

STATE OF WISCONSIN,

Plaintiff,

Case No.: 04-CV-1709

v.

ABBOTT LABORATORIES, et al.,

Defendants.

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**DEFENDANTS WATSON PHARMACEUTICALS, INC. AND WATSON PHARMA, INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S FIRST SET OF CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS**

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Pursuant to Wis. Stat. §§ 804.01 and 804.09, defendants Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. ("Watson"), by their attorneys, object and respond to Plaintiff's First Set of Consolidated Discovery Requests to All Defendants (the "Requests") as follows:

**PRELIMINARY STATEMENT**

1. The objections and responses provided herein are for use in this action and for no other purpose and are provided subject to that limitation.
2. Watson's responses are made without in any way waiving or intending to waive: (i) any objections as to the competency, relevancy, materiality, propriety, privilege, or admissibility as evidence, for any purpose, of any information or documents produced in response to the Requests; (ii) the right to object on any ground to the use of the information or documents produced in response to the Requests at any hearings or at trial; (iii) the right to object on any ground at any time to a demand for further responses to the Requests; or (iv) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

3. Watson's objections and responses shall not be deemed to constitute admissions:
  - a. that any particular document or thing exists, is relevant, nonprivileged, or admissible in evidence; or
  - b. that any statement or characterization in the Requests is accurate or complete.

4. Watson's responses are made based upon reasonable review and diligent investigation to date. Watson reserves the right to amend its responses and to raise any additional objections it may have in the future.

5. To the extent that Watson's responses to the Interrogatories and Requests concern information or documents subject to the Protective Order in this action, they must be treated accordingly.

**GENERAL OBJECTIONS TO REQUESTS, DEFINITIONS, AND INSTRUCTIONS**

1. Watson objects to the Requests to the extent that they are vague, ambiguous, argumentative, duplicative, overly broad, unduly burdensome or oppressive, or seek information or documents that are not relevant to the claims or defenses of any party or to the subject matter involved in this action, or to the extent they seek documents or information beyond that provided for by the Wisconsin Rules of Civil Procedure, and other applicable state and federal laws.

2. Watson objects to the Requests to the extent they seek documents or information protected from discovery by the attorney-client privilege, work product doctrine or other privilege, or that are otherwise immune or protected from disclosure. Watson does not intend to waive any applicable protections or privileges through the production of documents or the supplying of information in response to the Requests. On the contrary, Watson specifically intends to preserve any and all applicable protections or privileges.

3. Watson objects to the Requests to the extent that they seek admissions as to legal conclusions.

4. Watson objects to the Requests to the extent that they seek disclosure of information or documents that are publicly available, equally available to the Plaintiff or already in the possession, custody, or control of the Plaintiff.

5. Watson objects to the Requests to the extent that they seek information or documents from outside the statute of limitations applicable to the claims in this action, beyond the time period relevant to this action, or after the filing of the initial Complaint on June 3, 2004. The production of any documents or the provision of any other information by Watson that pre-dates or post-dates the relevant time period shall not be deemed to constitute a waiver of this objection.

6. Inadvertent production of any document shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such document or any other document, or with respect to the subject matter thereof or the information contained therein, nor shall such inadvertent production waive Watson's right to object to the use of the document or the information contained therein during this or any subsequent proceeding.

7. Watson objects to the Requests to the extent they seek documents other than those that can be located upon a search of files where such documents reasonably can be expected to be found.

8. Watson objects further to the Requests to the extent they seek any other confidential, proprietary or commercially sensitive information, and trade secrets. Any such materials will be subject to the protective order in this action.

9. Watson objects to the Requests to the extent they call for information or documents relating to business or practices that are inapplicable to the providers reimbursed by Plaintiff. Unless otherwise specified, Watson's responses will be limited to information and

documents about their business or practices applicable in the United States generally or to Wisconsin in particular and with respect to the types of providers that are reimbursed by the State of Wisconsin under Medicare and Medicaid.

10. Watson objects to the Requests to the extent that they purport to require Watson to provide a compilation, abstract, audit, and/or other document summary that does not currently exist.

11. Watson objects to the Requests to the extent that they are unreasonably cumulative or that they call for documents that are duplicative, or publicly available, or are obtainable from some other source that is more convenient, less burdensome or less expensive.

12. Watson objects to the Requests to the extent that they are unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

13. Watson is responding to the Requests without waiving or intending to waive, but on the contrary, preserving and intending to preserve: (a) the right to object on any proper grounds to the use of such documents or information for any purpose, in whole or in part, in any subsequent proceedings, in this action or in any other action; (b) the right to object on all grounds, at any time, to the Requests, or other discovery procedures involving or relating to the subject of the Requests to which Watson has responded herein; and (c) the right at any time to revise, correct, add to or clarify any of the responses made herein.

14. Watson objects to the Requests to the extent they call for the production of information or documents not within its possession, custody, or control or that are more appropriately sought from third parties to whom requests have been or may be directed.

15. Watson objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests. Watson's response that it will produce information or documents in connection with a particular Request is not intended to indicate that Watson 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.

16. Watson objects to the Requests to the extent responding to them would involve unreasonable expense.

17. Watson objects to the Requests as overly broad and unduly burdensome to the extent they call for the identification of "each," "any," or "all" when relevant information can be obtained from fewer than "each," "any," or "all."

18. Watson objects to the Requests as overly broad and unduly burdensome to extent they call for Watson to provide information or documents concerning whether Watson has "ever" done something.

19. Watson objects to the Requests to the extent they are not limited to the Watson drugs at issue in this action.

20. Watson objects to each Request as vague, overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it is not limited in time. Watson further objects to each Request to the extent it seeks documents or information from outside the time period relevant to this litigation or outside the statute of limitations applicable to the claims in this litigation.

21. Watson objects to each Request to the extent it purports to be directed not only to Watson, but also to its corporate parents, subsidiaries, affiliates, or other entities other than

Watson on the grounds that such an expansive scope is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

22. Watson hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any co-defendant in this action to the extent such objection or reservation of rights is not inconsistent with Watson's position in this action.

Watson 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**

1. Watson objects to the definition of "Document" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous. Watson also objects to this definition to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Watson's obligations under Wisconsin rules, statutes, or other applicable law. Watson further objects to this definition to the extent it requires or seeks to require Watson: (i) to produce documents or data in a particular form or format; (ii) to convert documents or data into a particular or different file format; (iii) to produce data, fields, records, or reports about produced documents or data; (iv) to produce documents or data on any particular media; (v) to search for and/or produce any documents or data on back-up tapes; (vi) to produce any proprietary software, data, programs, or databases; or (vii) to violate any licensing agreement or copyright laws.

2. Watson objects to the definition of "Identify" as set forth in Definition No. 2 on the grounds that it is overly broad and unduly burdensome.

3. Watson objects to the definition of "Incentive" as set forth in Definition No. 3 on the grounds that the term as defined is vague, ambiguous, unreasonably overbroad and unduly burdensome in purporting to require Watson to track each of the items for every customer

regardless of time or relation to particular sales, and to speculate about whether something provided is of value. Watson further objects that the definition of “customer or other party” incorporated within the definition of “incentive” is unreasonably overbroad and unduly burdensome in purporting to require information about customers and channels of trade not relevant to Plaintiff’s case.

4. Watson objects to Plaintiff’s definition of “You,” “Your” and “Your company” as vague, overbroad, as requiring speculation, and as imposing unreasonable burdens beyond the requirements of the Wisconsin Rules of Civil Procedure. Watson objects that the definition would require Watson to speculate as to “any other person or entity acting or purporting to act on your behalf” and object to the extent the definition would include entities other than those specifically included in this action by the Plaintiff.

#### **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 TO RFA NO. 1:** Watson incorporates herein by reference its General Objections. Watson further objects to this Request for Admission (“RFA”) on the grounds that the undefined phrases and terms “explicitly approved,” “true average prices” and “charged” are vague and ambiguous. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson had a “practice of reporting” to First DataBank AWPs that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for its drugs. In addition, Watson objects to this RFA to the extent that it purports to require Watson to admit or deny allegations concerning products

manufactured and distributed by Watson that are not among the products at issue in this action. Watson further objects to this RFA to the extent that it purports to require Watson to admit or deny facts that are in the sole and exclusive possession of the State of Wisconsin, to wit, whether or not the State by and through its agencies and employees approved of a particular practice.

Without waiving and subject to its General and Specific Objections, Watson denies Request for Admission No. 1 for the reasons set forth below in response to Interrogatory No. 1.

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

**RESPONSE TO INT. NO. 1:** Watson incorporates herein by reference its General Objections. Watson further objects to this Interrogatory on the grounds that the undefined phrases and terms “explicitly approved,” “true average prices” and “charged” are vague and ambiguous. Watson also objects to this Interrogatory on the grounds that it is argumentative and misleading to the extent that it suggests that Watson had a “practice of reporting” to First DataBank AWP’s that were not the true average prices charged by wholesalers to their customers for Watson drugs and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for its drugs. In addition, Watson objects to this Interrogatory to the extent that it purports to require Watson to provide information concerning

products manufactured and distributed by Watson that are not among the products at issue in this action. Finally, Watson objects to this Interrogatory to the extent it purports to require Watson to provide information about facts that are in the sole and exclusive possession of the State of Wisconsin, to wit, whether or not the State by and through its agencies and employees approved of a particular practice.

Without waiving and subject to its General and Specific Objections, Watson states that it does not have knowledge sufficient to form a belief as to the truth of RFA No. 1 and on that basis, and as further set forth herein, denies RFA No. 1. Answering further, Watson does not at this time know whether the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, “explicitly approved” any alleged practice of reporting AWP that were equal to the manufacturer’s suggested wholesale list prices. Watson believes that information about whether employees of the State of Wisconsin and its Department of Health & Family Services approved any such alleged practice is presently within the exclusive control of the Plaintiff. However, Watson states that the State of Wisconsin and its Department of Health & Family Services used pricing benchmark data compiled and/or published by First DataBank. During the relevant time period, First DataBank continuously and consistently defined, in its monthly Price Alert publication, AWP as “either the published suggested wholesale price obtained from the manufacturer/labeler or the price commonly charged by wholesalers as determined by survey.” By electing to rely upon the pricing benchmark data published by First DataBank, the State of Wisconsin adopted First DataBank’s methodology, including its express definition of AWP. Accordingly, the State of Wisconsin, by adopting First Databank’s definition of AWP, ratified that methodology and therefore approved the practice of reporting suggested wholesale list prices as AWP. In addition, by electing to rely upon the pricing benchmark data

published by First DataBank, the State of Wisconsin effectively appointed First DataBank as its agent for the purposes of collecting pricing benchmark data, and therefore First DataBank acted as the State of Wisconsin's agent when it defined AWP as "either the published suggested wholesale price obtained from the manufacturer/labeler or the price commonly charged by wholesalers as determined by survey." Furthermore, on August 23, 2000, Schein Pharmaceutical, Inc. (now known as Watson Pharma, Inc.) sent a letter to First DataBank (acting as agent for the State of Wisconsin and its Department of Health & Family Services), stating that Schein had reported, for AWP, "manufacturer suggested list prices to providers." Thereafter, and notwithstanding that this letter expressly advised the State's agent (First DataBank) that Schein had adopted the practice of reporting suggested wholesale list prices as AWP, the State of Wisconsin continued to rely on the pricing benchmark data compiled and/or published by First DataBank, and accordingly, at least by August 23, 2000, the State had effectively approved by ratification the practice of reporting suggested wholesale list prices as AWP. Moreover, during the relevant time period it was widely known, including by the State of Wisconsin, that AWP were not averages of prices charged by wholesalers to their customers. This fact was reported in reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies of the State of Wisconsin. By way of further response, Watson states that Wisconsin Medicaid had access to extensive information concerning pharmacy acquisition costs, including pharmacist, rebate information, reports by federal agencies and third parties, manufacturers and wholesalers, pharmacies, other state entities that purchase pharmaceuticals, other state programs that reimbursed for pharmaceuticals and many other sources. This information indicated that AWP are not mathematical averages of prices paid by pharmacies. Despite this knowledge, Wisconsin elected to use AWP as its reimbursement

benchmark, thereby ratifying and approving the practice of reporting suggested wholesale list prices as AWP to First DataBank. Further, Watson states that its investigation and discovery are ongoing and although it is not aware at this time of any direct communications between Watson and the State of Wisconsin, its Department of Health & Family Services or any employee thereof, regarding whether or not the State of Wisconsin approved of any such practice, Watson will supplement its response as required.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:** Produce all documents identified in your response to interrogatory no. 1.

**RESPONSE TO RPD NO. 1:** Watson incorporates herein by reference its General Objections. In addition, Watson objects to this Request for Production (“RPD”) on the grounds that it is duplicative of requests for production previously propounded by the Plaintiff and to which Watson has already responded. Watson further objects to this RPD on the grounds that the undefined phrases and terms “explicitly approved,” “true average prices,” and “charged” are vague and ambiguous. Watson also objects to this RPD on the grounds that it is argumentative and misleading to the extent that it suggests that Watson had a “practice of reporting” to First DataBank AWP that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for Watson’s drugs. In addition, Watson objects to this RPD to the extent that it purports to require Watson to produce documents concerning products manufactured and distributed by Watson that are not among the products at issue in this action. Finally, Watson objects to this RPD to the extent that it purports to require Watson to provide information about facts that are in the sole and exclusive possession of the State of

Wisconsin, to wit, whether or not the State by and through its agencies and employees approved of a particular practice.

Without waiving and subject to its General and Specific Objections, Watson responds that all non-privileged documents in its possession, custody or control that could be located after reasonable search are responsive to this request have been or will be 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 (“SWPs”) for your drugs that were not the true average prices charged by wholesalers to their customers for your drugs.

**RESPONSE TO RFA NO. 2:** Watson incorporates herein by reference its General Objections. Watson further objects to this RFA on the grounds that the undefined phrases and terms “explicitly approved,” “true average prices,” “suggested wholesale price,” and “charged” are vague and ambiguous; in particular, Watson objects to this RFA to the extent that it purports to suggest that the undefined phrase “suggested wholesale price” is, was, or could ever be the same as a “true average price charged by wholesalers to their customers,” because the phrase “suggested wholesale price” is commonly understood to mean the suggested price at which a particular product is offered for sale and therefore as commonly understood reflects neither an actual transaction price nor an average of any particular actual transaction prices. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson has a “practice of reporting” to First DataBank SWPs that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for its drugs. In addition, Watson objects to this RFA to the extent that it purports to

require Watson to admit or deny allegations concerning products manufactured and distributed by Watson that are not among the products at issue in this action. Finally, Watson objects to this RFA to the extent it purports to require Watson to admit or deny facts that are in the sole and exclusive possession of the State of Wisconsin, to wit, whether or not the State by and through its agencies and employees approved of a particular practice.

Without waiving and subject to its General and Specific Objections, Watson denies Request for Admission No. 2 for the reasons set forth in response to Interrogatory No. 2.

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

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

**RESPONSE TO INT. NO. 2:** Watson incorporates herein by reference its General Objections. Watson further objects to this Interrogatory on the grounds that the undefined phrases and terms “explicitly approved,” “true average prices,” “suggested wholesale price,” and “charged” are vague and ambiguous; in particular, Watson objects to this Interrogatory to the extent that it purports to suggest that the undefined phrase “suggested wholesale price” is, was or could ever be the same as a “true average price[e] charged by wholesalers to their customers,” because the phrase “suggested wholesale price” is commonly understood to mean the suggested

price at which a particular product is offered for sale and therefore as commonly understood reflects neither an actual transaction price nor an average of multiple actual transaction prices. Watson also objects to this interrogatory on the grounds that it is argumentative and misleading to the extent that it suggests that Watson has a “practice of reporting” to First DataBank SWPs that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for Watson’s drugs. In addition, Watson objects to this Interrogatory to the extent that it purports to require Watson to provide information concerning products manufactured and distributed by Watson that are not among the products at issue in this action. Finally, Watson objects to this interrogatory to the extent it purports to require Watson to provide information that is in the sole and exclusive possession of the State of Wisconsin, to wit, whether or not the State by and through its agencies and employees approved of a particular practice.

Without waiving and subject to its General and Specific Objections, Watson states that that it does not have knowledge sufficient to form a belief as to the truth of RFA No. 2 and, on that basis, and as further set forth herein, Watson denies RFA No. 2. Answering further, Watson does not at this time know whether the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, “explicitly approved” any alleged practice of reporting suggested wholesale list prices rather than prices that reflected the average of actual transaction prices; rather, Watson believes that information about whether employees of the State of Wisconsin and its Department of Health & Family Services approved any such practice is presently within the exclusive control of the Plaintiff. However, Watson states that the phrase “suggested wholesale price” is commonly understood to refer to the suggested price at which a particular product may be offered for sale and does not therefore by definition refer to either the

actual price of any particular transaction or the average price of any particular transactions. Moreover, the State of Wisconsin and its Department of Health & Family Services used pricing benchmark data compiled and/or published by First DataBank. During the relevant time period, First DataBank continuously and consistently defined SWP as the manufacturer's suggested wholesale price. By electing to rely upon the pricing benchmark data published by First DataBank, the State of Wisconsin adopted First DataBank's methodology, including its definition of SWP. Accordingly, the State of Wisconsin, by adopting First Databank's definition of SWP, ratified that methodology and therefore approved the practice of reporting suggested wholesale list prices as SWPs. In addition, by electing to rely upon the pricing benchmark data published by First DataBank, the State of Wisconsin effectively appointed First DataBank as its agent for the purposes of collecting pricing benchmark data, and therefore First DataBank acted as the State of Wisconsin's agent when it defined SWP as the manufacturer's suggested wholesale price. Moreover, during the relevant time period it was widely known, including by the State of Wisconsin, that SWPs were not averages of prices charged by wholesalers to their customers. This fact was reported in reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies of the State of Wisconsin. By way of further response, Watson states that Wisconsin Medicaid had access to extensive information concerning pharmacy acquisition costs, including pharmacist, rebate information, reports by federal agencies and third parties, manufacturers and wholesalers, pharmacies, other state entities that purchase pharmaceuticals, other state programs that reimbursed for pharmaceuticals and many other sources. This information indicated that SWPs are not mathematical averages of prices paid by pharmacies. Despite this knowledge, Wisconsin elected to use AWP, or other pricing benchmarks based on SWP, as its reimbursement

benchmark, thereby ratifying and approving the practice of reporting suggested wholesale list prices as SWPs to First DataBank. Further, Watson states that its investigation and discovery are ongoing and although it is not aware at this time of any direct communications between Watson and the State of Wisconsin, its Department of Health & Family Services or any employee thereof, regarding whether or not the State of Wisconsin approved of any such practice, Watson will supplement its response as required.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:** Produce all documents identified in your response to interrogatory no. 2.

**RESPONSE TO RPD NO. 2:** Watson incorporates herein by reference its General Objections. In addition, Watson objects to this RPD on the ground that it is duplicative of requests for production previously propounded by the Plaintiff and to which Watson has already responded. Watson further objects to this RPD on the grounds that the undefined phrases and terms “explicitly approved,” “true average prices,” “suggested wholesale price,” and “charged” are vague and ambiguous; in particular, Watson objects to this Interrogatory to the extent that it purports to suggest that the undefined phrase “suggested wholesale price” is, was or could ever be the same as a “true average price[e] charged by wholesalers to their customers,” because the phrase “suggested wholesale price” is commonly understood to mean the suggested price at which a particular product is offered for sale and therefore as commonly understood reflects neither an actual transaction price nor an average of multiple actual transaction prices. Watson also objects to this RPD on the grounds that it is argumentative and misleading to the extent that it suggests that Watson has a “practice of reporting” to First DataBank SWPs that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their

customers for Watson's drugs. In addition, Watson objects to this RPD to the extent that it purports to require Watson to produce documents concerning products manufactured and distributed by Watson that are not among the products at issue in this action. Finally, Watson objects to this RPD to the extent it purports to require Watson to produce documents that are in the sole and exclusive possession of the State of Wisconsin, to wit, documents showing whether or not the State by and through its agencies and employees approved of a particular practice.

Without waiving and subject to its General and Specific Objections, Watson responds that all non-privileged documents in its possession, custody or control that could be located after reasonable search and are responsive to this request have been or will be 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 (formerly known as the Department of Public Aid), 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 TO RFA NO. 3:** Watson incorporates herein by reference its General Objections. Watson further objects to this RFA on the grounds that the undefined phrases and terms "explicitly approved," "true average prices," "wholesale acquisition cost," and "charged" are vague and ambiguous; in particular, Watson objects to this RFA to the extent that it purports to suggest that the undefined phrase "wholesale acquisition cost" is, was or could ever be the same as a "true average prices, net of discounts, rebates, chargeback, and incentives, paid by wholesalers to [Watson] for [Watson's] drugs," because the phrase "wholesale acquisition cost" is commonly understood to mean the cost invoiced to wholesalers in connection with their acquisition of a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments, and therefore as commonly understood reflects neither a

particular acquisition price, net of discounts, rebates, chargebacks or other incentives, nor an average of any particular actual transaction prices, whether or not net of any discounts, rebates, chargebacks, or other incentives.. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson has a “practice of reporting” to First DataBank WACs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to Watson. In addition, Watson objects to this RFA to the extent that it purports to require Watson to admit or deny allegations concerning products manufactured and distributed by Watson that are not among the products at issue in this action. Watson further objects to this RFA to the extent it purports to require Watson to admit or deny facts that are in the sole and exclusive possession of the State of Wisconsin, to wit, whether or not the State by and through its agencies and employees, approved of a particular practice. Finally, Watson objects to this RFA on the grounds that it purports to require Watson to admit or deny allegations concerning issues that are not relevant to the subject matter of this action because, upon information and belief, the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs and therefore WACs are not relevant to the Plaintiff’s claims in this action.

Without waiving and subject to its General and Specific Objections, Watson denies Request for Admission No. 3 for the reasons set forth in response to Interrogatory No. 3.

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

**RESPONSE TO INT. NO. 3:** Watson incorporates herein by reference its General Objections. Watson further objects to this Interrogatory on the grounds that the undefined phrases and terms “explicitly approved,” “true average prices,” “wholesale acquisition cost,” and “charged” are vague and ambiguous; in particular, Watson objects to this Interrogatory to the extent that it purports to suggest that the undefined phrase “wholesale acquisition cost” is, was or could ever be the same as a “true average prices, net of discounts, rebates, chargeback, and incentives, paid by wholesalers to [Watson] for [Watson’s] drugs,” because the phrase “wholesale acquisition cost” is commonly understood to mean the cost invoiced to wholesalers in connection with their acquisition of a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments, and therefore as commonly understood reflects neither a particular acquisition price, net of discounts, rebates, chargebacks or other incentives, nor an average of any particular actual transaction prices, whether or not net of any discounts, rebates, chargebacks, or other incentives. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson has a “practice of reporting” to First DataBank WACs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to Watson. In addition, Watson objects to this Interrogatory to the extent that it purports to require Watson to provide information concerning products manufactured and distributed by Watson that are not among the products at issue in this action. Watson further objects to this Interrogatory to the extent it

purports to require Watson to provide information concerning facts that are in the sole and exclusive possession of the State of Wisconsin, to wit, whether or not the State by and through its agencies and employees approved of a particular practice. Finally, Watson objects to this interrogatory on the grounds that it purports to require Watson to provide information about issues that are not relevant to the subject matter of this action because, upon information and belief, the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs and therefore WACs are not relevant to the Plaintiff's claims in this action.

Without waiving and subject to its General and Specific Objections, Watson states that that it does not have knowledge sufficient to form a belief as to the truth of RFA No. 3 and on that basis, and as further set forth herein, Watson denies RFA No. 3. Answering further, Watson states that it does not at this time know whether the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, "explicitly approved" any alleged practice of reporting wholesale acquisition costs to First DataBank that reflected the prices a manufacturer charged wholesalers to acquire its products, not including rebates, discounts, chargebacks or other adjustments; rather, Watson believes that information about whether employees of the State of Wisconsin and its Department of Health & Family Services approved any such practice is presently within the exclusive control of the Plaintiff. However, Watson states that the phrase "wholesale acquisition cost" is commonly understood to refer to the price paid by a wholesaler to acquire a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments, and that therefore as commonly understood the phrase "wholesale acquisition cost" does not reflect the average price of any particular transactions. Moreover, the State of Wisconsin and its Department of Health & Family Services used pricing benchmark data compiled and/or published by First DataBank, an independent third-party

publisher of pricing information. During the relevant time period, Red Book, a competing independent third-party publisher of pricing information, defined WAC as the “manufacturer’s quoted list price to wholesale distributors” that “does not reflect any deal terms or specialized contract pricing.” In other words, Red Book defined WAC as an undiscounted invoice price to wholesalers. It would not have been practical to report a WAC under that definition to Red Book, and a different WAC, under a different definition, to First DataBank. The State of Wisconsin, by not furnishing and publicizing a different definition of WAC, ratified that definition and therefore approved the practice of reporting WACs that reflected the price paid by wholesalers to acquire products from manufacturers, not including any discounts, rebates or chargebacks. Further, Watson states that its investigation and discovery are ongoing and although it is not aware at this time of any direct communications between Watson and the State of Wisconsin, its Department of Health & Family Services or any employee thereof, regarding whether or not the State of Wisconsin approved of any such practice, Watson will supplement its response as required.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:** Produce all documents identified in your response to interrogatory no. 3.

**RESPONSE TO RPD NO. 3:** Watson incorporates herein by reference its General Objections. Watson further objects to this RPD on the grounds that the undefined phrases and terms “explicitly approved,” “true average prices,” “wholesale acquisition cost,” and “charged” are vague and ambiguous; in particular, Watson objects to this RPD to the extent that it purports to suggest that the undefined phrase “wholesale acquisition cost” is, was or could ever be the same as a “true average price s, net of discounts, rebates, chargeback, and incentives, paid by wholesalers to [Watson] for [Watson’s] drugs,” because the phrase “wholesale acquisition cost”

is commonly understood to mean the cost invoiced to wholesalers in connection with their acquisition of a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments, and therefore as commonly understood reflects neither a particular acquisition price, net of discounts, rebates, chargebacks or other incentives, nor an average of any particular actual transaction prices, whether or not net of any discounts, rebates, chargebacks, or other incentives. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson has a “practice of reporting” to First DataBank WACs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to Watson. In addition, Watson objects to this RPD to the extent that it purports to require Watson to produce documents concerning products manufactured and distributed by Watson that are not among the products at issue in this action. Watson further objects to this Interrogatory to the extent it purports to require Watson to produce documents concerning facts that are in the sole and exclusive possession of the State of Wisconsin, to wit, whether or not the State by and through its agencies and employees approved of a particular practice. Finally, Watson objects to this RPD on the grounds that it purports to require Watson to produce documents that are not relevant to the subject matter of this action because, upon information and belief, the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs and therefore WACs are not relevant to the Plaintiff’s claims in this action.

Without waiving and subject to its General and Specific Objections, Watson responds that all non-privileged documents in its possession, custody or control that could be located after reasonable search and are responsive to this request have been or will be produced.

**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 TO RFA NO. 4:** Watson incorporates herein by reference its General Objections. Watson further objects to this RFA on the grounds that the undefined phrases and terms “true average prices” and “charged” are vague and ambiguous. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson reported AWPs to First DataBank that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for Watson’s drugs. Finally, Watson objects to this RFA to the extent that it purports to require Watson to admit or deny allegations concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its General and Specific Objections, Watson has insufficient knowledge and information to admit or deny this Request for Admission, and therefore denies RFA No. 4 because Watson does not have knowledge about all of the prices charged by wholesalers to their customers for Watson’s 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 TO INT. NO. 4:** Watson incorporates herein by reference its General Objections. Watson further objects to this Interrogatory on the grounds that the undefined phrases and terms “true average prices” and “charged” are vague and ambiguous. Watson also objects to this Interrogatory on the grounds that it is argumentative and misleading to the extent

that it suggests that Watson reported AWP's to First DataBank that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for Watson's drugs. Finally, Watson objects to this Interrogatory to the extent that it purports to require Watson to admit or deny allegations concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its General and Specific Objections, Watson states that that it does not have knowledge or information sufficient to form a belief as to the truth of RFA No. 4 and on that basis, and as further set forth herein, denies RFA No. 4. In particular, Watson does not have knowledge about all of the prices charged by wholesalers to their customers for Watson's drugs.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4:** Produce all documents identified in your response to interrogatory no. 4.

**RESPONSE TO RPD NO. 4:** Watson incorporates herein by reference its General Objections. Watson further objects to this RPD on the grounds that the undefined phrases and terms "true average prices" and "charged" are vague and ambiguous. Watson also objects to this RPD on the grounds that it is argumentative and misleading to the extent that it suggests that Watson reported AWP's to First DataBank that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for Watson's drugs. Finally, Watson objects to this RPD to the extent that it purports to require Watson to produce documents concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its General and Specific Objections, Watson responds that all non-privileged documents in its possession, custody or control that could be located after reasonable search and are responsive to this request have been or will be produced.

**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 you 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 TO RFA NO. 5:** Watson incorporates herein by reference its General Objections. Watson further objects to this RFA on the grounds that the undefined phrases and terms “true average prices” and “charged” are vague and ambiguous. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson reported SWPs to First DataBank that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for Watson’s drugs. Finally, Watson objects to this RFA to the extent that it purports to require Watson to admit or deny allegations concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its General and Specific Objections, Watson has insufficient knowledge and information to admit or deny this Request for Admission, and therefore denies the RFA No. 5, because Watson does not have knowledge about all of the prices charged by wholesalers to their customers for Watson’s drugs.

**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 TO INT. NO. 5:** Watson incorporates herein by reference its General Objections. Watson further objects to this Interrogatory on the grounds that the undefined phrases and terms “true average prices” and “charged” are vague and ambiguous. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson reported SWPs to First DataBank that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson has knowledge of all prices charged by wholesalers to their customers for Watson’s drugs. Finally, Watson objects to this Interrogatory to the extent that it purports to require Watson to admit or deny allegations concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its General and Specific Objections, Watson states that it does not have knowledge or information sufficient to form a belief as to the truth of RFA No. 5 and on that basis, and as further set forth herein, denies RFA No. 5. In particular, Watson does not have knowledge about all of the prices charged by wholesalers to their customers for Watson’s drugs.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5:** Produce all documents identified in your response to interrogatory no. 5.

**RESPONSE TO RPD NO. 5:** Watson incorporates herein by reference its General Objections. Watson further objects to this RPD on the grounds that the undefined phrases and terms “true average prices” and “charged” are vague and ambiguous. Watson also objects to this RFA on the grounds that it is argumentative and misleading to the extent that it suggests that Watson reported SWPs to First DataBank that were not the true average prices charged by wholesalers to their customers for Watson drugs, and to the extent that it suggests that Watson

has knowledge of all prices charged by wholesalers to their customers for Watson's drugs.

Finally, Watson objects to this RPD to the extent that it purports to require Watson to produce documents concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its General and Specific Objections, Watson responds that all non-privileged documents in its possession, custody or control that could be located after reasonable search and are responsive to this request have been or will be produced.

### **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 TO RFA NO. 6:** Watson incorporates herein by reference its General Objections. Watson further objects to this RFA on the grounds that the undefined phrases "true average prices" and "net of discounts, rebates, chargebacks, and incentives" are vague and ambiguous. Watson also objects to this RFA to the extent that it purports to suggest that the prices reported to First DataBank as "wholesale acquisition costs" are, were or could ever be the same as the "true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to [Watson] for [Watson's] drugs," because the phrase "wholesale acquisition cost" is commonly understood to mean the cost invoiced to wholesalers in connection with their acquisition of a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments, and therefore as commonly understood reflects neither a particular acquisition price, net of discounts, rebates, chargebacks or other incentives, nor an average of any particular actual transaction prices, whether or not net of any discounts, rebates,

chargebacks, or other incentives. In addition, Watson objects to this RFA on the grounds that it is argumentative and misleading insofar as it suggests that the price paid by a wholesaler to Watson to acquire a particular product is subject to adjustment to reflect rebates or chargebacks. Watson also objects to this RFA on the grounds that the RFA is argumentative and misleading to the extent it suggests that Watson reported to First DataBank WACs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to Watson.. Watson further objects to this RFA on the grounds it seeks an admission concerning issues that are not relevant to the subject matter of this action because the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs. Finally, Watson objects to this RFA to the extent that it purports to require Watson to admit or deny allegations concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its objections, Watson denies RFA No. 6.

**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 TO INT. NO. 6:** Watson incorporates herein by reference its General Objections. Watson further objects to this Interrogatory on the grounds that the undefined phrases “true average prices” and “net of discounts, rebates, chargebacks, and incentives” are vague and ambiguous. Watson also objects to this Interrogatory to the extent that it purports to suggest that the prices reported to First DataBank as “wholesale acquisition costs” are, were or could ever be the same as the “true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to [Watson] for [Watson’s] drugs,” because the phrase “wholesale acquisition cost” is commonly understood to mean the cost invoiced to wholesalers

in connection with their acquisition of a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments, and therefore as commonly understood reflects neither a particular acquisition price, net of discounts, rebates, chargebacks or other incentives, nor an average of any particular actual transaction prices, whether or not net of any discounts, rebates, chargebacks, or other incentives. In addition, Watson objects to this Interrogatory on the grounds that it is argumentative and misleading insofar as it suggests that the price paid by a wholesaler to Watson to acquire a particular product is subject to adjustment to reflect rebates or chargebacks. Furthermore, Watson objects to this Interrogatory on the grounds that it is argumentative and misleading to the extent it suggests that Watson reported to First DataBank WACs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to Watson.. Watson also objects to this Interrogatory on the grounds that it seeks information that is not relevant to the subject matter of this action because the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs and therefore WACs are not relevant to the Plaintiff's claims in this action. Finally, Watson objects to this Interrogatory to the extent that it purports to require Watson to admit or deny allegations concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its General and Specific Objections, Watson states that the cost invoiced to wholesalers in connection with their acquisition of a particular Watson product (i.e. the "WAC") was more than the respective Average Manufacturer Price (as defined at 42 U.S.C. 1396r-8(k)(1)) for the same Watson product.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6:** Produce all documents identified in your response to interrogatory no. 6.

**RESPONSE TO RPD NO. 6:** Watson incorporates herein by reference its General Objections. Watson further objects to this RPD on the grounds that the undefined phrases “true average prices” and “net of discounts, rebates, chargebacks, and incentives” are vague and ambiguous. Watson also objects to this RPD to the extent that it purports to suggest that the prices reported to First DataBank as “wholesale acquisition costs” are, were or could ever be the same as the “true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to [Watson] for [Watson’s] drugs,” because the phrase “wholesale acquisition cost” is commonly understood to mean the cost invoiced to wholesalers in connection with their acquisition of a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments, and therefore as commonly understood reflects neither a particular acquisition price, net of discounts, rebates, chargebacks or other incentives, nor an average of any particular actual transaction prices, whether or not net of any discounts, rebates, chargebacks, or other incentives. In addition, Watson objects to this RPD on the grounds that it is argumentative and misleading insofar as it suggests that the price paid by a wholesaler to Watson to acquire a particular product is subject to adjustment to reflect rebates or chargebacks. Furthermore, Watson objects to this RPD on the grounds that it is argumentative and misleading to the extent it suggests that Watson reported to First DataBank WACs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to Watson. Watson also objects to this RPD on the grounds that it purports to require Watson to produce documents that are not relevant to the subject matter of this action because the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs and therefore WACs are not relevant to the Plaintiff’s claims in this action. Finally, Watson objects to this RPD to the extent that it purports to require Watson to produce documents

concerning products manufactured and distributed by Watson that are not among the products at issue in this action.

Without waiving and subject to its General and Specific Objections, Watson responds that all non-privileged documents in its possession, custody or control that could be located after a reasonable search and are responsive to this request have been or will be produced.

Dated this 23rd day of June, 2008.

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**Certificate of Service**

I hereby certify that on this 23rd day of June 2008, a true and correct copy of **DEFENDANTS WATSON PHARMACEUTICALS, INC. AND WATSON PHARMA, 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/Daniel S. Elger \_\_\_\_\_

