
STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN INC., et al.,

Defendants.

Case No: 04 CV 1709

Unclassified – Civil: 30703

**ANSWER AND DEFENSES OF DEFENDANT SMITHKLINE BEECHAM
CORPORATION, D/B/A GLAXOSMITHKLINE (“GSK”) TO
PLAINTIFF’S SECOND AMENDED COMPLAINT**

Defendant SmithKline Beecham Corporation, d/b/a GlaxoSmithKline (“GSK”), by and through its undersigned counsel, hereby answers the Second Amended Complaint of the State of Wisconsin (the “Complaint”) as follows:

PREFACE

The Complaint improperly refers to GSK, other defendants, and third parties on a collective basis, failing to plead with requisite particularity allegations against GSK. This is insufficient to apprise GSK of the allegations asserted against it. GSK nevertheless attempts to respond to the State’s allegations to the extent possible.

To the extent the Complaint’s allegations refer to the knowledge, conduct, or actions of others, GSK is generally without knowledge or information sufficient to form a belief as to the truth of those allegations, and on that basis denies those allegations. To the extent that the allegations in this Complaint are directed to others, no response is required of GSK. GSK states that it is answering the State’s

allegations solely on its own behalf, even when the State's allegations refer to alleged conduct of GSK and other persons or entities.

GSK denies each and every factual allegation contained in the Complaint, except as specifically admitted herein, and any factual averment admitted herein is admitted only as to the specific facts and not as to any conclusions, characterizations, implications, innuendos, or speculation contained in any averment or in the Complaint as a whole. Moreover, GSK specifically denies any allegations contained in headings, footnotes, or unnumbered paragraphs of the Complaint.

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

1. To the extent the allegations in Paragraph 1 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies those allegations. To the extent the allegations in Paragraph 1 of the Complaint are directed at GSK, GSK admits that the State purports to bring this action as alleged in Paragraph 1, but denies each and every remaining allegation. GSK specifically denies the existence of or participation in an "unlawful scheme" or any of the "deceptive practices" alleged. GSK further denies that the State is entitled to any damages or other form of relief from GSK.

2. To the extent the allegations in Paragraph 2 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information

sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 2 are directed at GSK, GSK admits that the State brings this action on behalf of itself but denies that there are any bases upon which to do so. GSK denies each and every remaining allegation in Paragraph 2.

3. To the extent the allegations in Paragraph 3 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 3 are directed at GSK, GSK admits that it is a pharmaceutical company but denies each and every remaining allegation in Paragraph 3. GSK specifically denies involvement in a “deceptive scheme.”

4. Paragraph 4 alleges identifying information as to another defendant. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

5. Paragraph 5 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5.

6. Paragraph 6 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7. Paragraph 7 alleges identifying information as to another defendant. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7.

8. Paragraph 8 alleges identifying information as to another defendant. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8.

9. Paragraph 9 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. Paragraph 10 alleges identifying information as to another defendant. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10.

11. Paragraph 11 alleges identifying information as to another defendant. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11.

12. Paragraph 12 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12.

13. Paragraph 13 alleges identifying information as to another defendant. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13.

14. Paragraph 14 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.

15. Paragraph 15 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. Paragraph 16 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

17. Paragraph 17 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.

18. Paragraph 18 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18.

19. Paragraph 19 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20. GSK admits the allegations in Paragraph 20.

21. Paragraph 21 alleges identifying information as to another defendant. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21.

22. Paragraph 22 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22.

23. Paragraph 23 alleges identifying information as to other defendants. GSK states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23.

24. Paragraph 24 of the Complaint states legal conclusions to which no response is required.

25. Paragraph 25 of the Complaint states legal conclusions to which no response is required.

26. GSK admits that the market for prescription drugs is complex and involves sales to intermediaries before those drugs reach providers. GSK is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 26 of the Complaint, and on that basis denies those allegations.

27. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint, and on that basis denies the allegations.

28. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint, and on that basis denies the allegations.

29. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Complaint, and on that basis denies the allegations.

30. To the extent the allegations in Paragraph 30 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 30 are directed at GSK, GSK denies the allegations. GSK specifically denies the existence of an “unlawful scheme.”

31. To the extent Paragraph 31 of the Complaint purports to recite laws or regulations, no response is required. To the extent a response is required, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations.

32. To the extent Paragraph 32 of the Complaint purports to recite laws or regulations, no response is required. To the extent a response is required, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations.

33. To the extent Paragraph 33 of the Complaint purports to recite laws or regulations, no response is required. To the extent a response is required, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations.

34. To the extent the allegations in Paragraph 34 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 34 are directed at GSK, GSK admits that pharmaceutical industry compendia, including Red Book and First DataBank, periodically publish AWP and WACs for certain prescription medicines sold in this country. GSK denies each and every remaining allegation in Paragraph 34 of the Complaint.

35. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences and in the last sentence of Paragraph 35 of the Complaint, and on that basis denies those allegations. The quote taken from Exhibit A speaks for itself and GSK denies the contents of Exhibit A to the extent they are not accurate.

36. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint, and on that basis denies the allegations.

37. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint, and on that basis denies the allegations.

38. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint, and on that basis denies the allegations.

39. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint, and on that basis denies the allegations.

40. To the extent the allegations in Paragraph 40 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 40 are directed at GSK, GSK denies the allegations. GSK specifically denies any existence or involvement in any “scheme.”

41. To the extent the allegations in Paragraph 41 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 41 are directed at GSK, GSK denies the allegations.

42. The allegations in Paragraph 42 of the Complaint are directed at a defendant other than GSK, and therefore no response is required from GSK. To the extent a response is required, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42, and on that basis denies the allegations.

43. To the extent the allegations in Paragraph 43 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies

the allegations. GSK is without knowledge or information sufficient to form a belief as to the truth of the allegation in the last sentence of Paragraph 43, and on that basis denies the allegation. To the extent the allegations in Paragraph 43 are directed at GSK, GSK denies the allegations.

44. The allegations in Paragraph 44 of the Complaint are directed at defendants other than GSK, and therefore no response is required from GSK. To the extent a response is required, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44, and on that basis denies the allegations.

45. The allegations in Paragraph 45 of the Complaint are directed at defendants other than GSK, and therefore no response is required from GSK. To the extent a response is required, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45, and on that basis denies the allegations.

46. The allegations in Paragraph 46 of the Complaint are directed at defendants other than GSK, and therefore no response is required from GSK. To the extent a response is required, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46, and on that basis denies the allegations.

47. The allegations in Paragraph 47 of the Complaint are directed at defendants other than GSK, and therefore no response is required from GSK. To the extent a response is required, GSK is without knowledge or information

sufficient to form a belief as to the truth of the allegations in Paragraph 47, and on that basis denies the allegations.

48. To the extent the allegations in Paragraph 48 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, including what data the State has “secured,” and on that basis denies the allegations. To the extent the allegations in Paragraph 48 are directed at GSK, GSK admits that the State attaches Exhibits to the Complaint purporting to contain pricing information. GSK is without knowledge or information sufficient to form a belief as to the accuracy of the Exhibits. GSK denies each and every remaining allegation.

49. To the extent the allegations in Paragraph 49 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 49 are directed at GSK, GSK admits that at times it offers certain discounts and rebates to certain customers on certain products, and that it may require its customers to keep competitively sensitive pricing information confidential. GSK denies each and every remaining allegation and specifically denies that it “misrepresented and inflated” the WAC of its drugs.

50. To the extent the allegations in Paragraph 50 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies

the allegations. To the extent that allegations in Paragraph 50 are directed at GSK, GSK denies the allegations. GSK specifically denies the existence of a “drug pricing scheme,” or of “purposely concealing” such “scheme” from the State.

51. GSK admits that prices of pharmaceutical products with NDC numbers are subject to change. GSK is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 51 of the Complaint, and on that basis denies the allegations.

52. To the extent the allegations in Paragraph 52 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent that allegations in Paragraph 52 are directed at GSK, GSK denies the allegations. GSK specifically denies the existence of or engagement in “marketing schemes which conceal the true price” of drugs.

53. To the extent the allegations in Paragraph 53 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 53 are directed at GSK, GSK admits that at times it offers certain discounts and rebates to certain customers on certain products, and that wholesalers often recoup the difference between the price paid by the customer and the price originally paid by the wholesaler via charge backs to GSK. GSK denies each and every remaining allegation, and specifically denies

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.”

54. To the extent the allegations in Paragraph 54 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 54 are directed at GSK, GSK denies the allegations.

55. To the extent the allegations in Paragraph 55 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 55 are directed at GSK, GSK admits that at times it offers certain discounts and rebates to certain customers on certain products. GSK specifically denies obscuring the true price for its drugs.

56. To the extent the allegations in Paragraph 56 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 56 are directed to GSK, GSK denies the allegations.

57. To the extent the allegations in Paragraph 57 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies

the allegations. To the extent the allegations in Paragraph 57 are directed at GSK, GSK denies the allegations. GSK specifically denies the existence of an “inflated AWP” or “phony price spread,” or “intentionally manipulating the nation’s drug reimbursement system.”

58. To the extent the allegations in Paragraph 58 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 58 are directed at GSK, GSK admits that at times it offers certain discounts and rebates for certain customers on certain products, and that it may require its customers to keep competitively sensitive pricing information confidential. GSK denies each and every remaining allegation.

59. To the extent the allegations in Paragraph 59 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 59 are directed at GSK, GSK admits that Red Book and First DataBank publish pharmaceutical pricing terms called Average Wholesale Price (“AWP”) and Wholesale Acquisition Cost (“WAC”). GSK admits that since the merger that formed GSK in early 2001, GSK has reported “Wholesale Acquisition Cost,” or “WAC,” and that prior to the merger, its predecessors reported similar list prices to wholesalers, all of which

have always been lower than the AWP published by third-party commercial price reporting services. GSK denies each and every remaining allegation.

60. To the extent the allegations in Paragraph 60 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 60 are directed at GSK, GSK denies the allegations. GSK specifically denies that it has ever engaged in an “unlawful scheme” or an “insidious, fraudulent scheme that is causing the State and its citizens to pay scores of millions of dollars a year more than they should for their prescription drugs.”

61. GSK admits that Wisconsin Medicaid is a joint state and federal program which pays for medical care, including prescription drug benefits, for certain Wisconsin citizens. GSK is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 61 of the Complaint, and on that basis denies the allegations.

62. GSK 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. GSK is without knowledge or information sufficient to form a belief as to whether the Wisconsin Medicaid Program has always reimbursed drugs at AWP minus a percentage.

63. To the extent the allegations in Paragraph 63 of the Complaint state legal conclusions, no response is required. GSK admits that the Wisconsin

Medicaid Program reimburses certain drugs based on the State Maximum Acquisition Cost (“MAC”) program. GSK is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 63 of the Complaint, and on that basis denies the allegations.

64. To the extent the allegations in Paragraph 64 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 64 are directed at GSK, GSK denies the allegations.

65. To the extent the allegations in Paragraph 65 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 65 are directed at GSK, GSK denies the allegations.

66. To the extent the allegations in Paragraph 66 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 66 are directed at GSK, GSK denies the allegations.

67. To the extent the allegations in Paragraph 67 of the Complaint state legal conclusions, no response is required. GSK admits that federal law governs the manner in which Medicare Part B reimburses providers for certain drugs.

GSK is without knowledge or information sufficient to form a belief as to whether the summary of these laws set forth in Paragraph 67 is accurate in all instances. Accordingly, to the extent a response is required of GSK, GSK denies the allegations in Paragraph 67 of the Complaint.

68. To the extent the allegations in Paragraph 68 of the Complaint state legal conclusions, no response is required. GSK admits that federal law governs the manner in which Medicare provides coverage for certain healthcare services, and that the Medicare program is supported by government funds and beneficiary premiums. GSK is without knowledge or information sufficient to form a belief as to whether the summary of the laws set forth in Paragraph 68 is accurate in all instances. Accordingly, to the extent a response is required of GSK, GSK denies the remaining allegations in Paragraph 68 of the Complaint.

69. To the extent the allegations in Paragraph 69 of the Complaint state legal conclusions, no response is required. GSK admits that federal law governs Medicare Part B benefits. GSK is without knowledge or information sufficient to form a belief as to whether the summary of these laws set forth in Paragraph 69 is accurate in all instances. Accordingly, to the extent a response is required of GSK, GSK denies the allegations in Paragraph 69 of the Complaint.

70. To the extent the allegations in Paragraph 70 of the Complaint state legal conclusions, no response is required. GSK admits that federal law governs the manner in which Medicare reimburses providers for certain drugs. GSK is without knowledge or information sufficient to form a belief as to whether the

summary of these laws set forth in Paragraph 70 is accurate in all instances. Accordingly, to the extent a response is required of GSK, GSK denies the allegations in Paragraph 70 of the Complaint. GSK specifically denies that Medicare has “relied upon the falsely reported AWP” for any GSK drug.

71. To the extent the allegations in Paragraph 71 of the Complaint are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 71 of the Complaint state legal conclusions, no response is required. GSK admits that federal law governs the manner in which Medicare reimburses providers for certain drugs. GSK is without knowledge or information sufficient to form a belief as to whether the summary of these laws set forth in Paragraph 71 is accurate in all instances. Accordingly, to the extent a response is required of GSK, GSK denies these allegations in Paragraph 71 of the Complaint.

72. To the extent the allegations in Paragraph 72 of the Complaint state legal conclusions, no response is required. To the extent the allegations are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations are directed at GSK and a response is required, GSK denies the allegations in Paragraph 72 of the Complaint.

73. To the extent the allegations in Paragraph 73 of the Complaint state legal conclusions, no response is required. To the extent the allegations are

directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations are directed at GSK and a response is required, GSK denies the allegations in Paragraph 73 of the Complaint.

74. To the extent the allegations in Paragraph 74 of the Complaint state legal conclusions, no response is required. To the extent the allegations are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations are directed at GSK and a response is required, GSK denies the allegations in Paragraph 74 of the Complaint.

75. The allegations in Paragraph 75 are directed at parties other than GSK, and so GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations

76. To the extent the allegations in Paragraph 76 of the Complaint state legal conclusions, no response is required. To the extent the allegations are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations are directed at GSK and a response is required, GSK denies the allegations in Paragraph 76 of the Complaint.

77. To the extent the allegations in Paragraph 77 of the Complaint state legal conclusions, no response is required. To the extent the allegations are directed at parties other than GSK, GSK is without knowledge or information

sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations are directed at GSK and a response is required, GSK denies the allegations in Paragraph 77 of the Complaint.

78. To the extent the allegations in Paragraph 78 of the Complaint are directed at parties other than GSK, GSK is without knowledge or sufficient information to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 78 are directed at GSK, GSK denies the allegations.

79. GSK realleges and incorporates by reference its responses to Paragraphs 1 through 78.

80. To the extent the allegations in Paragraph 80 of the Complaint state legal conclusions, no response is required. GSK refers to the laws and regulations cited for their content. To the extent the allegations in Paragraph 80 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 80 are directed at GSK, GSK denies the allegations.

81. To the extent the allegations in Paragraph 81 of the Complaint state legal conclusions, no response is required. GSK refers to the laws and regulations cited for their content. To the extent the allegations in Paragraph 81 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the

allegations. To the extent the allegations in Paragraph 81 are directed at GSK, GSK denies the allegations.

82. To the extent the allegations in Paragraph 82 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 82 are directed at GSK, GSK denies the allegations. GSK further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph with subsections A through F following Paragraph 82 of the Complaint.

83. GSK realleges and incorporates by reference its responses to Paragraphs 1 through 82.

84. To the extent the allegations in Paragraph 84 of the Complaint state legal conclusions, no response is required. GSK refers to the laws and regulations cited for their content. To the extent the allegations in Paragraph 84 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 84 are directed at GSK and a response is required, GSK denies the allegations.

85. To the extent the allegations in Paragraph 85 of the Complaint state legal conclusions, no response is required. GSK refers to the laws and regulations cited for their content. To the extent the allegations in Paragraph 85 are directed at parties other than GSK, GSK is without knowledge or information sufficient to

form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 85 are directed at GSK and a response is required, GSK denies the allegations.

86. To the extent the allegations in Paragraph 86 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 86 are directed at GSK, GSK denies the allegations. GSK further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph with subsections A through F following Paragraph 86 of the Complaint.

87. GSK realleges and incorporates by reference its responses to Paragraphs 1 through 86.

88. To the extent the allegations in Paragraph 88 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 88 are directed at GSK, GSK denies the allegations.

89. To the extent the allegations in Paragraph 89 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 89 are directed at GSK, GSK denies the allegations.

90. To the extent the allegations in Paragraph 90 of the Complaint state legal conclusions, no response is required. GSK refers to the law cited for its content. To the extent the allegations in Paragraph 90 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 90 are directed at GSK, GSK denies the allegations.

91. To the extent the allegations in Paragraph 91 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 91 are directed at GSK, GSK denies the allegations. GSK further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph with subsections A through F following Paragraph 91 of the Complaint.

92. GSK realleges and incorporates by reference its responses to Paragraphs 1 through 91.

93. To the extent the allegations in Paragraph 93 of the Complaint are directed at defendants other than GSK, GSK is without knowledge or sufficient information to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 93 are directed at GSK, GSK admits that it produces, markets and sells pharmaceutical products some of which are sold to entities and individuals in the State. GSK is without

knowledge or sufficient information to form a belief as to the truth of the remaining allegations, and on that basis denies the allegations.

94. To the extent the allegations in Paragraph 94 of the Complaint state legal conclusions, no response is required. GSK refers to the law cited for its content. To the extent the allegations in Paragraph 94 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 94 are directed at GSK, GSK denies the allegations.

95. To the extent the allegations in Paragraph 95 of the Complaint state legal conclusions, no response is required. GSK refers to the law cited for its content. To the extent the allegations in Paragraph 95 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 95 are directed at GSK, GSK denies the allegations. GSK further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph with subsections A through F following Paragraph 95 of the Complaint.

96. GSK realleges and incorporates by reference its responses to Paragraphs 1 through 95.

97. To the extent the allegations in Paragraph 97 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a

belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 97 are directed at GSK, GSK denies the allegations.

98. To the extent the allegations in Paragraph 98 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 98 are directed at GSK, GSK denies the allegations.

99. To the extent the allegations in Paragraph 99 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 99 are directed at GSK, GSK denies the allegations.

100. To the extent the allegations in Paragraph 100 are directed at parties other than GSK, GSK is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 100 are directed at GSK, GSK denies the allegations. GSK further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph with subsections A through E following Paragraph 100 of the Complaint.

GSK denies that the State has asserted any viable claims that would necessitate a trial by jury.

GSK'S AFFIRMATIVE DEFENSES

101. By alleging the matters set forth below, GSK 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 affirmative defenses, GSK reasserts and reincorporates as if fully set forth herein its responses to Paragraphs 1 through 100 above:

FIRST AFFIRMATIVE DEFENSE

102. The State 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 Article 1, Section 1 of the Wisconsin Constitution preclude the State from bringing claims and seeking damages as alleged in the Complaint.

SECOND AFFIRMATIVE DEFENSE

103. Some or all of the State's claims against GSK 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.

THIRD AFFIRMATIVE DEFENSE

104. 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 were 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.

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

106. 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 are precluded by the Supremacy Clause. This action is barred by the Supremacy Clause of the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

107. The State's claims are preempted by the Commerce Clause and/or the dormant Commerce Clause of the United States Constitution.

SEVENTH AFFIRMATIVE DEFENSE

108. The State's 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 there under.

EIGHTH AFFIRMATIVE DEFENSE

109. The State's claims against GSK are barred, in whole or in part, because it has suffered no damages as a result of the matters alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

110. 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 GSK in judicial, legislative, or administrative proceedings of any kind or at any level of government.

TENTH AFFIRMATIVE DEFENSE

111. The State fails to state a claim against GSK upon which relief may be granted.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

113. To the extent that the State obtains, or is barred from, recovery in any other case predicated on the same factual allegations, the State is barred from seeking recovery against GSK based on the Complaint pursuant to the doctrines of *res judicata* and collateral estoppel, and the prohibition on double recovery for the same injury.

THIRTEENTH AFFIRMATIVE DEFENSE

114. The State's claims are barred, in whole or in part, to the extent that the State has released, settled, entered into an accord and satisfaction or otherwise compromised its claims.

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

119. GSK's statements or actions were not the cause of any alleged injury to, or alleged loss by, the State.

NINETEENTH AFFIRMATIVE DEFENSE

120. The State's claims against GSK for injunctive relief were mooted by the passage of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

TWENTIETH AFFIRMATIVE DEFENSE

121. The State's claims for injunctive relief against GSK are barred by the doctrines of *in pari delicto* and/or unclean hands.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

123. The State's claims against GSK are barred, in whole or in part, due to the State's failure to join indispensable defendants.

TWENTY-THIRD AFFIRMATIVE DEFENSE

124. The State's claims against GSK are misjoined with the State's claims against other defendants and must be severed.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

125. The State's claims against GSK for damages are barred, in whole or in part: (1) because it failed to mitigate its damages, if any; (2) because it 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 the State has paid for products manufactured, marketed and sold by GSK after the filing of the State's original Complaint; (4) because the claims are speculative and remote; and (5) because of the impossibility of ascertaining and allocating the alleged damages.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

126. GSK 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 State, with respect to the same alleged injuries.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

128. The claims contained in the Complaint, which seek the recovery of penalty assessments, under Wisconsin law, violate the Fourth, Fifth, Sixth, 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 GSK, 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-EIGHTH AFFIRMATIVE DEFENSE

129. The recovery of penalty assessments by the State 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 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 GSK;

(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.

TWENTY-NINTH AFFIRMATIVE DEFENSE

130. The State fails to state with particularity facts to support its fraud claims against GSK, in violation of Wis. Stat. § 802.03(2).

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

133. The State's unjust enrichment claims are barred, in whole or in part, because the State has no authority to bring such claims either on behalf of itself or on behalf of Medicare Part B participants.

THIRTY-THIRD AFFIRMATIVE DEFENSE

134. The State's unjust enrichment claims are barred, in whole or in part, by contracts to which the State and GSK are parties.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

136. GSK has not knowingly made or caused to be made any false statements or representation of material fact, as required under Wis. Stat. § 49.49(4m)(a)(2).

THIRTY-SIXTH AFFIRMATIVE DEFENSE

137. The State did not rely on the allegedly fraudulent statements or representations of GSK.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

138. GSK has made no assertion, representation or statement of fact which is “untrue,” “deceptive,” or “misleading,” as required under Wis. Stat. §§ 100.18(1) and 100.18(10)(b).

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

139. The State’s claims under Wis. Stat. 100.18 are barred, in whole or part, to the extent the claims involve the insurance business.

THIRTY-NINTH AFFIRMATIVE DEFENSE

140. 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.

FORTIETH AFFIRMATIVE DEFENSE

141. The State’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 by an intermediate indirect purchaser, and was not passed through to the State.

FORTY-FIRST AFFIRMATIVE DEFENSE

142. Any damages, forfeiture or penalties recoverable by the State from GSK are limited by the applicable statutory ceilings.

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

144. The State's claims are barred, in whole or in part, by the First Amendment to the United States Constitution and the analogous provisions of the Constitution of the State of Wisconsin.

145. GSK adopts by reference any additional applicable defense pled by any other defendants not otherwise pled herein. GSK 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, GSK prays that this Court: (1) dismiss the State's Complaint with prejudice and enter judgment in favor of GSK against the State; (2) award GSK its costs and expenses; and (3) award such other and further relief as the Court may deem just and proper.

Dated this 11th day of August, 2006.

Respectfully submitted,

DEWITT ROSS & STEVENS S.C.

By: _____


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