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STATE OF WISCONSIN,	)	
	)	
Plaintiff,	)	Case No. 04-CV-1709
	)	Unclassified-Civil: 30703
v.	)	
	)	
AMGEN INC., et al.,	)	
	)	
Defendant.	)	

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**DEFENDANT TAP PHARMACEUTICAL PRODUCTS INC.’S RESPONSES TO  
PLAINTIFF STATE OF WISCONSIN’S FIRST SET OF CONSOLIDATED  
DISCOVERY REQUESTS**

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Pursuant to Wis. Stat. §§ 804.1, 804.08, 804.09 and 804.11, Defendant TAP Pharmaceutical Products Inc. (“TAP”), by its attorneys, answers and objects to Plaintiff’s First Set of Consolidated Discovery Requests (the “Requests”) as follows:

**PRELIMINARY STATEMENT**

1. TAP’s responses to the Requests are based on information available at this time. TAP’s investigation for information responsive to the Requests continues. TAP reserves the right to supplement and/or amend these responses (and its production of documents) at any time before trial.

2. Where TAP states herein that it will produce or has produced documents in accordance with the Wisconsin Rules of Civil Procedure, it will produce such documents to the extent that they exist and can be reasonably obtained.

3. TAP’s specific objections to each request are in addition to the general limitations and objections set forth in this and the next sections. These limitations and objections form a part of the response to each and every request and are set forth here to avoid repetition. Thus,

the absence of a reference to a general objection should not be construed as a waiver of the general objection as to a specific request.

3. By stating that TAP will produce any documents or things responsive to a particular request, TAP does not represent that any such documents or things exist or are within its custody, care, or control.

4. The information and documents supplied herein are for use in this litigation and for no other purpose.

5. If and where TAP states herein that it will produce documents in accordance with the Wisconsin Rules of Civil Procedure, it will provide such documents to the extent they exist and can be reasonably obtained. By stating that TAP will produce any documents or things responsive to a particular request, TAP does not represent that any such documents or things exist or are within its possession, custody or control. TAP's responses are limited to documents within its possession, custody or control, and that are reasonably accessible.

6. To the extent TAP's responses to Plaintiff's Requests contain confidential information subject to the Protective Order entered on November 29, 2005 in this Matter, they must be treated accordingly.

7. TAP's responses to Plaintiff's Requests are limited to the TAP products currently at issue in this litigation, namely certain NDCs of Prevacid® and PrevPac® (hereinafter referred to as "Prevacid®").

8. TAP's responses to Plaintiff's Requests are submitted without prejudice to TAP's right to produce evidence of any subsequently discovered fact. TAP accordingly reserves its right to further production as additional facts are ascertained.

## GENERAL OBJECTIONS TO REQUESTS

1. TAP generally objects to the Requests to the extent they seek information or documents not relevant to the issues in this action and not reasonably calculated to lead to the discovery of admissible evidence.

2. TAP generally objects to the Requests to the extent they seek information that is protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, consulting-expert privilege, joint-defense privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule or doctrine.

3. TAP generally objects to the Requests to the extent they seek confidential and/or proprietary information.

4. TAP generally objects to the Requests to the extent they exceed the scope of discovery permitted under the Wisconsin Rules of Civil Procedure, Wisconsin law, or other applicable law or Court order.

5. TAP generally objects to the Requests to the extent they are duplicative of Plaintiff's other discovery requests.

6. TAP generally objects to the Requests to the extent that: (a) the discovery sought by any request is unreasonably cumulative or duplicative, or is obtainable from some other source (including, but not limited to, a public source) that is more convenient, less burdensome, or less expensive; and (b) compliance with any request would be unduly burdensome, unduly expensive, harassing, annoying, or oppressive.

7. TAP generally objects to the Requests to the extent they seek information about products not named in the Second Amended Complaint.

8. TAP's responses to the Requests are made without in any way waiving: (a) the right to object on the grounds of competency, relevancy, materiality, privilege, or other grounds

of admissibility as evidence for any purpose in any subsequent proceeding in this action or any other action; and (b) the right to object on any ground to other discovery requests involving or relating to the subject matter of the Requests. Furthermore, TAP is providing responses in an effort to expedite discovery in this action and not as an indication or admission by TAP of the relevancy, materiality or admissibility of the responses. TAP preserves all objections to Plaintiff's use of such responses at trial.

9. TAP objects to the definition of time period covered by the Requests to the extent it encompasses any time period after June 3, 2004, the date Plaintiff filed its original Complaint in this case.

10. To the extent applicable, TAP adopts and incorporates by reference any objections to the Requests made by any other defendant in this matter.

11. TAP 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.

#### **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. TAP objects to Plaintiff's "Definitions" and "Instructions" contained within the Requests to the extent Plaintiff intends to expand upon or alter TAP's obligations under the Wisconsin Rules of Civil Procedure. TAP will comply with the applicable Wisconsin Rules of Civil Procedure in providing its responses and objections to the Requests.

2. TAP objects to the definition of the term "Document" as vague and ambiguous. TAP further objects to this definition to the extent it seeks to impose discovery obligations that exceed or are inconsistent with the requirements of the Wisconsin Rules of Civil Procedure. TAP further objects to this definition to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, the consulting expert privilege, the joint-

defense privilege or any other privilege or exemption recognized under Wisconsin or other applicable law. TAP further objects to this definition to the extent it seeks to: (i) require TAP to produce documents or data in a particular form or format; (ii) convert information into a particular file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, or other information; or (vii) violate any licensing agreement or copyright laws.

3. TAP objects to the definition of the term “Identify” to the extent it seeks to impose discovery obligations that exceed or are inconsistent with the requirements of the Wisconsin Rules of Civil Procedure, the Court’s Local Rules and Orders, or other applicable law.

4. TAP objects to the definition of “Incentive” on the grounds that it is overly broad, unduly burdensome, ambiguous and vague, particularly with respect to the language “anything of value,” “provided,” “customer,” “reward a customer or other party for promoting, prescribing, dispensing or administering a Pharmaceutical or course of treatment,” “lowering the cost of a Pharmaceutical to the customer in any way, regardless of the time the ‘incentive’ was provided,” “credits,” “discounts,” “return to practice discounts,” “prompt pay discounts,” “volume discounts,” “on-invoice discounts, “off-invoice discounts,” “rebates,” “market-share rebates,” “access rebates,” “bundled-drug rebates,” “free goods or samples,” “administrative fees or administrative fee reimbursements,” “marketing fees,” “stocking fees,” “conversion fees,” “patient education fees,” “off-invoice pricing,” “educational or other grants,” “research funding,” “clinical trials,” “honoraria,” “speaker’s fees or payments,” “patient education fees” and

“consulting fees.” TAP further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

5. TAP objects to the definition of “You,” “Your, ” and “Your Company” as overly broad and unduly burdensome. TAP further object to this definition to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, TAP’s obligations under the Wisconsin Rules of Civil Procedure and the Court’s Local Rules and Orders.

6. TAP objects to the Instructions for Interrogatories on the grounds that they are unduly burdensome. In responding to these Requests, TAP will search for and produce information and documents, not already produced, from divisions responsible for selling and marketing Prevacid®, to non-hospitals and from the individuals responsible for communicating with representatives of the Medicare and Wisconsin Medicaid agencies regarding the Subject Drugs. TAP further objects to these Instructions to the extent that they purport to impose discovery obligations that are broader than, or inconsistent with TAP’s obligations under the Wisconsin rules, statutes, or other applicable law. TAP also objects to these Instructions to the extent that they seek information in the possession of TAP’s “attorneys,” and “anyone else subject to... [TAP’s] attorneys’ control.”

7. TAP objects to the Instructions for Requests for Production of Documents on the ground that they are unduly burdensome. TAP further objects to these Instructions to the extent that they purport to impose discovery obligations that are broader than, or inconsistent with, TAP’s obligations under the Wisconsin rules, statute or other applicable law. TAP also objects to these Instructions to the extent that they seek collection of documents from TAP’s “attorneys or their agents.” “employees,” “representatives,” or “investigators.”

8. TAP objects to the Instructions for Requests for Admission to the extent that they purport to impose discovery obligations that are broader than, or inconsistent with, TAP's 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, TAP responds to Plaintiff's Requests as follows:

#### **CONSOLIDATED DISCOVERY REQUEST NO. 1**

**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 set forth above, TAP objects to this Request because it is not limited to the Subject Drugs during the relevant time period. TAP further objects to this Request because the phrases "explicitly approved" and "true average prices charged by wholesalers to their customers" are undefined, vague, ambiguous and subject to multiple and conflicting interpretations. TAP further objects to the Request to the extent it falsely implies that "the State of Wisconsin, its Department of Medicaid Services, or any employee thereof" were supposed to "approve" any prices provided by TAP to First DataBank. TAP also objects 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 TAP had access to such information. TAP further objects to this Request because it assumes that TAP reported AWP to First DataBank throughout the Relevant Time Period, which it did not.

Subject to and without waiving its General and Specific Objections, TAP denies this Request, and states that it has been widely known for decades, including by state Medicaid

agencies such as the State of Wisconsin's, that published AWP's are not mathematical averages of prices paid by pharmacies but rather reimbursement benchmarks that exceed pharmacy acquisition costs.

**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;
- o) identify all documents relating to the communication of the approval to you.

**RESPONSE:** In addition to the General Objections set forth above, TAP objects to this Interrogatory because it is not limited to Prevacid® during the Relevant Time Period. TAP further objects to this interrogatory because it assumes that TAP provided AWP's to First DataBank throughout the Relevant Time Period, which TAP did not. TAP also objects to this request because the phrases "approval" and "documents relating to the approval" are undefined, vague, ambiguous and subject to many conflicting interpretations. Subject to and without waiving its objections, TAP states that it did not report AWP to First DataBank throughout the Relevant Time Period. Answering further, TAP states 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 documents from the files of various agencies of the State of Wisconsin. TAP states 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.

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

**RESPONSE:** In addition to the General Objections set forth above, TAP incorporates by reference its objections and response to Request for Admission 1 and Interrogatory 1. Subject to and without waiving these objections, TAP states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's control. In addition, TAP refers Plaintiff to TAP's correspondence with the pricing compendia regarding Prevacid®, which TAP has previously produced.

### **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 ("SWP's") for your drugs that were not the true average prices charged by wholesalers to their customers for your drugs.

**RESPONSE:** In addition to its General Objections, TAP objects to this Request because it is not limited to Prevacid® during the relevant time period. TAP also objects to this Request because the phrases "explicitly approved" and "true average prices charged by wholesalers to their customers" are undefined, vague, ambiguous and subject to multiple and conflicting

interpretations. TAP further objects to this Request on the grounds that SWPs are not relevant to Plaintiff's claims because the State of Wisconsin did not use SWP as a basis for reimbursement in the Wisconsin Medicaid Program. TAP further objects to this request because it assumes TAP reported SWPs for its drugs, which it did not. TAP also objects to this request to the extent it mischaracterizes the facts of the case or assumes facts that are not in evidence, specifically to the extent it incorrectly implies that "the State of Wisconsin, its Department of Health and Family Services, or any employee thereof" was directed, authorized or required to "approve" the SWPs reported to First DataBank, and to the extent it incorrectly implies that SWP was intended to equal an average price charged by wholesalers to their customers, and that TAP had access to such information. TAP also objects to this request because it wrongly assumes that TAP provided SWPs to First DataBank during the Relevant Time Period. Subject to and without waiving its objections, TAP denies this Request.

**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;

a) identify all documents relating to the communication of the approval to you.

**RESPONSE:** In addition to its General Objections, TAP incorporates by reference its objections to Request for Admission No. 2. Subject to and without waiving its General and Specific objections, TAP states that it did not report SWP for Prevacid® to First DataBank during the relevant time period. Answering further, TAP incorporates by reference its Response to Request for Admission No. 2 and its Response to Interrogatory No. 1.

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

**RESPONSE:** In addition to its General Objections, TAP incorporates by reference its objection to Request for Admission No. 2 and Interrogatory No. 2 which are incorporated herein. Subject to and without waiving its General and Specific objections, TAP states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's control. In addition, TAP refers Plaintiff to TAP's correspondence with the pricing compendia regarding Prevacid®, which TAP has previously produced.

### **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 set forth above, TAP objects to this Request because it is not limited to Prevacid® during the relevant time period. TAP further object to this request because the phrases "explicitly approved" and "true average prices charged by wholesalers to their customers" are undefined, vague, ambiguous and subject to multiple and conflicting interpretations. TAP further objects to this Request to the extent it purports to subtract from WAC an industry standard, prompt-payment discount given to customers who pay

within a specified time period. TAP further objects to this Request on the grounds that it falsely implies that “the State of Wisconsin, its Department of Medicaid Services, or any employee thereof” were supposed to “approve” any WAC submitted by TAP to First DataBank. TAP further objects to this Request to the extent it falsely implies that WAC was intended to equal the net amount paid by wholesalers and that TAP had access to such information..

Subject to and without waiving its General and Specific Objections, TAP denies this Request and states that it has been widely known, including by state Medicaid agencies such as the State of Wisconsin’s, 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:** In addition to its General Objections, TAP incorporates by reference its objections to Request for Admission No. 3. Subject to and without waiving its General and Specific Objections, TAP states that during the relevant time period, the vast majority of Prevacid® sales to the retail class of trade were made at WAC. As disclosed in its catalogs and in its standard terms and conditions, TAP offered its customers an industry-standard, prompt payment discount for invoices paid within a specified time period.

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

**RESPONSE:** In addition to its General Objections, TAP incorporates by reference its objections to Request for Admission No. 3. Subject to and without waiving its objections, TAP refers Plaintiff to the sales data that TAP has produced in this case. TAP also refers Plaintiff to the wholesaler transactional data produced by third parties, including AmerisourceBergen, McKesson, and Cardinal.

#### **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 the General Objections set forth above, TAP objects to this Request for Admission on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP also objects to this request because it is not limited to sales and marketing of Prevacid® during the relevant time period. TAP further objects to this request because the phrase "true average prices charged by wholesalers to their customers" is undefined, vague, ambiguous and subject to multiple and conflicting interpretations. TAP further objects to this Request to the

extent it wrongly assumes that TAP reported AWP for Prevacid to First DataBank throughout the relevant time period. TAP further objects to this Request to the extent that it falsely implies that TAP sets AWP. TAP does not set AWP, rather AWP are established and reported by independent third-party publishers. TAP states that it has been widely known for decades, including by state Medicaid agencies such as the State of Wisconsin's, that AWP are not mathematical averages of prices paid by pharmacies or doctors, but rather reimbursement benchmarks that exceed acquisition costs.

Subject to and without waiving its General and Specific objections, TAP 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:** In addition to the General Objections set forth above, TAP incorporates by reference its objections to Request for Admission No. 4. Subject to and without waiving its General and Specific objections, TAP states that it does not set AWP and did not do so during the relevant time period. Answering further, Request for Admission No. 4 wrongly assumes that TAP reported an AWP for Prevacid® throughout the relevant time period; TAP did not. Answering further, TAP states that the majority of its sales of Prevacid® were to wholesalers, who in turn sell the pharmaceutical products to their customers. TAP is generally not involved in discussions between wholesalers and their customers for the sale of Prevacid®. Thus, TAP is generally not aware of the prices that the customers of wholesalers pay for TAP's products.

Answering further, TAP states 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.

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

**RESPONSE:** In addition to the General Objections set forth above, TAP incorporates by reference its objections to Request for Admission No. 4 and Interrogatory No. 4. Subject to and without waiving its General and Specific objections, TAP states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's control.

#### **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 the General Objections set forth above, TAP objects to this Request for Admission on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP also objects to this request because it is not limited to sales and marketing of Prevacid® during the relevant time period. TAP objects to this request because the phrase "true average prices charged by wholesalers to their customers" is undefined, vague, ambiguous and subject to multiple and conflicting interpretations. TAP further objects to this request because it wrongly assumes that TAP reported something called "SWP" to First DataBank during the relevant time period. TAP also objects to this request on the grounds that SWPs are not relevant to Plaintiff's claims because the State of Wisconsin did not use SWP as a basis for reimbursement in the Wisconsin Medicaid Program.

Subject to and without waiving its objections, TAP 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:** In addition to the General Objections set forth above, TAP incorporates by reference its objections to Request for Admission No. 5. Subject to and without waiving its General and Specific objections, TAP states that it did not report SWP to First DataBank for Prevacid® during the relevant time period.

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

**RESPONSE:** In addition to the General Objections set forth above, TAP incorporates by reference its objections to Request for Admission No. 5. Subject to and without waiving its General and Specific objections, TAP states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's control.

#### **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 set forth above, TAP objects to this Request for Admission on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP also objects to this request because it is not limited to Prevacid® during the relevant time period. TAP objects to this request because the phrases "explicitly approved" and "true average prices charged by wholesalers to their customers" are undefined, vague, ambiguous and subject

to multiple and conflicting interpretations. TAP also objects to this request to the extent it purports to subtract from WAC an industry-standard "prompt payment" discount given to customers if the customers paid within a specific period of time.

Subject to and without waiving its objections, TAP denies this Request.

**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 the General Objections set forth above, TAP incorporates by reference its objections to Request for Admission No. 6. Subject to and without waiving its General and Specific objections, TAP states that the vast majority of its sales of Prevacid were made at WAC, less an industry-standard, "prompt payment" discount if the customer paid within a certain time period. TAP refers Plaintiff to the sales data it has produced in the case and also 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:** In addition to the General Objections set forth above, TAP incorporates by reference its objections and responses to Request for Admission No. 6 and Interrogatory No. 6.

Dated: June 16, 2008

/s/ Lee Ann Russo  
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*Attorneys for Defendant TAP Pharmaceutical  
Products Inc.*

**Certificate of Service**

I, Lee Ann Russo, hereby certify that on this 16th day of June 2008, a true and correct copy of **TAP PHARMACEUTICAL PRODUCTS INC.'S 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®.

/s/ Lee Ann Russo

Lee Ann Russo