

STATE OF WISCONSIN

CIRCUIT COURT
Branch 9

DANE COUNTY

STATE OF WISCONSIN,

Plaintiffs,

v.

Case No. 04 CV 1709

ABBOTT LABORATORIES, INC., et al.,

Defendants.

**DEFENDANT DEY, INC.'S RESPONSES AND OBJECTIONS
TO PLAINTIFF'S AMENDED NOTICE OF DEPOSITION**

Pursuant to Wisconsin Statute § 804.05 and the Wisconsin Rules of Civil Procedure, defendant Dey, Inc. ("Dey"), by its undersigned counsel, hereby asserts the following responses and objections to the Amended Notice of Deposition (the "Deposition Notice") of Plaintiff State of Wisconsin (the "State" or "Plaintiff"), as follows:

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. These responses and objections are made without in any way waiving or intending to waive, but to the contrary intending to preserve and preserving: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents or information produced or any testimony provided in response to the Deposition Notice; (b) the right to object on any ground to the

use of the documents or information produced or testimony provided in response to the Deposition Notice at any hearing, trial, or other point during this action; (c) the right to object on any ground at any time to a demand for further responses to the Deposition Notice; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses or objections contained herein.

2. Any testimony, documents or information supplied pursuant to the Deposition Notice are for use in this action and for no other purpose.

3. No response or objection made herein, or lack thereof, is an admission by Dey as to the existence or non-existence of any documents or information.

4. Dey provides its responses to the Deposition Notice subject to the Protective Order, entered on November 29, 2005, in this action.

5. The production of documents or information pursuant to the Deposition Notice shall not be construed as a waiver of the confidentiality of any such documents or information.

6. Dey objects to the Deposition Notice to the extent that it demands testimony or the production of documents or information that is privileged or otherwise protected against discovery pursuant to the attorney-client privilege, the work product doctrine, the joint defense/prosecution privilege, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected testimony, documents, or information

are inadvertently provided or produced in response to the Deposition Notice, the production of such documents or information or the providing of such testimony shall not constitute a waiver of Dey's right to assert the applicability of any privilege or immunity to the testimony, documents, or information, and any such documents or information shall be returned to Dey's counsel immediately upon discovery thereof.

7. Dey objects to the Deposition Notice to the extent that it demands testimony or the production of documents or information from outside of the statute of limitations applicable to the State's claims in this action, or beyond the time period relevant to this action. Dey objects to the Deposition Notice as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it purports to require testimony, the production of documents, or seek information relating to a period of time after the filing of the Complaint on or around June 3, 2004.

8. Dey objects to the Deposition Notice to the extent that it demands testimony or the production of documents or information containing trade secrets, proprietary or commercially sensitive or other confidential information, or confidential information compiled pursuant to government regulations.

9. Dey objects to the disclosure, under any circumstance, of trade secret information where the probative value in this litigation is greatly exceeded by the potential harm to Dey if the information were to fall into the hands of its competitors, and

further asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by the law.

10. Dey objects to the Deposition Notice to the extent that it demands the production of documents or information or testimony concerning matters that are: (a) not within the possession, custody, or control of Dey, its agents, or its employees; (b) publicly available; or (c) more appropriately sought from third parties to whom requests have been or may be directed.

11. Dey objects to the Deposition Notice to the extent that it demands the production of documents or information or testimony concerning matters that are proprietary to third parties.

12. Dey objects to the Deposition Notice to the extent it is vague, ambiguous, unduly burdensome, overbroad, oppressive, duplicative, or does not identify with sufficient particularity the information or documents sought.

13. Dey objects to the Deposition Notice as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to demand testimony or the production of documents or information relating to pharmaceuticals not at issue in this litigation, and to the extent that it fails to sufficiently identify those pharmaceuticals that are at issue.

14. Dey objects to the Deposition Notice to the extent that it demands testimony or the production of documents or information concerning drugs that have not been

identified by National Drug Code in the Second Amended Complaint (the "Subject Drugs").

15. Dey objects to the Deposition Notice to the extent it demands testimony or the production of information or documents relating to Dey's activities that are outside the scope of the allegations in the Second Amended Complaint.

16. Dey objects to the Deposition Notice to the extent it purports to impose on Dey obligations that exceed those imposed by the Wisconsin Rules of Civil Procedure and any applicable local rules. Dey will comply with its duties and obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules.

17. Dey objects to the Deposition Notice to the extent the topics and document demand are duplicative or redundant of material and information requested in Plaintiff's prior discovery requests. Dey restates and incorporates Dey's Responses and Objections to Plaintiff's prior discovery requests. Dey further objects to the Deposition Notice to the extent the topics contained in the Deposition Notice are duplicative or redundant of each other.

18. Dey objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues in the Deposition Notice. Any response by Dey is not intended to indicate that Dey agrees with any implication or explicit or implicit characterization of the facts, events, circumstances, or issues in the Deposition Notice, or that such implication or characterization is relevant to this action.

19. Dey objects to the Deposition Notice to the extent it demands testimony or the production of information or documents already in Plaintiff's knowledge, possession and/or control, or information to which Plaintiff has equal access.

20. Dey objects to the Deposition Notice to the extent it demands testimony or the production of information or documents relating to Dey's activities other than those which concern the State, on the grounds that such testimony, information, and documents are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

21. Dey objects to the Deposition Notice to the extent it purports to impose on Dey an obligation to search or produce email or other electronically stored data in any format on the grounds that such obligations are overly broad, unduly burdensome, harassing, and not reasonably limited in scope.

22. Dey objects to the Deposition Notice to the extent it purports to require Dey to provide testimony and information concerning thoughts, knowledge, understanding, or perceptions of unspecified present and former employees, many of whom are no longer employed by Dey.

23. Dey objects to the Deposition Notice to the extent it purports to require Dey to provide testimony or information which would require Dey to create data or process an unreasonably large amount of data, some of which Dey cannot compute at all and some of which Dey cannot compute without expending a significant amount of resources, and

which is not reasonably calculated to lead to the discovery of admissible evidence.

24. Dey objects to the Deposition Notice to the extent it purports to require Dey to provide testimony or information which would require Dey to analyze data that Plaintiff itself has the ability to analyze by reviewing the documents and data that Dey has produced.

25. Dey hereby incorporates by reference as if fully set forth herein any objection or reserved right made by Dey in response to Plaintiff's prior deposition notice or prior discovery requests.

SPECIFIC RESPONSES AND OBJECTIONS

Dey's General Objections and Reservation of Rights as stated above apply to and are hereby incorporated into its specific responses to the Deposition Notice set forth below, whether or not expressly incorporated by reference in any such response. Dey also responds and objects specifically to the individual subject matter topics as follows:

TOPIC NO. 1:

The reason(s) for Defendant signing Medicaid rebate agreements pursuant to 42 U.S.C. § 1396r(a)(1).

RESPONSE TO TOPIC NO. 1:

Dey objects to Topic No. 1 on the grounds that the phrase "Medicaid rebate agreements pursuant to 42 U.S.C. § 1396r(a)(1)" is vague, ambiguous, and unintelligible, thereby rendering this Topic incomprehensible. Dey further objects to this Topic as overly broad to the extent it is not limited to the Subject Drugs. Dey further objects to

this Topic as not reasonably calculated to lead to the discovery of relevant or admissible evidence to the extent it seeks opinion rather than factual testimony.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the reasons for signing the Medicaid Rebate Agreement entered into pursuant to 42 U.S.C. § 1396r-8.

TOPIC NO. 2:

Defendant's knowledge and understanding of the federal Medicaid programs laws, regulations, and rules, including 42 C.F.R. § 447.331 and 42 C.F.R. § 447.301.

RESPONSE TO TOPIC NO. 2:

Dey objects to Topic No. 2 as not reasonably calculated to lead to the discovery of relevant or admissible evidence to the extent it seeks opinion rather than factual testimony. Dey further objects to this Topic to the extent it seeks testimony regarding the federal Medicaid program's laws, regulations, and rules applicable to entities and persons other than Dey. Dey further objects to this Topic to the extent it seeks testimony regarding "knowledge and understanding" derived from communications and information protected by the attorney-client privilege, the work product doctrine, joint defense privilege, or any other privilege.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide factual, but not legal or opinion, testimony regarding Dey's knowledge and understanding of the subject matter of this

Topic.

TOPIC NO. 3:

Defendant's knowledge of the Wisconsin Medicaid Agency's laws, regulations, and rules, including Defendant's knowledge of the Wisconsin Medicaid Agency's reimbursement formula and methodology for prescription drugs.

RESPONSE TO TOPIC NO. 3:

Dey objects to Topic No. 3 as not reasonably calculated to lead to the discovery of relevant or admissible evidence to the extent it seeks opinion rather than factual testimony. Dey further objects to this Topic to the extent it seeks testimony regarding the Wisconsin Medicaid Agency's laws, regulations, and rules applicable to entities and persons other than Dey. Dey further objects to this Topic to the extent it seeks testimony regarding "knowledge" derived from communications and information protected by the attorney-client privilege, the work product doctrine, joint defense privilege, or any other privilege. Dey further objects to this Topic to the extent it is not limited to the Subject Drugs.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide factual, but not legal or opinion, testimony regarding Dey's knowledge and understanding of the subject matter of this Topic.

TOPIC NO. 4:

Defendant's knowledge and understanding of the Wisconsin consumer protection laws, including but not limited to Wis. Stat. § 100.18(10)(b).

RESPONSE TO TOPIC NO. 4:

Dey objects to Topic No. 4 as not reasonably calculated to lead to the discovery of relevant or admissible evidence to the extent it seeks opinion rather than factual testimony. Dey further objects to this Topic to the extent it seeks testimony regarding laws applicable to entities and persons other than Dey. Dey further objects to this Topic to the extent it seeks testimony regarding "knowledge and understanding" derived from communications and information protected by the attorney-client privilege, the work product doctrine, joint defense privilege, or any other privilege.

TOPIC NO. 5:

Defendant's knowledge and understanding of the Medicare Part B program's laws, regulations, and rules relating to the reimbursement formula for covered drugs, including Defendant's knowledge that prior to January 1, 2005, the reimbursement formula for a covered drug (including the Medicare Part B beneficiary's 20% co-payment) was based on the Average Wholesale Price (AWP) of the drug.

RESPONSE TO TOPIC NO. 5:

Dey objects to Topic No. 5 as not reasonably calculated to lead to the discovery of relevant or admissible evidence to the extent it seeks opinion rather than factual testimony. Dey further objects to this Topic to the extent it seeks testimony regarding "knowledge and understanding" derived from communications and information protected

by the attorney-client privilege, the work product doctrine, joint defense privilege, or any other privilege. Dey further objects to this Topic to the extent it is not limited to the Subject Drugs.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide factual, but not legal or opinion, testimony regarding Dey's knowledge and understanding of the Medicare Part B program's laws, regulations, and rules relating to the reimbursement formula for the Subject Drugs.

TOPIC NO. 6:

The information or documents, if any, about which Defendant is aware, which show, or which Defendant believes may tend to show, that the net price paid by retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors for the drugs listed on Exhibit A to this notice of deposition (Deposition Drugs) was equal to or greater than the then current Average Wholesale Price (AWP) published by either First DataBank, the Red Book, or Medispan for the Deposition Drugs.

RESPONSE TO TOPIC NO. 6:

Dey objects to Topic No. 6 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "net price", "retail pharmacies", "long-term care pharmacies", "mail-order pharmacies", "may tend to show", and "then current Average Wholesale Price (AWP)". Dey further objects to this Topic to the extent it seeks information unknown to Dey. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey

to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales transactions for every sales transaction purportedly at issue.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about its own various prices and its documents regarding such prices. Dey further states that it will produce a witness to provide testimony regarding its knowledge of its own published AWP's.

TOPIC NO. 7:

The information or documents which show that the then current Wholesale Acquisition Cost (WAC) or Net Wholesale Price (NWP) published by First DataBank, Red Book, or Medispan was higher than the actual net price paid by wholesalers to Defendant for the Deposition Drugs.

RESPONSE TO TOPIC NO. 7:

Dey objects to Topic No. 7 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "actual net price", "wholesalers", and "then current Wholesale Acquisition Cost (WAC) or Net Wholesale Price (NWP)". Dey further objects to this Topic to the extent it seeks information unknown to Dey. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in

the Deposition Notice. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales transactions for every sales transaction purportedly at issue.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about its own various prices and its documents regarding such prices. Dey further states that it will produce a witness to provide testimony regarding its knowledge of its own published WACs.

TOPIC NO. 8:

Defendant's knowledge, understanding, or belief of actual net prices paid (in relation to Average Wholesale Price and Wholesale Acquisition Cost) by retail pharmacies, long-term care pharmacies, mail-order pharmacies, and doctors for the Deposition Drugs based in whole or in part on its knowledge of direct sales from Defendant to these entities.

RESPONSE TO TOPIC NO. 8:

Dey objects to Topic No. 8 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "actual net prices", "retail pharmacies", "long-term care pharmacies", "mail-order pharmacies", "Average Wholesale Price", and "Wholesale Acquisition Cost". Dey further objects to this Topic to the extent it seeks information unknown to Dey. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this

Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales transactions for every sales transaction purportedly at issue.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about its own various prices. Dey further states that it will produce a witness to provide testimony regarding its knowledge of its own published AWP's and WAC's.

TOPIC NO. 9:

Defendant's knowledge, understanding, or belief of the actual or typical markup or margin above a wholesaler's actual net acquisition cost applied by a wholesaler when selling or re-selling the Deposition Drugs to retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors.

RESPONSE TO TOPIC NO. 9:

Dey objects to Topic No. 9 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "actual", "typical", "markup", "margin", "wholesaler", "actual net acquisition cost", "selling or re-selling", "retail pharmacies", "long-term care pharmacies", and "mail-order pharmacies". Dey further objects to this Topic to the extent it seeks information unknown to Dey. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide testimony regarding Dey's knowledge and understanding, if any, of the subject matter of this Topic.

TOPIC NO. 10:

Defendant's knowledge of the net price paid (in relation to Average Wholesale Price and Wholesale Acquisition Cost) by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors for the Deposition Drugs when purchased through wholesalers.

RESPONSE TO TOPIC NO. 10:

Dey objects to Topic No. 10 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "net price paid", "retail and chain pharmacies", "long-term care pharmacies", "mail-order pharmacies", "home health care entities", "wholesalers", "Average Wholesale Price", and "Wholesale Acquisition Cost". Dey further objects to this Topic to the extent it seeks information unknown to Dey. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales transactions for every sales transaction purportedly at issue.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide testimony regarding the terms of sales transactions with its customers, including any reductions in prices, to the extent called for by this Topic. Dey further states that it will produce a witness to give testimony regarding its knowledge of its own published AWP's and WAC's.

TOPIC NO. 11:

Defendant's knowledge or belief of the markup or margin above a wholesaler's actual net acquisition cost applied by a wholesaler when selling or re-selling the Deposition Drugs to retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors.

RESPONSE TO TOPIC NO. 11:

Dey objects to Topic No. 11 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "markup", "margin", "wholesaler", "actual net acquisition cost", "selling or re-selling", retail and chain pharmacies", "long-term care pharmacies", and "mail-order pharmacies", and "home health care entities". Dey further objects to this Topic to the extent it seeks information unknown to Dey. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic to the extent it is redundant of Topic No. 9 and other topics. Dey further objects to this Topic as unduly burdensome to

the extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales transactions for every sales transaction purportedly at issue.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide testimony regarding Dey's knowledge and understanding, if any, of the subject matter of this Topic.

TOPIC NO. 12:

The documents or information, if any, about which Defendant is aware, which show, or which Defendant believes may tend to show, that the then current Average Wholesale Price (AWP) published by either First DataBank, the Red Book, or Medispan was higher than the actual net price paid by retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors for the Deposition Drugs.

RESPONSE TO TOPIC NO. 12:

Dey objects to Topic No. 12 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "actual net price", "retail pharmacies", "long-term care pharmacies", "mail-order pharmacies", "may tend to show", and "then current Average Wholesale Price (AWP)". Dey further objects to this Topic to the extent it seeks information unknown to Dey. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales

transactions for every sales transaction purportedly at issue. Dey further objects to this Topic to the extent it is redundant of Topic No. 6 and other topics.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about its own various prices and its documents regarding such prices. Dey further states that it will produce a witness to provide testimony regarding its knowledge of its own published AWP's.

TOPIC NO. 13:

The discounts, rebates, chargebacks, free goods, incentives, or other things of value offered by Defendant to wholesalers, retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors that would reduce the net price paid by these entities for the Deposition Drugs.

RESPONSE TO TOPIC NO. 13:

Dey objects to Topic No. 13 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "discounts", "rebates", "chargebacks", "free goods", "incentives", "other things of value", "wholesalers", "retail pharmacies", "long-term care pharmacies", "mail-order pharmacies", "net price", "pricing decisions", "pricing strategies", and "pricing recommendations", "price discounts", "credits", "inventory management agreements", and "other forms of price reductions". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome to the

extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales transactions for every sales transaction purportedly at issue.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the terms of sales transactions with its customers, including any reductions in prices.

TOPIC NO. 14:

Defendant's pricing decisions, pricing strategies, and pricing recommendations, including but not limited to, decisions, strategies, and recommendations regarding price discounts, rebates, chargebacks, credits, inventory management agreements, and other forms of price reductions relating to the Deposition Drugs.

RESPONSE TO TOPIC NO. 14:

Dey objects to Topic No. 14 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "pricing decisions", "pricing strategies", "pricing recommendations", "price discounts", "rebates", "chargebacks", "credits", "inventory management agreements", and "other forms of price reductions". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales transactions for every sales transaction purportedly at issue.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about how Dey sets its prices and the terms of sales transactions with its customers, including any reductions in prices.

TOPIC NO. 15:

Defendant's marketing decisions, plans, and strategies, market share research, product launches, and advertising relating to the Deposition Drugs.

RESPONSE TO TOPIC NO. 15:

Dey objects to Topic No. 15 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "marketing decisions", "plans", and "strategies". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness generally knowledgeable about the subject matter of this Topic.

TOPIC NO. 16:

Defendant's knowledge and understanding of the competitive environment for each Deposition Drug, and its impact on Defendant's marketing or pricing decisions for that drug, or for any part of its product line, to the extent that the Deposition Drug was affected or involved.

RESPONSE TO TOPIC NO. 16:

Dey objects to Topic No. 16 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "competitive environment" and "pricing decisions". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide testimony regarding Dey's general knowledge and understanding of the subject matter of this Topic.

TOPIC NO. 17:

Defendant's sales strategies, sales staff training, sales meetings, competitive sales research, sales staff evaluations, and sales forecasts for the Deposition Drugs.

RESPONSE TO TOPIC NO. 17:

Dey objects to Topic No. 17 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "competitive sales research" and "sales forecasts". Dey further objects to this Topic because information regarding "sales staff evaluations" is not reasonably calculated to lead to the discovery of admissible evidence. Dey objects to the terms "sales meetings", "sales staff training", and "sales forecasts" as overly broad and

not reasonably calculated to lead to the discovery of admissible evidence. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness generally knowledgeable about Dey's sales strategies, sales staff training, sales meetings, competitive sales research, and sales forecasts for the Deposition Drugs.

TOPIC NO. 18:

Communications between Defendant and First DataBank, the Red Book, and Medispan about the Targeted Drugs including the pricing information (such as AWP, WAC, SWP, DP) provided by Defendant to these entities and Defendant's definitions of these terms.

RESPONSE TO TOPIC NO. 18:

Dey objects to Topic No. 18 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "Targeted Drugs", "pricing information", "AWP", "WAC", "SWP", and "DP". Dey further objects to this Topic to the extent it is not limited to the Subject Drugs. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome because it seeks communications during an undefined

period and involving non-specified persons.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness generally knowledgeable about communications with First DataBank, the Red Book, and Medispan regarding the subject matter of this Topic.

TOPIC NO. 19:

Defendant's reason(s) for supplying pricing information (such as AWP, WAC, SWP, DP) to First Databank, the Red Book, or Medispan for the Deposition Drugs.

RESPONSE TO TOPIC NO. 19:

Dey objects to Topic No. 18 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "pricing information", "AWP", "WAC", "SWP", and "DP".

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the reasons for reporting AWP's and WAC's for the Deposition Drugs to First Databank, the Red Book, and Medispan.

TOPIC NO. 20:

Defendant's knowledge, understanding, and belief of the relationship between the pricing information (such as AWP, WAC, SWP, DP) Defendant supplied to First DataBank, the Red Book, or Medispan and the pricing information published by First DataBank, the Red Book, or Medispan for the Deposition Drugs.

RESPONSE TO TOPIC NO. 20:

Dey objects to Topic No. 20 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "pricing information", "AWP", "WAC", "SWP", and "DP". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide testimony regarding Dey's knowledge and understanding of the subject matter of this Topic.

TOPIC NO. 21:

Defendant's knowledge, understanding, and belief of the use of Defendant's reported pricing information (such as AWP, WAC, SWP, DP) by First DataBank, the Red Book, or Medispan, including but not limited to the transmission of that information to the Wisconsin Medicaid program.

RESPONSE TO TOPIC NO. 21:

Dey objects to Topic No. 21 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "pricing information", "AWP", "WAC", "SWP", and "DP". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic to the

extent it seeks information unknown to Dey.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide testimony regarding Dey's knowledge and understanding of the subject matter of this Topic.

TOPIC NO. 22:

The action(s), if any, taken by Defendant to stop, object to, or otherwise oppose the publication of the Wholesale Acquisition Cost (WAC) or Average Wholesale Price (AWP) by First DataBank, the Red Book, or Medispan for any of the Deposition Drugs and the reason(s) for any such action(s).

RESPONSE TO TOPIC NO. 22:

Dey objects to Topic No. 22 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and undefined: "Wholesale Acquisition Cost (WAC)" and "Average Wholesale Price (AWP)".

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 23:

To the extent Defendant stopped reporting any pricing information (such as AWP, WAC, SWP, DP) to First DataBank, the Red Book, or Medispan, for the Deposition Drugs, the reason(s) for doing so and the date(s) that such reporting stopped.

RESPONSE TO TOPIC NO. 23:

Dey objects to Topic No. 23 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "pricing information", "AWP", "WAC", "SWP", and "DP". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of dates.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 24:

Defendant's confirmation or acquiescence that the pricing information published by First DataBank, Red Book or Medispan for the Deposition Drugs was true and accurate.

RESPONSE TO TOPIC NO. 24:

Dey objects to Topic No. 24 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "confirmation", "acquiescence", "pricing information", "true", and "accurate". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic to the extent it seeks information unknown to Dey.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 25:

The information and/or data that Defendant has purchased, obtained, or reviewed from First DataBank, the Red Book, Medispan, or IMS Health relating to the Deposition Drugs, including but not limited to, pricing and market share.

RESPONSE TO TOPIC NO. 25:

Dey objects to Topic No. 25 on the grounds that it is vague and ambiguous because the term "pricing" is vague, ambiguous, interpreted differently by the parties, and undefined. Dey further objects to this Topic as not reasonably calculated to lead to the discovery of admissible evidence to the extent the term "has" purports to require Dey to provide testimony concerning matters after the filing of the Complaint. Dey further objects to this Topic as overly broad because it is not limited to the scope of this lawsuit. Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness generally knowledgeable about the subject matter of this Topic.

TOPIC NO. 26:

Whether Defendant ever communicated to First DataBank, the Red Book, or Medispan that the Average Wholesale Prices (AWP) that Defendant reported to these entities was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors for the

Deposition Drugs and, if so, when such communications took place and of what they consisted.

RESPONSE TO TOPIC NO. 26:

Dey objects to Topic No. 26 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "Average Wholesale Prices (AWP)", "price", "actually an average of wholesale prices", "actually paid", "retail pharmacies", "long-term care pharmacies", and "mail-order pharmacies". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome because it seeks communications during an undefined period and involving non-specified persons. Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about communications with First DataBank, the Red Book, and Medispan regarding the subject matter of this Topic.

TOPIC NO. 27:

Whether Defendant ever communicated to anyone in the Wisconsin Medicaid Program that the Average Wholesale Prices (AWP) that Defendant reported to First DataBank, the Red Book, or Medispan was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors for the Deposition Drugs and, if so, when such communications took place and of what they consisted.

RESPONSE TO TOPIC NO. 27:

Dey objects to Topic No. 27 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "Average Wholesale Prices (AWP)", "price", "actually an average of wholesale prices", "actually paid", "retail pharmacies", "long-term care pharmacies", and "mail-order pharmacies". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome because it seeks communications during an undefined period and involving non-specified persons.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about communications with the Wisconsin Medicaid Program regarding the subject matter of this Topic.

TOPIC NO. 28:

Whether Defendant ever communicated to First DataBank, the Red Book, or Medispan that the Wholesale Acquisition Cost (WAC) that Defendant reported to these entities was not the net price actually paid by wholesalers to Defendant for the Deposition Drugs and, if so, when such communications took place and of what they consisted.

RESPONSE TO TOPIC NO. 28:

Dey objects to Topic No. 28 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "Wholesale Acquisition Cost (WAC)", "net price",

"actually paid", and "wholesalers". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome because it seeks communications during an undefined period and involving non-specified persons.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about communications with First DataBank, the Red Book, and Medispan regarding the subject matter of this Topic.

TOPIC NO. 29:

Whether Defendant ever communicated to anyone in the Wisconsin Medicaid Program that the Wholesale Acquisition Cost (WAC) that Defendant reported to First DataBank, the Red Book, or Medispan was not the net price actually paid by wholesalers to Defendant for the Deposition Drugs and, if so, when such communications took place and of what they consisted.

RESPONSE TO TOPIC NO. 29:

Dey objects to Topic No. 29 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "Wholesale Acquisition Cost (WAC)", "net price", "actually paid", and "wholesalers". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome because it seeks

communications during an undefined period and involving non-specified persons.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about communications with the Wisconsin Medicaid Program regarding the subject matter of this Topic.

TOPIC NO. 30:

The methodology used by Defendant to calculate the Average Manufacturer's Price (AMP) (as defined by 42 U.S.C. §1396r-8(k)(1)) for the Deposition Drugs and Defendant's understanding of the use of AMP by CMS, including but not limited to its use in connection with rebates under the Medicaid rebate statute.

RESPONSE TO TOPIC NO. 30:

Dey objects to Topic No. 30 on the grounds that it is vague and ambiguous because the term "Medicaid rebate statute" is vague, ambiguous, and undefined. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic to the extent it implies that Dey should have calculated AMP based solely on the definition in the statute and refers Plaintiff to the Rebate Agreement entered into by Dey and the state and federal governments, along with any rules, memoranda, or guidance provided by HCFA/CMS concerning the calculation of AMP.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this

Topic.

TOPIC NO. 31:

Whether Defendant has ever provided AMPs or any other pricing information (such as AWP, WAC) to the State of Wisconsin (apart from providing them pursuant to the State's discovery requests in this case), and the circumstances surrounding any such event.

RESPONSE TO TOPIC NO. 31:

Dey objects to Topic No. 31 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "AMPs", "AWP", and "WAC". Dey further objects to this Topic because Plaintiff is in possession of the information it seeks or has equal access to it.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 32:

Defendant's knowledge, understanding, and belief regarding the confidentiality provisions of the Medicaid Rebate statute, 42 U.S.C. 1396r, as they pertain to AMP.

RESPONSE TO TOPIC NO. 32:

Dey objects to Topic No. 32 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, and undefined: "Medicaid Rebate statute, 42 U.S.C. 1396r" and "AMP". Dey further objects to this Topic to the extent that it seeks testimony that is privileged or otherwise protected against

discovery pursuant to the attorney-client privilege, the work product doctrine, or any other legally recognized privilege. Dey further objects to this Topic as not reasonably calculated to lead to the discovery of relevant or admissible evidence to the extent it seeks opinion rather than factual testimony. Dey further objects to this Topic as vague and ambiguous because it fails to specify a time period and the statute regarding Medicaid rebates has changed over time, including the provisions regarding confidentiality of AMP. Dey further objects to this Topic because the phrase "Medicaid Rebate statute, 42 U.S.C. 1396r" is unintelligible, thereby rendering this Topic incomprehensible.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about Dey's knowledge and understanding regarding the confidentiality provisions in 42 U.S.C. § 1396r-8.

TOPIC NO. 33:

Whether Defendant contends that the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMP of the Deposition Drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. 1396r, and if so, all bases for such contention.

RESPONSE TO TOPIC NO. 33:

Dey objects to Topic No. 33 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, and undefined: "Medicaid Rebate statute, 42 U.S.C. 1396r", "Unit Rebate Amount", and "AMP". Dey further objects to this Topic because the phrase "Medicaid Rebate statute, 42 U.S.C.

1396r" is unintelligible, thereby rendering this Topic incomprehensible.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 34:

Defendant's policies and practices concerning the disclosures that providers (retail pharmacies, long-term care pharmacies, mail-order pharmacies, doctors, hospitals, clinics), wholesalers, and pharmacy benefit managers may make of the drug pricing information they receive from Defendant for the Deposition Drugs.

RESPONSE TO TOPIC NO. 34:

Dey objects to Topic No. 34 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "policies and practices", "disclosures", "providers", "retail pharmacies", "long-term care pharmacies", "mail-order pharmacies", "clinics", "wholesalers", "pharmacy benefit managers", and "drug pricing information". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice. Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of the terms of particular sales transactions for every sales transaction purportedly at issue.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the terms of sales transactions with its customers.

TOPIC NO. 35:

Defendant's knowledge, understanding and belief of First DataBank's increase in the AWP for the Targeted Drugs from WAC+20% to WAC+25% in or around 2001-2002 and the action(s), if any, taken by Defendant in response including, but not limited to, any studies, analyses or white papers regarding this issue.

RESPONSE TO TOPIC NO. 35:

Dey objects to Topic No. 35 on the grounds that it is vague and ambiguous because the following terms are vague, ambiguous, interpreted differently by the parties, and/or undefined: "AWP", "WAC", "Targeted Drugs", and "action(s)". Dey further objects to this Topic to the extent it is not limited to the Subject Drugs.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness to provide testimony regarding Dey's knowledge and understanding of the subject matter of this Topic.

TOPIC NO. 36:

The corporate history and organizational structure of Defendant and any predecessor entities.

RESPONSE TO TOPIC NO. 36:

Dey objects to Topic No. 36 to the extent it seeks information and testimony regarding Dey's "predecessor entities" and "corporate history" on the grounds that it is

overly broad and not limited to the scope of this lawsuit.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 37:

Direct communications between Defendant (or Defendant's counsel or representatives) and the State of Wisconsin Attorney General's Office and/or the State of Wisconsin Medicaid agency.

RESPONSE TO TOPIC NO. 37:

Dey objects to Topic No. 37 as not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information and testimony regarding communications between Dey's counsel and Plaintiff's counsel concerning this lawsuit. Dey further objects to this Topic as overly broad because it is not limited to the scope of this lawsuit. Dey further objects to this Topic as unduly burdensome because it seeks communications during an undefined period and involving non-specified persons. Dey further objects to this Topic because Plaintiff is in possession of the information it seeks or has equal access to it.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 38:

The nature and type of customers who purchase or distribute Defendant's drugs.

RESPONSE TO TOPIC NO. 38:

Dey objects to Topic No. 38 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "nature and type of customers" and "purchase or distribute". Dey further objects to this Topic to the extent it is not limited to the Subject Drugs. Dey further objects to this Topic to the extent it seeks information unknown to Dey to the extent it refers to transactions where Dey was not a party.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 39:

Defendant's use in its marketing or sales of the Deposition Drugs of the difference between a provider's acquisition cost and third-party reimbursement, including but not limited to "return to practice."

RESPONSE TO TOPIC NO. 39:

Dey objects to Topic No. 39 on the grounds that it is vague and ambiguous because the following terms and phrases are vague, ambiguous, interpreted differently by the parties, and/or undefined: "acquisition cost", "third-party reimbursement", and "return to practice". Dey further objects to this Topic as unduly burdensome to the extent it requires Dey to produce a witness with particularized knowledge of these matters for each and every drug purportedly defined in the Deposition Notice.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

TOPIC NO. 40:

Identification of the existence, location and format of all hard copy and electronic documents, data, and information relating to the subjects identified in paragraphs 1-39 above.

RESPONSE TO TOPIC NO. 40:

Dey objects to Topic No. 40 as unduly burdensome. Dey incorporates all of its objections to Topic Nos. 1-39 herein.

Subject to and without waiving the foregoing General and Specific Objections, Dey states that it will produce a witness knowledgeable about the subject matter of this Topic.

UNNUMBERED PARAGRAPH

The designated deponents shall bring with them all evidence or information showing that any of the Deposition Drugs was sold at a price equal to or greater than the published AWP from 1993 to the present.

RESPONSE TO UNNUMBERED PARAGRAPH

Dey objects to this request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, and fails to identify with sufficient particularity the documents or information sought. Dey further objects to this request because the term "price" is vague, ambiguous, undefined, and interpreted differently by the parties, thereby

