

allegations in this Complaint are directed to Amgen, no response is required of Immunex. Immunex states that it is answering Plaintiff's allegations solely on behalf of itself, even when Plaintiff's allegations refer to alleged conduct of "defendants."

Immunex 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, Immunex specifically denies any allegations contained in headings 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 Immunex, Immunex 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 Immunex, Immunex admits that Plaintiff purports to bring this action as alleged in Paragraph 1, but denies the remaining allegations. Immunex specifically denies the existence of or participation in an "unlawful scheme" or any alleged "deceptive practices." Immunex further denies that the State is entitled to any damages or other form of relief from Immunex.

2. To the extent the allegations in Paragraph 2 of the Complaint are directed at parties other than Immunex, Immunex 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 Immunex, Immunex admits that the State purports to bring this action on behalf of itself. Immunex denies the remaining allegations in Paragraph 2.

3. To the extent the allegations in Paragraph 3 of the Complaint are directed at defendants other than Immunex, Immunex 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 Immunex, Immunex admits that it is a biopharmaceutical company but denies the remaining allegations in Paragraph 3. Immunex specifically denies involvement in a "deceptive scheme."

4. The allegations in Paragraph 4 of the Complaint are directed at defendants other than Immunex, and therefore require no response from Immunex. To the extent a response is required, Immunex is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and on that basis denies the allegations.

5. Answering Paragraph 5b. of the Complaint, Immunex admits that since July 2002 it has been a wholly owned subsidiary of Amgen. Immunex further admits that it is a Washington State corporation that was formerly engaged in the business of manufacturing and selling pharmaceuticals. Immunex further admits that its principal place of business was once located at 51 University Street, Seattle, Washington. The allegations in Paragraph 5a. of the Complaint are directed at a defendant other than Immunex, and therefore require no response from Immunex. Immunex denies all remaining factual allegations set forth in Paragraph 5.

6 – 23. The allegations in Paragraphs 6 – 23 of the Complaint are directed at defendants other than Immunex and therefore require no response from Immunex. To the extent a response is required, Immunex is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 6 – 23 and on that basis denies the allegations.

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. Immunex admits that the market for prescription drugs is complex and involves sales to intermediaries before those drugs reach providers. Immunex 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 – 29. Immunex is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 27 – 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 Immunex, Immunex 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 Immunex, Immunex denies the allegations. Immunex specifically denies the existence of an "unlawful scheme."

31 – 33. To the extent Paragraphs 31 – 33 of the Complaint purport to recite laws or regulations, no response is required. To the extent a response is required, Immunex 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 Immunex, Immunex 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 Immunex, Immunex admits that pharmaceutical industry compendia, including Red Book and First DataBank, periodically publish AWP's for certain prescription medicines sold in this country. Immunex denies the remaining allegations in Paragraph 34 of the Complaint.

35. To the extent the allegations in Paragraph 35 of the Complaint are directed at parties other than Immunex, Immunex 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 35 are directed at Immunex, Immunex denies the allegations.

36 – 38. Immunex is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 36 – 38 of the Complaint, and on that basis denies the allegations.

39. To the extent the allegations in Paragraph 39 of the Complaint are directed at parties other than Immunex, Immunex 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 39 are directed at Immunex, Immunex denies

the allegations. Immunex specifically denies that, during the period of the State's claims, Immunex reported AWP's for any Immunex drugs to publications such as First DataBank.

40. To the extent the allegations in Paragraph 40 of the Complaint are directed at defendants other than Immunex, Immunex 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 Immunex, Immunex denies the allegations. Immunex specifically denies any existence of or involvement in any "scheme" and "reporting false and inflated AWP's." Immunex further incorporates its answer to Paragraph 39.

41. To the extent the allegations in Paragraph 41 of the Complaint are directed at defendants other than Immunex, Immunex 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 Immunex, Immunex denies the allegations.

42. The allegations in Paragraph 42 of the Complaint are directed at defendants other than Immunex, and therefore no response is required from Immunex. To the extent a response is required, Immunex 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 Immunex, Immunex 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 43 are directed at Immunex, Immunex denies the allegations.

44 – 45. The allegations in Paragraphs 44 – 45 of the Complaint are directed at defendants other than Immunex, and therefore no response is required from Immunex. To the extent a response is required, Immunex is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 44 – 45, and on that basis denies the allegations.

46. Immunex admits that the State attached as Exhibit C to the Complaint a Program Memorandum dated September 8, 2000, from the U.S. Department of Health and Human Services Health Care Financing Administration. Immunex refers to the Program Memorandum for its content, and specifically refers to Attachment 2, which "includes data for 14 oncology drugs [including certain drugs formerly sold by Immunex] and 3 clotting factors that are not to be implemented" due to "concern about access to care ... due to other Medicare payment policies associated with the provision of these drugs." Immunex denies the remaining allegations of Paragraph 46.

47. The allegations in Paragraph 47 of the Complaint are directed at defendants other than Immunex, and therefore no response is required from Immunex. To the extent a response is required, Immunex 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 Immunex, Immunex 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 48 are directed at Immunex, Immunex admits that Plaintiff attaches Exhibits to the Complaint, which purport to contain pricing information. Immunex denies the remaining allegations.

49. To the extent the allegations in Paragraph 49 of the Complaint are directed to defendants other than Immunex, Immunex is without information sufficient to form a belief as to the truth of the allegations, and therefore denies the allegations. To the extent the allegations in Paragraph 49 are directed to Immunex, Immunex denies the allegations. Immunex specifically denies that it reported or inflated a "wholesale acquisition cost" for its drugs.

50. To the extent the allegations in Paragraph 50 of the Complaint are directed at defendants other than Immunex, Immunex 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 Immunex, Immunex denies the allegations. Immunex specifically denies the existence of a "drug pricing scheme," or of "purposely concealing" such "scheme" from the State.

51. To the extent the allegations in Paragraph 51 of the Complaint are directed at defendants other than Immunex, Immunex is without information sufficient to form a belief as to the truth of the allegations, and therefore denies the allegations. To the extent the allegations in paragraph 51 are directed to Immunex, Immunex is without knowledge or information sufficient to form a belief as to the truth of the allegations, 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 Immunex, Immunex 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 Immunex, Immunex denies the allegations. Immunex 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 Immunex, Immunex 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 Immunex, Immunex admits that it formerly sold some of its drugs to wholesalers. Immunex denies the remaining allegations, and specifically denies the existence of or engagement in any "scheme" 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 Immunex, Immunex 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 Immunex, Immunex admits that certain contracts may require that pricing information be kept confidential but denies the remaining allegations.

55. To the extent the allegations in Paragraph 55 of the Complaint are directed at defendants other than Immunex, Immunex 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 Immunex, Immunex admits that at times it offers certain discounts and rebates to certain customers on certain products. Immunex 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 Immunex, Immunex 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 Immunex, Immunex denies the allegations.

57. To the extent the allegations in Paragraph 57 of the Complaint are directed at defendants other than Immunex, Immunex 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 Immunex, Immunex denies the allegations. Immunex specifically denies "utilizing 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 Immunex, Immunex 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 Immunex, Immunex admits that it negotiated prices to be paid by its customers and that certain contracts may require that pricing information be kept confidential. Immunex denies the remaining allegations, and specifically denies the existence of or participation in any "scheme" or "inflated spread."

59. To the extent the allegations in Paragraph 59 of the Complaint are directed at defendants other than Immunex, Immunex 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 Immunex, Immunex denies the allegations.

60. To the extent the allegations in Paragraph 60 of the Complaint are directed at parties other than Immunex, Immunex 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 Immunex, Immunex denies the allegations. Immunex specifically denies that it has ever engaged in an "unlawful scheme" or an "insidious, fraudulent scheme that is causing Wisconsin and its citizens to pay scores of millions of dollars a year more than they should for their prescription drugs."

61. Immunex admits only that Wisconsin Medicaid is a joint state and federal program which pays for medical care, including prescription drug benefits, for certain Wisconsin citizens. Immunex 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 – 63. To the extent that the allegations in Paragraphs 62 – 63 of the Complaint purport to recite laws or regulations and, as such, no response is required. Immunex refers to those laws or regulations for their content. Immunex is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraphs 62 – 63, 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 Immunex, Immunex 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 64 are directed at Immunex, Immunex admits that it was aware that state Medicare programs used various methods for reimbursing providers for certain drug costs and denies the remaining allegations.

65. To the extent the allegations in Paragraph 65 of the Complaint are directed at parties other than Immunex, Immunex 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 Immunex, Immunex denies the allegations. Immunex specifically denies "publishing false and inflated wholesale prices."

66. To the extent the allegations in Paragraph 66 of the Complaint are directed at parties other than Immunex, Immunex 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 Immunex, Immunex denies the allegations.

67 – 71. The allegations in Paragraphs 67 – 71 of the Complaint purport to recite laws or regulations and, as such, no response is required. Immunex refers to those laws or regulations for their content.

72 – 76. To the extent the allegations in Paragraphs 72 – 76 of the Complaint state legal conclusions, no response is required. To the extent the allegations are directed at parties other than Immunex, Immunex 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 Immunex, Immunex denies the allegations.

77. Immunex 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 Immunex, Immunex 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 Immunex, Immunex denies the allegations.

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

80 – 82. To the extent the allegations in Paragraphs 80 – 82 of the Complaint state legal conclusions, no response is required. Immunex refers to the laws and regulations cited for their content. To the extent the allegations in Paragraphs 80 – 82 are directed at parties other than Immunex, Immunex 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 Paragraphs 80 – 82 are directed at Immunex, Immunex denies the allegations. Immunex further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered "WHEREFORE" paragraph following Paragraph 82 of the Complaint.

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

84 – 86. To the extent the allegations in Paragraphs 84 – 86 of the Complaint state legal conclusions, no response is required. Immunex refers to the laws and regulations cited for their content. To the extent the allegations in Paragraphs 84 – 86 are directed at parties other than Immunex, Immunex 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 Paragraphs 84 – 86 are directed at Immunex, Immunex denies the allegations. Immunex further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered "WHEREFORE" paragraph following Paragraph 86 of the Complaint.

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

88 – 91. To the extent the allegations in Paragraphs 88 – 91 of the Complaint state legal conclusions, no response is required. Immunex refers to the laws and regulations cited for their content. To the extent the allegations in Paragraphs 88 – 91 are directed at parties other than Immunex, Immunex 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 Paragraphs 88 – 91 are directed at Immunex, Immunex denies the allegations. Immunex further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered "WHEREFORE" paragraph following Paragraph 91 of the Complaint.

92. Immunex 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 Immunex, Immunex 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 Immunex, Immunex admits that it at one time manufactured, marketed and sold pharmaceutical products, some of which were sold to entities in the State of Wisconsin. Immunex 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 – 95. To the extent the allegations in Paragraphs 94 – 95 of the Complaint state legal conclusions, no response is required. Immunex refers to the laws and regulations cited for their content. To the extent the allegations in Paragraphs 94 – 95 are directed at parties other than Immunex, Immunex 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 Paragraphs 94 – 95 are directed at Immunex, Immunex denies the allegations. Immunex further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered "WHEREFORE" paragraph following Paragraph 95 of the Complaint.

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

97 – 100. To the extent the allegations in Paragraphs 97 – 100 are directed at parties other than Immunex, Immunex 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 Paragraphs 97 – 100 are directed at Immunex, Immunex denies the allegations. Immunex further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered "WHEREFORE" paragraph following Paragraph 100 of the Complaint.

DEMAND FOR JURY

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

IMMUNEX'S DEFENSES

By alleging the matters set forth below, Immunex 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 Plaintiff 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 and affirmative defenses, Immunex asserts the following:

1. The Complaint fails to state a claim upon which relief may be granted.
2. Immunex has not acted in a manner that is illegal, oppressive, or fraudulent and in fact acted in good faith, with just cause, and in accordance with established industry practices and government requirements and policies.
3. The federal government adopted AWP as a reimbursement benchmark with knowledge that it was not a calculation of actual average prices and with no express or implicit definition contrary to industry practice. For public policy and other reasons, the federal government retained AWP as a reimbursement benchmark in the face of years of criticism that it was not a calculation of actual average prices. To the extent the State has adopted the federal government's AWP term, the State is bound by the defenses applicable to the federal government. Among the defenses that arise from those and other relevant circumstances are the following:
 - A. The State's claims are barred, in whole or in part, by the political question and separation of powers doctrines.

- B. The State's claims are barred, in whole or in part, by the filed rate doctrine. The relief sought by plaintiff would interfere with legislative decisions and functions.
- B. The State's claims are barred, in whole or in part, because Immunex has complied with all applicable statutes and regulations.
- C. The State's claims are barred, in whole or in part, because they violate Immunex's rights under the Due Process and Ex Post Facto clauses of the United States Constitution, as well as all the Constitution of the State of Wisconsin, insofar, among other things, as the State seeks to impose liability under vague or nonexistent standards or retroactively for conduct that was not actionable at the time it occurred.
- D. The State's claims are barred, in whole or in part, because Immunex did not make any false statements to the State or to any Wisconsin citizen. Immunex had no reasonable grounds to believe, and did not believe, that any statement was false or misleading or capable of being false or misleading.
- E. The communications and conduct of Immunex and others are protected by the First Amendment to the United States Constitution, the Constitution of the State of Wisconsin, and common law privileges, and it would violate those protections to construe the AWP practice and term of art as fraudulent.
- F. The State's claims are barred, in whole or in part, by the government contractor and similar defenses because the reimbursement system, including the use of AWP in excess of actual average prices, was designed and approved by the United States Government to serve its purposes.

G. Immunex relied on the policies and practices of the federal and Wisconsin governments, and the State is estopped or otherwise barred from seeking to impose liability for such reliance.

H. The State's approach to AWP would discourage legitimate price competition and is inconsistent with and preempted by the Sherman Act.

4. 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, the Federal Medicaid Act, all regulations promulgated under those acts, and by the dormant Commerce Clause of the United States Constitution.

5. 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 expressive conduct by Immunex, healthcare providers, or others directed at judicial, legislative, or administrative bodies of government.

6. The State's claims are barred, in whole or in part, by the applicable statutes of limitations and repose and the equal protection clauses of the United States and Wisconsin Constitutions.

7. The State's claims are barred, in whole or in part, by the doctrines of laches, estoppel, and waiver.

8. The State lacks standing and privity.

9. The State's claims against Immunex for injunctive relief are moot because of the passage of the 2003 Medicare reform legislation and because Immunex is no longer selling the drugs at issue.

10. The State's claims are barred, in whole or part, with respect to any alleged overcharge or supracompetitive price because third party payors passed on any effect of the alleged supracompetitive prices to their customers or employees in the form of higher premiums or in other ways; because such supracompetitive price, if any, was absorbed, in whole or part, by a person or entity that purchased the medicine directly, or by an intermediate indirect purchaser, and was not passed through to the State and Wisconsin citizens or because purchasers who paid directly or indirectly on the basis of an allegedly excessive AWP would have paid more with respect to this or other elements of health care pricing in the absence of AWP.

11. To the extent the State or any Wisconsin citizen recovers or benefits from another entity's recovery in this or any other case or through any other method predicated on the same factual allegations, that the State or citizen is barred on the basis of res judicata, collateral estoppel, and the prohibition on double recovery, from seeking recovery against Immunex based on the Complaint.

12. The State's claims are barred, in whole or in part, to the extent that the State or any Wisconsin citizens have released, settled, entered into an accord and satisfaction, or otherwise compromised their claims.

13. The State's claims are barred, in whole or in part, due to its failure to join indispensable parties.

14. The State's claims are barred, in whole or in part, because any injuries sustained by the State or any Wisconsin citizen were the result of intervening or superseding conduct of third parties or of the State or their agents or representatives.

15. The State's claims for damages are barred, in whole or in part because they are speculative and remote and because of the impossibility of ascertaining and allocating of those alleged damages.

16. The State's claims for damages are barred, in whole or in part because it failed to mitigate its damages, and its failure to mitigate damages should proportionately reduce the recovery and the allocation of any fault, if any exists, attributable to Immunex.

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

18. Immunex 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 or Wisconsin citizens, with respect to the same alleged injuries.

19. Maintenance of this action in one proceeding against many defendants would violate Immunex's rights as provided by the United States and Wisconsin Constitutions by denying Immunex procedural and substantive safeguards.

20. The State is not the real party in interest.

21. Immunex maintained policies regarding samples, grants, and other issues that prohibited unlawful or questionable practices. Immunex regularly instructed relevant employees as to such policies. To the extent that Immunex had knowledge of conduct that it believed was improper, Immunex took prompt and reasonable steps to correct and halt such conduct, including disciplinary action against employees.

22. The State fails to plead fraud and/or fraudulent concealment with particularity, in violation of Wis. Stat. § 802.03(2).

23. Immunex's conduct was not the proximate cause or cause in fact of any alleged loss or damage sustained by the State.

24. Any damages recovered by the State and Wisconsin citizens from Immunex must be limited by any applicable statutory ceilings on recoverable damages.

25. Immunex 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.

26. 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 U.S. Constitution on the following grounds:

- A. any penalty assessments would be excessive, penal in nature, and subject Immunex to multiple and retroactive liability and deny Immunex constitutionally adequate standards, instructions, and procedures;
- B. the State's claims for penalty assessments are barred by the Excessive Fines Clause of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;
- C. the State's claim for penalty assessments against Immunex cannot be sustained because any award without the apportionment of the award separately and severally between or among the defendants and other alleged responsible parties, as determined by the alleged percentage of the wrong committed by each alleged tortfeasor;

D. the State's claim for penalty assessments would violate Immunex's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

27. 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 Immunex;
- 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.

28. Some or all of the State's claims against Immunex 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.

29. 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.

30. 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.

31. 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 Constitution.

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

33. The State's claims are barred in whole or in part because 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.

34. The State's claims under Wis. Stat. § 49.49 are barred because Immunex did not possess the requisite mental state required under that statute.

35. 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.

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

37. Immunex 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).

38. The State did not rely on the allegedly fraudulent statements or representations of Immunex.

39. Immunex 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).

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

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

42. Immunex adopts by reference any additional applicable defense pled by any other defendant not otherwise pled in this answer. Immunex 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 reserve its right to amend its answer to assert such defense. Immunex also reserves the right to assert such other and related defenses as may become available in the event of a determination that the action, or some part of it, is governed by the substantive law of a state other than Wisconsin.

WHEREFORE, Immunex prays that this Court:

- (1) dismiss Wisconsin's Complaint with prejudice and enter judgment in favor of Immunex against the State;
- (2) award Immunex its costs and expenses; and
- (3) award such other and further relief as the Court may deem just and proper.

August 11, 2006


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