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

**THE J&J DEFENDANTS’ RESPONSES AND OBJECTIONS TO
PLAINTIFF STATE OF WISCONSIN’S FIRST SET OF
CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS**

Pursuant to Wis. Stat. §§ 804.08, 804.09 and 804.11, defendants Johnson & Johnson, Janssen, LP, Ortho-McNeil Pharmaceutical, Inc., Ortho Biotech Products, LP, and McNeil-PPC, Inc., (“the J&J Defendants”), by their attorneys, objects and responds to Plaintiff State of Wisconsin’s First Set of Consolidated Discovery Requests to All Defendants (the “Requests”) as follows:

PRELIMINARY STATEMENT

1. The responses and objections supplied herein are for use in this action and for no other purpose and are supplied subject to that limitation.

2. The J&J Defendants’ responses are made without in any way waiving or intending to waive: (i) any objections as to the competency, relevancy, materiality, propriety, privilege, or admissibility as evidence, for any purpose, of any information or documents produced in response to the Requests; (ii) the right to object on any ground to the use of the information or documents produced in response to the Requests at any hearings or at trial; (iii)

the right to object on any ground at any time to a demand for further responses to the Requests; or (iv) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

3. The J&J Defendants' responses and objections shall not be deemed to constitute admissions:

- a. that any particular document or thing exists, is relevant, nonprivileged, or admissible in evidence; or
- b. that any statement or characterization in the Interrogatories is accurate or complete.

4. The J&J Defendants' responses are made based upon reasonable review and diligent investigation to date.

5. The J&J Defendants reserve the right at any time to revise, supplement, correct, clarify, or add to these responses and objections, or to revise, supplement, correct, clarify, or add to any production of information made pursuant to the Requests. The J&J Defendants further reserve the right to object on any ground at any time to a demand for further answers to the Requests.

6. The J&J Defendants' responses and objections are submitted without prejudice to the J&J Defendants' right to produce evidence of any subsequently discovered fact. The J&J Defendants accordingly reserve their right to provide further responses and objections as additional facts are ascertained.

7. To the extent that the J&J Defendants' responses to the Requests concern information or documents subject to the Protective Order in this action, they must be treated accordingly.

GENERAL OBJECTIONS

The J&J Defendants make the following General Objections, which apply to each and

every Request, and are incorporated by reference in each and every response below as if set forth fully therein. Failure to reiterate a General Objection below does not constitute a waiver of that or any other objection.

1. The J&J Defendants object to the Requests to the extent that they seek information, documents, or admissions that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence. The J&J Defendants further object to the Requests to the extent that they seek information not limited to the J&J Defendants' practices in Wisconsin.

2. The J&J Defendants object to the Requests to the extent that they are overly broad, unduly burdensome, ambiguous, or vague, are not described with reasonable particularity, lack a readily discernible meaning, and/or require the J&J Defendants to speculate as to the information sought.

3. The J&J Defendants object to the Requests on the ground that they are unduly burdensome to the extent that they purport to require the J&J Defendants to compile, analyze, compute, and/or summarize voluminous data or information for Plaintiff.

4. The J&J Defendants object to the Requests to the extent that responding to them would involve unreasonable expense.

5. The J&J Defendants object to the Requests to the extent that they seek to impose obligations broader than, or inconsistent with, the J&J Defendants' obligations under the Wisconsin Rules of Civil Procedure or other applicable law.

6. The J&J Defendants object to the Requests to the extent that they call for the production of information or documents that are protected from disclosure by the work-product doctrine, attorney-client privilege, accountant-client privilege, consulting expert privilege,

investigative privileges, any common interest or joint defense agreement, or any other applicable privilege or protection. To the extent that any such protected material is inadvertently disclosed or produced in response to the Requests, the disclosure or production of such material shall not constitute a waiver of the J&J Defendants' right to assert the applicability of any privilege or immunity to the material, and the J&J Defendants demands that any such material be returned to the J&J Defendants' counsel immediately upon discovery thereof.

7. The J&J Defendants object to the Requests to the extent that they seek admissions as to legal conclusions.

8. The J&J Defendants object to the Requests to the extent that they call for the production of information or documents not within their possession, custody, or control or that are more appropriately sought from third parties to whom requests have been or may be directed. The J&J Defendants further object to the Requests to the extent that they request admission of matters not within the J&J Defendants' knowledge and to the extent that they request admission of matters for which Plaintiff bears the burden of proof.

9. The J&J Defendants object to the Requests to the extent that they seek disclosure of information or documents that are publicly available, equally available to the Plaintiff, or already in the possession, custody, or control of the Plaintiff.

10. The J&J Defendants object to the Requests to the extent that they call for the disclosure of proprietary, commercially sensitive, or other confidential information, the probative value of which is outweighed by the J&J Defendants' interest in preserving their confidentiality. Any such materials produced will be subject to the Protective Order entered in this matter. The J&J Defendants further object to the disclosure, under any circumstance, of trade secret information and hereby asserts each and every applicable privilege and rule governing

confidentiality to the fullest extent provided by law.

11. The J&J Defendants object to the Requests as overly broad and unduly burdensome to the extent that they call for the identification of “each,” “any,” or “all” when relevant information can be obtained from fewer than “each,” “any,” or “all.”

12. The J&J Defendants object to the Requests to the extent that they are not limited to the drugs at issue in this action.

13. The J&J Defendants object to the Requests to the extent that they seek information or documents from outside the statute of limitations applicable to the claims in this action or beyond the time period relevant to this action. The production of any documents or the provision of any other information by the J&J Defendants that pre-dates or post-dates the relevant time period shall not be deemed to constitute a waiver of this objection.

14. The J&J Defendants object to any implication and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests. The J&J Defendants’ responses to the Requests shall not be construed as admissions to any legal conclusion, or that any explicit or implicit characterization of the facts, events, circumstances, or issues contained in the Requests are relevant to this action.

15. The J&J Defendants object to the Requests to the extent that they are argumentative.

16. The J&J Defendants reserve the right to assert additional objections to the Requests as appropriate and to amend or supplement these responses and objections in accordance with the applicable rules and court orders. The J&J Defendants also reserve the right to object to the use of any of their responses at trial or other hearing or proceeding, as the J&J Defendants deems necessary and appropriate. To the extent that the J&J Defendants may

provide information or documents in response to any Request herein, the J&J Defendants do so without limiting or waiving any of the substantive objections they may otherwise have available.

17. The J&J Defendants hereby incorporate by reference, as if fully set forth herein, any objection or reservation of rights made by any co-defendant in this action to the extent that such objection or reservation of rights is not inconsistent with the J&J Defendants' position in this action.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

The J&J Defendants make the following objections to Plaintiff's definitions and instructions in the Requests, which are incorporated by reference in each and every specific response below:

1. The J&J Defendants object to the definition of "document" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous. The J&J Defendants also object to this definition to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, the J&J Defendants' obligations under Wisconsin rules, statutes, or other applicable law. The J&J Defendants further object to this definition to the extent it requires or seeks to require the J&J Defendants: (i) to produce documents or data in a particular form or format; (ii) to convert documents or data into a particular or different file format; (iii) to produce data, fields, records, or reports about produced documents or data; (iv) to produce documents or data on any particular media; (v) to search for and/or produce any documents or data on back-up tapes; (vi) to produce any proprietary software, data, programs, or databases; or (vii) to violate any licensing agreement or copyright laws. The production of any documents or data or the provision of other information by the J&J Defendants as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

2. The J&J Defendants object to the definition of “identify” as set forth in Definition No. 2 on the grounds that, taken together with the Requests, this term is overly broad and unduly burdensome.

3. The J&J Defendants object to the definition of “incentive” as set forth in Definition No. 3 on the grounds that it is overly broad, unduly burdensome, ambiguous, vague, argumentative, and necessarily encompass information and materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The J&J Defendants further object to this definition on the grounds that it references purportedly defined terms, the definitions of which are not provided in the Requests.

4. The J&J Defendants object to the definition of “You” and “Your” as set forth in Definition No. 4 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. The J&J Defendants further object to this definition to the extent that it purports to impose discovery obligations that are broader than, or inconsistent with, the J&J Defendants’ obligations under the Wisconsin rules, statutes, or other applicable law. The J&J Defendants object to this definition to the extent that it seeks to impose an obligation on the J&J Defendants to provide information that is not in the possession, custody, or control of the J&J Defendants, and insofar as it purports to require the J&J Defendants to speculate concerning the identities of individuals and business entities included in these definitions. The J&J Defendants also object to this definition to the extent that it purports to require the J&J Defendants to search files other than their own and seeks the production of information and documents protected from disclosure under the attorney-client privilege, the work-product doctrine, the joint defense privilege, the common interest doctrine, or any other legally recognized privilege, immunity or exemption from discovery.

5. The J&J Defendants object to the Instructions for Interrogatories on the ground that they are unduly burdensome. The J&J Defendants further object to these Instructions to the extent that they purport to impose discovery obligations that are broader than, or inconsistent with, the J&J Defendants' obligations under the Wisconsin rules, statutes, or other applicable law. The J&J Defendants also object to these Instructions to the extent that they seek information in the possession of the J&J Defendants' "attorneys," and "anyone else subject to ... [the J&J Defendants'] attorneys' control."

6. The J&J Defendants object to the Instructions for Requests for Production of Documents on the ground that they are unduly burdensome. The J&J Defendants further object to these Instructions to the extent that they purport to impose discovery obligations that are broader than, or inconsistent with, the J&J Defendants' obligations under the Wisconsin rules, statutes, or other applicable law. The J&J Defendants also object to these Instructions to the extent that they seek collection of documents from the J&J Defendants' "attorneys or their agents," "employees," "representatives," or "investigators."

7. The J&J Defendants object to the Instructions for Requests for Admission to the extent that they purport to impose discovery obligations that are broader than, or inconsistent with, the J&J Defendants' obligations under the Wisconsin rules, statutes, or other applicable law.

SPECIFIC RESPONSES AND OBJECTIONS

Subject to the foregoing General Objections, and without waiving and expressly preserving all such objections that are incorporated by reference in the response below, the J&J Defendants respond to Plaintiff's Requests as follows:

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 their General Objections, which are incorporated herein by reference, the J&J Defendants object to Request for Admission No. 1 on the grounds that the terms “explicitly approved” and “true average prices” are vague, ambiguous and undefined. The J&J Defendants further object 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” were supposed to “approve” the suggested AWPs reported to First DataBank. The J&J Defendants also object to this Request to the extent that it falsely implies that AWP was intended to equal an average price charged by wholesalers to their customers and that the J&J Defendants had access to such information. The J&J Defendants also object to this Request for Admission to the extent it assumes that the J&J Defendants reported AWPs to First DataBank.

Subject to and without waiving their General and Specific Objections, the J&J Defendants deny Request for Admission No. 1, and state that it has been widely known for decades, including by state Medicaid agencies such as that in the State of Wisconsin, that published AWPs are not mathematical averages of prices paid by pharmacies but rather reimbursement benchmarks that exceed pharmacy acquisition costs and are calculated by adding a standard 20% or 25% mark-up to the list prices, also known as WACs, for branded pharmaceutical products, and moreover, Wisconsin Medicaid expressly adopted and promulgated reimbursement formulas reflecting knowledge of, acceptance of, and approval of the practice. Nor are the J&J Defendants aware of any correspondence or any communication from or by the State of Wisconsin to the J&J Defendants expressing disapproval of its price

reporting practices. The J&J Defendants further state that they stopped suggesting AWP's to First DataBank in 2004.

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: Subject to and without waiving their General Objections, the J&J Defendants incorporate by reference their Response to Request for Admission No. 1. By way of further response, the J&J Defendants state that documents reflecting the well-known fact that AWP's were not averages of prices charged by wholesalers to their customers include 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. By way of further response, the J&J Defendants state that Wisconsin Medicaid had access to extensive information concerning pharmacy acquisition costs, including pharmacists, rebate information, reports by federal agencies and third parties, manufacturers and wholesalers, pharmacies, other state entities that purchased pharmaceuticals, other state programs that reimbursed for pharmaceuticals and many other sources. This information indicated that AWP's are not mathematical averages of prices paid by pharmacies. Armed with this extensive information and knowledge concerning

pharmacy acquisition costs and the meaning of AWP, Wisconsin Medicaid periodically considered alternative pharmaceutical reimbursement methodologies but voluntarily chose to continue to reimburse pharmacies for branded pharmaceuticals based on published First DataBank AWP.

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

RESPONSE: Subject to and without waiving their General Objections, the J&J Defendants incorporate by reference their Response to Request for Admission No. 1. By way of further response, the J&J Defendants state that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's custody or control.

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 their General Objections, which are incorporated herein by reference, the J&J Defendants object to Request for Admission No. 2 on the grounds that the terms "explicitly approved" and "true average prices" are vague, ambiguous and undefined. The J&J Defendants further object to this request on the grounds that SWPs are not relevant to Plaintiff's claims because the State of Wisconsin did not use SWPs as a basis for reimbursement in the Wisconsin Medicaid Program. The J&J Defendants further object 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" were supposed to "approve" the SWPs reported to First

DataBank. The J&J Defendants also object to this Request to the extent that it falsely implies that SWP was intended to equal an average price charged by wholesalers to their customers and that the J&J Defendants had access to such information. The J&J Defendants also object to this Request for Admission to the extent it assumes that the J&J Defendants reported SWPs to First DataBank. The J&J Defendants also incorporate herein their response to Request for Admission No. 1. Subject to and without waiving their General and Specific Objections, the J&J Defendants deny 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.

RESPONSE: Subject to and without waiving their General Objections, the J&J Defendants incorporate by reference their Response to Request for Admission No. 2 and their Response to Interrogatory No. 1.

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

RESPONSE: Subject to and without waiving their General Objections, the J&J Defendants incorporate by reference their Response to Request for Admission No. 2. By way of further response, the J&J Defendants state that this Request seeks documents or information equally

available to Plaintiff or already in Plaintiff's custody or control.

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 their General Objections, which are incorporated herein by reference, the J&J Defendants object to Request for Admission No. 3 on the grounds that the terms "explicitly approved" and "true average prices" are vague, ambiguous and undefined. The J&J Defendants further object 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" were supposed to "approve" the J&J Defendants' WACs. The J&J Defendants also object to this Request to the extent it falsely implies that WAC was intended to equal the net amount paid by wholesalers. The J&J Defendants also object 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. Subject to and without waiving their General and Specific Objections, the J&J Defendants deny Request for Admission No. 3, and state that it has been widely known, including by 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."

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: Subject to and without waiving their General Objections, the J&J Defendants incorporate by reference their Response to Request for Admission No. 3. By way of further response, the J&J Defendants state that documents reflecting the well-known fact that WAC is a list price include federal statutes, reports from various branches of the federal government and documents from the files of various agencies of the State of Wisconsin.

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

RESPONSE: Subject to and without waiving their General Objections, the J&J Defendants incorporate by reference their Response to Request for Admission No. 3. By way of further response, the J&J Defendants state that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's custody or control.

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 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 their General Objections, which are incorporated herein by

reference, the J&J Defendants object to Request for Admission No. 4 on the grounds that it is vague, ambiguous, and misleading in purporting to compare sales to customers of wholesalers with AWP. The J&J Defendants further object to this Request to the extent that it falsely implies that the J&J Defendants sets AWP. The J&J Defendants do not set AWPs; AWPs are established and reported by independent third-party publishers. The J&J Defendants also object to this Request to the extent that it falsely implies that AWP was intended to equal an actual price paid by customers of wholesalers. The J&J Defendants state that it has been widely known for decades, including by state Medicaid agencies such as that in the State of Wisconsin, that AWPs are not mathematical averages of prices paid by pharmacies or doctors but rather reimbursement benchmarks that exceed acquisition costs and generally are calculated by adding a standard 20% or 25% mark-up to the list prices, also known as WACs, for branded pharmaceutical products, and moreover, Wisconsin Medicaid expressly adopted and promulgated reimbursement formulas reflecting knowledge of, acceptance of, and approval of the practice. Nor are the J&J Defendants aware of any correspondence or any communication from or by the State of Wisconsin to the J&J Defendants expressing disapproval of its price reporting practices.

Subject to and without waiving their General and Specific Objections, the J&J Defendants deny Request for Admission No. 4, except to state that the J&J Defendants generally sell their pharmaceuticals to wholesalers. Wholesalers, in turn, sell pharmaceutical products manufactured by the J&J Defendants to their customers. The J&J Defendants are generally not involved in discussions between wholesalers and their customers. The purchase prices for those transactions are the result of negotiations between wholesalers and their customers, which are wholly independent of the J&J Defendants' involvement. As a result, the J&J Defendants are

generally not aware of the prices that the customers of wholesalers pay for the J&J Defendants' products. Notwithstanding, the J&J Defendants state that as indicated by the information on acquisition costs to which Wisconsin Medicaid had access (including information from audits, other state entities that purchased pharmaceuticals, other state programs that reimbursed for 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 paid by these customers were 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 their General Objections, which are incorporated herein by reference, the J&J Defendants object to Interrogatory No. 4 on the grounds that it is overly broad and unduly burdensome. The J&J Defendants also object to this interrogatory to the extent it seeks information that is not within the J&J Defendants' possession, custody or control, publicly available, or more readily available to Plaintiff. The J&J Defendants also incorporate by reference their Response to Request for Admission Nos. 1 and 4 and Interrogatory No. 1.

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

RESPONSE: In addition to their General Objections, which are incorporated herein by reference, the J&J Defendants object to Request for Production of Documents No. 4 on the grounds that it is overly broad and unduly burdensome. The J&J Defendants also object to this request to the extent it seeks information that is not within the J&J Defendants' possession, custody or control, publicly available, or more readily available to Plaintiff. Subject to and

without waiving their objections, the J&J Defendants incorporate by reference their Response to Request for Admission Nos. 1 and 4 and Request for Production of Documents No. 1.

RESPONSES TO 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 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 their response to Request for Admission No. 4, which is incorporated herein by reference, the J&J Defendants object to Request for Admission No. 5 on the grounds that the term “true average prices” is vague, ambiguous and undefined. The J&J Defendants further object to this request on the grounds that the values for any SWPs are not relevant to Plaintiff’s claims because the State did not use SWP for reimbursement in the Wisconsin Medicaid Program. The J&J Defendants also object to this Request to the extent that it falsely implies that the suggested AWP’s provided by the J&J Defendants prior to 2002 were intended to equal actual prices paid by customers of wholesalers. Those suggested AWP’s were simply a mathematical calculation of the 20% or 25% mark-up over the list prices, also known as WACs, typically applied by the publishers consistent with well-known industry practice.

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 their General Objections, which are incorporated herein by reference, the J&J Defendants object to Interrogatory No. 5 on the grounds that it is overly broad and unduly burdensome. The J&J Defendants also object to this interrogatory to the extent it

seeks information that is not within the J&J Defendants' possession, custody or control, publicly available, or more readily available to Plaintiff. Subject to and without waiving their objections, the J&J Defendants incorporate by reference their Response to Request for Admission Nos. 2 and 5 and Interrogatory No. 2.

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

RESPONSE: In addition to their General Objections, which are incorporated herein by reference, the J&J Defendants object to Interrogatory No. 5 on the grounds that it is overly broad and unduly burdensome. The J&J Defendants also object 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. The J&J Defendants also object to this request to the extent it seeks information that is not within the J&J Defendants' possession, custody or control, publicly available, or more readily available to Plaintiff. Subject to and without waiving their objections, the J&J Defendants incorporate by reference their Response to Request for Admission Nos. 1 and 4 and Request for Production of Documents No. 1.

RESPONSES TO 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 their General Objections, which are incorporated herein by reference, the J&J Defendants object to Request for Admission No. 6 on the grounds that it is vague and ambiguous. The J&J Defendants also object to this Request to the extent that it

falsely implies that WAC was intended to equal the net amount paid by wholesalers. The J&J Defendants state that it is widely known, including by state Medicaid agencies such as that in the State of Wisconsin, that WAC is a list price for pharmaceutical products that does not include minimal, customary prompt-pay discounts or stocking incentive payments. 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. The J&J Defendants also object 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.

Subject to and without waiving their General and Specific Objections, the J&J Defendants deny Request for Admission No. 6, except state that the J&J Defendants charged wholesalers the reported WAC price on the invoice that the J&J Defendants sent to these customers. The J&J Defendants typically offered their customers an industry-standard “prompt-pay” discount, which could be earned by the customer if it paid the J&J Defendants within a specified period. In addition, consistent with well-known industry practice, there were also stocking incentive payments offered to certain wholesalers in connection with the launch of a new product.

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.

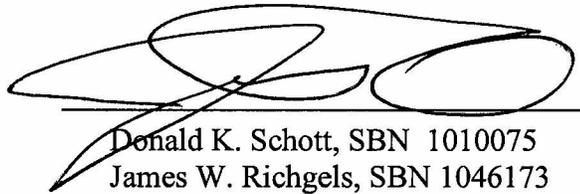
RESPONSE: In addition to their General Objections, which are incorporated herein by reference, the J&J Defendants object to Interrogatory No. 6 on the grounds that it is overly broad,

unduly burdensome, vague, and ambiguous. Subject to and without waiving their General and Specific Objections, the J&J Defendants incorporate herein their response to Request for Admission No. 3. The J&J Defendants state that all sales to wholesalers were at prices close to the published WAC price subject to prompt-pay discounts and stocking incentives offered in connection with product launches. The J&J Defendants further states that it has produced sales transaction data for each the J&J Defendants NDC at issue in this litigation as well as other documents concerning the J&J Defendants' sales to wholesalers. The J&J Defendants also refer 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: See Response to Interrogatory No. 6.

Dated this 16th day of June, 2008.



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Certificate of Service

I, James W. Richgels, hereby certify that on this 16th day of June 2008, a true and correct copy of THE J&J DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S FIRST SET OF CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS was served on all counsel of record by Lexis Nexis File & Serve®.



James W. Richgels