

STATE OF WISCONSIN,

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Plaintiff,

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Case No.: 04 CV 1709

v.

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AMGEN INC., ET AL.,

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Defendants.

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**RESPONSES AND OBJECTIONS OF
PHARMACIA CORPORATION TO PLAINTIFF’S FIRST CONSOLIDATED
SET OF DISCOVERY REQUESTS TO ALL DEFENDANTS**

Pursuant to Wisconsin Rule of Civil Procedure 804.09, defendant Pharmacia Corporation (“Pharmacia ”), by its attorneys, hereby asserts the following responses and objections to the First Consolidated Set of Discovery Requests of Plaintiff, the State of Wisconsin (“the State”), as follows:

PRELIMINARY STATEMENT

1. These responses and objections are made solely for the purposes of this action and no other purpose. Each response is made without in any way waiving or intending to waive: (i) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, information or documents produced in response to these Requests; (ii) the right to object on any ground to the use of the documents or information produced in response to the Requests at any hearings or at trial; or (iii) the right to object on any ground at any time for further responses to the Requests; (iv) its right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein; and (v) and to any and all other objections that may be applicable at a trial or other hearing or proceeding, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Pharmacia has not completed its investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the accompanying document requests are based upon, and necessarily limited by, information now available to Pharmacia.

3. Pharmacia objects to these Requests to the extent that they seek documents and information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, are overly broad, unduly burdensome, ambiguous and vague.

4. Pharmacia objects to these Requests to the extent they call for the production of documents or information protected from disclosure under the attorney-client privilege, the work product doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to these Requests, the production of such documents or information shall not constitute a waiver of Pharmacia's right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to Pharmacia's counsel immediately upon discovery thereof.

5. Pharmacia objects to these Requests to the extent that they seek production of publicly available documents or information, or that which Plaintiff can obtain from other sources.

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

7. Pharmacia's responses to these Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

8. Pharmacia objects to these Requests to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, Pharmacia's obligations under the Wisconsin Rules of Civil Procedure.

9. Pharmacia objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in these Requests. Pharmacia's response that it will produce documents in connection with a particular Request, or that it has no responsive documents, is not intended to indicate that Pharmacia agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests or that such implications or characterizations are relevant to this action.

10. Pharmacia objects to each Request to the extent that it calls for the identification or production of documents or information not relevant to the issues in this action and is not reasonably calculated to lead to the discovery of admissible evidence.

11. Pharmacia objects to each Request to the extent that it calls for production of documents or information not within its possession, custody, or control or are more appropriately sought from third parties to whom Requests have been or may be directed.

12. Pharmacia objects to each Request to the extent that it calls for information that is confidential, proprietary, and/or a trade secret of a third party. Any such materials produced will be subject to the Protective Order entered in this action.

13. Pharmacia objects to each Request to the extent that it seeks 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.

14. Pharmacia objects to the definition of “document” 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 Rules of Civil Procedure. Pharmacia further objects to this definition to the extent that it purports to require Pharmacia 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 Pharmacia as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

15. Pharmacia objects to the definition of “targeted drugs” to the extent that it (i) refers to information not relevant to Plaintiff’s claims, which are limited to Wisconsin, (ii) seeks information from beyond the time period from September 1, 1993 to June 4, 2004 (i.e., the time period relevant to this litigation); or (iii) includes drugs Pharmacia did not manufacture, produce or sell during that time period relevant in this litigation, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

16. Pharmacia objects to the definition of the terms “you,” “your,” and “your company” on the grounds that it is vague, ambiguous and overbroad. The responses herein are made on behalf of Pharmacia Corporation

17. Pharmacia objects to the time-period specified by the Requests to the extent it encompasses any time-period before September 1, 1993 or any time period after June 4, 2004,

and does not fall within any of the exceptions (the document discovery time-period set by the Court).

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

19. Pharmacia expressly incorporates the above General Objections into each specific response to the Requests set forth below as if set forth in full therein. The response to a Request shall not operate as a waiver of any applicable specific or general objection to the Request.

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS
CONSOLIDATED DISCOVERY REQUEST NO. 1

REQUEST FOR ADMISSION At no time has the State of Wisconsin, its Department of Health and Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank average wholesale prices ("AWPs") for your drugs that were not the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE: In addition to the General Objections set forth above, Pharmacia objects to this Request for Admission on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pharmacia objects to this Request for Admission on the grounds that it is vague and ambiguous with respect to the language "explicitly approved," "your practice," "reporting," "AWPs," "your drugs," "true average prices," "charged," "wholesalers," and "customers." Pharmacia incorporates by reference its objections to the State's definition of the terms "you" and "your."

Pharmacia further objects that this Request for Admission is predicated on the false and

mistaken premise, which Wisconsin knows not to be true, that the state had any right, basis or ability to approve any manufacturer's reporting of AWP's to First DataBank.

Subject to and without waiving its objections, Pharmacia responds that First DataBank periodically publishes "Blue Book AWP's" for prescription medicines sold in this country and that, at times, Pharmacia and/or its predecessors or subsidiaries provided "suggested AWP's" to First DataBank that were usually consistent with First DataBank's historical mark-up of Pharmacia products. Accordingly, this Request is: DENIED.

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
- (f) communication was made verbally or in writing;
- (g) if the approval was communicated to you, identify the date of such communication(s);
- (h) if the approval was communicated to you, identify the person(s) who made 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: See Response to Request for Admission No. 1.

REQUEST FOR PRODUCTION Produce all documents identified in your

Response to Interrogatory No. 1.

RESPONSE: See Response to Request for Admission No. 1.

CONSOLIDATED DISCOVERY REQUEST NO. 2

REQUEST FOR ADMISSION At no time has the State of Wisconsin, its Department of Health and Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank suggested wholesale prices (“SWPs”) for your drugs that were not the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE: In addition to the General Objections set forth above, Pharmacia objects to this Request for Admission on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pharmacia objects to this Request for Admission on the grounds that it is vague and ambiguous with respect to the language “explicitly approved,” “your practice,” “reporting,” “SWPs,” “your drugs,” “true average prices,” “charged,” “wholesalers,” and “customers.” Pharmacia incorporates by reference its objections to the State’s definition of the terms “you” and “your.”

Pharmacia further objects that this Request for Admission is predicated on the false and mistaken premise, which Wisconsin knows not to be true, that the state had any right, basis or ability to approve any manufacturer’s reporting of SWPs to First DataBank.

Without waiving and subject to these objections, Pharmacia responds that it did not provide SWPs to First DataBank, except as to Greenstone Ltd. Accordingly, this Request is:
DENIED.

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: See Response to Request for Admission No. 2.

REQUEST FOR PRODUCTION

Produce all documents identified in your

Response to Interrogatory No. 2.

RESPONSE: See Response to Request for Admission No. 2.

CONSOLIDATED DISCOVERY REQUEST NO. 3

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

RESPONSE: In addition to the General Objections set forth above, Pharmacia objects to this Request for Admission on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pharmacia objects to this Request for Admission on the grounds that it is vague and ambiguous with respect to the language “explicitly approved,” “practice,” “reporting,” “WACs,” “your drugs,” “true average prices,” “net of discounts,” “rebates,” “chargebacks,” “incentives,” and “wholesalers.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “you” and “your.”

Pharmacia further objects that this Request for Admission is predicated on the false and mistaken premise that Wisconsin had any right, basis or ability to approve any manufacturer’s reporting of WACs to First DataBank. In addition, this Request for admission is predicated on the further false and mistaken premise that WACs are “true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers [to manufacturers] for [their] drugs.”

Without waiving and subject to these objections, Pharmacia responds that WACs are list prices, which, by common and universal definition, usage and practice, do not reflect or incorporate discounts, chargebacks or incentives. Pharmacia further responds that Wisconsin

fully understands what a list price is and that to the extent it contends otherwise in this litigation, it does so disingenuously. Accordingly, this Request is: DENIED.

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: See Response to Request for Admission No. 3.

REQUEST FOR PRODUCTION Produce all documents identified in your Response to Interrogatory No. 3.

RESPONSE: See Response to Request for Admission No. 3.

CONSOLIDATED DISCOVERY REQUEST NO. 4

REQUEST FOR ADMISSION 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 the General Objections set forth above, Pharmacia objects to this Request for Admission on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pharmacia objects to this Request for Admission on the grounds that it is vague and ambiguous with respect to the language “AWPs,” “reported,” “your drugs,” “true average prices,” “charged by,” “wholesalers,” and “customers.” Pharmacia incorporates by reference its objections to the State’s definition of the terms “you” and “your.”

Pharmacia further objects that this Request for Admission is predicated on the false and mistaken premise, which Wisconsin knows not to be true, that the AWP’s published by First DataBank were “average prices charged by wholesalers to their customers.”

Subject to and without waiving its objections, Pharmacia further refers the state to its Response to Request for Admission No. 1, and otherwise DENIES this Request.

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: See Response to Request for Admission No. 4.

REQUEST FOR PRODUCTION Produce all documents identified in your

Response to Interrogatory No. 4.

RESPONSE: See Response to Request for Admission No. 4.

CONSOLIDATED DISCOVERY REQUEST NO. 5

REQUEST FOR ADMISSION 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 the General Objections set forth above, Pharmacia objects to this Request for Admission on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pharmacia objects to this Request for Admission on the grounds that it is vague and ambiguous with respect to the language “SWPs” “reported,” “your drugs,” “true average prices,” “charged by,” “wholesalers,” and “customers.” Pharmacia incorporates by reference its objections to the State’s definition of the terms “you” and “your.”

Pharmacia further objects that this Request for Admission is predicated on the false and mistaken premise, which Wisconsin knows not to be true, that the SWPs published by First DataBank were “average prices charged by wholesalers to their customers.”

Subject to and without waiving its objections, Pharmacia further refers the state to its Response to Request for Admission No. 2, and otherwise DENIES this Request.

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: See Response to Request for Admission No. 5.

REQUEST FOR PRODUCTION Produce all documents identified in your Response to Interrogatory No. 5.

RESPONSE: See Response to Request for Admission No. 5.

CONSOLIDATED DISCOVERY REQUEST NO. 6

REQUEST FOR ADMISSION 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 the General Objections set forth above, Pharmacia objects to this Request for Admission on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pharmacia objects to this Request for Admission on the grounds that it is vague and ambiguous with respect to the language “WACs,” “reported,” “your drugs,” “true average prices,” “net of discounts,” “rebates,” “chargebacks,” “incentives,” “paid by,” and “wholesalers.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “you” and “your.”

Pharmacia further objects that this Request for Admission is predicated on the false and mistaken premise that WACs are “true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers [to manufacturers] for [their] drugs.”

Without waiving and subject to these objections, Pharmacia responds that WACs are list prices, which, by common and universal definition, usage and practice, do not reflect or incorporate discounts, chargebacks or incentives. Pharmacia further responds that Wisconsin fully understands what a list price is and that to the extent it contends otherwise in this litigation, it does so disingenuously. Accordingly, this Request is: DENIED.

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: Pharmacia refers Wisconsin to any dictionary definition of “list price.” In addition, Pharmacia refers Wisconsin to its product catalogues, and its terms of sale, which are published in its catalogues. Pharmacia also refers Plaintiff to wholesaler transactional data produced by third parties, including AmerisourceBergen, McKesson and Cardinal. Finally, Pharmacia refers Wisconsin to the federal Medicaid statute, with which Wisconsin is presumed to be familiar.

REQUEST FOR PRODUCTION 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, Beth J. Kushner, hereby certify that on this day of 16th day of June 2008, a true and correct copy of Responses and Objections of Pharmacia Corporation to Plaintiff's First Consolidated Set of Discovery Requests to all Defendants was served on all counsel of record by Lexis Nexis File & Serve®.

