

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709
(Judge Krueger)

AMGEN, INC., et. al.,

Defendants.

**DEFENDANT ABBOTT LABORATORIES' ANSWER AND AFFIRMATIVE
DEFENSES TO THE STATE OF WISCONSIN'S
SECOND AMENDED COMPLAINT**

Defendant Abbott Laboratories ("Abbott") hereby files its Answer and Affirmative Defenses to Plaintiff State of Wisconsin's Second Amended Complaint ("Complaint").

PREFACE

The Complaint improperly and repetitively refers to Abbott and certain other defendants and third parties on a collective basis, failing to plead with requisite particularity allegations against Abbott or other defendants or third parties. Intentionally ambiguous pleading is improper and insufficient to apprise Abbott in any meaningful sense of the allegations asserted against it. Abbott nevertheless attempts to respond to Plaintiff's allegations to the extent possible under the circumstances. In answering the Complaint, Abbott responds for itself only, even when Plaintiff's allegations refer to alleged conduct by Abbott and other persons or entities. To the extent the allegations in the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

The Complaint also improperly mixes factual allegations with inflammatory rhetoric so as to make it virtually impossible to respond meaningfully. Many of the allegations of the Complaint are vague or conclusory. The Complaint also includes terms which are undefined and which are susceptible of different meanings, and is therefore ambiguous.

Abbott specifically denies the existence of, or its participation in, any fraud, fraudulent scheme, fraudulent suppression, concealment, conspiracy or any other wrongdoing. Abbott further denies each and every allegation contained in the Complaint, except as specifically admitted, and any factual averment admitted is admitted only as to the specific facts and not as to any conclusions, characterizations, implications, innuendoes or speculations which are contained in any averment or in the Complaint as a whole. Moreover, Abbott specifically denies any allegations contained in headings, footnotes or unnumbered paragraphs in the Complaint. Abbott also denies all allegations that contain legal arguments and conclusions of law as those allegations do not require a response.

These comments and objections are incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

ANSWER

Subject to the statements and limitations above, Abbott responds to the Plaintiff's allegations as follows.

1. In response to paragraph 1 of the Complaint, Abbott admits that the Plaintiff, State of Wisconsin, purports to bring this action, but denies that the Plaintiff is entitled to maintain this action. Abbott further admits that the Plaintiff purports to seek legal and equitable redress for Defendants' alleged conduct, but denies that the Plaintiff is entitled to any damages or other form of relief from Abbott. The remaining allegations are legal arguments or conclusions of law to which no response is required. To the extent that any response is required, Abbott

denies the remaining allegations of this paragraph, specifically the existence of or participation in an “unlawful scheme” or any “deceptive practices.” By way of further answer, Abbott denies that pharmaceutical manufacturers or the pharmaceutical industry are fairly characterized in paragraph 1, and on that basis denies the allegations of paragraph 1 of the Complaint. Further, to the extent the allegations in this paragraph are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. The allegations are, therefore, denied.

2. In response to paragraph 2 of the Complaint, Abbott admits that the State of Wisconsin purports to bring this action in its sovereign capacity, but denies that there is any basis upon which to do so. The remaining allegations are legal arguments or conclusions of law to which no response is required. To the extent that any response is required, Abbott denies the remaining allegations of this paragraph, specifically the existence of, or participation in, any “unlawful conduct.” By way of further answer, to the extent the allegations in this paragraph are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. The allegations are, therefore, denied.

3. In response to paragraph 3 of the Complaint, Abbott admits that it is a pharmaceutical company. The remaining allegations are legal arguments or conclusions of law to which no response is required. To the extent that any response is required, Abbott denies the remaining allegations of this paragraph, including the allegations that it participated in a “deceptive scheme,” or that such alleged “scheme” has resulted in inflated prices for drugs sold to the Plaintiff or its citizens. By way of further answer, to the extent the allegations in this paragraph are directed to defendants other than Abbott, Abbott is without knowledge or

information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

4. In response to paragraph 4 of the Complaint, Abbott admits that it is an Illinois corporation with its principal place of business in Abbott Park, Illinois.

5-23. Paragraphs 5-23 of the Complaint are directed at defendants other than Abbott and thus require no response from Abbott. To the extent the allegations in paragraphs 5-23 are deemed to include allegations against Abbott, Abbott admits only that in response to paragraph 21, TAP Pharmaceutical Products Inc.'s shares are owned equally by Abbott and Takeda Pharmaceutical Company Limited and that TAP is a Delaware corporation with its principal place of business in Illinois. Otherwise, Abbott is without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in paragraphs 5-23 of the Complaint. These allegations are therefore denied.

24. In response to paragraph 24 of the Complaint, Abbott admits that the Plaintiff purports to bring this action as alleged in paragraph 24 of the Complaint, but denies that Plaintiff has any basis in fact or law to maintain this action against Abbott. Furthermore, the allegations contained in this paragraph state legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies the remaining allegations of this paragraph. By way of further answer, to the extent the allegations reference statutes or regulations, those sources speak for themselves and any characterizations thereof are denied. Abbott denies any remaining allegations contained in Paragraph 24 of the Complaint.

25. In response to paragraph 25 of the Complaint, Abbott denies each and every allegation contained in paragraph 25 of the Complaint. Furthermore, the allegations contained in this paragraph state legal arguments and conclusions of law to which no response is required. To

the extent a response is required, Abbott denies these allegations. By way of further answer, to the extent the allegations reference statutes or regulations, those sources speak for themselves and any characterizations thereof are denied.

26. In response to paragraph 26 of the Complaint, Abbott admits that it sells certain of its pharmaceutical drug products to hospitals, physicians and pharmacies, among other customers. By way of further answer, Abbott admits that the market for pharmaceuticals is complex, but denies that the market is fairly characterized in paragraph 26. By way of further answer, Abbott admits that certain patients have private or public health insurance, but denies that these insurance markets are fairly characterized in paragraph 26. On that basis Abbott denies the remaining allegations of paragraph 26. Furthermore, to the extent the allegations in this paragraph are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

27. In response to paragraph 27 of the Complaint, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint. These allegations are, therefore, denied.

28. In response to paragraph 28 of the Complaint, Abbott denies that the market for pharmaceuticals is fairly characterized in paragraph 28, and on that basis denies the allegations of paragraph 28 of the Complaint. By way of further answer, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint. These allegations are, therefore, denied.

29. In response to paragraph 29 of the Complaint, Abbott admits that certain patients have private or public health insurance, but denies that the market for pharmaceuticals is fairly

characterized in paragraph 29, and on that basis, except as specifically admitted, Abbott denies the allegations of paragraph 29 of the Complaint. By way of further answer, Abbott is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 29 of the Complaint. These allegations are, therefore, denied.

30. In response to paragraph 30 of the Complaint, Abbott denies each and every allegation contained in paragraph 30 of the Complaint, including the existence of an “unlawful scheme.” By way of further answer, Abbott denies that the market for pharmaceuticals is fairly characterized in paragraph 30, and on that basis denies the allegations of paragraph 30 of the Complaint. Further, to the extent that the remaining allegations are legal arguments, hypotheticals or conclusions of law, no response is required. To the extent any response is required, Abbott denies these remaining allegations. Further, to the extent the allegations in this paragraph are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

31. In response to paragraph 31 of the Complaint, Abbott admits only that the Wisconsin Medicaid Program provides certain medical assistance for certain Wisconsin citizens. To the extent that the allegations in paragraph 31 of the Complaint purport to recite laws or regulations, those laws and regulations speak for themselves and thus no response is required. To the extent a response is required, Abbott is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 31 of the Complaint. The remaining allegations are, therefore, denied.

32. In response to paragraph 32 of the Complaint, Abbott admits only that it sells certain pharmaceutical products to hospitals, physicians and pharmacies, among other customers,

and that some of these customers, but not Abbott, may receive reimbursement from the Wisconsin Medicaid Program. To the extent that the allegations in paragraph 32 of the Complaint purport to recite laws or regulations, those laws and regulations speak for themselves and thus no response is required and any characterizations of them are denied. To the extent a response is required, Abbott is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32 of the Complaint. The remaining allegations are, therefore, denied.

33. In response to paragraph 33 of the Complaint, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required and any characterizations of them are denied. To the extent a response is required, Abbott denies each and every allegation contained in paragraph 33 of the Complaint.

34. In response to paragraph 34 of the Complaint, Abbott admits only that the pharmaceutical industry compendia, including Red Book and First DataBank, periodically publish certain pricing information, among other information, for prescription medicines sold in this country. Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent these allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied. Abbott denies all remaining allegations contained in paragraph 34 of the complaint.

35. In response to paragraph 35 of the Complaint, Abbott is without information or knowledge sufficient to form a belief as to whether the Plaintiff has chosen First DataBank as its “primary price source.” This allegation is, therefore, denied. Abbott denies each and every remaining allegation contained in paragraph 35 of the Complaint. Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent these allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

36. In response to paragraph 36 of the Complaint, Abbott denies each and every allegation contained in paragraph 36 of the Complaint. Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent these allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

37. In response to paragraph 37 of the Complaint, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

38. In response to paragraph 38 of the Complaint, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

39. In response to paragraph 39 of the Complaint, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied. Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent these allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

40. In response to paragraph 40 of the Complaint, Abbott denies each and every allegation in paragraph 40 of the Complaint. Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent these allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or

any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

41. In response to paragraph 41 of the Complaint, Abbott denies each and every allegation in paragraph 41 of the Complaint. Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

42. In response to paragraph 42 of the Complaint, the allegations are directed to defendants other than Abbott, and therefore, Abbott is not required to respond to this allegation and is otherwise without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied. To the extent that the allegations contained in paragraph 42 are directed at Abbott, Abbott denies these allegations.

43. In response to paragraph 43 of the Complaint, Abbott denies each and every allegation in paragraph 43 of the Complaint, including that it inflated average wholesale prices. Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent the allegations are directed to defendants other than

Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

44. In response to paragraph 44 of the Complaint, the allegations are directed to defendants other than Abbott, and therefore, Abbott is not required to respond to this allegation and is otherwise without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied. To the extent that the allegations contained in paragraph 44 are directed at Abbott, Abbott denies these allegations.

45. In response to paragraph 45 of the Complaint, the allegations are directed to defendants other than Abbott, and therefore, Abbott is not required to respond to these allegations and is otherwise without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied. To the extent that the allegations contained in paragraph 45 are directed at Abbott, Abbott denies these allegations.

46. In response to paragraph 46 of the Complaint, Abbott admits that Exhibit C is attached to the Complaint, but denies that the Plaintiff has accurately characterized any alleged finding, opinion, statement or conclusion contained therein, or that such are applicable to Abbott. By way of further answer, to the extent the allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied. Abbott denies all remaining allegations contained in paragraph 46 of the Complaint.

47. In response to paragraph 47 of the Complaint, these allegations are directed to defendants other than Abbott, and Abbott, therefore, need not respond to this paragraph. To the extent the allegations in this paragraph are deemed to be allegations directed against Abbott,

Abbott denies each and every allegation contained in paragraph 47 of the Complaint. Abbott is otherwise without information or knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies these allegations.

48. In response to paragraph 48 of the Complaint, Abbott admits that Exhibits D and E are attached to the Complaint, but denies that the Plaintiff has accurately characterized any alleged finding, information, opinion, statement or conclusion contained therein, or that such are applicable to Abbott. By way of further answer, to the extent the allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied. Abbott denies all remaining allegations contained in paragraph 48 of the Complaint.

49. In response to paragraph 49 of the Complaint, Abbott admits only that at times it offers certain discounts and rebates to certain customers on certain products, and that it may require (as would be expected) its customers to keep sensitive pricing information confidential. Abbott denies each and every remaining allegation in paragraph 49 of the Complaint including that it “misrepresented and inflated” the WAC of its drugs. By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

50. In response to paragraph 50 of the Complaint, Abbott denies each and every allegation in paragraph 50 of the Complaint, including the existence of a “drug pricing scheme,” or of “purposely concealing” such “scheme” from the Plaintiff. By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge

or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

51. In response to paragraph 51 of the Complaint, Abbott admits that the prices of certain pharmaceutical products with NDC numbers are subject to change. Abbott is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 51 of the Complaint. These allegations are, therefore, denied.

52. In response to paragraph 52 of the Complaint, Abbott denies each and every allegation in paragraph 52 of the Complaint, including the existence of, or engagement in, “marketing schemes which conceal the true price” of drugs. By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

53. In response to paragraph 53 of the Complaint, Abbott admits only that at times it offers certain discounts and rebates to certain customers on certain products. Abbott denies each and every remaining allegation in paragraph 53 of the Complaint, including the Plaintiff’s characterization of Abbott’s discount and rebate process and the existence of, or engagement in, any “scheme,” intended to “create the impression that the ‘wholesale price’ of the drug is higher than it really is.” By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

54. In response to paragraph 54 of the Complaint, Abbott denies each and every allegation in paragraph 54 of the Complaint. By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge or

information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

55. In response to paragraph 55 of the Complaint, Abbott admits that at times it offers certain discounts and rebates to certain customers on certain products. Abbott denies each and every remaining allegation in paragraph 55 of the Complaint, including that it “obscure[s] the[] true prices for [its] drugs.” By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

56. In response to paragraph 56 of the Complaint, Abbott denies each and every allegation set forth in paragraph 56 of the Complaint, including that Abbott has “hidden [its] real drug prices by providing free drugs and phony grants to providers.” Further, to the extent the allegations are directed to defendants other than Abbott, no response by Abbott is required. To the extent a response is required, Abbott denies that TAP’s guilty plea has been fairly characterized, and is otherwise without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

57. In response to paragraph 57 of the Complaint, Abbott denies each and every allegation in paragraph 57 of the Complaint, including the existence of an “inflated AWP,” a “phony price spread,” or that it “intentionally manipulate[ed] the nation’s drug reimbursement system.” By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

58. In response to paragraph 58 of the Complaint, Abbott admits that at times it offers certain discounts and rebates to certain customers on certain products, and that it may require (as

would be expected) its customers to keep competitively sensitive pricing information confidential. Abbott denies the remaining allegations in paragraph 58 of the Complaint, including the existence of, or participation in, any “scheme” of profiting off an “inflated spread.” By way of further answer, to the extent the allegations are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

59. In response to paragraph 59 of the Complaint, Abbott denies each and every allegation of paragraph 59 of the Complaint, including that it has “continuously concealed the true price of [its] drugs and continued to publish AWP’s [as if they were real, representative prices.” Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent the allegations are directed to defendants other than Abbott, including Novartis’ Pharmacy Benefit Report, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

60. In response to paragraph 60 of the Complaint, Abbott denies each and every allegation in paragraph 60 of the Complaint, including that it has ever engaged in an “unlawful scheme” or an “insidious, fraudulent scheme” that is causing Wisconsin and its citizens to pay more money per year than they should for prescription drugs. Moreover, Plaintiff’s allegation that “Wisconsin and its citizens [] pa[id] scores of millions of dollars a year more than they should for their prescription drugs” fails to account for those rebates Abbott has paid to the

Plaintiff. By way of further answer, to the extent that the allegations in paragraph 60 of the Complaint purport to recite laws or regulations, those laws speak for themselves and thus no response is required and any characterizations of them are denied. To the extent the allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

61. In response to paragraph 61 of the Complaint, Abbott admits only that the Wisconsin Medicaid program is a joint state and federal program whose benefits cover certain prescription drugs. To the extent that the allegations in paragraph 61 of the Complaint implicitly reference statutes or regulations, those sources speak for themselves and thus no response is required. To the extent a response is required, Abbott is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 61 of the Complaint. The remaining allegations are, therefore, denied.

62. In response to paragraph 62 of the Complaint, to the extent that the allegations in paragraph 62 of the Complaint implicitly reference statutes or regulations, those sources speak for themselves and thus no response is required. To the extent a response is required, Abbott admits only that during certain years, Wisconsin's Medicaid Program reimbursed pharmacists and physicians for certain drugs at AWP minus a certain percentage, plus a dispensing fee. Abbott is without knowledge or information sufficient to form a belief as to whether the Wisconsin Medicaid Program has always reimbursed providers at AWP minus a percentage. These allegations are, therefore, denied.

63. In response to paragraph 63 of the Complaint, Abbott admits that certain drugs are reimbursed by the Wisconsin Medicaid Program based upon the Federal Upper Limit, State

Maximum Allowable Cost and/or other reimbursement mechanisms that are not based upon AWP. By way of further answer, to the extent the allegations in this paragraph implicitly or explicitly reference statutes and regulations, those sources speak for themselves, and thus no response is required and any characterizations of them are denied. By way of further answer, Abbott is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 63 of the Complaint. These allegations are, therefore, denied.

64. In response to paragraph 64 of the Complaint, Abbott denies each and every allegation contained in paragraph 64 of the Complaint. By way of further answer, to the extent the allegations in this paragraph are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

65. In response to paragraph 65 of the Complaint, Abbott denies each and every allegation contained in paragraph 65 of the Complaint, including that Abbott “publish[es] false and inflated wholesale prices” or that it in any way “interfered with Wisconsin’s ability to set reasonable reimbursement rates for these drugs.” By way of further answer, Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. Moreover, Abbott avers that the Plaintiff had the obligation, as a matter of federal law, to determine an appropriate Medicaid reimbursement rate based on, among other things, the providers’ actual acquisition costs, and the Plaintiff had the opportunity and means to do so by requesting this information from pharmacists and other recipients of Medicaid reimbursement. Furthermore, to the extent

the allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

66. In response to paragraph 66 of the Complaint, Abbott denies each and every allegation in paragraph 66 of the Complaint. Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. By way of further answer, to the extent the allegations are directed to defendants other than Abbott or describe the actions of the Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

67. In response to paragraph 67 of the Complaint, Abbott admits that Medicare is a health insurance program created by the federal government and that it provides certain health benefits to certain individuals. By way of further answer, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required. Furthermore, to the extent that the allegations in paragraph 67 state legal conclusions, no response is required. Abbott refers to the relevant statutes governing Medicare, and otherwise is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 67 of the complaint. These allegations are, therefore, denied.

68. In response to paragraph 68 of the Complaint, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no

response is required. Furthermore, to the extent that the allegations in paragraph 68 state legal conclusions, no response is required. Abbott refers to the relevant statutes governing Medicare, and otherwise is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 68 of the complaint. These allegations are, therefore, denied. Abbott denies any remaining allegations in this paragraph.

69. In response to paragraph 69 of the Complaint, to the extent the allegations in this paragraph implicitly reference statutes and regulations, those sources speak for themselves, and thus no response is required. Furthermore, to the extent that the allegations in paragraph 69 state legal conclusions, no response is required. Abbott refers to the relevant statutes governing Medicare, and otherwise is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 69 of the complaint. These allegations are, therefore, denied.

70. In response to paragraph 70 of the Complaint, to the extent that the allegations reference statutes or regulations, those sources speak for themselves, and thus no response is required. Abbott refers to the relevant statutes and regulations governing Medicare Part B program's reimbursement of prescription drug providers. By way of further answer, Abbott states that paragraph 70 of the Complaint consists of conclusions of law as to which no answer is required. To the extent any answer is required, these allegations are denied.

71. In response to paragraph 71 of the Complaint, Abbott denies each and every allegation in paragraph 71 of the Complaint. By way of further answer, to the extent that the allegations in paragraph 71 state legal conclusions, no response is required. Further, to the extent that the allegations are directed to Defendants other than Abbott or describe the actions of the

Plaintiff or any entity besides Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

72. In response to paragraph 72 of the Complaint, Abbott states that this paragraph consists of conclusions of law to which no answer is required. To the extent any answer is required, these allegations are denied. Further, to the extent that the allegations are directed to Defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

73. In response to paragraph 73 of the Complaint, to the extent that the allegations reference federal cases or other sources of law, those sources speak for themselves and any characterizations thereof are denied. Further, Abbott states that paragraph 70 of the Complaint consists of conclusions of law to which no answer is required. To the extent any answer is required, these allegations are denied. Further, to the extent that the allegations are directed to Defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

74. In response to paragraph 74 of the Complaint, to the extent that the allegations reference statutes or regulations, those sources speak for themselves, and thus no response is required. By way of further answer, Abbott states that paragraph 74 of the Complaint consists of conclusions of law to which no answer is required. To the extent any answer is required, these allegations are denied.

75. In response to paragraph 75 of the Complaint, Abbott denies each and every allegation in paragraph 75 of the complaint, including that it “caus[ed] untrue AWP’s to be published.” By way of further answer, Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP

pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. Further, Abbott denies that the Plaintiff has accurately characterized any alleged Congressional hearing, finding, opinion, statement or conclusion, or that such are applicable to Abbott. Further, to the extent that the allegations are directed to Defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

76. In response to paragraph 76 of the Complaint, Abbott denies each and every allegation in paragraph 76 of the Complaint. By way of further answer, Abbott states that paragraph 76 of the Complaint consists of conclusions of law to which no answer is required. To the extent any answer is required, these allegations are denied. Further, to the extent that the allegations are directed to Defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

77. In response to paragraph 77 of the Complaint, Abbott denies each and every allegation in paragraph 77 of the Complaint. Further, Abbott denies Plaintiff is entitled to a judgment or any other form of relief from Abbott.

78. In response to paragraph 78 of the Complaint, Abbott denies each and every allegation in paragraph 78 of the Complaint, including that it engaged in any “unlawful activities” that “significantly and adversely impacted Wisconsin and its citizens.” By way of further answer, Abbott states that paragraph 78 of the Complaint consists of conclusions of law to which no answer is required. To the extent any answer is required, these allegations are denied. Further, to the extent that the allegations are directed to Defendants other than Abbott,

Abbott is without knowledge or information sufficient to form a belief as to the truth of these allegations. These allegations are, therefore, denied.

79. In response to paragraph 79 of the Complaint, Abbott realleges and incorporates by reference its responses to paragraphs 1-78 of the Complaint.

80. In response to paragraph 80 of the Complaint, Abbott denies each and every allegation contained in paragraph 80 of the Complaint. Furthermore, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required. The allegations of paragraph 80 also contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent that allegations in paragraph 80 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

81. In response to paragraph 81 of the Complaint, Abbott denies each and every allegation contained in paragraph 81 of the Complaint. Furthermore, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required. The allegations of paragraph 81 also contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent that allegations in paragraph 81 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

82. In response to paragraph 82 of the Complaint, Abbott denies each and every allegation contained in paragraph 82 of the Complaint. By way of further answer, Abbott avers that it has been common knowledge and universally understood for years, including by the

Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. Abbott also avers that the Plaintiff's allegation that it paid "far more for the drugs" also fails to account for those rebates Abbott has paid to the Plaintiff. Furthermore, to the extent that allegations in paragraph 82 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

In response to the Plaintiff's unnumbered Prayer for Relief, Abbott denies Plaintiff is entitled to a judgment or any other relief requested in its Prayer for Relief following paragraph 82 of the Complaint. Abbott respectfully requests that the Plaintiff's Complaint be dismissed, with prejudice, and that Abbott be awarded its costs and fees in defending this action, and any other relief the Court deems appropriate and just.

83. In response to paragraph 83 of the Complaint, Abbott realleges and incorporates by reference its responses to paragraphs 1-82 of the Complaint.

84. In response to paragraph 84 of the Complaint, Abbott denies each and every allegation contained in paragraph 81 of the Complaint. Furthermore, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required. The allegations of paragraph 84 also contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent that allegations in paragraph 84 are

directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

85. In response to paragraph 85 of the Complaint, Abbott denies each and every allegation contained in paragraph 85 of the Complaint. Furthermore, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required. The allegations of paragraph 85 also contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent the allegations in paragraph 85 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

86. In response to paragraph 86 of the Complaint, Abbott denies each and every allegation contained in paragraph 86 of the Complaint. By way of further answer, Abbott avers that it has been common knowledge and universally understood for years, including by the Plaintiff and/or its agents, that the AWP pricing figure published by various pricing compendia (who are unaffiliated with Abbott) does not equal an actual average of wholesale prices, and indeed, the federal government has repeatedly instructed the Plaintiff to this effect. Abbott also avers that the Plaintiff's allegation that it paid "far more for the drugs" also fails to account for those rebates Abbott has paid to the Plaintiff. Furthermore, to the extent that allegations in paragraph 86 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

In response to the Plaintiff's unnumbered Prayer for Relief, Abbott denies Plaintiff is entitled to a judgment or any other relief requested in its Prayer for Relief following paragraph 86 of the Complaint. Abbott respectfully requests that the Plaintiff's Complaint be dismissed, with prejudice, and that Abbott be awarded its costs and fees in defending this action, and any other relief the Court deems appropriate and just.

87. In response to paragraph 87 of the Complaint, Abbott realleges and incorporates by reference its responses to paragraphs 1-86 of the Complaint.

88. In response to paragraph 88 of the Complaint, Abbott denies each and every allegation contained in paragraph 88 of the Complaint, including that Abbott has "injur[ed] competition," "artificially inflated markets and market prices" for its drugs or that it paid "secret discounts, rebates, and other economic benefits." By way of further answer, the allegations of paragraph 88 contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent that allegations in paragraph 88 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

89. In response to paragraph 89 of the Complaint, Abbott denies each and every allegation contained in paragraph 89 of the Complaint, including the existence of or participation in any "unlawful activities." By way of further answer, the allegations of paragraph 89 contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent that allegations in paragraph 89 are directed to defendants other than Abbott, Abbott is without knowledge or

information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

90. In response to paragraph 90 of the Complaint, Abbott denies each and every allegation contained in paragraph 90 of the Complaint. Furthermore, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required. The allegations of paragraph 90 also contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent that allegations in paragraph 90 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

91. In response to paragraph 91 of the Complaint, Abbott denies each and every allegation contained in paragraph 91 of the Complaint. Abbott avers that the Plaintiff's allegation that it paid "more for drugs" also fails to account for those rebates Abbott has paid to the Plaintiff. Furthermore, to the extent that allegations in paragraph 91 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

In response to the Plaintiff's unnumbered Prayer for Relief, Abbott denies Plaintiff is entitled to a judgment or any other relief requested in its Prayer for Relief following paragraph 91 of the Complaint. Abbott respectfully requests that the Plaintiff's Complaint be dismissed, with prejudice, and that Abbott be awarded its costs and fees in defending this action, and any other relief the Court deems appropriate and just.

92. In response to paragraph 92 of the Complaint, Abbott realleges and incorporates by reference its responses to paragraphs 1-91 of the Complaint.

93. In response to paragraph 93 of the Complaint, Abbott admits that it markets and sells certain pharmaceutical products to certain customers for which the State of Wisconsin Medicaid Program may reimburse providers, but not Abbott. By way of further answer, to the extent that allegations in paragraph 93 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied. Abbott denies all remaining allegations contained in paragraph 93 of the Complaint.

94. In response to paragraph 94 of the Complaint, Abbott denies each and every allegation of paragraph 94 of the Complaint. By way of further answer, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required. Furthermore, the allegations of paragraph 94 contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent that allegations in paragraph 94 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

95. In response to paragraph 95 of the Complaint, Abbott denies each and every allegation of this paragraph, including the existence of or participation in “a variety of schemes, devices, agreements and false statements, and misrepresentations.” By way of further answer, to the extent the allegations in this paragraph reference statutes and regulations, those sources speak for themselves, and thus no response is required and any characterizations of them are denied.

Furthermore, the allegations of paragraph 95 contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Finally, to the extent that allegations in paragraph 95 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

In response to the Plaintiff's Prayer for Relief, Abbott denies Plaintiff is entitled to a judgment or any other relief requested in its Prayer for Relief following paragraph 95 of the Complaint. Abbott respectfully requests that the Plaintiff's Complaint be dismissed, with prejudice, and that Abbott be awarded its costs and fees in defending this action, and any other relief the Court deems appropriate and just.

96. In response to paragraph 96 of the Complaint, Abbott realleges and incorporates by reference its responses to paragraphs 1-95 of the Complaint.

97. In response to paragraph 97 of the Complaint, Abbott denies each and every allegation of paragraph 97 of the complaint. By way of further answer, the allegations of paragraph 97 contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Further, to the extent that allegations in paragraph 97 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

98. In response to paragraph 98 of the Complaint, Abbott denies each and every allegation of paragraph 98 of the complaint. By way of further answer, the allegations of

paragraph 98 contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Further, to the extent that allegations in paragraph 98 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

99. In response to paragraph 99 of the Complaint, Abbott denies each and every allegation of this paragraph. By way of further answer, the allegations of paragraph 99 contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Further, to the extent that allegations in paragraph 99 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

100. In response to paragraph 100 of the Complaint, Abbott denies each and every allegation of this paragraph. By way of further answer, the allegations of paragraph 100 contain legal arguments and conclusions of law to which no response is required. To the extent any response is required, Abbott denies these allegations. Further, to the extent that allegations in paragraph 100 are directed to defendants other than Abbott, Abbott is without knowledge or information sufficient to form a belief as to the truth of the allegations. These allegations are, therefore, denied.

In response to the Plaintiff's Prayer for Relief, Abbott denies Plaintiff is entitled to a judgment or any other relief requested in its Prayer for Relief following paragraph 100 of the Complaint. Abbott respectfully requests that the Plaintiff's Complaint be dismissed, with

prejudice, and that Abbott be awarded its costs and fees in defending this action, and any other relief the Court deems appropriate and just.

In response to the Plaintiff's unnumbered "Demand for Jury," Abbott denies that the Plaintiff has asserted any viable claims that would necessitate a trial by jury.

AFFIRMATIVE DEFENSES

Abbott provides a list of defenses without assuming any burden of proof:

FIRST DEFENSE

The Plaintiff and/or its agents knew and were aware that AWP was not an average wholesale price or the actual acquisition cost of drugs. Legal and equitable principles preclude this action for damages and injunctive relief, and the Due Process Clause of the U.S. Constitution and Section 2 of the Wisconsin Constitution preclude Plaintiff from bringing claims and seeking damages as alleged in the Complaint.

SECOND DEFENSE

Some or all of the Plaintiff's claims against Abbott arise from the Plaintiff's failure to follow its federal and state statutory and regulatory obligations to properly establish appropriate reimbursement rates. To the extent that the Plaintiff established Medicaid reimbursement rates by reference to AWP, the Plaintiff violated federal law in failing to establish Medicaid reimbursement rates as prescribed by federal law. The Plaintiff is precluded by federal law from seeking damages, especially by reference to a different, lower AWP, as alleged.

THIRD DEFENSE

The Plaintiff was required by federal law to conduct surveys and have statistics and data justifying, and to represent and warrant to the federal government that, its Medicaid reimbursement rates for single source drugs were necessary and appropriate as a condition of obtaining federal funds. This action, with respect to single-source drugs, is inconsistent with and

precluded by the Plaintiff's actions, representations and promises, and assumes that, with respect to single source drugs, the Plaintiff made false claims to the federal government to obtain federal funds.

FOURTH DEFENSE

The claims alleged herein, based on the facts alleged, are barred by the Plaintiff's own negligence or gross negligence. Among other things, the claims disregard the Plaintiff's obligations under federal law, and they ignore the Plaintiff's affirmative misstatements and declarations that were intended to cover up and hid from view of the federal regulatory authority, and the Plaintiff's citizens and taxpayers, the Plaintiff's failings referred to herein, as well as other inappropriate conduct by the Plaintiff.

FIFTH DEFENSE

The Plaintiff's reimbursement rates for drugs for Medicaid were filed with, reviewed, and approved by a federal regulatory agency with authority to do so under the Medicaid Act. Actions in a state court seeking relief, including alleged damages, contending that rates approved by a federal regulatory agency do not apply or are not binding are, as the United States Supreme Court directed, precluded by the Supremacy Clause. This action is barred by the Supremacy Clause of the United States Constitution.

SIXTH DEFENSE

The Plaintiff fails to state a claim against Abbott upon which relief may be granted.

SEVENTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, by the political question and separation of powers doctrines.

EIGHTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, by the *Noerr-Pennington* doctrine to the extent that such claims are premised, in whole or in part, on alleged statements or conduct by Abbott in judicial, legislative, or administrative proceedings of any kind or at any level of government.

NINTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, by the filed rate doctrine.

TENTH DEFENSE

The Plaintiff's claims are barred because the Plaintiff has not suffered, and will not suffer, any injury to a legally protected or cognizable interest by reason of the conduct of Abbott as alleged in the Complaint.

ELEVENTH DEFENSE

To the extent the Plaintiff or any of its citizens for whom it is seeking relief obtains recovery in any other case predicated on the same factual allegations, it is barred from seeking recovery against Abbott based on the Complaint pursuant to the doctrines of *res judicata* and collateral estoppel and the prohibition on double recovery for the same injury.

TWELFTH DEFENSE

The Plaintiff's claims against Abbott are misjoined with the Plaintiff's claims against other defendants and must be severed.

THIRTEENTH DEFENSE

The Plaintiff's unjust enrichment claims are barred, in whole or in part, by the existence of written agreements concerning the same subject matter.

FOURTEENTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, to the extent that the Plaintiff or any of its citizens for whom it is seeking relief has released, settled, entered into an accord and satisfaction or otherwise compromised its claims.

FIFTEENTH DEFENSE

Any and all actions taken by Abbott with respect to any of the matters alleged in the Complaint were taken in good faith and in accordance with established industry practice.

SIXTEENTH DEFENSE

The Plaintiff's state law claims are preempted, in whole or in part, by federal law, including without limitation, the Federal Employment Retirement Income and Security Act of 1974, the Federal Medicare Act, and the Federal Medicaid Act, including all amendments to the same and all regulations promulgated thereunder.

SEVENTEENTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, because they conflict with federal statutes and regulations that comprise a comprehensive regulatory regime governing the amounts paid to providers for Medicare Part B-covered drugs.

EIGHTEENTH DEFENSE

The Plaintiff's claims against Abbott for injunctive relief were mooted by the passage of the Medicare Prescription Drug Improvement and Modernization Act of 2003.

NINETEENTH DEFENSE

The Plaintiff's claims are preempted by the dormant Commerce Clause of the United States Constitution.

TWENTIETH DEFENSE

The Plaintiff's claims are preempted by the Commerce Clause of the United States Constitution.

TWENTY-FIRST DEFENSE

The Plaintiff's claims against Abbott are barred, in whole or in part, because Abbott has complied with all applicable regulations of the federal and state governments.

TWENTY-SECOND DEFENSE

The Plaintiff's claims against Abbott are barred, in whole or in part, by the applicable statutes of limitations and repose, and by the doctrines of laches, estoppel and waiver.

TWENTY-THIRD DEFENSE

The Plaintiff's claims are barred, in whole or in part, because they violate Abbott's rights under the Due Process and *Ex Post Facto* clauses of the United States Constitution, as well as the Constitution of the State of Wisconsin, insofar as the Plaintiff seeks to impose liability retroactively for conduct that was not actionable at the time it occurred.

TWENTY-FOURTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, because Abbott's statements or actions were not the proximate cause or cause in fact of any injury or alleged loss to the Plaintiff.

TWENTY-FIFTH DEFENSE

The Plaintiff's claims against Abbott are barred, in whole or in part, because the Plaintiff has failed to state with particularity facts to support claims of fraudulent conduct, fraudulent concealment or any other allegation of fraud.

TWENTY-SIXTH DEFENSE

The Plaintiff's claims against Abbott are barred, in whole or in part, because the Plaintiff has no standing or capacity to bring some or all of the claims raised in this suit to recover Medicaid or Medicare expenditures or to seek injunctive relief.

TWENTY-SEVENTH DEFENSE

The Plaintiff's claims against Abbott are barred, in whole or in part, because Abbott did not make any false statements to the Plaintiff or any of the agencies, departments, or citizens for whom the Plaintiff is seeking relief. As to any statement asserted against Abbott that the Plaintiff alleges to be false or misleading, Abbott had no reasonable grounds to believe, and did not believe at the time such a statement was made, that the statement was false or misleading.

TWENTY-EIGHTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, because the Plaintiff did not rely on the allegedly fraudulent statements or conduct of Abbott.

TWENTY-NINTH DEFENSE

The Plaintiff's unjust enrichment claims are barred, in whole or in part, because Abbott did not collect or retain any money belonging to the Plaintiff as a result of any alleged overpayments as required under Wisconsin law.

THIRTIETH DEFENSE

The Plaintiff's claims against Abbott are barred because Abbott did not directly or indirectly engage in any conduct in violation of state or federal law.

THIRTY-FIRST DEFENSE

The Plaintiff's claims are barred, in whole or in part, because Abbott's conduct was neither "deceptive," "misleading," "unlawful," nor "illegal."

THIRTY-SECOND DEFENSE

Abbott denies that the Plaintiff has a valid claim against Abbott under Wis. Stat. §§ 100.18(1), 100.18(10)(b), 133.05, or 49.49(4m)(a)(2) as alleged in the Complaint. However, if any such claims are found to exist, Abbott pleads all available defenses under these Statutes, including that Plaintiff's claims are barred, in whole or in part, to the extent the claims involve the insurance business, pursuant to the exclusions in § 100.18(12)(a).

THIRTY-THIRD DEFENSE

The Plaintiff's claims are barred, in whole or in part, because Abbott's conduct was neither "untrue," "deceptive," nor "misleading" as required under Wis. Stat. §§ 100.18(a) and 100.18(10)(b).

THIRTY-FOURTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, because Abbott did not pay "secret" rebates or "unearned" discounts as required under Wis. Stat. § 133.05.

THIRTY-FIFTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, because Abbott did not "willfully" make or cause to be made any "false" statement or representation of a "material fact" as required under Wis. Stat. § 49.49.

THIRTY-SIXTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, because the Plaintiff lacks standing to bring its asserted claims against Abbott under Wis. Stat. §§ 100.18(1), 100.18(10)(b), 133.05, or 49.49(4m)(a)(2).

THIRTY-SEVENTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, to the extent that Wis. Stat. §§ 100.18(1), 100.18(10)(b), 133.05, or 49.49(4m)(a)(2) do not allow (or did not allow at the

time of the conduct alleged herein) for recovery by indirect purchasers; and do not govern conduct that is predominantly interstate in nature.

THIRTY-EIGHTH DEFENSE

The Plaintiff's claims under Wis. Stat. § 49.49 are barred, in whole or in part, because Abbott did not possess the requisite mental state required under that statute.

THIRTY-NINTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, because the Plaintiff did not consult with the Governor of Wisconsin and/or the Department of Agriculture, Trade and Consumer Protection prior to bringing this suit.

FORTIETH DEFENSE

The Plaintiff is barred from recovery because the representations and actions alleged by the Plaintiff were not, and are not, material, in that they were not, and are not, likely to affect the decisions or conduct of Plaintiff, or to have caused consumers or Third Party Payors to have chosen differently, but for such alleged representations or actions, in light of the information available and known to consumers and Third Party Payors, and in that the alleged representations and actions were not likely to mislead consumers or Third Party Payors acting reasonably under the circumstance.

FORTY-FIRST DEFENSE

To the extent that the Plaintiff seeks equitable relief against Abbott, the Plaintiff is not entitled to such relief because there is an adequate remedy at law.

FORTY-SECOND DEFENSE

Some or all of the Plaintiff's claims for injunctive relief against Abbott are barred by the doctrines of *in pari delicto* and/or unclean hands.

FORTY-THIRD DEFENSE

The Plaintiff's claims against Abbott are barred, in whole or in part, because the Plaintiff failed to follow its federal and state statutory and regulatory obligations to properly establish appropriate reimbursement rates.

FORTY-FOURTH DEFENSE

The Plaintiff's claims against Abbott are barred, in whole or in part, due to the Plaintiff's failure to join indispensable parties.

FORTY-FIFTH DEFENSE

The Plaintiff's claims against Abbott are barred, in whole or in part, because the Plaintiff suffered no damages as a result of the matters alleged in the Complaint.

FORTY-SIXTH DEFENSE

The Plaintiff's claims are barred, in whole or in part, because any injuries sustained by the Plaintiff were the result of its own conduct or the intervening or superseding conduct of third parties.

FORTY-SEVENTH DEFENSE

The Plaintiff's claims against Abbott for damages are barred, in whole or in part: (1) because the Plaintiff failed to mitigate its damages, and that failure to mitigate damages should proportionately reduce the recovery of such persons and the allocation of any fault, if any exists, attributable to Abbott; (2) because the Plaintiff would be unjustly enriched if allowed to recover any portion of the damages alleged in the Complaint; (3) by the doctrine of consent and/or ratification to the extent that Plaintiff has received and paid for medicines manufactured, marketed and sold by Abbott after the filing of the Plaintiff's original complaint; and (4) because the Plaintiff's claims are speculative and remote and because of the impossibility of ascertaining and allocating those alleged damages.

FORTY-EIGHTH DEFENSE

Abbott is entitled to a set-off, should any damages be awarded against it, for the entire amount of all damages or settlement amounts recovered by the Plaintiff, with respect to the same alleged injuries.

FORTY-NINTH DEFENSE

The applicable statutory ceilings on recoverable damages must limit any damages recovered by the Plaintiff from Abbott.

FIFTIETH DEFENSE

The Plaintiff fails to allege facts or a cause of action against Abbott sufficient to support a claim for compensatory damages, attorneys' fees and/or legal fees, or any other relief.

FIFTY-FIRST DEFENSE

Abbott denies that it has engaged in any conduct that entitles the Plaintiff to recover penalty assessments and avers that the Plaintiff's Complaint fails to state a claim upon which penalty assessments may be awarded to the Plaintiff.

FIFTY-SECOND DEFENSE

The Plaintiff's penalty assessment claims against Abbott: (1) have no basis in law or fact; (2) are not recoverable because the allegations of the Complaint are legally insufficient to support a claim for penalty assessments against Abbott; (3) cannot be sustained because laws regarding the standards for determining liability for and the amount of penalty assessments fails to give Abbott prior notice of the conduct for which penalty assessments may be imposed and the severity of the penalty that may be imposed and are void for vagueness in violation of Abbott's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Wisconsin; (4) cannot be sustained because any award of penalty assessments exceeding the limits authorized by the laws or other comparable

laws would violate Abbott's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would be improper under the Constitution, common law and applicable state laws of Wisconsin; (5) cannot be sustained because an award of penalty assessments in this case, combined with any prior, contemporaneous, or subsequent judgments against Abbott for penalty assessments arising from the design, development, manufacture, fabrication, distribution, supply, marketing, sale, or use of Abbott's medicines, would constitute impermissible multiple punishments for the same wrong in violation of Abbott's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would constitute double jeopardy in violation of the Constitution, common law and statutory law of Wisconsin; (6) cannot be sustained because any award of penalty assessments without the apportionment of the award separately and severally between or among the alleged joint tortfeasors, as determined by the alleged percentage of the wrong committed by each alleged tortfeasor, would violate Abbott's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would be improper under the Constitution, common law and public policies of Wisconsin; and (7) cannot be sustained because any award of penalty assessments, which are penal in nature, without according Abbott the same protections that are accorded to all criminal defendants, including the protection against unreasonable searches and seizures, the privilege against self-incrimination, and the rights to confront adverse witnesses, a speedy trial, and the imposition of excessive fines would violate Abbott's rights guaranteed by the Fourth, Fifth, Sixth, and Eighth Amendments as incorporated into the Fourteenth Amendment to the United States Constitution and would be improper under the Constitution, common law and public policies of Wisconsin.

FIFTY-THIRD DEFENSE

The Plaintiff's claim for penalty assessments against Abbott cannot be sustained because an award of penalty assessments by a jury that: (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a penalty assessments award; (2) is not adequately instructed on the limits of penalty assessments imposed by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from awarding penalty assessments, or determining the amount of an award of penalty assessments, in whole or in part, on the basis of invidiously discriminatory characteristics, including without limitation, the residence, wealth, and corporate status of Abbott; (4) is permitted to award penalty assessments under a standard for determining liability for penalty assessments that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes penalty assessments permissible; (5) is not properly instructed regarding the Plaintiff's burden of proof with respect to each and every element of a claim for penalty assessments; and (6) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards, would violate Abbott's Due Process and Equal Protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and would be improper under the Constitution, common law and public policies of Wisconsin.

FIFTY-FOURTH DEFENSE

The Plaintiff's claim for penalty assessments against Abbott cannot be sustained because an award of penalty assessments that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount of penalty assessments that may be imposed, would: (1) violate Abbott's Due Process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution; (2) violate Abbott's right not to be subjected to

an excessive award; and (3) be improper under the Constitution, common law and public policies of Wisconsin.

FIFTY-FIFTH DEFENSE

The recovery of penalty assessments by the Plaintiff in this action would violate Article I, sections 1, 6, 7, 8 and 11 of the Wisconsin Constitution on the following grounds: (a) it is impermissible to impose penalty assessments, which are penal in nature, upon a civil defendant upon the Plaintiff satisfying a burden of proof less than the “beyond a reasonable doubt” burden of proof required in criminal cases; (b) the procedures pursuant to which any penalty assessments would be awarded fail to provide a reasonable limit on the amount of the award against Abbott; (c) the procedures pursuant to which any penalty assessments would be awarded are unconstitutionally vague; (d) the procedures pursuant to which any penalty assessments would be awarded fail to provide specific standards for the amount of the award of penalty assessments; (e) the award of penalty assessments in this case would constitute a deprivation of property without due process; and (f) the procedures pursuant to which any penalty assessments would be awarded permit the imposition of an excessive fine.

FIFTY-SIXTH DEFENSE

The procedures pursuant to which any penalty assessments would be awarded permit the imposition of an excessive fine in violation of Article I, Section 6 of the Wisconsin Constitution.

FIFTY-SEVENTH DEFENSE

The Plaintiff fails to allege facts or a cause of action against Abbott sufficient to support a claim for prejudgment interest or any other relief.

FIFTY-EIGHTH DEFENSE

The Plaintiff’s claims are barred, in whole or in part, with respect to any alleged overcharge or supracompetitive price because such supracompetitive price, if any, was absorbed

in whole or in part by a person and/or entity that purchased the medicine directly, and/or an intermediate purchaser, and was not passed through to the Plaintiff.

FIFTY-NINTH DEFENSE

Abbott adopts by reference any additional applicable defense pled by any other defendant in this case, not otherwise pled herein.

SIXTIETH DEFENSE

Abbott hereby gives notice that it intends to rely upon any other and additional defense that is now or may become available or appear during, or as a result of the discovery proceedings in this action and hereby reserves its right to amend its answer to assert such defense.

WHEREFORE, Abbott prays that this Court: (1) dismiss Wisconsin's Complaint with prejudice and enter judgment in favor of Abbott against the Plaintiff; (2) award Abbott its costs and expenses; and (3) award such other further relief as the Court may deem just and proper.

August 11, 2006

Respectfully Submitted,

DEFENDANT ABBOTT LABORATORIES

By:


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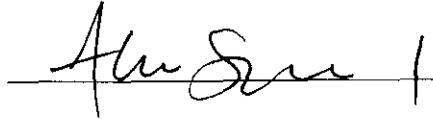
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Certificate of Service

I hereby certify that on this 11th day of August, 2006, a true and correct copy of the foregoing Answer and Affirmative Defenses of Defendant Abbott Laboratories to the State of Wisconsin's Second Amended Complaint was served on all counsel of record by Lexis Nexis File & Serve®.

Dated: August 11, 2006

A handwritten signature in cursive script, appearing to read "Alan S. Smith", is written over a horizontal line.