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

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**SCHERING-PLOUGH CORPORATION’S AND WARRICK PHARMACEUTICALS CORPORATION’S RESPONSES AND OBJECTIONS TO PLAINTIFF’S SECOND SET OF CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS**

Pursuant to Wisconsin Rules of Civil Procedure 804.08, 804.09 and 804.11, Defendants Schering-Plough Corporation (“Schering-Plough”) and Warrick Pharmaceuticals Corporation (“Warrick”, collectively, “Respondents”) hereby respond and object to Plaintiff’s Second Set of Consolidated Discovery Requests to All Defendants (the “Requests”) as follows.

**GENERAL OBJECTIONS**

1. Respondents provide this response without waiver of or prejudice to their right, at any later time, to raise objections to: (a) the relevance, materiality, or admissibility of (i) the Requests or any part thereof, (ii) statements made in this response to the Requests or any part thereof, or (iii) any document produced pursuant to this response; or (b) any further demand for discovery involving or relating to the matters raised in the Requests.

2. Respondents object to each and every Request for Admission, Interrogatory and Request for Production of Documents to the extent that it calls upon the Respondents to reveal

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 local rules of this Court, and other applicable law (the "Rules"), 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 3 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 Rules, and they object to the Requests to the extent they seek to impose any such continuing obligation.

6. 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.

7. Respondents object to each Request as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require production of documents or seek information relating to a period of time prior to June 16, 1998 (which is outside of any applicable statute of limitations) and/or after January 9, 2002 (as of which date Warrick was, on its own accord, regularly furnishing the State of Wisconsin with a monthly letter reporting its high and low contract prices, net of described discounts, for each of their three main classes of trade for the previous month; and, as of which date Schering Corporation was, on its own accord, regularly furnishing the State of Wisconsin with a quarterly letter showing, among other things, a Net Direct Price for each branded product and package sold by Schering Corporation). Except as specifically stated below, and subject to and without waving any objection, Respondents' responses herein shall be limited to the period between June 16, 1998, and January 9, 2002.

8. 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.

9. Respondents object to each Request to the extent that it may be construed as calling for confidential information relating to a patient. Respondents will not provide 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.

10. Respondents object to the Requests as unduly burdensome to the extent they seek documents or information 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.

11. 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.

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

13. 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.

14. Respondents expressly incorporate by reference as if fully set forth herein their objections and reservations to Plaintiff's prior sets of interrogatories, document production requests, and requests for admission, as well as any objection or reservation of rights made by any co-defendant in this action to the extent such objections or reservation of rights is not inconsistent with Respondents' position in this litigation.

#### OBJECTIONS TO REQUESTS FOR ADMISSION

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

16. 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

17. 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.

18. 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

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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 and have produced responsive documents from the MDL production and certain state productions. Any further obligation to search and review documents is unduly burdensome.

25. 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. 7:** At no time has [*sic*] the State of Wisconsin and you agreed on the meaning or definition of average wholesale price ("AWP").

RESPONSE:

In addition to the General Objections, Respondents object to Request for Admission No. 7 to the extent that it seeks information that is not within Respondent's possession, custody, or control; is publicly available; or, is more readily available to Plaintiff. Respondents further object to Request for Admission No. 7 to the extent it implies that Respondents have a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP. Respondents also object to Request for Admission No. 7 because it uses the term "agreed" in a vague, ambiguous, and undefined manner in the context of this Request. Respondents state that it would appear that, throughout the entire relevant time period, the State of Wisconsin understood that AWP is a reimbursement benchmark and does not represent an average of prices charged by wholesalers to their customers. Such an understanding is consistent with Respondents' understanding.

Subject to and without waiving their objections, Respondents DENY 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.

RESPONSE:

In addition to the General Objections, Respondents object to Interrogatory No. 7 as improperly presenting multiple interrogatories as a single interrogatory by use of subparts. Respondents object to Interrogatory No. 7 to the extent that it seeks information that is not within Respondent's possession, custody, or control; is publicly available; or, is more readily available to Plaintiff. Respondents further object to Interrogatory No. 7 to the extent it implies that Respondents have a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP. Respondents also object to Interrogatory No. 7 because it uses the terms "agreed," "agree," and "together developed" in a vague, ambiguous, and undefined manner in the context of this Interrogatory.

Subject to and without waiving their objections, Respondents state that it would appear that, throughout the entire relevant time period, the State of Wisconsin understood that AWP is a reimbursement benchmark and does not represent an average of prices charged by wholesalers to their customers. Such an understanding is consistent with Respondents' understanding. Respondents further state that it would appear 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. Respondents also state that Plaintiff is already in possession of documents from which the answer to this Interrogatory may be obtained. Additionally, Respondents refer Plaintiff to Defendants' briefing and attached

exhibits filed in response to Plaintiff's motions for summary judgment and in support of Defendants' motions for summary judgment, which contain information generally responsive to this Interrogatory. Because the State's understanding is reflected through a continuing course of conduct, it would be unduly burdensome, if not impossible to answer Interrogatory No. 7 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. 7:** Produce all documents identified in your response to interrogatory no. 7.

**RESPONSE:**

In addition to their General Objections, Respondents object to Request No. 7 to the extent that it calls upon them to produce documents either (a) already in the State's possession and/or (b) publicly available. Notwithstanding the foregoing General and Specific Objections, and without waiving them, to the extent that any additional relevant, non-privileged responsive documents are located, they will be produced.

**CONSOLIDATED DISCOVERY REQUEST NO. 8**

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

**RESPONSE:**

In addition to the General Objections, Respondents object to Request for Admission No. 8 to the extent that it seeks information that is not within Respondent's possession, custody, or control; is publicly available; or, is more readily available to Plaintiff. Respondents further object to Request for Admission No. 8 to the extent it implies that Respondents have a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC. Respondents also object to Request for Admission No. 8 because it uses the term "agreed" in a

vague, ambiguous, and undefined manner in the context of this Request. Respondents state that it would appear that, throughout the entire relevant time period, the State of Wisconsin understood that WAC is a list price for brand pharmaceutical products that does not include customary prompt-pay discounts or other discounts. Such an understanding is consistent with Respondents' understanding.

Subject to and without waiving their objections, Respondents DENY 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.

**RESPONSE:**

In addition to the General Objections, Respondents object to Interrogatory No. 8 as improperly presenting multiple interrogatories as a single interrogatory by use of subparts. Respondents object to Interrogatory No. 8 to the extent that it seeks information that is not within Respondent's possession, custody, or control; is publicly available; or, is more readily available to Plaintiff. Respondents further object to Interrogatory No. 8 to the extent it implies that Respondents have a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC. Respondents also object to Interrogatory No. 8 because it uses the terms "agreed," "agree," and "together developed" in a vague, ambiguous, and undefined manner in the context of this Interrogatory.

Subject to and without waiving their objections, Respondents state that it would appear that, throughout the entire relevant time period, the State of Wisconsin understood that WAC is a list price for brand pharmaceutical products that does not include customary prompt-pay discounts or other discounts. Such an understanding is consistent with Respondents' understanding. Respondents further state 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, Respondents refer Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment and in support of Defendants' motions for summary judgment, which contain information generally responsive to this Interrogatory. Since discovery in this matter is ongoing, Respondents reserve the right to supplement their response 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 their General Objections, Respondents object to Request No. 8 to the extent that it calls upon them to produce documents either (a) already in the State's possession and/or (b) publicly available. Notwithstanding the foregoing General and Specific Objections, and without waiving them, to the extent that any additional relevant, non-privileged responsive documents are located, they will be produced.

Dated: August 11, 2008



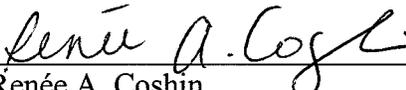
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*Attorneys for Defendants Schering-Plough Corp.,  
and Warrick Pharmaceuticals Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August 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