

STATE OF WISCONSIN  
CIRCUIT COURT Branch 7  
DANE COUNTY

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STATE OF WISCONSIN, :  
Plaintiff, :  
v. :  
AMGEN INC., et al., :  
Defendants. :  
-----X

Case No.: 04 CV 1709  
Unclassified Civil: 30703

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**DEFENDANT SANDOZ INC.'S MOTION FOR LEAVE TO FILE A SUR-REPLY  
MEMORANDUM RELATING TO ITS MOTION FOR PROTECTIVE ORDER AND  
PLAINTIFF'S CROSS-MOTION TO COMPEL DISCOVERY**

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Defendant Sandoz Inc. respectfully seeks leave to file a short memorandum in further support of its Motion for a Protective Order, dated May 4, 2006, and in further response to Plaintiff State of Wisconsin's Cross-Motion to Compel Discovery, dated May 19, 2006.

In support of this request, Sandoz states:

1. Sandoz and Plaintiff agreed to a briefing schedule governing Sandoz' Motion for a Protective Order and Plaintiff's Cross-Motion to Compel. Your Honor approved this schedule on May 13, 2006, and the amended schedule on May 25, 2006.

2. Pursuant to the schedule (as amended), on May 19, 2006, Plaintiff served its Memorandum in Opposition to Sandoz' Motion for Protective Order and in Support of Plaintiff's Cross-Motion to Compel Production of Documents and Answers to Interrogatories; on June 5, 2006, Sandoz served its Memorandum in Further Support of its Motion for a Protective Order

and in Opposition to Plaintiff's Motion to Compel Production of Documents and Responses to Interrogatories ("Sandoz Reply Brief"); and on June 9, 2006, Plaintiff served its Reply Brief in Further Support of its Cross-Motion to Compel Production of Documents and Answers to Interrogatories ("Plaintiff's Reply Brief").

3. Although the briefing originally contemplated by the parties' schedule is now complete, Plaintiff's Reply Brief repeatedly cites the Decision & Report on Motion of Defendant Teva Pharmaceuticals USA, Inc. for a Protective Order (the "Teva Ruling"), which was issued by Your Honor on June 6, 2006 the day after Sandoz served its Reply Brief.

4. Because Sandoz has not had an opportunity to address the Teva Ruling, it respectfully seeks leave to file a short (four page) memorandum to refute Plaintiff's arguments that Teva applies to the instant motion and cross-motion. (A copy of Sandoz' memorandum is attached hereto as Exhibit A.)

5. Counsel for Sandoz has advised counsel for Plaintiff of its intention to file this motion, and in addition to service under the agreed protocol, has provided Plaintiff's counsel with a courtesy copy of the motion and its memorandum by electronic mail.

For these reasons, Sandoz respectfully requests that Your Honor accept for consideration Sandoz' Memorandum in Further Response to Plaintiff's Cross-Motion to Compel.

Dated: New York, New York  
June 23, 2006

Respectfully submitted,

By: 

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**EXHIBIT A**

STATE OF WISCONSIN  
CIRCUIT COURT Branch 7  
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**DEFENDANT SANDOZ INC.’S MEMORANDUM IN FURTHER  
RESPONSE TO PLAINTIFF’S CROSS-MOTION TO COMPEL**

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Plaintiff argues that Your Honor’s decision on Teva’s Motion for Protective Order (the “Teva Ruling”) essentially disposes of Sandoz’ unique arguments why further discovery of the company should be temporarily adjourned. According to Plaintiff, “[f]or the same reasons that Teva’s arguments were rejected, Sandoz’s arguments, too, should be rejected.” (Pl. Reply Br. in Further Supp. of Cross-Motion to Compel, dated June 19, 2006 (“Pl. Reply.”), at 4.) As shown below, however, Plaintiff misinterprets the Teva Ruling and wrongly characterizes Sandoz’ contentions.

Although Teva (like Sandoz) argued that it must be permitted time to review vast material potentially responsive to Plaintiff’s discovery, Your Honor found that Teva “offer[ed] no evidence in support of the assertion.” (See Teva Ruling, at 3-4, Libman Reply Aff. Ex. 1.) Teva identified a universe of potentially-responsive documents, but Your Honor also found that it did not make an adequate showing of the necessary time to conduct the review, or even whether the review had started. (See id. at 4.)

Unlike Teva, Sandoz has provided specifics as to the burden of preparing responses to Plaintiff's discovery, including the number documents potentially relevant to its document requests, interrogatories, and deposition topics (as drafted), and the time necessary to review this bulk of material so as to be able to appropriately respond. (See Affidavit of Paul Olszowka, dated May 4, 2006 ("Olszowka Aff.") ¶ 29-30; see also Mem. in Supp. of Sandoz Mot. for Protective Order, dated May 4, 2006 ("Sandoz Mem."), at 4-5.) It is this burden on Sandoz – and concomitant risk of prejudice to Sandoz should discovery proceed forthwith, that presents good cause for Your Honor to enter the protective order that Sandoz seeks.

Indeed, although Plaintiff continues to argue that Sandoz' showing is insufficient, Plaintiff has not even attempted to refute Sandoz' contention that an adjournment until the claims in this action are clearly defined will not cause Plaintiff any discernable prejudice. (Sandoz Mem. at 12-13.) For example, Sandoz has shown that Plaintiff possesses multiple tens of thousands of Sandoz documents (Olszowka Aff. ¶18-19), but Plaintiff does not profess that it has yet completed its review of these materials.

In addition to misconstruing the Teva Ruling, Plaintiff makes a few other claims in its Reply Brief that are either newly raised or misconstrue the record and warrant a response. First, Sandoz is not "cherry-picking" Your Honor's rulings. (See Pl. Reply at 5 n.8.) The resolution of discovery disputes in this action involve facts particular to each of the multiple defendants in this action. Your Honor's prior rulings regarding disputes between Plaintiff and other defendants are instructive, but the instant motion must be resolved based on facts and circumstances particular to Sandoz. Thus, contrary to Plaintiff's claim, we have not argued that any prior ruling applicable to another defendant can just be applied wholesale. (See, e.g., Sandoz Reply Mem. in

Further Supp. of Mot. for Protective Order, dated June 5, 2006, at 9 (contending that Your Honor's Mylan Ruling is "wholly consistent" with the relief Sandoz seeks).)

Second, in regard to Plaintiff's deposition notice, Plaintiff has flip-flopped about the topics that are covered, further demonstrating that the notice is inadequate. Initially, Plaintiff argued that its counsel's April 25, 2006 letter provided any necessary elaboration about the topics. (See Pl. Mem. in Opp'n. to Mot. for Protective Order, dated May 19, 2006 ("Pl. Opening Mem."), at 12 ("This description provides Sandoz with more than sufficient particularity regarding the nature of the State's inquiries at deposition") (citing letter from Robert Libman to Paul Olszowka dated April 25, 2006).) But now, attempting to distinguish case law cited by Sandoz showing that the open-termed descriptions in that letter (e.g., "among other things") showed the notice to be improper, Plaintiff states that the "deposition notice itself, rather than the State's letter, would limit the scope of the deposition." (Pl. Reply at 7.) Worse, in another section of its Reply Brief, Plaintiff again offers an ad hoc interpretation, stating that it intends to ask Sandoz about the company's understanding of the terms "retail pharmacies", "retail class of trade", and "pharmacy." (Id. at 5.) Yet Plaintiff does not state which topic could be reasonably construed to inform Sandoz that it needs to produce a designee with such knowledge. In sum, Plaintiff's inability to identify with any precision to deposition topics, or even what documents constitute the notice, shows that Your Honor should simply strike it.

Finally, as to the location of a possible future deposition of a Sandoz designee, Your Honor should conclude that any such deposition must take place in New Jersey, where Sandoz resides. Plaintiff simply has offered no response to Sandoz' argument and factual showing that the company does not transact business in Wisconsin. Moreover, Your Honor should not countenance Plaintiff's attempt to preserve the issue for a later time. It is Plaintiff that demanded

that Sandoz raise “immediately” any “objections relating to the location of the deposition.” (See Pl. Opening Mem. at 7.) Plaintiff, however, now says it is willing to take Sandoz’ deposition in New Jersey, but makes this offer “without waiving” the ability to change its position later on. (See Pl. Reply at 8 n. 14.) Accordingly, given Plaintiff’s demand that the issue be decided now, Your Honor should decide definitively that all of Sandoz’ depositions will occur in New Jersey.

Dated: New York, New York  
June 23, 2006

Respectfully submitted,

By: 

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