

3. Ben Venue admits in part and denies in part the averments in paragraph 3. Ben Venue admits that it is a pharmaceutical company. Ben Venue denies the remaining averments in paragraph 3, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 3 pertaining to other defendants, and therefore denies those averments.

4 - 8. The averments in paragraphs 4 – 8 are directed to parties other than Ben Venue, and therefore Ben Venue need not respond to these paragraphs. To the extent a response is required, Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 4 – 8, and on that basis denies the averments.

9. Ben Venue admits in part and denies in part the averments in paragraph 9. Ben Venue admits that it is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals, with its principal place of business at 300 Northfield Road, Bedford, Ohio 44146. Ben Venue admits that Boehringer Ingelheim Pharmaceuticals, Inc. (“BIPI”) is a corporation engaged in the business of manufacturing and selling pharmaceuticals, with its principal place of business located at 900 Ridgebury Road, Ridgefield, Connecticut 06877. Ben Venue denies that BIPI is a wholly owned subsidiary of an entity named “Boehringer” and that BIPI is a Connecticut corporation. Ben Venue admits that Roxane Laboratories, Inc. is a Nevada corporation, with its principal place of business located at 1809 Wilson Road, Columbus, Ohio 43216-6532. Ben Venue admits that Roxane has engaged in the business of selling pharmaceuticals since April, 2005, but denies that Roxane engaged in the business of selling pharmaceuticals before April, 2005. Ben Venue denies that Roxane is engaged in the business of manufacturing pharmaceuticals. Ben Venue admits that Boehringer Ingelheim Roxane, Inc. (“BIRI”) is a Delaware corporation engaged in the business of manufacturing pharmaceuticals,

with its principal place of business located at 1809 Wilson Road, Columbus, Ohio 43216-6532. Ben Venue admits that BIRI engaged in the business of selling pharmaceuticals until April, 2005, but denies that BIRI has engaged in the business of selling pharmaceuticals since April, 2005. Ben Venue admits that BIRI, Roxane, and Ben Venue are wholly owned subsidiaries of Boehringer Ingelheim Corporation. Ben Venue affirmatively avers that reference to these four separate corporate defendants collectively as “the Boehringer Group” is inappropriate and improper.

10. The averments in paragraphs 10 – 23 are directed to parties other than Ben Venue, and therefore Ben Venue need not respond to these paragraphs. To the extent a response is required, Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 10 – 23, and on that basis denies the averments.

24. Ben Venue denies the averments in paragraph 24.

25. Ben Venue admits in part and denies in part the averments in paragraph 25. Ben Venue admits that venue is proper in Dane County, Wisconsin pursuant to Wisconsin Civil Procedure Rule 801.50. Ben Venue denies the remaining averments in paragraph 25, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 25 pertaining to other defendants, and therefore denies those averments.

26. Ben Venue admits in part and denies in part the averments in paragraph 26. Ben Venue admits that the market for prescription drugs is complex and involves sales by manufacturers to intermediaries before drugs reach providers or patients. Ben Venue admits that there is a unique NDC number for each dosage and package size of each of its drugs. Ben Venue admits that it manufactures and sells drugs. Ben Venue is without knowledge or information

sufficient to form a belief as to the truth of the remaining averments of paragraph 26 and therefore denies them.

27. Paragraph 27 contains no factual allegation to which Ben Venue is required or able to respond. To the extent that a response is required, Ben Venue incorporates its responses to the specific averments in paragraphs 28 - 29

28. Ben Venue admits in part and denies in part the averments in paragraph 28. Ben Venue admits that prescription drugs are dispensed only on a physician's order and that a physician determines what prescription drug to prescribe for the patient. Ben Venue further admits that for prescription drugs, pharmacies can exert influence over which drug will be dispensed to the patient when there is a choice between filling a prescription with different versions of the same drug. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 28, and therefore denies those averments.

29. Ben Venue admits in part and denies in part the averments in paragraph 29. Ben Venue admits that payment for prescription drugs is often made by payers. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 29, and therefore denies those averments.

30. Ben Venue denies the averments in paragraph 30, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 30 pertaining to other defendants, and therefore denies those averments.

31. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 31, and therefore denies those averments.

32. Ben Venue admits in part and denies in part the averments in paragraph 32. Ben Venue admits that its participation in the Wisconsin Medicaid program is voluntary and that Ben Venue has chosen to participate in the Wisconsin Medicaid program. Ben Venue further admits that Wisconsin, through its Medicaid program, purchases drugs. Ben Venue denies the remaining averments in paragraph 32, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 32 pertaining to other defendants, and therefore denies those averments.

33. Ben Venue denies the averments in paragraph 33. To the extent that the averments in paragraph 33 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 33, and therefore denies those averments.

34. Ben Venue admits in part and denies in part the averments in paragraph 34. Ben Venue admits that First DataBank and Redbook periodically publish certain pricing information for prescription drugs. Ben Venue denies the remaining averments in paragraph 34, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 34 pertaining to other defendants, and therefore denies those averments.

35. Ben Venue denies the averments in paragraph 35. To the extent that the averments in paragraph 35 refer to Exhibit A, Ben Venue states that Exhibit A speaks for itself and any characterization thereof is denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 35, and therefore denies those averments.

36. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 36, and therefore denies those averments.

37. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 37, and therefore denies those averments.

38. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 38, and therefore denies those averments.

39. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 39, and therefore denies those averments.

40. Ben Venue denies the averments in paragraph 40, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 40 pertaining to other defendants, and therefore denies those averments.

41. Ben Venue denies the averments in paragraph 41, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 41 pertaining to provider profits and other defendants, and therefore denies those averments.

42. The averments in paragraph 42 are directed to parties other than Ben Venue, and therefore Ben Venue need not respond to this paragraph. To the extent a response is required, Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 42, and on that basis denies the averments.

43. Ben Venue denies the averments in paragraph 43, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the

truth of the averments in paragraph 43 pertaining to other defendants and statements made by an unidentified "high-ranking industry executive," and therefore denies those averments.

44. Ben Venue admits in part and denies in part the averments in paragraph 44. Ben Venue admits that a representative of Roxane has testified to Congress. Ben Venue denies the remaining averments in paragraph 44, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 44 pertaining to other defendants, and therefore denies those averments.

45. The averments in paragraph 45 are directed to a party other than Ben Venue, and therefore Ben Venue need not respond to this paragraph. To the extent a response is required, Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 45, and on that basis denies the averments.

46. Ben Venue refers to Payment Reform for Part B Drugs, 68 Fed. Reg. 50, 430 (August 20, 2003), for its content, and otherwise is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 46, and on that basis denies the averments.

47. Ben Venue denies the averments in paragraph 47, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 47 pertaining to other defendants, and therefore denies those averments.

48. Ben Venue denies that it has caused false prices to be published or failed to produce data. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 48, and therefore denies those averments.

49. Ben Venue denies the averments in paragraph 49, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 49 pertaining to other defendants, and therefore denies those averments.

50. Ben Venue denies the averments in paragraph 50, to the extent they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 50 pertaining to other defendants, and therefore denies those averments.

51. Ben Venue admits in part and denies in part the averments in paragraph 51. Ben Venue admits that wholesale prices of drugs change overtime, sometimes daily. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 51, and therefore denies those averments.

52. Ben Venue denies the averments in paragraph 52, to the extent they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 52 pertaining to other defendants, and therefore denies those averments.

53. Ben Venue admits in part and denies in part the averments in paragraph 53. Ben Venue admits that it agrees upon a contract price with some customers for some drugs. Ben Venue further admits that for some customers and some drugs, a wholesaler ships the product to the customer, charging the contract price, and issues a "charge-back," for any difference between its acquisition cost and the contract price. To the extent that the remaining averments in paragraph 53 refer to Ben Venue, Ben Venue denies those averments. Ben Venue is without

knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 53 pertaining to other defendants, and therefore denies those averments.

54. Ben Venue admits in part and denies in part the averments in paragraph 54. Ben Venue admits that it may require (as would be expected) its customers to keep competitively sensitive pricing information confidential. Ben Venue denies the remaining averments in paragraph 54, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 54 pertaining to other defendants, and therefore denies those averments.

55. Ben Venue admits in part and denies in part the averments in paragraph 55. Ben Venue admits that it negotiates different prices for its drugs with different customers. To the extent that the remaining averments in paragraph 55 refer to Ben Venue, Ben Venue denies those averments. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 55 pertaining to other defendants, and therefore denies those averments.

56. Ben Venue denies the averments in paragraph 56, to the extent they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 56 pertaining to other defendants, and therefore denies those averments.

57. Ben Venue denies the averments in paragraph 57, to the extent they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 57 pertaining to other defendants, and therefore denies those averments.

58. Ben Venue admits in part and denies in part the averments in paragraph 58. Ben Venue admits that it may require (as would be expected) its customers to keep competitively sensitive pricing information confidential. To the extent that the remaining averments in paragraph 58 refer to Ben Venue, Ben Venue denies those averments. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 58 regarding provider income and motivation, and therefore denies those averments. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 58 pertaining to other defendants, and therefore denies those averments.

59. Ben Venue denies the averments in paragraph 59, to the extent they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 59 pertaining to other defendants, and therefore denies those averments. Ben Venue refers to *Novartis Pharmacy Benefit Report: Facts and Figures*, 200 Edition, East Hanover, NJ, Novartis Pharmaceuticals Corporation, p. 43, for its content, and otherwise is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 59, and on that basis denies the averments.

60. Ben Venue denies the averments in paragraph 60, to the extent they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 60 pertaining to other defendants, and therefore denies those averments.

61. Ben Venue admits in part and denies in part the averments in paragraph 61. Ben Venue admits that the Wisconsin Medicaid program is a joint federal and state program which pays for medical care, including prescription drug benefits, for certain Wisconsin citizens. Ben

Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 61, and therefore denies those averments.

62. Ben Venue admits in part and denies in part the averments in paragraph 62. Ben Venue admits that for certain years the Wisconsin Medicaid Program reimbursed pharmacies and physicians for certain drugs at AWP minus a percentage, plus a dispensing fee. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 62, and therefore denies those averments.

63. Ben Venue admits in part and denies in part the averments in paragraph 63. Ben Venue admits that the federal government establishes federal upper limits for certain multi-source drugs. Ben Venue admits that the Wisconsin Medicaid Program reimburses certain drugs based on the State Maximum Acquisition Cost ("MAC") program. To the extent that the averments in paragraph 63 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 63, and therefore denies those averments.

64. Ben Venue denies the averments in paragraph 64, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 64 pertaining to other defendants, and therefore denies those averments.

65. Ben Venue denies the averments in paragraph 65, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 65 pertaining to other defendants, and therefore denies those averments.

66. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 66, and therefore denies those averments.

67. Ben Venue admits in part and denies in part the averments in paragraph 67. Ben Venue admits that Medicare is a health insurance program created by the federal government for eligible persons and that two of its components are Part A and Part B. To the extent that the averments in paragraph 67 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 67, and therefore denies those averments.

68. To the extent that the averments in paragraph 68 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 68, and therefore denies those averments.

69. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 69, and therefore denies those averments.

70. Ben Venue admits in part and denies in part the averments in paragraph 70. Ben Venue admits that through the Medicare Part B program, the federal government reimburses healthcare providers for up to 80% of the allowable cost of certain prescription drugs. Ben Venue denies the remaining averments in paragraph 70, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 70 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 70, and therefore denies those averments.

71. Ben Venue denies the averments in paragraph 71, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 71 pertaining to other defendants and Medicare Part B participants' co-pays, and therefore denies those averments.

72. Ben Venue admits in part and denies in part the averments in paragraph 72. Ben Venue admits that it has a duty to comply with the law and that it has known that it has a duty to comply with the law. To the extent that the averments in paragraph 72 are conclusions of law, no response is required. To the extent that a response is required, Ben Venue denies that it has duties greater than those imposed by the law. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 72 pertaining to other defendants, and therefore denies those averments.

73. Ben Venue denies the averments in paragraph 73, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 73 are conclusions of law, no response is required. To the extent that a response is required, Ben Venue refers to the cases cited in paragraph 73 for their content. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 73 pertaining to other defendants, and therefore denies those averments.

74. To the extent that the averments in paragraph 74 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 74, and therefore denies those averments.

75. Ben Venue denies the averments in paragraph 75.

76. Ben Venue denies the averments in paragraph 76, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 76 pertaining to other defendants, and therefore denies those averments.

77. Ben Venue denies the averments in paragraph 77, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 77 pertaining to other defendants, and therefore denies those averments.

78. Ben Venue denies the averments in paragraph 78, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 78 pertaining to other defendants, and therefore denies those averments.

COUNT I

79. Ben Venue reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-78.

80. Ben Venue denies the averments in paragraph 80, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 80 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 80 pertaining to other defendants, and therefore denies those averments.

81. Ben Venue denies the averments in paragraph 81, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 81 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are

denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 81 pertaining to other defendants, and therefore denies those averments.

82. Ben Venue denies the averments in paragraph 82, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 82 pertaining to other defendants, and therefore denies those averments.

COUNT II

83. Ben Venue reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-82.

84. Ben Venue denies the averments in paragraph 84, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 84 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 84 pertaining to other defendants, and therefore denies those averments.

85. Ben Venue denies the averments in paragraph 85, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 85 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 85 pertaining to other defendants, and therefore denies those averments.

86. Ben Venue denies the averments in paragraph 86, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the

truth of the averments in paragraph 86 pertaining to other defendants, and therefore denies those averments.

COUNT III

87. Ben Venue reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-86.

88. Ben Venue denies the averments in paragraph 88, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 88 pertaining to other defendants, and therefore denies those averments.

89. Ben Venue denies the averments in paragraph 89, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 89 pertaining to other defendants, and therefore denies those averments.

90. Ben Venue denies the averments in paragraph 90, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 90 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 90 pertaining to other defendants, and therefore denies those averments.

91. Ben Venue denies the averments in paragraph 91, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 91 pertaining to other defendants, and therefore denies those averments.

COUNT IV

92. Ben Venue reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-91.

93. Ben Venue admits in part and denies in part the averments in paragraph 93. Ben Venue admits that it manufactures, markets, and sells pharmaceutical products. Ben Venue further admits that the State of Wisconsin through its Medicaid Program has paid for some Ben Venue drugs. Ben Venue denies that Ben Venue has sold any of its pharmaceuticals products to the State of Wisconsin's Medicaid Program. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 93 pertaining to other defendants, and therefore denies those averments.

94. Ben Venue denies the averments in paragraph 94, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 94 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 94 pertaining to other defendants, and therefore denies those averments.

95. Ben Venue denies the averments in paragraph 95, to the extent that they refer to Ben Venue. To the extent that the averments in paragraph 95 refer to the interpretation of statutes and regulations, these sources speak for themselves, and any characterization thereof are denied. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 95 pertaining to other defendants, and therefore denies those averments.

COUNT V

96. Ben Venue reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-95.

97. Ben Venue denies the averments in paragraph 97, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 97 pertaining to other defendants, and therefore denies those averments.

98. Ben Venue denies the averments in paragraph 98, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 98 pertaining to other defendants, and therefore denies those averments.

99. Ben Venue denies the averments in paragraph 99, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 99 pertaining to other defendants, and therefore denies those averments.

100. Ben Venue denies the averments in paragraph 100, to the extent that they refer to Ben Venue. Ben Venue is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 100 pertaining to other defendants, and therefore denies those averments.

BEN VENUE'S DEFENSES

101. Ben Venue further responds to the Complaint with the following defenses. By alleging the matters set forth below, Ben Venue does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters or that the State is relieved of its burdens to prove each and every element of its claims and the damages, if any, to

which it is entitled. As for its defenses, Ben Venue reasserts and reincorporates as if fully set forth herein its responses to paragraphs 1 through 100 above:

FIRST DEFENSE

102. Ben Venue generally denies liability for all claims alleged in the Complaint and denies each allegation contained in the Complaint that has not been admitted.

SECOND DEFENSE

103. The Complaint fails to state a claim against Ben Venue upon which relief may be granted.

THIRD DEFENSE

104. The Complaint and the claims therein are barred, in whole or in part, by the applicable statutes of limitations and repose.

FOURTH DEFENSE

105. The Complaint and claims contained therein are barred because they fail to allege any causal link between any injury suffered by the State and any alleged activities of Ben Venue or its employees.

FIFTH DEFENSE

106. The State's claims are barred in whole or in part because the State's alleged injuries and damages were not legally or proximately caused by any acts or omissions of Ben Venue and/or were caused, if at all, by the conduct of the State and/or third parties.

SIXTH DEFENSE

107. The State's claims against Ben Venue are barred, in whole or in part, by the doctrines of waiver, estoppel, and/or laches.

SEVENTH DEFENSE

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

EIGHTH DEFENSE

109. The State'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 Ben Venue or its predecessors or successors in judicial, legislative, or administrative proceedings of any kind or at any level of government.

NINTH DEFENSE

110. The State'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.

TENTH DEFENSE

111. The State's claims are barred, in whole or in part, because they violate Ben Venue'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 State seeks to impose liability retroactively for conduct that was not actionable at the time it occurred.

ELEVENTH DEFENSE

112. To the extent that the State attempts to seek equitable relief against Ben Venue, the State is not entitled to such relief because the State has an adequate remedy at law.

TWELFTH DEFENSE

113. The State's claims against Ben Venue for injunctive relief were mooted, in whole or in part, by the passage of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

THIRTEENTH DEFENSE

114. The State's claims for equitable relief against Ben Venue are barred by the doctrines of *in pari delicto* and/or unclean hands.

FOURTEENTH DEFENSE

115. The State's claims against Ben Venue are barred, in whole or in part, due to the State's failure to join indispensable parties.

FIFTEENTH DEFENSE

116. The State's claims are barred, in whole or in part, because the State failed to mitigate damages, if any, allegedly suffered as a result of the conduct it alleges.

SIXTEENTH DEFENSE

117. The State's claims against Ben Venue for damages are barred, in whole or in part, by the doctrine of consent and/or ratification to the extent that the State has received and paid for medicines manufactured, marketed or sold by Ben Venue after the filing of the State's original Complaint.

SEVENTEENTH DEFENSE

118. To the extent penalty assessments are sought, penalty assessments are not recoverable from Ben Venue because the allegations of the Complaint are legally insufficient to support a claim for penalty assessments against Ben Venue.

EIGHTEENTH DEFENSE

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

NINETEENTH DEFENSE

120. The State 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 was necessary and appropriate, as a condition to obtaining federal funds. This action, with respect to single source drugs, is inconsistent with and precluded by the State's actions, representations and promises, and assumes that, with respect to single source drugs, the State made false claims to the federal government to obtain federal funds.

TWENTIETH DEFENSE

121. The State's reimbursement rates for drugs for Medicaid recipients 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 Constitution.

TWENTY-FIRST DEFENSE

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

TWENTY-SECOND DEFENSE

123. The State's claims against Ben Venue are misjoined with the State's claims against other defendants and must be severed.

TWENTY-THIRD DEFENSE

124. The State's claims against Ben Venue for damages are barred, in whole or in part, because the State would be unjustly enriched if allowed to recover any portion of damages alleged in the Complaint.

TWENTY-FOURTH DEFENSE

125. The claims contained in the Complaint, which seek the recovery of penalty assessments violate the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America on the following grounds:

- (a) it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose penalty assessments, which are penal in nature, against a civil defendant upon the State's satisfying a burden of proof which is 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 Ben Venue, which violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (c) 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, which violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (d) the procedures pursuant to which any penalty assessments would be awarded result in the imposition of different penalties for the same or similar acts, and thus

violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

- (e) the procedures pursuant to which any penalty assessments would be awarded permit the imposition of penalty assessments in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and
- (f) the procedures pursuant to which any penalty assessments would be awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution.

TWENTY-FIFTH DEFENSE

126. Ben Venue adopts by reference any additional, applicable defense pled by any other defendant in this action.

TWENTY-SIXTH DEFENSE

127. The State fails to allege facts or a cause of action against Ben Venue sufficient to support a claim for prejudgment interest.

TWENTY-SEVENTH DEFENSE

128. The State's claims against Ben Venue are barred in whole or in part by the doctrine of voluntary payment.

TWENTY-EIGHTH DEFENSE

129. The State has failed to exhaust available statutory and administrative remedies.

TWENTY-NINTH DEFENSE

130. The State's unjust enrichment claims are barred, in whole or in part, because Ben Venue has not accepted or retained any benefits under circumstances where it would be inequitable for Ben Venue to do so.

THIRTIETH DEFENSE

131. The State's unjust enrichment claims are barred, in whole or in part, to the extent there are contracts, to which the State and Ben Venue are parties, that relate to the same subject matter as the State's claim.

THIRTY-FIRST DEFENSE

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

THIRTY-SECOND DEFENSE

133. The State has no authority to seek restitution for third parties based on any alleged violation of Wis. Stat. § 49.49(4m)(a)(2).

THIRTY-THIRD DEFENSE

134. The recovery of penalty assessments by the State in this action would violate Article I, sections 1, 6, 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 State 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 Ben Venue;
- (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.

THIRTY-FOURTH DEFENSE

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

THIRTY-FIFTH DEFENSE

136. The State's claims against Ben Venue are barred because Ben Venue has complied with all applicable laws or regulations of the federal and state governments.

THIRTY-SIXTH DEFENSE

137. The State has no standing or capacity to bring some or all of the claims in the Complaint.

THIRTY-SEVENTH DEFENSE

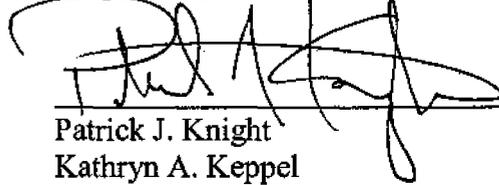
138. Ben Venue reserves its right to assert additional defenses that are now or may become available or appear during, or as a result of the discovery proceedings in this action and reserves the right to amend this Answer if necessary.

CONCLUSION

WHEREFORE, Ben Venue, having answered the allegations of the Complaint, requests judgment in its favor on the entirety of the Complaint, and further requests an award of its costs incurred herein, including reasonable attorneys' fees and such other relief, legal or equitable, as the Court deems appropriate.

August 11, 2006

Respectfully submitted,



Patrick J. Knight
Kathryn A. Keppel
Gimbel Reilly Guerin & Brown
Two Plaza East, Suite 1170
330 East Kilbourn Avenue
Milwaukee, WI 53202
Telephone: (414) 271-1440
Fax: (414) 271-7680

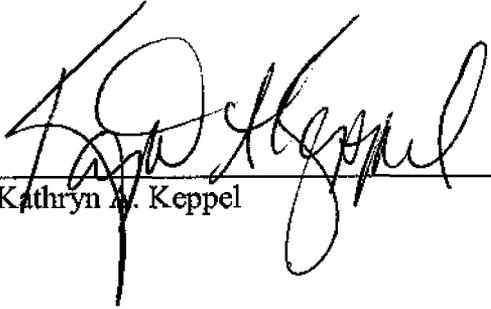
Helen E. Witt, P.C.
hwitt@kirkland.com
Brian P. Kavanaugh
bkavanaugh@kirkland.com
Ceylan Ayasli Eatherton
ceatherton@kirkland.com
KIRKLAND & ELLIS LLP
200 E. Randolph Drive
Chicago, IL 60601
(312) 861-2000
(312) 861-2200 (Fax)

Attorneys for Defendant Ben Venue Laboratories,
Inc.

CERTIFICATE OF SERVICE

I, Kathryn A. Keppel, hereby certify that on this 11th day of August, 2006, a true and correct copy of the foregoing ANSWER OF DEFENDANT BEN VENUE LABORATORIES, INC. TO PLAINTIFF'S SECOND AMENDED COMPLAINT was served on all counsel of record by Lexis Nexis File & Serve®.

Dated: August 11, 2006



Kathryn A. Keppel