

STATE OF WISCONSIN,

Plaintiff,

Case No. 04-CV-1709

Case Code: 30703

v.

AMGEN, INC., et al.

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF WATSON PHARMACEUTICALS, INC.
AND WATSON PHARMA, INC. TO THE STATE OF WISCONSIN'S
SECOND AMENDED COMPLAINT**

Defendants Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. ("Watson"), by Gass Weber Mullins LLC, by Ralph A. Weber, and Hyman, Phelps & McNamara, P.C., by Douglas B. Farquhar and Michelle L. Butler, answer the Second Amended Complaint (the "Complaint") of the State of Wisconsin ("Plaintiff," "Wisconsin" or the "State") as follows:

Preface

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

To the extent the Complaint's allegations refer to the knowledge, conduct, or actions of others, Watson 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. Watson states that it is answering Plaintiff's allegations solely on its own behalf, even when Plaintiff's allegations refer to alleged conduct of Watson and other persons or entities.

Watson 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, Watson 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 Watson, Watson 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 Watson, Watson admits that Plaintiff purports to bring this action as alleged in Paragraph 1, but denies the remaining allegations. Watson further denies that the State is entitled to any damages or other form of relief from Watson.

2. To the extent the allegations in Paragraph 2 of the Complaint are directed at parties other than Watson, Watson 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 Watson, Watson admits that the State brings this action on behalf of itself but denies that there are any bases upon which to do so. Watson 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 Watson, Watson 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 Watson, Watson denies the allegations in Paragraph 3.

4-21. The allegations in Paragraphs 4 through 21 of the Complaint are directed at defendants other than Watson, and therefore require no response from Watson. To the extent a response is required, Watson is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 4 through 21, and on that basis denies the allegations.

22. Watson admits that Watson Pharmaceuticals, Inc. is a Nevada corporation, that its business includes manufacturing and selling pharmaceuticals, and that its principal place of business is located at 311 Bonnie Circle, Corona, California 92880. Watson further admits that Watson Pharma, Inc., f/k/a Schein, a wholly owned subsidiary of Watson Pharmaceuticals, Inc. since 2000, is a Delaware corporation and that its business includes manufacturing and selling pharmaceuticals, but denies that its principal place of business is located at 311 Bonnie Circle, Corona, California 92880.

23. The allegations in Paragraph 23 of the Complaint are directed at defendants other than Watson and therefore require no response from Watson. To the extent a response is required, Watson is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 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. Watson admits that the market for prescription drugs is complex and involves sales to intermediaries before those drugs reach providers. Watson 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. Paragraphs 27 through 29 do not contain factual allegations against Watson, and thus no response is required. To the extent a response is required of Watson, Watson is without

knowledge or information sufficient to form a belief as to the truth of the allegations 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 Watson, Watson 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 Watson, Watson denies the allegations.

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

35. Watson 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 Watson denies the contents of Exhibit A to the extent they are not accurate.

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

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

40. To the extent the allegations in Paragraph 40 of the Complaint are directed at defendants other than Watson, Watson 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 Watson, Watson denies the allegations.

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

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

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

46. To the extent the allegations in Paragraph 46 of the Complaint are directed at defendants other than Watson, Watson is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. Watson admits that

for a period of time it marketed certain drugs contained in Exhibit C to the Complaint. Watson denies the remaining allegations.

47. The allegations in Paragraph 47 of the Complaint are directed at defendants other than Watson, and therefore no response is required from Watson. To the extent a response is required, Watson is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 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 Watson, Watson 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 Watson, Watson admits that Plaintiff attaches Exhibits to the Complaint. Watson is without knowledge or information sufficient to form a belief as to the accuracy of the Exhibits. Watson denies the remaining allegations.

49. To the extent the allegations in Paragraph 49 of the Complaint are directed at defendants other than Watson, Watson 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 Watson, Watson denies the allegations.

50. To the extent the allegations in Paragraph 50 of the Complaint are directed at defendants other than Watson, Watson 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 Watson, Watson denies the allegations.

51. Watson admits that prices of pharmaceutical products with NDC numbers may change. Watson 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 Watson, Watson 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 Watson, Watson denies the allegations.

53. To the extent the allegations in Paragraph 53 are directed at parties other than Watson, Watson 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 Watson, Watson admits that at times it may offer certain discounts and rebates to certain customers on certain products. Watson denies the remaining allegations.

54. To the extent the allegations in Paragraph 54 of the Complaint are directed at defendants other than Watson, Watson 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 Watson, Watson admits that it may require (as would be expected) its customers to keep competitively sensitive pricing information confidential. Watson denies the remaining allegations.

55. To the extent the allegations in Paragraph 55 of the Complaint are directed at defendants other than Watson, Watson 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 Watson, Watson admits that pricing may differ for different customers. Watson denies the remaining allegations.

56. To the extent the allegations in Paragraph 56 of the Complaint are directed at defendants other than Watson, Watson 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 Watson, Watson denies the allegations.

57. To the extent the allegations in Paragraph 57 of the Complaint are directed at defendants other than Watson, Watson 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 Watson, Watson denies the allegations.

58. To the extent the allegations in Paragraph 58 of the Complaint are directed at parties other than Watson, Watson 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 Watson, Watson admits that it may require (as would be expected) its customers to keep competitively sensitive pricing information confidential. Watson denies the remaining allegations.

59. To the extent the allegations in Paragraph 59 of the Complaint are directed at defendants other than Watson, Watson 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 Watson, Watson denies the allegations. The 2000 edition of Novartis' Pharmacy Benefit Report cited to in Paragraph 59 speaks for itself, and Watson denies its contents to the extent they are not accurate.

60. To the extent the allegations in Paragraph 60 of the Complaint are directed at parties other than Watson, Watson 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 Watson, Watson denies the allegations.

61. To the extent the allegations in Paragraph 61 of the Complaint state legal conclusions, no response is required. Watson admits that Wisconsin Medicaid is a joint state and federal program which pays for medical care, including prescription drug benefits, for certain Wisconsin citizens. Watson 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. Watson 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. Watson 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. Watson admits that the Wisconsin Medicaid Program reimburses certain drugs based on the State Maximum Acquisition Cost (“MAC”) program. Watson is without knowledge or sufficient information to form a belief as 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 Watson, Watson 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 Watson, Watson denies the allegations.

65. To the extent the allegations in Paragraph 65 of the Complaint are directed at parties other than Watson, Watson 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 Watson, Watson denies the allegations.

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

67-71. To the extent the allegations in Paragraphs 67 through 71 of the Complaint state legal conclusions, no response is required. Watson admits that federal law governs the manner in which Medicare Part B reimburses providers for certain drugs. Watson is without knowledge or information sufficient to form a belief as to whether the summary of those laws set forth in

Paragraphs 67 through 71 is accurate in all instances. Accordingly, to the extent a response is required of Watson, Watson denies the allegations in Paragraphs 67 through 71 of the Complaint.

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

77. Paragraph 77 states legal conclusions to which no response is required. To the extent a response is required of Watson, Watson 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 Watson, Watson 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 Watson, Watson denies the allegations.

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

80-82. To the extent the allegations in Paragraphs 80 through 82 of the Complaint state legal conclusions, no response is required. Watson refers to the laws and regulations cited for their content. To the extent the allegations in Paragraphs 80 through 82 are directed at parties other than Watson, Watson 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 through 82 are directed at Watson, Watson denies the allegations. Watson 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. Watson realleges and incorporates by reference its responses to Paragraphs 1 through 82.

84-86. To the extent the allegations in Paragraphs 84 through 86 of the Complaint state legal conclusions, no response is required. Watson refers to the laws and regulations cited for their content. To the extent the allegations in Paragraphs 84 through 86 are directed at parties other than Watson, Watson 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 through 86 are directed at Watson, Watson denies the allegations. Watson 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. Watson realleges and incorporates by reference its responses to Paragraphs 1 through 86.

88-91. To the extent the allegations in Paragraphs 88 through 91 of the Complaint state legal conclusions, no response is required. Watson refers to the laws and regulations cited for their content. To the extent the allegations in Paragraphs 88 through 91 are directed at parties other than Watson, Watson 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 through 91 are directed at Watson, Watson denies the allegations. Watson 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. Watson 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 Watson, Watson 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 Watson, Watson admits that it produces, markets and sells pharmaceutical products some of which are sold to entities and individuals in the State of Wisconsin.

Watson 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 through 95 of the Complaint state legal conclusions, no response is required. Watson refers to the laws and regulations cited for their content. To the extent the allegations in Paragraphs 94 through 95 are directed at parties other than Watson, Watson 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 through 95 are directed at Watson, Watson denies the allegations. Watson 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. Watson realleges and incorporates by reference its responses to Paragraphs 1 through 95.

97-100. To the extent the allegations in Paragraphs 97 through 100 are directed at parties other than Watson, Watson 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 through 100 are directed at Watson, Watson denies the allegations. Watson 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

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

WATSON’S DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

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

Some or all of the State's claims against Watson 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

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

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

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

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

SEVENTH AFFIRMATIVE DEFENSE

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

The State's claims against Watson 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

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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 Watson 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

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

Any and all actions taken by Watson 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

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

SIXTEENTH AFFIRMATIVE DEFENSE

The State's claims against Watson 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

The State's claims are barred, in whole or in part, because they violate Watson'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

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The State's claims against Watson 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 Watson

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

Watson 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

Watson 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

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 Watson, 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

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 Watson;

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

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

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

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Watson 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

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Watson 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

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

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

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

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

FORTY-SECOND AFFIRMATIVE DEFENSE

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

Watson adopts by reference any additional applicable defense pled by any other defendants not otherwise pled herein. Watson 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, Watson prays that this Court: (1) dismiss Wisconsin's Complaint with prejudice and enter judgment in favor of Watson against the State; (2) award Watson 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.

GASS WEBER MULLINS LLC
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Inc. and Watson Pharma, Inc.

s/Ralph A. Weber

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Certificate of Service

I, Janet Kosmatka, hereby certify that on this 11th day of August, 2006, a true and correct copy of the foregoing Answer and Affirmative Defenses of Defendants Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. to the State of Wisconsin's Second Amended Complaint was served on all counsel of record by Lexis Nexis File & Serve®.

s/Janet L. Kosmatka
Janet L. Kosmatka