



3. BIRI admits in part and denies in part the averments in paragraph 3. BIRI admits that it is a pharmaceutical company. BIRI denies the remaining averments in paragraph 3, to the extent that they refer to BIRI. BIRI 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 BIRI, and therefore BIRI need not respond to these paragraphs. To the extent a response is required, BIRI 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. BIRI admits in part and denies in part the averments in paragraph 9. BIRI admits that it 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. BIRI admits that it engaged in the business of selling pharmaceuticals until April, 2005, but denies that it has engaged in the business of selling pharmaceuticals since April, 2005. BIRI states that it was formerly known as Roxane Laboratories, Inc., and in April, 2005 changed its name to Boehringer Ingelheim Roxane, Inc. Also in April 2005, a new entity, Roxane Laboratories, Inc. (“Roxane”), was incorporated in the state of Nevada. As of that time, the new Roxane entity assumed responsibility for sales and marketing of multi-source pharmaceutical products sold under the Roxane tradename. BIRI admits that Roxane is a Nevada corporation, with its principal place of business located at 1809 Wilson Road, Columbus, Ohio 43216-6532. BIRI 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. BIRI denies that Roxane is engaged in the business of manufacturing pharmaceuticals. BIRI admits

that Boehringer Ingelheim Pharmaceuticals, Inc. ("BIP") 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. BIRI denies that BIP is a wholly owned subsidiary of an entity named "Boehringer" and that BIP is a Connecticut corporation. BIRI admits that Ben Venue Laboratories, Inc. 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. BIRI admits that BIRI, Roxane, and Ben Venue are wholly owned subsidiaries of Boehringer Ingelheim Corporation. BIRI 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 BIRI, and therefore BIRI need not respond to these paragraphs. To the extent a response is required, BIRI 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. BIRI denies the averments in paragraph 24.

25. BIRI admits in part and denies in part the averments in paragraph 25. BIRI admits that venue is proper in Dane County, Wisconsin pursuant to Wisconsin Civil Procedure Rule 801.50. BIRI denies the remaining averments in paragraph 25, to the extent that they refer to BIRI. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 26. BIRI admits that the market for prescription drugs is complex and involves sales by manufacturers to

intermediaries before drugs reach providers or patients. BIRI admits that there is a unique NDC number for each dosage and package size of each of its drugs. BIRI admits that it manufactures and has sold drugs. BIRI 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 BIRI is required or able to respond. To the extent that a response is required, BIRI incorporates its responses to the specific averments in paragraphs 28 - 29

28. BIRI admits in part and denies in part the averments in paragraph 28. BIRI 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. BIRI 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. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 29. BIRI admits that payment for prescription drugs is often made by payers. BIRI 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. BIRI denies the averments in paragraph 30, to the extent that they refer to BIRI. BIRI 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. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 32. BIRI admits that its participation in the Wisconsin Medicaid program is voluntary and that BIRI has chosen to participate in the Wisconsin Medicaid program. BIRI further admits that Wisconsin, through its Medicaid program, purchases drugs. BIRI denies the remaining averments in paragraph 32, to the extent that they refer to BIRI. BIRI further states that it has not sold drugs since April, 2005. BIRI 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. BIRI 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. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 34. BIRI admits that First DataBank and Redbook periodically publish certain pricing information for prescription drugs. BIRI denies the remaining averments in paragraph 34, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 35. To the extent that the averments in paragraph 35 refer to Exhibit A, BIRI states that Exhibit A speaks for itself and any characterization thereof is denied. BIRI 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. BIRI 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. BIRI 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. BIRI 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. BIRI 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. BIRI denies the averments in paragraph 40, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 41, to the extent that they refer to BIRI. BIRI 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 BIRI, and therefore BIRI need not respond to this paragraph. To the extent a response is required, BIRI 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. BIRI denies the averments in paragraph 43, to the extent that they refer to BIRI. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 44. BIRI admits that a representative of Roxane has testified to Congress. BIRI denies the remaining averments in paragraph 44, to the extent that they refer to BIRI. BIRI 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 BIRI, and therefore BIRI need not respond to this paragraph. To the extent a response is required, BIRI 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. BIRI 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. BIRI denies that it had a “practic[e] of inflating AWP’s.” The remaining averments in paragraph 47 are directed to parties other than BIRI, and therefore BIRI need not respond to this paragraph. To the extent a response is required, BIRI is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 47, and on that basis denies the averments.

48. BIRI denies that it has caused false prices to be published or failed to produce data. BIRI 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. BIRI denies the averments in paragraph 49, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 50, to the extent they refer to BIRI. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 51. BIRI admits that wholesale prices of drugs change overtime, sometimes daily. BIRI 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. BIRI denies the averments in paragraph 52, to the extent they refer to BIRI. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 53. BIRI admits that has agreed upon a contract price with some customers for some drugs. BIRI 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. BIRI denies that it has marketed or sold drugs after April, 2005. To the extent that the remaining averments in paragraph 53 refer to BIRI, BIRI denies those averments. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 54. BIRI admits that it may have required (as would be expected) its customers to keep competitively sensitive pricing information confidential. BIRI denies the remaining averments in paragraph 54, to the extent that they refer to BIRI. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 55. BIRI admits that it has negotiated different prices for its drugs with different customers. To the extent that the remaining averments in paragraph 55 refer to BIRI, BIRI denies those averments. BIRI 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. BIRI denies the averments in paragraph 56, to the extent they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 57, to the extent they refer to BIRI. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 58. BIRI admits that it may have required (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 BIRI, BIRI denies those averments. BIRI 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. BIRI 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. BIRI denies the averments in paragraph 59, to the extent they refer to BIRI. BIRI 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. BIRI 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. BIRI denies the averments in paragraph 60, to the extent they refer to BIRI. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 61. BIRI 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. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 62. BIRI 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. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 63. BIRI admits that the federal government establishes federal upper limits for certain multi-source drugs. BIRI 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. BIRI 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. BIRI denies the averments in paragraph 64, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 65, to the extent that they refer to BIRI. BIRI 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. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 67. BIRI 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. BIRI 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. BIRI 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. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 70. BIRI 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. BIRI denies the remaining averments in paragraph 70, to the extent that they refer to BIRI. 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. BIRI 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. BIRI denies the averments in paragraph 71, to the extent that they refer to BIRI. BIRI 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. BIRI admits in part and denies in part the averments in paragraph 72. BIRI 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, BIRI denies that it has duties greater than those imposed by the law. BIRI 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. BIRI denies the averments in paragraph 73, to the extent that they refer to BIRI. 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, BIRI refers to the cases cited in paragraph 73 for their content. BIRI 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. BIRI 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. BIRI denies the averments in paragraph 75.

76. BIRI denies the averments in paragraph 76, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 77, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 78, to the extent that they refer to BIRI. BIRI 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. BIRI reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-78.

80. BIRI denies the averments in paragraph 80, to the extent that they refer to BIRI. 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. BIRI 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. BIRI denies the averments in paragraph 81, to the extent that they refer to BIRI. 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. BIRI 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. BIRI denies the averments in paragraph 82, to the extent that they refer to BIRI. BIRI 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. BIRI reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-82.

84. BIRI denies the averments in paragraph 84, to the extent that they refer to BIRI. 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. BIRI 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. BIRI denies the averments in paragraph 85, to the extent that they refer to BIRI. 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. BIRI 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. BIRI denies the averments in paragraph 86, to the extent that they refer to BIRI. BIRI 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. BIRI reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-86.

88. BIRI denies the averments in paragraph 88, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 89, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 90, to the extent that they refer to BIRI. 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. BIRI 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. BIRI denies the averments in paragraph 91, to the extent that they refer to BIRI. BIRI 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. BIRI reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-91.

93. BIRI admits in part and denies in part the averments in paragraph 93. BIRI admits that it manufactures pharmaceutical products. BIRI admits that it marketed and sold pharmaceutical products until April, 2005, but denies that it marketed and sold pharmaceutical products after April, 2005. BIRI further admits that the State of Wisconsin through its Medicaid Program has paid for some drugs sold under the Roxane tradename. BIRI denies that BIRI has sold any of its pharmaceuticals products to the State of Wisconsin's Medicaid Program. BIRI 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. BIRI denies the averments in paragraph 94, to the extent that they refer to BIRI. 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. BIRI 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. BIRI denies the averments in paragraph 95, to the extent that they refer to BIRI. 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. BIRI 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. BIRI reasserts and incorporates herein by reference its answers to the averments of paragraphs 1-95.

97. BIRI denies the averments in paragraph 97, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 98, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 99, to the extent that they refer to BIRI. BIRI 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. BIRI denies the averments in paragraph 100, to the extent that they refer to BIRI. BIRI 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.

## BIRI'S DEFENSES

101. BIRI further responds to the Complaint with the following defenses. By alleging the matters set forth below, BIRI 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, BIRI reasserts and reincorporates as if fully set forth herein its responses to paragraphs 1 through 100 above:

**FIRST DEFENSE**

102. BIRI 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 BIRI 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 BIRI 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 BIRI 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 BIRI 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 BIRI 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 BIRI'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 BIRI, 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 BIRI 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 BIRI are barred by the doctrines of *in pari delicto* and/or unclean hands.

**FOURTEENTH DEFENSE**

115. The State's claims against BIRI 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 BIRI 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 BIRI 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 BIRI because the allegations of the Complaint are legally insufficient to support a claim for penalty assessments against BIRI.

**EIGHTEENTH DEFENSE**

119. Some or all of the State's claims against BIRI 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 BIRI are misjoined with the State's claims against other defendants and must be severed.

### **TWENTY-THIRD DEFENSE**

124. The State's claims against BIRI 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 BIRI, 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. BIRI 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 BIRI sufficient to support a claim for prejudgment interest.

**TWENTY-SEVENTH DEFENSE**

128. The State's claims against BIRI 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 BIRI has not accepted or retained any benefits under circumstances where it would be inequitable for BIRI 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 BIRI 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 BIRI;
- (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 BIRI 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 BIRI are barred because BIRI 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**

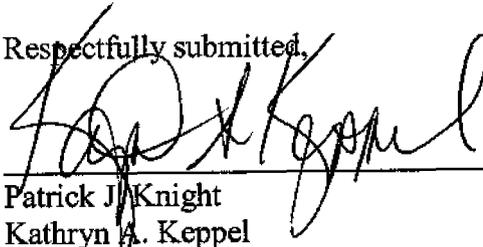
138. BIRI reserves its right to assert additional defenses that are now or may become available or appear during, or as a result of the discovery proceedings in this action and reserves the right to amend this Answer if necessary.

**CONCLUSION**

WHEREFORE, BIRI, 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,



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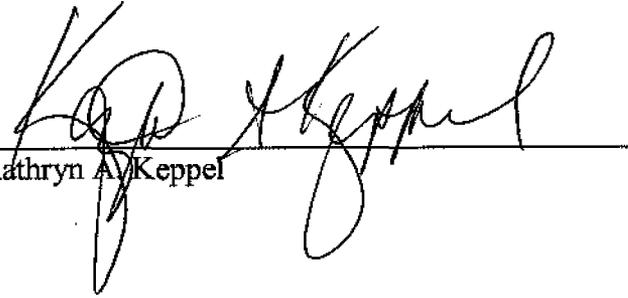
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Attorneys for Defendant Boehringer Ingelheim  
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**CERTIFICATE OF SERVICE**

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 BOEHRINGER INGELHEIM ROXANE, 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