STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

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| STATE OF WISCONSIN,<br><br>Plaintiff,<br><br>v.<br><br>IMMUNEX INC., et al.,<br><br>Defendants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 04 CV 1709 |

IMMUNEX CORPORATION'S RESPONSES AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S SECOND 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 its 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 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Immunex objects to the extent that any request or interrogatory seeks

information concerning Immunex products not at issue in this litigation.

11. 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.

12. 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 Pharmal, 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.

13. 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.

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

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

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Admission No. 7 on the grounds that it is overly broad and unduly burdensome. Immunex further objects to this request on the grounds that the term "agreed" is 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 implies that Immunex has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Based on its General and Specific Objections, Immunex denies Request for Admission No. 7.

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

(a) identify the definition of AWP that you contend the State of Wisconsin and you agreed on;

(b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;

(c) state whether you contend that the State of Wisconsin and you agree on the definition of AWP provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;

(d) if your answer to subpart (c) is "no," identify the last date when you contend the State of Wisconsin and you agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;

(e) state whether you contend that the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory;

(f) if your answer to subpart (e) is "yes," describe in detail the manner in which the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person's participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of AWP;

(g) identify all documents supporting your response to request for admission no. 7;

(h) identify all documents supporting your answer to interrogatory no. 7, including all subparts; and

(i) identify all documents supporting any contention you provide in your answer to interrogatory no. 7, including all subparts.

**ANSWER:** In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Interrogatory No. 7 on the grounds that it is overly broad and unduly burdensome. Immunex further objects to this request on the grounds that the terms "agreed" and "together developed" 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 implies that Immunex has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that both it and the State of Wisconsin understood throughout the entire relevant time period that AWP is a reimbursement benchmark, and does not represent an actual average of wholesale prices. Immunex further states that the State of Wisconsin chose and continues to use AWP as a basis for reimbursement despite, and in part because of its understanding that AWP does not represent an actual average of wholesale prices. Immunex additionally states that Plaintiff is already in possession of documents 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 generally responsive to this interrogatory.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7:** Produce all documents identified in your response to interrogatory no. 7.

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Production of Documents No. 7 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 answer and objections to Interrogatory No. 7 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.

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

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

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Admission No. 8 on the grounds that it is overly broad and unduly burdensome. Immunex further objects to this request on the grounds that the term "agreed" is 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 implies that Immunex has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Based on its General and Specific Objections, Immunex denies Request for Admission No. 8.

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

(a) identify the definition of WAC that you contend the State of Wisconsin and you agreed on;

(b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;

(c) state whether you contend that the State of Wisconsin and you agree on the definition of WAC provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;

(d) if your answer to subpart (c) is "no," identify the last date when you contend the State of Wisconsin and you agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;

(e) state whether you contend that the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory;

(f) if your answer to subpart (e) is "yes," describe in detail the manner in which the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person's participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of WAC;

(g) identify all documents supporting your response to request for admission no. 8;

(h) identify all documents supporting your answer to interrogatory no. 8, including all subparts;

(i) identify all documents supporting any contention you provide in your answer to interrogatory no. 8, including all subparts.

**ANSWER:** In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. Immunex further objects to this request on the grounds that the terms "agreed" and "together developed" 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

implies that Immunex has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Notwithstanding its General and Specific Objections, and without waiving them, Immunex states that both it and the State of Wisconsin understood throughout the entire relevant time period that WAC is a list price for pharmaceutical products that does not include customary prompt-pay discounts or other discounts. Immunex further states that Plaintiff is already in possession of documents from which the answer to this interrogatory may be obtained. Such documents include, but are not limited to, federal statutes, reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies of the State of Wisconsin. Additionally, Immunex refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information generally responsive to this interrogatory.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8:** Produce all documents identified in your response to interrogatory no. 8.

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, Immunex objects to Request for Production of Documents No. 8 on the grounds that it is overly broad and unduly burdensome. Immunex further objects to this request on the grounds that the terms "agreed" and "together developed" 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. Immunex also incorporates by reference its answer and objections to Interrogatory No. 8 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.

August 11, 2008

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CERTIFICATE OF SERVICE

I, Breena M. Roos, certify that on August 11, 2008, I caused a copy of IMMUNEX CORPORATION'S RESPONSES AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S SECOND SET OF CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS to be served on all counsel of record by LexisNexis File & Serve.

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