



legal conclusions or information covered by the work product doctrine, attorney-client privilege and/or any other applicable privilege.

3. Respondents undertake to respond to the Requests only to the extent required by the Wisconsin Rules of Civil Procedure (the "Rules"), the local rules of this Court, and other applicable law, and Respondents object to the Requests to the extent that they purport to exceed, expand upon or conflict with those requirements.

4. Respondents further object to the definitions of "you," "your," "your company," "document," and "documents" as set forth in Definitions No. 1 and 4 on the grounds that they are overly broad, unduly burdensome, vague, ambiguous, and to the extent they seeks to impose discovery obligations that are broader than, or inconsistent with, Respondents' obligations under the Rules. Respondents undertake to respond on behalf of Schering-Plough Corporation and Warrick Pharmaceuticals Corporation.

5. Respondents have not completed their investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the responses are based upon, and necessarily limited by, information now available to Respondents. Respondents reserve the right, at any time, to revise, correct, and to supplement, modify, or clarify the specific responses set forth below or the information disclosed therein. By this reservation, Respondents do not, however, assume a continuing responsibility to update their responses beyond the requirements of the Wisconsin Rules of Civil Procedure and the local rules of this Court, and they object to the Requests to the extent they seek to impose any such continuing obligation.

#### OBJECTIONS TO REQUESTS FOR ADMISSION

6. Respondents object to the Requests for Admission to the extent that they call upon Respondents to admit to anything other than matters of fact.

7. Respondents object to the Requests for Admission to the extent that they call upon Respondents to admit or deny facts irrelevant to this matter.

#### OBJECTIONS TO INTERROGATORIES

8. Respondents object to the Interrogatories to the extent that, through the use of multiple sub-parts, the State has posed multiple interrogatories while purporting to group them into single interrogatories.

9. Respondents object to the Interrogatories to the extent that they impose an undue burden upon the Respondents by (a) asking for information exclusively within the State's control; (b) asking for information already publicly available to the State; and (c) asking for information not relevant to this matter.

#### OBJECTIONS TO REQUESTS FOR PRODUCTION

10. Respondents object to the place and time directed for the production of documents. Subject to and without waiving any objection set forth herein, Respondents will produce responsive documents, if any, and/or make them available for inspection and designation for copying at a mutually-agreeable time and location.

11. Respondents object to the Requests to the extent they demand production of any document covered by the attorney-client privilege or the work product doctrine, third-party confidentiality agreements or protective orders, or any other applicable privilege, immunity or protection. In the event any document subject to a privilege, immunity or protection is produced by Respondents, its production is inadvertent and does not constitute a waiver of any privilege, immunity or protection.

12. In the responses that follow, a statement that responsive documents will be produced does not mean that: (a) any documents exist; or (b) they are in Respondents' possession, custody, or control.

13. Respondents object to the Requests (i) to the extent they call for information generated after the date this action was commenced, or (ii) to the extent they call for information pertaining to any time outside of the limitations periods applicable to any of Plaintiff's claims because the Requests are to this extent overly broad and unduly burdensome, and seek information that is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

14. Respondents object to the Requests as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent they purport to require production of documents or seek information relating to Respondents' drugs that have not been identified in the Amended Complaint.

15. Respondents object to each Request to the extent that it may be construed as calling for the production of confidential information relating to a patient. Respondents will not produce any such material to the extent they are under any obligation to maintain the patient information in confidence. Respondents will not disclose such material unless the patient grants permission to do so.

16. Respondents object to the Requests as unduly burdensome to the extent they seek documents that are available, in a way that would be less burdensome or expensive, from a public source or some other source available to the Plaintiff.

17. Respondents object to the Requests to the extent they seek information regarding matters not related to Wisconsin, because such information is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

18. Any production of documents or information responsive to requests to which Respondents have objected is not intended to and does not waive those or any other objections.

19. Respondents' production and responses to the Requests are supplied for use in this litigation and for no other purpose.

20. Respondents object to the Requests to the extent they are indefinite and/or fail to describe the categories of documents to be produced with reasonable particularity, and to the extent that they employ terms or definitions that render the Requests vague or ambiguous. Except as otherwise stated, Respondents will interpret any such term based on its understanding of the term's usage, if any, by Respondents and/or in the pharmaceutical industry.

21. Respondents object to the Requests to the extent they request documents not within Respondents' possession, custody or control.

22. Respondents object to each and every Request to the extent that it purports to require Respondents to search through an unduly large number of documents or to search for documents that are not accessible, available or locatable without imposing an undue burden upon the Respondents. Respondents have already reviewed and produced a significant quantity of documents concerning the drugs involved in this case in connection with a related case, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.) ("MDL production"). Subject to and without waiving any objection, Respondents are willing to produce responsive documents from the MDL production and certain state productions. Any further obligation to search and review documents is unduly burdensome.

23. Respondents expressly incorporate these General Objections into each specific response to the request set forth below as if set forth in full therein. These General Objections form a part of the response to each and every request and are set forth here to avoid the

unnecessary duplication and repetition that would result from restating them for each response below. The response to a request shall not operate as a waiver of any applicable specific or general objection to a request.

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

**REQUEST FOR ADMISSION NO. 1:** At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank 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, Respondents object to Request for Admission No. 1 as overly broad to the extent that it refers to the reporting of prices for “your drugs” without limitation to drugs at issue in this matter. Respondents further object to Request for Admission No. 1 because it uses the term “approve” in vague and ambiguous manner given the context of this matter. While the State of Wisconsin has long been aware that manufacturers’ reported AWP’s are not an average of prices charged by wholesalers to their customers (*see, e.g.*, the documents produced by the State bearing bates numbers WI-Prod-AWP-112268, WI-Prod-AWP-117940-948, WI-Prod-AWP-105410-422), the State has continued to use AWP as a reimbursement basis to this day. Given this behavior, the State can be understood to consider favorably the alleged reporting practice. Respondents further object to Request for Admission No. 1 as vague and ambiguous with respect to the terms “explicitly” and “true average prices.” Respondents further object to Request for Admission No. 1 because Schering-Plough does not manufacture, market, or sell any drugs, and therefore did not report AWP’s. Warrick reported the AWP’s for the Warrick products at issue in this case.

Subject to and without waiving their objections, Respondents DENY this request.

**INTERROGATORY NO. 1:** If your response to Request for Admission No. 1 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;
- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who made the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (i) identify all documents relating to the approval of the practice;
- (j) identify all documents relating to the communication of the approval to you.

**RESPONSE:**

In addition to their General Objections, Respondents object to Interrogatory No. 1 as improperly presenting multiple interrogatories as a single interrogatory by use of subparts. Respondents object to Interrogatory No. 1 as vague as to the term “approval.” Respondents further object to Interrogatory No. 1 as unnecessarily burdensome insofar as it calls upon the Respondents to provide information within the State’s custody and control.

Subject to and without waiving their objections, Respondents state that the State’s apparent approval of the Warrick’s purported AWP reporting practices was made clear by its continued use of AWP as a reimbursement method after the State had knowledge of the limitations of AWP (*see, e.g.*, the documents produced by the State bearing bates numbers WI-Prod-AWP-112268, WI-Prod-AWP-117940-948, WI-Prod-AWP-105410-422) through reports

from the Department of Health and Human Services and, since 2002, regular reports from Warrick and Schering Pharmaceuticals Corp. about actual drug prices to various channels. Because the State's "approval" is reflected through a continuing course of conduct, it would be unduly burdensome, if not impossible to answer Interrogatory No. 1 and all of its subparts more precisely. Since discovery in this matter is ongoing, Respondents reserve the right to supplement their response to this Interrogatory.

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

**RESPONSE:**

In addition to their General Objections, Respondents object to Request No. 1 to the extent that it calls upon them to produce documents either (a) already in the State's possession and/or (b) publicly available. Subject to and without waiving their objections, Respondents will produce documents responsive to this Request that have not already been produced to the State.

**CONSOLIDATED DISCOVERY REQUEST NO. 2**

**REQUEST FOR ADMISSION NO. 2:** At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank 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, Respondents object to Request for Admission No. 2 as overly broad to the extent that it refers to the reporting of prices for "your drugs" without limitation to drugs at issue in this matter. Respondents further object to Request for Admission No. 2 because it uses the term "approve" in vague and ambiguous manner given the context of this matter. Respondents further object to Request for Admission No. 2 as vague and ambiguous with respect to the terms "explicitly" and "true average prices." Further, because Respondents

did not report SWPs as defined by the State to First DataBank, Request for Admission No. 2, as drawn, can only be understood to be asking in the hypothetical, and is not properly a request for an admission of fact as required by Wisconsin Rules of Civil Procedure 804.11(a).

Subject to and without waiving their objections, Respondents DENY this request with the explanation that neither Warrick nor Schering-Plough reported “SWPs” to First DataBank and there therefore was no “practice” of which the State could approve or disapprove.

**INTERROGATORY NO. 2:** If your response to Request for Admission No. 2 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;
- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who made the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (i) identify all documents relating to the approval of the practice;
- (j) identify all documents relating to the communication of the approval to you.

**RESPONSE:**

In addition to their General Objections, Respondents object to Interrogatory No. 2 as improperly presenting multiple interrogatories as a single interrogatory by use of subparts. Respondents object to Interrogatory No. 2 as vague as to the term “approval.” Respondents

further object to Interrogatory No. 2 as unnecessarily burdensome insofar as it calls upon the Respondents to provide information within the State's custody and control.

Subject to and without waiving their objections, Respondents state that the basis of their denial of Request for Admission No. 2 is that Respondents did not report SWPs as defined by the State.

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

RESPONSE:

Subject to and without waiving their objections, Respondents state that they have not identified any documents in response to Interrogatory No. 2 and therefore have no documents to produce in response to Request for Production No. 2.

### **CONSOLIDATED DISCOVERY REQUEST NO. 3**

**REQUEST FOR ADMISSION NO. 3:** At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof; explicitly approved your practice of reporting to First DataBank wholesale acquisition costs ("WACs") for your drugs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs.

RESPONSE:

In addition to the General Objections, Respondents object to Request for Admission No. 3 as overly broad to the extent that it refers to the reporting of prices for “your drugs” without limitation to drugs at issue in this matter. Respondents further object to Request for Admission No. 3 because it uses the term “approve” in vague and ambiguous manner given the context of this matter. Respondents further object to Request for Admission No. 3 as vague and ambiguous with respect to the terms “explicitly” and “true average prices.” Further, because Respondents did not report WACs to First DataBank, Request for Admission No. 3, as drawn, can only be understood to be asking in the hypothetical, and is not properly a request for an admission of fact as required by Wisconsin Rules of Civil Procedure 804.11(a).

Subject to and without waiving their objections, Respondents DENY Request for Admission No. 3 with the explanation that neither Warrick nor Schering-Plough reported WACs to First DataBank and there therefore was no “practice” of which the State could approve or disapprove.

**INTERROGATORY NO. 3:** If your response to Request for Admission No. 3 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;
- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who made the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);

- (i) identify all documents relating to the approval of the practice;
- (j) identify all documents relating to the communication of the approval to you.

RESPONSE:

In addition to their General Objections, Respondents object to Interrogatory No. 3 as improperly presenting multiple interrogatories as a single interrogatory by use of subparts.

Respondents object to Interrogatory No. 3 as vague as to the term “approval.” Respondents further object to Interrogatory No. 3 as unnecessarily burdensome insofar as it calls upon the Respondents to provide information within the State’s custody and control.

Subject to and without waiving their objections, Respondents state that the basis of their Denial of Request for Admission No. 3 is that neither Warrick nor Schering-Plough reported WACs to First DataBank.

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

RESPONSE:

Subject to and without waiving their General Objections, Respondents state that they have identified no documents in response to Interrogatory No. 3 and therefore have no documents to produce in response to Request for Production No. 3.

**CONSOLIDATED DISCOVERY REQUEST NO. 4**

**REQUEST FOR ADMISSION NO. 4:** The average wholesale prices (“AWPs”) that you reported to First DataBank for your drugs were not the true average prices charged by wholesalers to their customers for your drugs. Rather, the 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 General Objections, Respondents object to Request for Admission No. 4 as without foundation and based on an improper premise, namely that First DataBank

requested that Respondents report “true average prices.” Respondents further object to Request for Admission No. 4 as unduly burdensome to the extent that it refers to the reporting of prices for “your drugs” without limitation to drugs at issue in this matter. Respondents further object to Request for Admission No. 4 as vague and ambiguous with respect to the phrase “true average prices.” Respondents further object to Request for Admission No. 4 as calling for information that is in the possession of third parties.

Subject to and without waiving their objections, Respondents state that they are without information sufficient to either admit or deny Request for Admission No. 4 with the following explanation. Respondents do not know what wholesalers charge their customers for drugs.

**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:**

Subject to and without waiving their objections, Respondents state that their response to Request for Admission No. 4 is based on the State’s failure to adequately define its terms.

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

**RESPONSE:**

Subject to and without waiving their objections, Respondents state that they have identified no documents in response to Interrogatory No. 4 and therefore have no documents to produce in response to Request for Production No. 4.

**CONSOLIDATED DISCOVERY REQUEST NO. 5**

**REQUEST FOR ADMISSION NO. 5:** The suggested wholesale prices (“SWPs”) that you reported to First DataBank for your drugs were not the true average prices charged by wholesalers to their customers for your drugs. Rather, the SWPs that you reported to First DataBank for your drugs were more than the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE:

In addition to their General Objections, Respondents object to Request for Admission No. 5 as unduly burdensome to the extent that it refers to the reporting of prices for “your drugs” without limitation to drugs at issue in this matter. Respondents further object to Request for Admission No. 5 as vague and ambiguous with respect to the phrase “true average prices.” Further, because Respondents did not report SWP’s as defined by the State to First DataBank, Request for Admission No. 5, as drawn, can only be understood to be asking in the hypothetical, and is not properly a request for an admission of fact as required by Wisconsin Rules of Civil Procedure 804.11(a).

Subject to and without waiving their objections, Respondents state that they cannot answer Request for Admission No. 5

**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:

Respondents further object to Interrogatory No. 5 as unnecessarily burdensome insofar as it calls upon the Respondents to provide information within the State’s custody and control.

Subject to and without waiving their objections, Respondents state that the basis of their response to Request for Admission No. 5 is that Respondents did not report SWPs to First DataBank.

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

RESPONSE:

Subject to and without waiving their General Objections, Respondents state that they have identified no documents in response to Interrogatory No. 5 and therefore have no documents to produce in response to Request for Production No. 5.

### **CONSOLIDATED DISCOVERY REQUEST NO. 6**

**REQUEST FOR ADMISSION NO. 6:** The wholesale acquisition costs (“WACs”) that you reported to First DataBank for your drugs were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs. Rather, the WACs that you reported to First DataBank for your drugs were more than the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs.

**RESPONSE:**

In addition to the General Objections, Respondents object to Request for Admission No. 6 as overly broad to the extent that it refers to the reporting of prices for “your drugs” without limitation to drugs at issue in this matter. Respondents further object to Request for Admission No. 6 as vague and ambiguous with respect to the phrase “true average prices.” Further, because Respondents did not report WACs to First DataBank, Request for Admission No. 6, as drawn, can only be understood to be asking in the hypothetical, and is not properly a request for an admission of fact as required by Wisconsin Rule of Civil Procedure 804.11(a).

Subject to and without waiving their objections, Respondents DENY Request for Admission No. 6 with the explanation that neither Warrick nor Schering-Plough reported WACs to First DataBank.

**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:**

Respondents further object to Interrogatory No. 6 as unnecessarily burdensome insofar as it calls upon the Respondents to provide information within the State’s custody and control.

Subject to and without waiving their objections, Respondents state that the basis of their Denial of Request for Admission No. 6 is that Respondents did not report WACs to First DataBank.

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

RESPONSE:

Subject to and without waiving their General Objections, Respondents state that they have identified no documents in response to Interrogatory No. 6 and therefore have no documents to produce in response to Request for Production No. 6.

  
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John P. Bueker

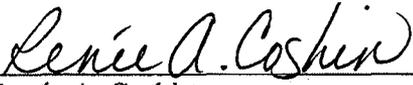
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*Attorneys for Defendants Schering-Plough Corp.,  
and Warrick Pharmaceuticals Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June 2008, a true and correct copy of the foregoing document was served upon all counsel of record via Lexis Nexis File & Serve electronic service.

  
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Renée A. Coshin