
STATE OF WISCONSIN,)
)
)
 Plaintiff,)
)
 v.)
)
 ABBOTT LABORATORIES, INC., et. al.,)
)
 Defendants.)

Case No.: 04 CV 1709

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS MYLAN LABORATORIES INC. AND MYLAN PHARMACEUTICALS INC. TO THE STATE OF WISCONSIN'S SECOND AMENDED COMPLAINT

Defendants Mylan Laboratories Inc. and Mylan Pharmaceuticals Inc. (collectively, "Mylan"), by their undersigned attorneys, hereby answer the Second Amended Complaint (the "Complaint") of the State of Wisconsin ("Wisconsin"), as follows:

Mylan specifically denies any and all allegations contained in headings, footnotes, unnumbered Paragraphs, or "Wherefore" claims in the Complaint.

1. Mylan denies the allegations in Paragraph 1 of the Complaint, except admits that Mylan Pharmaceuticals Inc. manufactures prescription drugs.
2. Mylan denies the allegations in Paragraph 2 of the Complaint.
3. Mylan denies the allegations in Paragraph 3 of the Complaint.
- 4-13. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 4 through 13 of the Complaint, and therefore denies those allegations.

14. Mylan denies the allegations in paragraph 14 of the Complaint, except admits that Mylan Laboratories Inc. is a Pennsylvania corporation and that its principal place of business is located at 1500 Corporate Drive, Suite 400, Canonsburg, Pennsylvania 15317; admits that Mylan Pharmaceuticals Inc. is a wholly owned subsidiary of Mylan Laboratories Inc. and that Mylan Pharmaceuticals Inc. is a West Virginia corporation engaged in the business of manufacturing and selling pharmaceuticals.

15-23. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 15 through 23 of the Complaint, and therefore denies those allegations.

24. Mylan denies the allegations of Paragraph 24 of the Complaint and refers to the referenced statutes and common law for their content.

25. Mylan denies the allegations in Paragraph 25 of the Complaint.

26. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint, and therefore denies those allegations.

27. Mylan denies the allegations in Paragraph 27 of the Complaint.

28. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint, and therefore denies those allegations.

29. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Complaint, and therefore denies those allegations.

30. Mylan denies the allegations in Paragraph 30 of the Complaint insofar as they pertain to Mylan, and to the extent the allegations in Paragraph 30 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30, and therefore denies those allegations.

31. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint, and therefore denies those allegations.

32. Mylan denies the allegation in Paragraph 32 of the Complaint, except admits that it participated in the Wisconsin Medicaid program.

33. To the extent a response is required, Mylan denies the allegations of Paragraph 33 of the Complaint, and refers the Court to the regulations for a true and complete statement of their content.

34. Mylan denies the allegations in Paragraph 34 directed to Mylan, except admits that First DataBank and RedBook publish pricing information. To the extent the allegations in Paragraph 34 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34, and therefore denies those allegations.

35. Mylan refers to the document annexed to the Complaint at Exhibit A for its content, and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint, and therefore denies those allegations.

36. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint, and therefore denies those allegations.

37. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint, and therefore denies those allegations.

38. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint, and therefore denies those allegations.

39. Mylan denies the allegations in Paragraph 39 of the Complaint.

40. Mylan denies the allegations in Paragraph 40 of the Complaint.

41. Mylan denies the allegations in Paragraph 41 of the Complaint.
42. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the Complaint, and therefore denies those allegations.
43. Mylan denies the allegations in Paragraph 43 of the Complaint.
44. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 44 of the Complaint, and therefore denies those allegations.
45. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 45 of the Complaint, and therefore denies those allegations.
46. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Complaint, and therefore denies those allegations.
47. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint, and therefore denies those allegations.
48. Mylan denies the allegations in Paragraph 48 of the Complaint insofar as they pertain to Mylan. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 as they pertain to other parties, and therefore denies those allegations.
49. Mylan denies the allegations in Paragraph 49 of the Complaint.
50. Mylan denies the allegations in Paragraph 50 of the Complaint.
51. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint, and therefore denies those allegations.
52. Mylan denies the allegations in Paragraph 52 of the Complaint insofar as they pertain to Mylan. To the extent the allegations in Paragraph 52 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief

as to the truth of the allegations in Paragraph 52, and therefore denies those allegations.

53. Mylan denies the allegations in Paragraph 53 of the Complaint insofar as they pertain to Mylan, except admits that it has sold to wholesalers at WAC, which can sometimes be discounted for a variety of legitimate business reasons. To the extent the allegations in Paragraph 53 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53, and therefore denies those allegations.

54. Mylan denies the allegations in Paragraph 54 of the Complaint insofar as they pertain to Mylan, except admits to entering into sales agreements that have confidentiality provisions and refers to those documents for a true statement of their terms. To the extent the allegations in Paragraph 54 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54, and therefore denies those allegations.

55. Mylan denies the allegations in Paragraph 55 of the Complaint insofar as they pertain to Mylan, except admits that some customers pay different prices than others for legitimate competitive reasons. To the extent the allegations in Paragraph 55 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55, and therefore denies those allegations.

56. Mylan denies the allegations in Paragraph 56 of the Complaint insofar as they pertain to Mylan. To the extent the allegations in Paragraph 56 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56, and therefore denies those allegations.

57. Mylan denies the allegations in Paragraph 57 of the Complaint insofar as they pertain to Mylan. To the extent the allegations in Paragraph 57 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57, and therefore denies those allegations.

58. Mylan denies the allegations in Paragraph 58 of the Complaint.

59. Mylan denies the allegations in Paragraph 59 of the Complaint insofar as they pertain to Mylan. To the extent the allegations in Paragraph 59 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59, and therefore denies those allegations.

60. Mylan denies the allegations in Paragraph 60 of the Complaint.

61. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 61 of the Complaint, and therefore denies those allegations, except admits Medicaid is a joint state and federal program.

62. Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 of the Complaint, and therefore denies those allegations.

63. Mylan refers to the relevant statutes and regulations governing Wisconsin's Medicaid program for their content, and is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63, and therefore denies those allegations.

64. Mylan denies the allegations in Paragraph 64 of the Complaint.

65. Mylan denies the allegations in Paragraph 65 of the Complaint.

66. Mylan denies the allegations in Paragraph 66 of the Complaint.

67-69. Mylan avers that, to the extent the allegations in Paragraphs 67-69 of the Complaint consist of conclusions of law, no response is required. To the extent a response is

required, Mylan refers to the relevant statutes referenced in Paragraph 67-69 of the Complaint for their content, and otherwise is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

70. Mylan avers that, to the extent the allegations in Paragraph 70 of the Complaint consist of conclusions of law, no response is required. Mylan refers to the relevant regulations concerning Medicare reimbursement for their content. To the extent a response is required, Mylan denies the allegations in Paragraph 70.

71. Mylan denies the allegations in Paragraph 71 of the Complaint insofar as they pertain to Mylan. To the extent the allegations in Paragraph 71 of the Complaint are directed to parties other than Mylan, Mylan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71, and therefore denies those allegations.

72. Mylan avers that, to the extent the allegations in Paragraph 72 of the Complaint consist of conclusions of law, no response is required, and otherwise denies the allegations in Paragraph 72.

73. Mylan denies the allegations in Paragraph 73 of the Complaint.

74. Mylan avers that, to the extent the allegations in Paragraph 74 of the Complaint consist of conclusions of law, no response is required. Mylan refers to the relevant statute cited in Paragraph 74 for its content. To the extent a response is required, Mylan denies the allegations in Paragraph 74 of the Complaint.

75. Mylan denies the allegations in Paragraph 75 of the Complaint.

76. Mylan denies the allegations in Paragraph 76 of the Complaint.

77. Mylan denies the allegations in Paragraph 77 of the Complaint.

78. Mylan denies the allegations in Paragraph 78 of the Complaint.

COUNT I

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

80-82. Mylan denies the allegations in Paragraphs 80-82 of the Complaint.

COUNT II

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

84-86. Mylan refers to the relevant statutes for their content, and otherwise denies the allegations in Paragraphs 84-86 of the Complaint.

COUNT III

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

88-91. Mylan refers to the relevant statutes for their content, and otherwise denies the allegations in Paragraphs 88-91 of the Complaint.

COUNT IV

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

93. Mylan is without knowledge or information sufficient to form a belief as to the truth of those allegations in Paragraph 93 of the Complaint, and therefore denies those allegations.

94-95. Mylan denies the allegations in Paragraphs 94-95 of the Complaint.

COUNT V

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

97-100. Mylan denies the allegations in Paragraphs 97-100 of the Complaint.

Mylan further denies that Plaintiff has asserted any viable claims that would necessitate a trial by jury.

MYLAN'S DEFENSES

AFFIRMATIVE AND OTHER DEFENSES

First Defense

The Complaint fails to state a claim against Mylan upon which relief can be granted.

Second Defense

The Complaint fails to satisfy the pleading requirements of Wis. Stat. §§ 802.02(1) and (5).

Third Defense

Plaintiff has not suffered, and will not suffer, any injury to a legally protected or cognizable interest by reason of the conduct of Mylan as alleged in the Complaint.

Fourth Defense

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations, and Plaintiff is not entitled to any tolling of any limitations period.

Fifth Defense

Plaintiff is estopped from claiming entitlement to the sums it seeks because it has known throughout the relevant time period, from various public sources including government reports provided to Plaintiff, that the AWP's and WAC's published in industry sources were not what Plaintiff now claims them to have been.

Sixth Defense

Plaintiff was aware that the reimbursement rates it was using to reimburse providers were greater than the estimated acquisition cost of those drugs, and knowingly set their reimbursement rates higher than estimated acquisition cost.

Seventh Defense

Plaintiff fails to allege with particularity facts to support the fraud and/or fraudulent concealment allegations against Mylan as required by Wis. Stat. § 802.03(2).

Eighth Defense

Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, and unclean hands.

Ninth Defense

Plaintiff's claims are barred to the extent that the claims involve drugs reimbursed without reference to AWP or WAC.

Tenth Defense

Plaintiff's claims are barred, in whole or in part, because Mylan's alleged statements, actions, or omissions were not the proximate cause of any alleged loss by Plaintiff.

Eleventh Defense

Plaintiff was negligent, careless, committed willful misconduct or was otherwise at fault in and about the matter referred to in the Complaint, and such conduct on the part of Plaintiff caused and contributed to the injury complained of, if any actually occurred.

Twelfth Defense

Plaintiff directed, ordered, approved and/or ratified Mylan's conduct, and the Plaintiff is, therefore, barred from asserting any claims based thereon.

Thirteenth Defense

Any and all actions taken by Mylan with respect to any of the matters alleged in the Complaint were taken in good faith and in accordance with established industry practice. Moreover, publishers, including First Data Bank, rather than Mylan, determine the AWP that they publish for drugs.

Fourteenth Defense

Plaintiff's claims against Mylan are barred because Mylan has complied with all applicable regulations of the federal government and the State of Wisconsin.

Fifteenth Defense

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

Sixteenth Defense

Plaintiff's claims against Mylan for damages are barred, in whole or in part, because Plaintiff failed to mitigate and/or neglected to minimize its damages, and its failure to mitigate damages should proportionately reduce its recovery and the allocation of any fault, if any exists, attributable to Mylan.

Seventeenth Defense

Plaintiff receives funding from the federal government for a percentage of the prescription drug reimbursements made under the Wisconsin Medicaid program. Any of Plaintiff's recovery should be substantially if not entirely set off by appropriate percentages of those amounts and should also be reduced by any benefits and rebates they received from Mylan. Plaintiff's claims against Mylan for damages are barred, in whole or in part, because the Plaintiff would be unjustly enriched if allowed to recover any portion of the damages alleged in the Complaint.

Eighteenth Defense

Mylan 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 Plaintiff with respect to the same alleged injuries.

Nineteenth Defense

Plaintiff's claims for damages against Mylan are barred, in whole or in part, by the doctrine of consent and/or ratification to the extent that the Plaintiff has received and paid for pharmaceuticals manufactured, marketed and sold by Mylan after the filing of Plaintiff's Complaint and after first learning of the information that forms the basis for the allegations in the Complaint.

Twentieth Defense

Any damages recovered by the Plaintiff must be limited by the applicable statutory ceilings on recoverable damages.

Twenty-First Defense

Plaintiff fails to state a claim against Mylan sufficient to support an award for costs, treble damages, attorneys' fees and/or legal fees.

Twenty-Second Defense

Plaintiff's claims are barred, in whole or in part, by the doctrines of mistake and mutual mistake.

Twenty-Third Defense

The civil penalties sought against Mylan cannot be sustained because an award of the civil penalties sought by Plaintiff would violate the United States Constitution, Excessive Fines Clause of the Eighth Amendment, U.S. Const. amend. VIII, and the Due Process Clauses

of the Fifth and Fourteenth Amendments, U.S. Const. amend. V and XIV, and the analogous provisions in the Constitution of the State of Wisconsin.

Twenty-Fourth Defense

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

Twenty-Fifth Defense

The granting of relief prayed for in Plaintiff's Complaint is unconstitutional under the United States Constitution and Constitution of the State of Wisconsin in that it violates Due Process and Equal Protection guarantees, places an undue burden on interstate commerce, and violates Constitutional proscriptions against excessive fines.

Twenty-Sixth Defense

The granting of the relief prayed for in Plaintiff's Complaint is unconstitutional in that it would violate Mylan's right of commercial speech under the United States Constitution and Constitution of the State of Wisconsin.

Twenty-Seventh Defense

Plaintiff has failed to join all persons and parties necessary for a just adjudication of the controversy.

Twenty-Eighth Defense

Any or all causes of action in Plaintiff's Complaint are barred because of the lack of privity between Plaintiff and Mylan.

Twenty-Ninth Defense

Any or all causes of action in Plaintiff's Complaint are barred because the statutes upon which Plaintiff relies are vague and ambiguous.

Thirtieth Defense

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

Thirty-First Defense

Plaintiff's claims are barred, in whole or in part, because Mylan did not make any statements to Plaintiff. As to any statement asserted against Mylan that Plaintiff claims to be false or misleading, Mylan had no reasonable grounds to believe, and did not believe at the time such statements were made, that the statements were false or misleading.

Thirty-Second Defense

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

Thirty-Third Defense

Plaintiff'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 thereunder.

Thirty-Fourth Defense

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

Thirty-Fifth Defense

Mylan did not owe any duty to Plaintiff and did not breach any duty owed to the Plaintiff.

Thirty-Sixth Defense

Plaintiff'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 Plaintiff to serve its purposes.

Thirty-Seventh Defense

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

Thirty-Eighth Defense

Plaintiff's claims for damages are barred, in whole or in part, because its alleged damages, if any, are speculative and because of the impossibility of the ascertainment and allocation of these alleged damages.

Thirty-Ninth Defense

To the extent equitable relief is sought, such claims cannot be sustained because Plaintiff has an adequate remedy at law.

Fortieth Defense

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

Forty-First Defense

Plaintiff has no standing or capacity to bring some or all of the claims raised in this suit.

Forty-Second Defense

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

Forty-Third Defense

To the extent punitive damages and/or penalty assessments are sought, Plaintiff's punitive damages and/or penalty assessments claims against Mylan: (1) have no basis in law or fact; (2) are not recoverable because the allegations of the Complaint are legally insufficient to support a claim for punitive damages and/or penalty assessments against Mylan; (3) cannot be sustained because the laws regarding the standards for determining liability for and the amount of punitive damages and/or penalty assessments fail to give Mylan prior notice of the conduct for which punitive damages and/or penalty assessments may be imposed and the severity of the penalty that may be imposed, and are void for vagueness in violation of Mylan's Due Process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Wisconsin; (4) cannot be sustained because any award of punitive damages and/or penalty assessments exceeding the limits authorized by law would violate Mylan's Due Process and Equal Protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would be improper under the Constitution, common law and laws of the State of Wisconsin; (5) cannot be sustained because an award of punitive damages and/or penalty assessments in this case, combined with any prior, contemporaneous, or subsequent judgments against Mylan for punitive damages and/or penalty assessments arising from the design, development, manufacture, fabrication, distribution, supply, marketing, sale, or use of Mylan's products would constitute impermissible multiple punishments for the same wrong, in violation of Mylan's Due Process and Equal Protection

rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would constitute double jeopardy in violation of the Constitution, common law, and statutory laws of the State of Wisconsin; (6) cannot be sustained because any award of punitive damages and/or penalty assessments without the apportionment of the award separately and severally between or among the alleged joint tortfeasors, as determined by the alleged percentage of the wrong committed by each alleged tortfeasor, would violate Mylan's Due Process and Equal Protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would be improper under the Constitution, common law, and public policies of the State of Wisconsin; and (7) cannot be sustained because any award of punitive damages and/or penalty assessments, which are penal in nature, without according Mylan the same protections that are accorded to all criminal defendants, including the protection against unreasonable searches and seizures, the privilege against self-incrimination, and the rights to confront adverse witnesses, a speedy trial, and the effective assistance of counsel, would violate Mylan's rights guaranteed by the Fourth, Fifth, and Sixth Amendment as incorporated into the Fourteenth Amendment to the United States Constitution and would be improper under the Constitution, common law, and public policies of the State of Wisconsin.

Forty-Fourth Defense

To the extent punitive damages and/or penalty assessments are sought, Plaintiff's claims for punitive damages and/or penalty assessments against Mylan cannot be sustained because an award of punitive damages and/or penalty assessments by a jury that: (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages and/or penalty assessments award; (2) is not adequately instructed on the limits of punitive damages and/or penalty assessments

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

Forty-Fifth Defense

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

Forty-Sixth Defense

Mylan hereby adopts and incorporates by reference, as if fully set forth herein, any affirmative defenses listed by any other defendant in its answer to Plaintiff's Complaint to the extent that such defenses are factually and/or legally consistent with Mylan's position.

Forty-Seventh Defense

Subject to confirmation during discovery, Mylan hereby reserves those affirmative defenses required to be specifically pled under Wis. Stat. § 802.02(3) not specifically pled above and incorporates them as if fully set forth in separate paragraphs. Mylan reserves the right to amend its answer to assert additional affirmative defenses and to supplement those asserted herein upon discovery of further information regarding the claims asserted in the Complaint. These additional defenses cannot be asserted at this time because of the lack of detail in the Complaint concerning Plaintiff's claims.

Forty-Eighth Defense

Mylan Laboratories Inc. does not and has not conducted any business in the State of Wisconsin and there is no basis for personal jurisdiction over Mylan Laboratories Inc. under Wisconsin law, and personal jurisdiction over Mylan Laboratories Inc. would be improper under the United States Constitution.

Forty-Ninth Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's settlement agreement in connection with *FTC v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03114-TFH (D.D.C.) and *State of Connecticut v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03115-TFH (D.D.C.).

Fiftieth Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's release of claims in connection with *FTC v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03114-TFH (D.D.C.) and *State of Connecticut v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03115-TFH (D.D.C.).

Fifty-First Defense

Plaintiff's claims are barred, in whole or in part, by an accord and satisfaction between Mylan and the State in connection with *FTC v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03114-TFH (D.D.C.) and *State of Connecticut v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03115-TFH (D.D.C.).

Fifty-Second Defense

Plaintiff's claims are barred, in whole or in part, by Mylan's payment in connection with *FTC v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03114-TFH (D.D.C.) and *State of Connecticut v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03115-TFH (D.D.C.).

Fifty-Third Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's waiver of claims in connection with *FTC v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03114-TFH (D.D.C.) and *State of Connecticut v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03115-TFH (D.D.C.).

Fifty-Fourth Defense

Plaintiff's claims are barred, in whole or in part, by the doctrine of res judicata in connection with *FTC v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03114-TFH (D.D.C.) and *State of Connecticut v. Mylan Laboratories Inc., et al.*, C.A. No. 98-CV-03115-TFH (D.D.C.).

Fifty-Fifth Defense

To the extent Plaintiff or any of its citizens for whom it is seeking relief has obtained or obtains recovery in any other action or proceeding predicated on the same factual

allegations, it is barred from seeking recovery against Mylan based on the Complaint pursuant to the doctrines of res judicata and collateral estoppel and the prohibition on double recovery for the same injury.

Fifty-Sixth Defense

Some or all of Plaintiff's claims against Mylan arise from Plaintiff's failure to follow its federal and state statutory and regulatory obligations to properly establish appropriate reimbursement rates.

Fifty-Seventh Defense

Plaintiff's claims are barred, in whole or in part, because Plaintiff has not suffered any actual injury or damage as a result of any conduct alleged as a basis of this lawsuit.

Fifty-Eighth Defense

Plaintiff's claims are barred, in whole or in part, because Mylan's alleged conduct was reasonable and based on independent, legitimate business and economic justifications.

Fifty-Ninth Defense

Plaintiff's claims are barred, in whole or in part, because any and all of Mylan's actions alleged by Plaintiff were lawful, justified, pro-competitive, carried out in furtherance of Mylan's legitimate business interests, and constitute bona fide business competition.

Sixtieth Defense

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

Sixty-First Defense

Plaintiff's claims against Mylan are misjoined with Plaintiff's claims against other defendants and must be severed.

Sixty-Second Defense

Plaintiff's claims are barred by the Supremacy Clause of the United States Constitution.

Sixty-Third Defense

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

Sixty-Fourth Defense

Plaintiff's claims for costs and attorneys' fees under Counts I and II are barred because Wis. Stat. § 100.18 (11) (d) does not provide for the recovery of costs or attorneys' fees.

Sixty-Fifth Defense

Plaintiff's claims under Wis. Stat. § 49.49 are barred because Mylan did not possess the requisite mental state under the statute.

Sixty-Sixth Defense

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

Sixty-Seventh Defense

Plaintiff's unjust enrichment claim is barred by the existence of written agreements concerning the same subject matter.

Sixty-Eighth Defense

Plaintiff's claims under Wis. Stat. §§ 100.18 and 133.05 are barred to the extent that the claims involve the insurance business.

Sixty-Ninth Defense

Plaintiff knowingly uses the undiscounted benchmarks of AWP or WAC in order to provide a margin that encourages providers to participate and to compensate for inadequate dispensing fees. Plaintiff is not entitled to any recovery of the so-called "spread", and for this reason, any recovery is entirely set off by those amounts attributable to the deficient dispensing fee.

Seventieth Defense

Plaintiff's claims under Wis. Stat. § 133.05 are barred, in whole or in part, because Mylan has not engaged in any conduct that has restrained competition.

Seventy-First Defense

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

WHEREFORE, Mylan prays for judgment: (i) dismissing the Complaint in its entirety with prejudice and entering judgment in favor of Mylan against the Plaintiff; (ii) awarding to Mylan costs and fees incurred in this action; and (iii) granting to Mylan such other and further relief as the Court may deem just and proper.

Dated: August 11, 2006

Respectfully submitted,

/s/

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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 04-CV-1709

Unclassified Civil: 30703

v.

AMGEN INC., et al.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Answer And Affirmative Defenses Of Defendants Mylan Laboratories Inc. And Mylan Pharmaceuticals Inc. To The State Of Wisconsin's Second Amended Complaint to be served on counsel of record by transmission to LNFS pursuant to order dated December 20, 2005.

Dated this 11th day of August, 2006.

/s/ Lissa R. Koop
Lissa R. Koop