waiving its objections, DENIED. Ben Venue states that it did not provide a reference price designated “SWP” to First DataBank.

**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:**

In addition to its General Objections set forth below, Ben Venue objects to Interrogatory No. 2 on the grounds that it is overly broad and unduly burdensome.

Subject to and without waiving its objections, Ben Venue incorporates by reference its objections and response to Request for Admission No. 2. Ben Venue denied Request for Admission No. 2 because Ben Venue did not provide a reference price designated “SWP” to First DataBank.

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

**RESPONSE:**

Ben Venue incorporates by reference its objections and response to Interrogatory No. 2.

**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:**

In addition to its General Objections set forth below, Ben Venue objects to Request for Admission No. 3 on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and the following phrases are vague and ambiguous: “explicitly approved,” “true average prices,” and “net of discounts, rebates, chargebacks, and incentives.” Ben Venue further objects to this Request on the grounds that it falsely implies that “the State of Wisconsin, its Department of Health and Family Services, or any employee thereof” was supposed to “approve” reporting with respect to WAC. Ben Venue further objects that this Request is vague, ambiguous, confusing, and misleading to the extent it compares WACs with sales prices to wholesalers “net of discounts, rebates, chargebacks, and incentives.” Ben Venue further objects to this Request because it incorrectly assumes that Ben Venue is or could be aware of every communication in which the State of Wisconsin, its Department of Health and Family Services, or any employee thereof, may have “explicitly approved” Ben Venue’s reporting. Ben Venue further objects to this Request to the extent that it is not limited to a

particular time frame and/or seeks information relating to Ben Venue drugs other than those identified in the Ben Venue Drug List.

For the foregoing reasons, and subject to and without waiving its objections, Ben Venue states that it can neither admit nor deny Request for Admission No. 3, as phrased. Subject to and without waiving its objections, Ben Venue states that it has been widely known, including by the state Medicaid agencies, such as that in the State of Wisconsin, that WAC is a list price for pharmaceutical products that does not include “discounts, rebates, chargebacks, and incentives.” Ben Venue admits only that, at this time, it is not aware of any instance in which the State of Wisconsin, its Department of Health and Family Services, or any employee thereof, “explicitly approved” Ben Venue’s reporting with respect to WAC. Ben Venue denies any remaining facts contained in Request for Admission No. 3.

**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 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:**

In addition to its General Objections set forth below, Ben Venue objects to Interrogatory No. 3 on the grounds that it is overly broad and unduly burdensome.

Subject to and without waiving its objections, Ben Venue incorporates by reference its objections and response to Request for Admission No. 3. Ben Venue states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's custody or control.

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

**RESPONSE:**

Ben Venue incorporates by reference its objections and responses to Interrogatory No. 3.

**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:**

In addition to its General Objections set forth below, Ben Venue objects to Request for Admission No. 4 on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and the following phrases are vague and ambiguous: "true average prices charged" and "their customers." Ben Venue further objects that this Request is vague, ambiguous, and misleading to the extent it is based on the false premise that AWPs were

intended to equal the “average prices charged by wholesalers to their customers.” Ben Venue further objects to this Request because it incorrectly assumes that Ben Venue: (1) has or had knowledge of what wholesalers charged “their customers” for the Ben Venue drugs at issue in this case; and (2) provided AWP’s to First DataBank. Ben Venue further objects to this Request to the extent that it is not limited to a particular time frame and/or seeks information relating to Ben Venue drugs other than those identified in the Ben Venue Drug List.

Subject to and without waiving its objections, DENIED. Ben Venue states that it did not provide AWP’s to First DataBank.

**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:**

In addition to its General Objections set forth below, Ben Venue objects to Interrogatory No. 4 on the grounds that it is overly broad and unduly burdensome, particularly to the extent it requests that Ben Venue identify “all documents” that support its response.

Subject to and without waiving its objections, Ben Venue incorporates by reference its objections and response to Request for Admission No. 4. Ben Venue denied Request for Admission No. 4 because Ben Venue did not provide AWP’s to First DataBank.

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

**RESPONSE:**

Ben Venue incorporates by reference its objections and response 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:**

In addition to its General Objections set forth below, Ben Venue objects to Request for Admission No. 5 on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and the following phrases are vague and ambiguous: “true average prices charged” and “their customers.” Ben Venue further objects to this Request because it incorrectly assumes that Ben Venue: (1) has or had knowledge of what wholesalers charged “their customers” for the Ben Venue drugs at issue in this case; and (2) provided a reference price designated “SWP” to First DataBank. Ben Venue further objects to this Request to the extent that it is not limited to a particular time frame and/or seeks information relating to Ben Venue drugs other than those identified in the Ben Venue Drug List.

Subject to and without waiving its objections, DENIED. Ben Venue states that it did not provide a reference price designated “SWP” to First DataBank.

**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:**

In addition to its General Objections set forth below, Ben Venue objects to Interrogatory No. 5 on the grounds that it is overly broad and unduly burdensome, particularly to the extent it requests that Ben Venue identify “all documents” that support its response.

Subject to and without waiving its objections, Ben Venue incorporates by reference its objections and response to Request for Admission No. 5. Ben Venue denied Request for Admission No. 5 because Ben Venue did not provide a reference price designated “SWP” to First DataBank.

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

**RESPONSE:**

Ben Venue incorporates by reference its objections and response 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:**

In addition to its General Objections set forth below, Ben Venue objects to Request for Admission No. 6 on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and the following phrases are vague and ambiguous: “true average prices,” and “net of discounts, rebates, chargebacks, and incentives.” Ben Venue further objects that this Request is vague, ambiguous, confusing, and misleading to the extent it compares WACs with sales prices to wholesalers “net of discounts, rebates, chargebacks, and incentives.” Ben Venue further objects to this Request to the extent that it is not limited to a

particular time frame and/or seeks information relating to Ben Venue drugs other than those identified in the Ben Venue Drug List.

For the foregoing reasons, and subject to and without waiving its objections, Ben Venue states that it can neither admit nor deny Request for Admission No. 6, as phrased. Subject to and without waiving its objections, Ben Venue states that it has been widely known, including by the state Medicaid agencies, such as that in the State of Wisconsin, that WAC is a list price for pharmaceutical products that does not include “discounts, rebates, chargebacks, and incentives.” Ben Venue admits only that, at this time, it is not aware of a particular instance in which the prices paid by wholesalers to Ben Venue, “net of discounts, rebates, chargebacks, and incentives,” were higher than the WACs Ben Venue reported for its drugs at issue. Ben Venue denies any remaining facts contained in Request for Admission No. 6.

**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:**

In addition to its General Objections set forth below, Ben Venue objects to Interrogatory No. 6 on the grounds that it is overly broad and unduly burdensome, particularly to the extent it requests that Ben Venue identify “all documents” that support its response.

Subject to and without waiving its objections, Ben Venue incorporates by reference its objections and response to Request for Admission No. 6. Ben Venue states that it will make available for inspection and/or copying relevant transactional data sufficient to show the price paid to Ben Venue by wholesalers for the Ben Venue drugs at issue in this case. Ben Venue also refers Plaintiff to the wholesaler transactional data produced by third parties, including

wholesalers, and documents that are equally available to Plaintiff or already in Plaintiff's custody or control.

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

**RESPONSE:**

Ben Venue incorporates by reference its objections and response to Interrogatory No. 6.

**GENERAL OBJECTIONS**

Ben Venue expressly incorporates all of the General Objections set forth below into each response to the Discovery Requests. The inclusion of any specific objection to a Discovery Request is neither intended as, nor shall in any way be deemed, a waiver of any General Objection or any other specific objection made herein or that may be asserted at a later date. In addition, the failure to include at this time any general or specific objection to a Discovery Request is neither intended as, nor shall in any way be deemed, a waiver of Ben Venue's rights to assert that or any other objection at a later date. Any information provided in response to these Discovery Requests shall be made subject to and without waiver of these General Objections. Furthermore, no objection made herein, or lack thereof, is an admission by Ben Venue of the existence or non-existence of any information.

1. Ben Venue objects to each Definition, Instruction, and Discovery Request to the extent it purports to impose on Ben Venue duties and/or obligations broader than or inconsistent with those imposed by the Wisconsin Rules of Civil Procedure or the local rules or orders of this court.

2. Ben Venue objects to each Discovery Request to the extent it calls for information or documents not relevant to the issues in this action and not reasonably calculated to lead to the discovery of admissible evidence.

3. Ben Venue objects to each Discovery Request as vague, overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it is not limited to a particular time frame.

4. Ben Venue objects to each Discovery Request as overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information pertaining to Ben Venue drugs other than those identified in the Stipulation Regarding the Identity of the Proper Defendant and Target Drugs Between the State of Wisconsin and Defendant Ben Venue Laboratories, Inc. filed on April 23, 2008.

5. Ben Venue objects to each Discovery Request to the extent it purports to require Ben Venue to compile, analyze, compute, and/or summarize voluminous data or information for Plaintiff.

6. By responding to Plaintiff's Discovery Requests, Ben Venue does not waive any objections to the relevancy, materiality, or admissibility of the documents or information sought. Ben Venue reserves the right to object on any ground to the use of any documents or testimony provided in response to the Discovery Requests at any hearings or at trial.

7. Reference in a response to another response is intended to incorporate both the substantive answer and objections in such other response.

8. Ben Venue objects to each Discovery Request to the extent it purports to be directed not only to Ben Venue, but also to its corporate parents, subsidiaries, affiliates, or other

entities other than Ben Venue on the grounds that such an expansive scope is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

9. Ben Venue objects to each Discovery Request to the extent it seeks information or documents that are exempt from discovery pursuant to the attorney-client privilege, work-product doctrine, critical self-analysis privilege, the consulting expert privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule, or doctrine. In the event Ben Venue supplies information or produces any document that is privileged, its production is inadvertent and does not constitute waiver of any privilege.

10. Ben Venue objects to each document request and interrogatory to the extent it seeks information or documents outside the knowledge of Ben Venue, its agents or employees, or information or documents not within the possession, custody, or control of Ben Venue, its agents or employees. Ben Venue further objects to each document request and interrogatory to the extent it seeks information or documents already in the possession, custody, or control of the Plaintiff.

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

12. Ben Venue objects to each Discovery Request to the extent that it is argumentative or seeks admissions as to legal conclusions

13. Ben Venue objects to each Discovery Request to the extent it is unreasonably cumulative or duplicative or calls for information or documents that are obtainable from some other source that is more convenient, less burdensome, or less expensive.

14. Ben Venue objects to each Discovery Request as overly broad and unduly burdensome to the extent it calls 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 items of information. Ben Venue objects to each Discovery Request to the extent it seeks information other than that which can be located upon a search of files or other sources where such information reasonably can be expected to be found.

15. Ben Venue objects to each Discovery Request to the extent it seeks information or documents irrelevant to Plaintiff’s claims, which arise in Wisconsin. Ben Venue objects to each Discovery Request that is irrelevant to Ben Venue’s dealings in Wisconsin on the grounds that such request is overly broad, unduly burdensome, and does not seek the discovery of information that is relevant to the subject matter of the pending action or reasonably calculated to lead to the discovery of admissible evidence.

16. Any documents produced or information provided in response to Plaintiff’s Discovery Requests is for use in this litigation and for no other purpose.

17. Any documents produced or information provided in response to Plaintiff’s Discovery Requests are subject to the terms of the Protective Order entered in this litigation.

18. Ben Venue adopts and incorporates by reference, as if fully set forth herein, its General Objections to Plaintiff's prior document requests and interrogatories.

19. Ben Venue objects to Plaintiff's definitions of the terms "you" and "your" as set forth in Definition No. 4 as unreasonably overbroad and as purporting to impose obligations beyond those in the Wisconsin discovery rules.

20. Ben Venue objects to the definition of "incentive" as set forth in Definition No. 3 on the grounds that it is overly broad, unduly burdensome, ambiguous, and vague. Ben Venue further objects to this definition to the extent it is not limited to a particular time frame.

21. Ben Venue 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 Ben Venue's position in this litigation.

Dated: June 16, 2008

Respectfully submitted,

/s/ Ceylan Ayasli Eatherton

Helen E. Witt, P.C.

Brian P. Kavanaugh

Elizabeth S. Hess

Ceylan Ayasli Eatherton

Kirkland & Ellis LLP

200 East Randolph Drive

Chicago, Illinois 60601

Tel: (312) 861-2000

Fax: (312) 861-2200

Mr. Patrick J. Knight

Gimbel Reilly Guerin & Brown

Two Plaza East, Suite 1170

330 East Kilbourn Avenue

Milwaukee, WI 53202

Tel: (614) 464-6400

Fax: (614) 464-6350

*Attorneys for Defendant Ben Venue  
Laboratories, Inc.*

**CERTIFICATE OF SERVICE**

I, Ceylan Ayasli Eatherton, hereby certify that on this 16th day of June, 2008, a true and correct copy of the foregoing was served on all counsel of record by Lexis Nexis File & Serve®.

Dated: June 16, 2008

/s/ Ceylan Ayasli Eatherton  
Ceylan Ayasli Eatherton

VERIFICATION

STATE OF OHIO )

)SS.

COUNTY OF CUYAHOGA )

David R. Gaugh, being first duly sworn, on oath deposes and states that he is authorized by Ben Venue Laboratories, Inc. to verify the foregoing Ben Venue Laboratories, Inc.'s Responses and Objections to Plaintiff State of Wisconsin's First Set of Consolidated Discovery Requests to All Defendants and hereby verifies the same; that some of the facts and matters set forth therein are not within his personal knowledge; that the facts and matters set forth therein have been assembled by authorized employees and counsel of Ben Venue Laboratories, Inc.; and that he is informed that the facts and matters set forth therein are true to the best of Ben Venue Laboratories, Inc.'s present knowledge and recollection.

  
David R. Gaugh

Subscribed and sworn to before me

this 13<sup>th</sup> day of June, 2008.

Scott R. Lillback  
Type / Print Name

Scott R. Lillback  
Notary Public

My Commission expires: April 13, 2013

**SCOTT R. LILLBACK**  
Notary Public, STATE OF OHIO  
My Commission Expires.....  
Recorded in Cuyahoga County