

STATE OF WISCONSIN,

Plaintiff,

v.

IMMUNEX INC., et al.,

Defendants.

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Case No. 04 CV 1709

**IMMUNEX CORPORATION'S RESPONSES AND OBJECTIONS TO PLAINTIFF
STATE OF WISCONSIN'S FIRST SET OF
CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS**

Pursuant to Wisconsin Rule of Civil Procedure 804.08, 804.09 and 804.11, defendant Immunex Corporation ("Immunex"), by its attorneys, responds and objects to Plaintiff State of Wisconsin's First Set of Consolidated Discovery Requests to all Defendants (the "Requests") as follows:

PRELIMINARY STATEMENT

1. These responses and objections are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such Plaintiff's Requests were asked of, or statements contained herein were made by, a witness present and testifying in Court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Immunex's responses shall not be deemed to constitute admissions:

a. that any particular document or thing exists, is relevant, non-privileged,

or admissible in evidence; or

- b. that any statement or characterization in Plaintiff's Requests is accurate or complete.

3. Immunex's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and Immunex reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses 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.

4. Immunex's responses to Plaintiff's Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

5. Immunex is responding on its own behalf, and not on behalf of Amgen Inc., the parent company of Immunex, which has been named as a separate defendant in these proceedings and is separately represented by counsel.

6. Immunex's responses to Plaintiff's Requests are submitted without prejudice to Immunex's right to produce evidence of any subsequently discovered fact. Immunex accordingly reserves its right to provide further responses and answers as additional facts are ascertained.

GENERAL OBJECTIONS

Immunex objects generally to Plaintiff's Requests as follows:

1. On July 3, 2007, Immunex produced to Plaintiff all documents produced to plaintiffs in the AWP MDL. The MDL court has directed coordination with related state cases such as this one, and at the very least before pursuing further discovery from Immunex, Plaintiff should review the relevant documents already produced to the State.

2. Immunex objects to Plaintiff's "Definitions" and "Instructions" to the extent Plaintiff seeks to expand upon or alter Immunex's obligations under the Wisconsin Statutes, in responding to Plaintiff's Requests. Immunex will comply with the Wisconsin Statutes in providing its responses to Plaintiff's Requests.

3. Immunex objects to the definition of the word "Document(s)" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin Statutes. Immunex further objects to this definition to the extent that it purports to require Immunex to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any 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 Immunex as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

4. Immunex objects to Plaintiff's definition of "Incentive" on the grounds that it is vague, ambiguous, overbroad, burdensome, and necessarily encompasses information and materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Immunex further objects to this definition on the grounds that it references purportedly defined terms, the definitions of which are not provided in the Requests.

5. Immunex objects to Plaintiff's Requests to the extent they call for the

identification or production of documents or information not relevant to the issues in this action or not reasonably calculated to lead to the discovery of admissible evidence.

6. Immunex objects to Plaintiff's Requests to the extent they seek information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, any common interest or joint defense agreement, or any other applicable privilege or protection.

7. Immunex objects to Plaintiff's Requests to the extent they call for information not within Immunex's possession, custody or control. In responding to Plaintiff's Requests, Immunex has undertaken or will undertake a reasonably diligent and reasonable search of documents and information within Immunex's current possession, custody or control.

8. Immunex objects to Plaintiff's Requests to the extent they call for information that is confidential, proprietary, and/or a trade secret of a third-party or is protected from disclosure by an agreement with a third-party.

9. Immunex objects to Plaintiff's Requests to the extent they seek disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

10. Immunex objects to the extent the Requests are directed not only to Immunex but to its "domestic or foreign parents, and any other affiliated company, subsidiary, division, joint venture or other entity having at least 10% ownership interest in [Immunex]; [Immunex's] agents, independent contractors, directors, employees, officers, and representatives; and merged, consolidated or acquired predecessors; and any other person or entity acting or purporting to act on behalf of [Immunex]" on the grounds

that such an expansive request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Immunex 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 Immunex's possession, custody or control.

11. Immunex objects to the extent that any request or interrogatory seeks information concerning Immunex products not at issue in this litigation.

12. Immunex objects to the extent that any request or interrogatory seeks information or documents outside the time period relevant to this action. The production of any documents or the provision of any other information by Immunex that pre-dates the relevant time period shall not be deemed to constitute a waiver of this objection.

13. Immunex objects to these Requests to the extent they seek documents no longer in the possession or control of Immunex. In June 2001, Immunex sold the rights to leucovorin calcium to Xanodyne Pharmed, Inc. In July 2002, Immunex closed on an agreement to sell all assets relating to Leukine® to Schering AG Germany, whose U.S. subsidiary is Berlex Laboratories. In November 2002, Immunex licensed the rights to sell Novantrone® in the United States to Serono, S.A. Immunex objects to these Requests to the extent they ask for documents or information concerning any divested product after the date of its sale.

14. Immunex expressly incorporates the above General Objections into the specific response set forth below as if set forth in full therein. A response to Plaintiff's Requests shall not operate as a waiver of any applicable specific or general objection.

RESPONSES TO 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") that were not the true average prices charged by wholesalers to their customers.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Admission No. 1 on the grounds that it is overly broad and unduly burdensome. Immunex further objects to this request on the grounds that the terms "explicitly approved" and "true average prices" are vague, ambiguous and undefined. Immunex further objects to this request to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Immunex 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 Immunex had access to such information. Immunex also incorporates by reference its responses and objections to Consolidated Discovery Request No. 4 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex denies Request for Admission No. 1.

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.

ANSWER: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Interrogatory No. 1 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this interrogatory to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference its responses and objections to Consolidated Discovery Request No. 4 and Request for Admission No. 1 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that Plaintiff is already in possession of documents, including but not limited to those already produced by Immunex, from which the answer to this interrogatory may be obtained. Additionally, Immunex refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information responsive to this interrogatory.

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

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Production of Documents No. 1 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this

request to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference its responses and objections to Consolidated Discovery Request No. 4 and Request for Admission No. 1 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that Plaintiff is already in possession of documents responsive to this request, including but not limited to those already produced by Immunex.

RESPONSES TO 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") that were not the true average prices charged by wholesalers to their customers.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Admission No. 2 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this request on the grounds that information relating to SWPs is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State of Wisconsin did not use SWP for reimbursement of pharmaceutical products under the Wisconsin Medicaid Program. Immunex also objects to this request on the grounds that the terms "explicitly approved" and "true average prices" are vague, ambiguous and undefined. Immunex further objects to this request to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Immunex 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 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 Immunex had access to such information. Immunex further objects on the grounds that it during the time period at issue in this case, it did not report AWP or SWP, but informed third-party compendia such as First DataBank of the list prices for its drugs. Immunex also incorporates by reference its responses and objections to Consolidated Discovery Request No. 5 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex denies Request for Admission No. 2.

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.

ANSWER: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Interrogatory No. 2 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this interrogatory on the grounds that information relating to SWPs is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence because the State of Wisconsin did not use SWP for reimbursement of pharmaceutical products under the Wisconsin Medicaid Program. Immunex further objects to this interrogatory to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference its responses and objections to Consolidated Discovery Request No. 5 and Request for Admission No. 2 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that Plaintiff is already in possession of documents, including but not limited to those already produced by Immunex, from which the answer to this interrogatory may be obtained. Additionally, Immunex refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information responsive to this interrogatory.

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

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Production of Documents No. 2 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this request on the grounds that information relating to SWPs is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State of Wisconsin did not use SWP for reimbursement of pharmaceutical products under the Wisconsin Medicaid Program. Immunex further objects to this request to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference

its responses and objections to Consolidated Discovery Request No. 5 and Request for Admission No. 2 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that Plaintiff is already in possession of documents responsive to this request, including but not limited to those already produced by Immunex.

RESPONSES TO CONSOLIDATED DISCOVERY REQUEST NO. 3

REQUEST FOR ADMISSION NO. 3: 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 wholesale acquisition costs ("WACs") that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Admission No. 3 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this request on the grounds that information relating to WACs is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State of Wisconsin did not use WAC for reimbursement of pharmaceutical products under the Wisconsin Medicaid Program. Immunex further objects to this request on the grounds that the terms "explicitly approved," "true average prices," "discounts," "rebates" and "chargebacks" are vague, ambiguous and undefined. Immunex further objects to this request to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Immunex 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" a pharmaceutical company's WACs, and to the extent it incorrectly implies that WAC was intended to equal the net amount paid by wholesalers. Immunex further objects on the grounds that it did not report WAC, but informed third-party compendia of the list prices for its drugs. Immunex also incorporates by reference its responses and objections to Consolidated Discovery Request No. 6 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex denies 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.

ANSWER: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Interrogatory No. 3 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this interrogatory on the grounds that information relating to WACs is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State of Wisconsin did not use WAC for reimbursement of pharmaceutical products under the Wisconsin Medicaid Program.

Immunex further objects to this interrogatory to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference its responses and objections to Consolidated Discovery Request No. 6 and Request for Admission No. 3 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that Plaintiff is already in possession of documents, including but not limited to those already produced by Immunex, from which the answer to this interrogatory may be obtained. Additionally, Immunex refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information responsive to this interrogatory.

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

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Production of Documents No. 3 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this request on the grounds that information relating to WACs is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State of Wisconsin did not use WAC for reimbursement of pharmaceutical products under the Wisconsin Medicaid Program. Immunex further objects to this request to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference its responses and objections to Consolidated Discovery Request No. 6 and Request for Admission No. 3 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that Plaintiff is already in possession of documents generally responsive to this request, including but not limited to those already produced by Immunex.

RESPONSES TO 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: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Admission No. 4 on the grounds that it is vague, ambiguous, and misleading. Immunex also objects on the ground that the phrase "true average prices" is vague, ambiguous, and undefined. Immunex further objects to this request to the extent that it incorrectly implies that Immunex reported and set AWP. Immunex did not set AWP's; AWP's are established and reported by independent third-party compendia. And, during the time period at issue in this lawsuit, Immunex did not report AWP's to the third-party compendia, but informed them of the list prices for Immunex's drugs. Immunex also objects to this request to the extent that it incorrectly implies that AWP was intended to reflect an actual price charged by wholesalers to their customers. Immunex states that it has been widely known for decades, including by state Medicaid agencies such as the State of Wisconsin's, that AWP's are not mathematical averages of prices paid by pharmacies but rather are reimbursement benchmarks that may exceed pharmacy and physician acquisition costs. Immunex also objects to this request on the ground that it incorrectly implies that Immunex was generally aware of the exact price wholesalers charged for Immunex products. Wholesalers' prices are commonly the

result of negotiations between wholesalers and their customers, which are wholly independent of Immunex's involvement. As a result, Immunex was generally not aware of the exact price wholesalers charged their customers for Immunex's products.

Based upon its General and Specific Objections, Immunex denies Request for Admission No. 4. Immunex admits, however, that it is generally aware, based on publicly available information concerning pharmacy acquisition costs, that the prices charged by wholesalers were typically less than the AWP's published by 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, which are incorporated herein by reference, Immunex objects to Interrogatory No. 4 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this interrogatory to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference 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: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Production of Documents No. 4 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this request to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference its response to Request for Admission No. 4.

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, which are incorporated herein by reference, Immunex objects to Request for Admission No. 5 on the grounds that it is vague, ambiguous, and misleading. Immunex also objects on the ground that the phrase "true average prices" is vague, ambiguous, and undefined. Immunex further objects that the values for any SWPs are not relevant to Plaintiff's claims because the State of Wisconsin did not use SWP for reimbursement in the Wisconsin Medicaid Program. Immunex further objects on the grounds that, during the time period at issue in this lawsuit, Immunex did not report AWP's to the third-party compendia, but informed them of the list prices for Immunex's drugs. Immunex also objects to this request to the extent that it incorrectly implies that the suggested AWP's were intended to equal actual prices charged by wholesalers.

Based upon its General and Specific Objections, Immunex denies Request for Admission No. 5. Immunex admits, however, that it is generally aware, based on publicly available information concerning pharmacy acquisition costs, that the prices charged by wholesalers were typically less than a pharmaceutical company's suggested AWP's.

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, which are incorporated herein by reference, Immunex objects to Interrogatory No. 5 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this interrogatory to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference its responses to Request for Admission Nos. 4 and 5, and 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.

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

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Interrogatory No. 5 on the grounds that it is overly broad and unduly burdensome. Immunex also objects to this request to the extent it seeks documents related to SWPs which are not relevant to Plaintiff's claims because the State of Wisconsin did not use SWP for reimbursement in the Wisconsin Medicaid Program. Immunex also objects to this request to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also incorporates by reference its Responses to Request for Admission Nos. 4 and 5.

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, which are incorporated herein by reference, Immunex objects to Request for Admission No. 6 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous. Immunex further objects to this request on the grounds that the phrases and terms "true average prices," "discounts," "rebates" and "chargebacks" are vague, ambiguous, and undefined. Immunex also objects to this request on the grounds that information relating to WACs is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State of Wisconsin did not use WAC for reimbursement of pharmaceutical products under the Wisconsin Medicaid Program. Immunex also objects to this request to the extent it incorrectly implies that Immunex reported a WAC for its drugs. Immunex states that it is widely known, including by state Medicaid agencies such as the State of Wisconsin's Medicaid agency, that WAC is a list price for pharmaceutical products that does not include minimal, customary prompt-pay discounts or other discounts. Documents reflecting these well-known facts include federal statutes, reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies of the State of Wisconsin.

Based upon its General and Specific Objections, Immunex denies Request for Admission No. 6. Immunex admits, however, that it charged wholesalers its reported list price on the invoice that Immunex sent to these customers. Immunex also offered its customers well-known industry discounts.

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, which are incorporated herein by reference, Immunex objects to Interrogatory No. 6 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous. Immunex also objects to this interrogatory to the extent it seeks information that is not within Immunex's possession, custody or control, publicly available, or more readily available to Plaintiff. Immunex also objects to this interrogatory on the grounds that information relating to WACs is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State of Wisconsin did not report a WAC to the third-party compendia.

Subject to its General and Specific Objections, and without waiving them, Immunex incorporates herein its response to Request for Admission No. 6. Immunex states that sales to wholesalers were at the published list price. Immunex further states that it has produced sales transaction data for each Immunex NDC at issue in this litigation, including data reflecting sales to wholesalers, as well as other documents from which the information sought by this interrogatory can be obtained. Immunex also refers Plaintiff to the wholesaler transactional 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: In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Production of Documents No. 6 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous. Immunex also objects to this request to the extent it seeks documents that are not within Immunex's

possession, custody or control, publicly available, or are more readily available to Plaintiff. Immunex also objects to this request on the grounds that information relating to WACs is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State of Wisconsin did not use WAC for reimbursement of pharmaceutical products under the Wisconsin Medicaid Program. Immunex incorporates herein its response to Request for Admission No. 6.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that Plaintiff is already in possession of documents responsive to this request, including but not limited to those already produced by Immunex.

June 16, 2008



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Attorneys for Immunex Corporation

CERTIFICATE OF SERVICE

I, Breena M. Roos, certify that on June 16, 2008, I caused a copy of IMMUNEX 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 by LexisNexis File & Serve.


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