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STATE OF WISCONSIN,

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Plaintiff,

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v.

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Case No. 04-CV-1709

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AMGEN INC., et al.,

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Defendants.

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**BRISTOL-MYERS SQUIBB COMPANY'S RESPONSES AND OBJECTIONS  
TO PLAINTIFF STATE OF WISCONSIN'S INDIVIDUAL REQUEST FOR  
PRODUCTION OF DOCUMENTS NO. 2 TO BRISTOL-MYERS SQUIBB COMPANY**

Pursuant to Wisconsin Rule of Civil Procedure § 804.09, defendant Bristol-Myers Squibb Company ("BMS"), by its attorneys, hereby asserts the following responses and objections to Plaintiff's Individual Request for Production of Documents No. 2 to Bristol-Myers Squibb Company (the "Requests").

**PRELIMINARY STATEMENT**

1. These responses are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such document requests were asked of, or statements contained herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. BMS's responses shall not be deemed to constitute admissions:
- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
  - b. that any statement or characterization in Plaintiff's Requests is accurate or complete.

3. BMS's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and BMS reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses are made based upon the typical or usual interpretation of words contained in Plaintiff's Requests, unless a specific definition or instruction has been provided.

4. BMS's responses to these Requests are contingent upon, and are made subject and pursuant to, the protective order entered in this action and must be treated accordingly.

5. BMS's responses to these Requests are submitted without prejudice to BMS's right to produce evidence of any subsequently discovered facts and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial. BMS reserves its right to provide further responses as additional facts are ascertained.

6. Any statement by BMS contained in these objections and responses that non-privileged documents or information will be produced in response to a specific request does not mean that any such documents or information actually exist, but only that they will be produced to the extent that they exist.

### **GENERAL OBJECTIONS**

1. BMS objects to Plaintiff's "Definitions" and "Instructions" to the extent Plaintiff intends to expand upon or alter BMS's obligations under the Wisconsin Rules of Civil Procedure. BMS will comply with applicable rules of civil procedure in providing its responses and objections to the Requests.

2. BMS objects to the Requests to the extent that they seek information or documents from outside the statute of limitations applicable to the claims in this action or beyond the time period relevant to this action.

3. BMS objects to these Requests to the extent that they seek documents and information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, or are overly broad, unduly burdensome, ambiguous and vague. In response to these Requests, BMS will produce information concerning only those drugs that the parties have agreed are at issue in this action.

4. BMS objects to these Requests to the extent they call for the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, joint defense/prosecution privilege, the work product doctrine, the consulting expert rule, the common interest doctrine or other applicable statutory or common law. To the extent that any such protected documents or information are inadvertently produced in response to these Requests, the production of such documents or information shall not constitute a waiver of BMS's right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to BMS's counsel immediately upon discovery thereof.

5. BMS objects to these Requests to the extent that they seek documents and information not within BMS's possession, custody, or control or are more appropriately sought from third parties to whom requests have been or may be directed.

6. BMS objects to these Requests to the extent that they seek production of publicly available documents or information, or information which Plaintiff has in its possession or can obtain from other sources.

7. BMS objects to these Requests to the extent that they purport to impose obligations beyond, or inconsistent, with those imposed by applicable law. BMS will respond to these Requests, subject to other objections, as required by the Wisconsin Rules of Civil Procedure.

8. BMS objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in these Requests. BMS's response that it will produce documents in connection with a particular Request, or that it has no responsive documents, is not intended to indicate that BMS agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests or that such implications or characterizations are relevant to this action.

9. BMS objects to these Requests to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information.

10. BMS incorporates the above General Objections and the below Objections to Definitions into each response to the Requests set forth below as if set forth fully therein. The response to a Request shall not operate as a waiver of any applicable specific or general objection to any Request.

#### **OBJECTIONS TO DEFINITIONS**

(1) The words "document" and "documents" are used in the broadest possible sense and refer, without limitation, to all written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communications or representations of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, as well as audio or video recordings of communications, oral statement, conversations or events. This definition includes, but is not limited to, any and all of the following: day-timers, journals,

logs, calendars, handwritten notes, correspondence, minutes, records, messages, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial statements, working papers, tallies, maps, drawings, diagrams, sketches, x-rays, charts, labels, packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. Any preliminary versions, drafts, or revisions of any of the foregoing, any document which has or contains any attachment, enclosure, comment, notation, addition, insertion, or marking of any kind which is not part of another document, or any document which does not contain a comment, notation, addition, insertion or marking of any kind which is part of another document, is to be considered a separate document.

**OBJECTION:** BMS objects to the definition of "Document" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous. BMS also objects to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, BMS's obligations under the Wisconsin Rules of Civil Procedure. BMS further objects to this definition to the extent it requires or seeks to require BMS to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format from that which the documents are now stored; (iii) produce metadata constituting attorney work product, including without limitation, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes and/or such other storage media that may be inaccessible in the normal course of business; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreements or copyright laws.

### **SPECIFIC RESPONSES TO DISCOVERY REQUESTS**

**DOCUMENT REQUEST NO. 1:** A copy from Defendants' files of the attached document.

**RESPONSE:** In addition to the Preliminary Statement, General Objections and Objections to Definitions set forth above, BMS objects to Request No. 1 on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the

discovery of admissible evidence. Subject to and without waiving the foregoing Preliminary Statement, General Objections, Objections to Definitions and specific objections, BMS states that it will produce to Plaintiff the document requested to the extent it is able to locate it within its possession, custody and control.

**DOCUMENT REQUEST NO. 2:** The Wal\*Mart correspondence referred to in the attached document;

All "Support Materials," referenced in the attached document, including but not limited to the document "AWP Spread impact on managed care Plans";

Any and all documents referring or relating to drug reimbursements paid to retailers;

Any and all documents referring or relating to drug pricing with regard to retailers; and

Any and all documents referring or relating to launch programs for drugs.

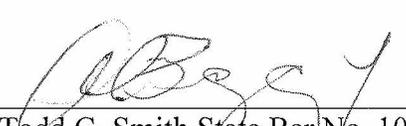
**RESPONSE:** In addition to the Preliminary Statement, General Objections and Objections to Definitions set forth above, BMS objects to Request No. 2 on the grounds that it is grossly overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. BMS also objects to Request No. 2 because the document attached to the Plaintiff's Request relates to the operation of BMS's wholly owned subsidiary, Apothecon, Inc. BMS divested in substantial part the assets of Apothecon, Inc. effective January 1, 2001. Consequently, BMS states that it will not produce documents potentially responsive to this Request that are dated after January 1, 2001. BMS also objects to this Request to the extent it seeks documents or information regarding drugs that are not at issue in this action. BMS further objects to this Request on the grounds that it is vague, ambiguous and grossly overbroad with respect to the language "Wal\*Mart correspondence," "all," "drug reimbursement," "drug pricing," and "launch programs." BMS also objects to the term "Support Materials" as vague and ambiguous as it is not apparent that these materials were ever prepared and/or exist. BMS further objects to this Request on the grounds that responsive documents have already been produced to Plaintiff by BMS and Sandoz, Inc. Subject to and without waiving the foregoing preliminary Statement, General Objections, Objections to Definitions, and specific objections, BMS states that it will produce Wal\*Mart correspondence or other materials referenced in the document attached to Plaintiff's Request to the extent it can locate any such documents within its possession, custody and control.

Dated: July 18, 2008

Respectfully Submitted,

GODFREY & KAHN, S.C.

BY:

  
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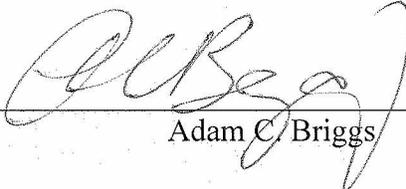
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**Certificate of Service**

I, Adam C. Briggs, hereby certify that on July 18, 2008 a true and correct copy of the foregoing was served on all counsel of record by Lexis Nexis® File & Serve®.

  
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Adam C. Briggs