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March 28, 2008

VIA ELECTRONIC MAIL AND U.S. MAIL

CLIENT/MATTER NUMBER  
045152-0101

Honorable William Eich  
840 Farwell Drive  
Madison, WI 53704

Re: *State of Wisconsin v. Abbott Labs., et al.*  
Case No. 04-CV-1709

Dear Judge Eich:

Enclosed please find Defendants' Reply Brief in Support of Their Motion to Compel Supplemental Interrogatory Responses and Verification of Other Responses.

All counsel of record have been served via Lexis Nexis File & Serve with a copy of the same.

Sincerely yours,

FOLEY & LARDNER LLP

  
Matthew D. Lee

Enclosure

cc: Ann Ford, Clerk, Br. 9 (w/enc., via Hand Delivery)  
Frank D. Remington (w/enc., via electronic and U.S. mail)  
Charles J. Barnhill, Jr. (w/enc., via electronic and U.S. mail)  
All Counsel of Record (via Lexis Nexis File & Serve)

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TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

STATE OF WISCONSIN,

Plaintiff,

v.

ABBOTT LABORATORIES, *et. al.*,

Defendants.

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Case No.: 04 CV 1709

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**DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR  
MOTION TO COMPEL SUPPLEMENTAL INTERROGATORY RESPONSES  
AND VERIFICATION OF OTHER RESPONSES**

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Defendants' motion is simple. It asks plaintiff to abide by the Wisconsin Rules of Civil Procedure by properly supplementing its interrogatory answers and verifying them. Plaintiff's response is unnecessarily complicated and digresses from these basic points, yet it acknowledges that Defendants' motion can be justified "assuming they have concerns about admissibility of the information [at issue] later in these proceedings under Wis. Stat. § 804.08(2)."<sup>1</sup> This is precisely Defendants' concern, and one that is clearly anticipated by the Wisconsin Rules of Civil Procedure, which require interrogatory responses be formally memorialized, verified and served on all parties.<sup>2</sup> Despite its length, the opposition never contests these essential points.

**ARGUMENT**

Wis. Stat. § 804.08(1)(b) provides that each substantive interrogatory response must "be answered separately and fully in writing under oath . . . . The answers are to be signed by the person making them, and the objections signed by the attorney making them."

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<sup>1</sup> See Plaintiff's Br. at 10.

<sup>2</sup> See Wis. Stat. § 804.08(1)(b).

Subsection (5)(c) further provides that a duty to supplement interrogatory responses may be imposed “by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.” Clearly, then, parties to a litigation are required under the Rules to formally memorialize interrogatory responses – including information provided by agreement of the parties to clarify or supplement initial responses – and verify and serve them on all parties. Plaintiff’s declaration that it has satisfied “the spirit, if not the letter, of Wisconsin’s discovery statutes”<sup>3</sup> does nothing to alter this requirement. It is Plaintiff’s acknowledged failure to comply with the letter of the law and the need for orderly discovery in this case that prompted Defendants’ motion.

**I. Plaintiff Must Formally Memorialize Its Supplemental Interrogatory Responses.**

Contrary to what Plaintiff may have indicated in its brief, Defendants are *not* asking this Court to require Plaintiff to formally memorialize any and all information Plaintiff has informally provided to Defendants during the course of discovery.<sup>4</sup> Rather, Defendants merely ask that Plaintiff memorialize in a formal document the information Plaintiff agreed to provide during meet and confers to supplement or clarify its interrogatory responses – *information it already has provided* to Defendants’ liaison counsel through informal means.<sup>5</sup> This information is contained in a grand total of three pieces of correspondence – specifically two emails and one letter, together totaling no more than eight pages, in which Plaintiff explicitly states either “[p]lease consider this message a supplemental answer to your earlier interrogatory on this question,”<sup>6</sup> or “in further

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<sup>3</sup> See Plaintiff’s Br. at 2.

<sup>4</sup> See, e.g. Plaintiff’s Br. at 3-4, and 7.

<sup>5</sup> See Defendants’ Br., Exhibit 1 (an email from Plaintiff’s counsel to Defendants’ liaison counsel stating “I realize that I had lapsed into an informal mode by supplementing and/or clarifying our responses by e-mail.”)

<sup>6</sup> See Defendants’ Br., Exhibit 7 (an email from Plaintiff’s counsel to Defendants’ liaison counsel).

response to Interrogatory number 7,”<sup>7</sup> or “the Plaintiff provides this additional response to the Defendants’ Second Set of Interrogatories as follows.”<sup>8</sup>

Defendants’ liaison counsel has already collected and forwarded to Plaintiff copies of these three communications.<sup>9</sup> It is only this very limited and specifically defined set of information that Defendants wish Plaintiff to formally memorialize. As such, the many concerns Plaintiff raises in its brief regarding burden, scope or the difficulty of gathering the information at issue<sup>10</sup> are, quite frankly, a red herring. Plaintiff agreed to supplement its interrogatory responses and did so informally by providing information to Defendants’ liaison counsel. Defendants need this information in order to, among other things, cross-examine witnesses or use as admissions. Therefore, Defendants request that this Court compel Plaintiff to formally memorialize its supplemental responses, verify them, and serve them on all parties.

## **II. Plaintiff Must Verify Its Interrogatory Responses.**

The Wisconsin Rules are clear that a party must verify all substantive interrogatory responses.<sup>11</sup> Nowhere in its brief does Plaintiff dispute its obligation to verify its responses. Rather, Plaintiff alternately protests that it is difficult for it to find someone to verify its responses, that it does not wish to subject a person verifying its responses to a potential deposition, or that some defendants did not verify their responses.<sup>12</sup> Of course, none of these objections excuse Plaintiff from fulfilling its unambiguous obligations under the Rules. The Rules do not contain an exception for difficulty or because verification may

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<sup>7</sup> See Defendants’ Br., Exhibit 9 at 2 (an email from Plaintiff’s counsel to Defendants’ liaison counsel).

<sup>8</sup> See Defendants’ Br., Exhibit 10 (a letter from Plaintiff’s counsel to Defendants’ liaison counsel).

<sup>9</sup> See Defendants’ Br., Exhibits 7, 8 and 9 (emails from Defendants’ liaison counsel to Plaintiff’s counsel attaching information Plaintiff had provided to supplement or clarify its interrogatory responses).

<sup>10</sup> See, e.g. Plaintiff’s Br. at 7.

<sup>11</sup> Wis. Stat. § 804.08(1)(b).

<sup>12</sup> See Plaintiff’s Br. at 11-17.

subject a person to a deposition. Nor do they state that a party need not comply with the Rules because it believes one of its opponents has not done so.<sup>13</sup>

Furthermore, the vast majority of Defendants' interrogatory responses are verified, despite similar difficulties arising from the fact that many are large corporations with disparate branches engaged in diverse business functions. So too have many other States involved in so-called AWP litigations managed to verify their interrogatory responses, despite undoubtedly encountering many of the same difficulties that Plaintiff has raised.<sup>14</sup> Simply put, Plaintiff, as a party to this litigation, has an obligation under the Rules to verify its substantive interrogatory responses. It has not come forward with any valid reason for not doing so.

### CONCLUSION

For all of the foregoing reasons, Defendants request this Court compel Plaintiff to memorialize its supplemental interrogatory responses in a formal document to be served on all Defendants and to verify all of its heretofore unverified substantive interrogatory responses. Defendants further request that the Court award Defendants reasonable expenses incurred in obtaining this order, including attorneys' fees, as provided for in Wis. Stat. § 804.12(1)(c).

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<sup>13</sup> Plaintiff's objection that some Defendants have not verified their interrogatory responses, *see* Plaintiff's Br. at 12 and 15, is irrelevant and largely unfounded. Whether Defendants have or have not verified their responses does not in any way affect Plaintiff's obligation to verify its responses under the Rules. If Plaintiff wishes certain Defendants to verify their responses, its remedy is to request that those Defendants do so, not to engage in self-help by refusing to verify its own responses.

Moreover, the assertion that fourteen Defendants have not verified some or all of their interrogatory responses is incorrect. Seven of those fourteen Defendants have (or have since) verified all of their substantive interrogatory responses.

<sup>14</sup> *See* Defendants' Br., Exhibit 17 (attaching plaintiffs' verifications in the Alaska, Alabama and Kentucky AWP litigations).

Date: March 28, 2008

Respectfully submitted,



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*Attorneys for Amgen Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2008, a true and correct copy of the foregoing was served upon all counsel of record via electronic service pursuant to Case Management Order No. 1 by causing a copy to be sent to LexisNexis File & Serve for posting and notification.

A handwritten signature in black ink, appearing to read "Matthew D. Lee", written over a horizontal line.

Matthew D. Lee