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STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Branch 7

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04CV1709

ABBOTT LABORATORIES, ET AL.,

Unclassified Civil: 30703

Defendants.

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**BEN VENUE LABORATORIES, INC.'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF STATE OF WISCONSIN'S WRITTEN  
DISCOVERY REQUEST NO. 3 (TO ALL DEFENDANTS)**

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Pursuant to Wisconsin Rule of Civil Procedure 804.09, defendant Ben Venue Laboratories, Inc. ("Ben Venue"), by its attorneys, objects and responds to Plaintiff's Written Discovery Request No. 3 to All Defendants ("Requests") as follows:

**RESERVATION OF RIGHTS**

As to all matters referred to in these responses and objections to these Requests, Ben Venue's investigation and discovery continues. The specific responses set forth below, and any production made consistent with the accompanying Requests, are based upon, and necessarily limited by, information now available to Ben Venue. Ben Venue reserves the right to modify these objections and responses and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial.

## **GENERAL OBJECTIONS**

Ben Venue incorporates by reference all of its General Objections enumerated in Ben Venue's Responses and Objections to Plaintiff's Requests for Production and Ben Venue's Answers to Plaintiff's First Set of Interrogatories, both served on Plaintiff July 15, 2005.

Ben Venue's responses to the Requests contain information subject to the Final Protective Order entered on November 29, 2005 in this matter and must be treated accordingly.

Ben Venue expressly incorporates its General Objections into each specific response to the Requests set forth below as if set forth in full therein. The response to a Request shall not operate as a waiver of any applicable specific or general objection to a Request.

## **OBJECTIONS TO DEFINITIONS**

Ben Venue's responses are made based upon the typical or usual interpretation of words contained in the Requests, unless a specific definition or instruction has been provided and/or agreed upon. Notwithstanding any objection set forth herein, and without waiving any such objection, Ben Venue will negotiate with Plaintiff in an effort to reach an agreement regarding the scope of the Requests, and will supplement or amend these objections and responses consistent with those negotiations.

Ben Venue further incorporates by reference all of its objections to definitions enumerated in Ben Venue's Responses and Objections to Plaintiff's Requests for Production and Ben Venue's Answers to Plaintiff's First Set of Interrogatories, both served on Plaintiff July 15, 2005.

Ben Venue objects to the definition of "Documents" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin Rules of Civil Procedure. Ben Venue further objects to this definition to the extent that its purports to require Ben Venue to identify or produce documents or data in a

particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Ben Venue as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

Ben Venue objects to the definition of “you,” “your,” and “your company” to the extent Plaintiff attributes to those terms definitions other than the plain and ordinary meaning of those terms and to the extent that, through Plaintiff’s definitions, Plaintiff seeks to impose on Ben Venue obligations beyond those required by Wisconsin law. Ben Venue specifically objects to Plaintiff’s definition of these terms to the extent such definition seeks to impose on Ben Venue the obligation to identify and/or produce documents in the possession of entities other than Ben Venue.

### **RESPONSE TO SPECIFIC REQUESTS**

#### **REQUEST NO. 7:**

All documents listed in Appendix A attached hereto in unredacted form. Each of these documents is identified in the Third Amended Master Consolidated Class Action Compliant Amended to Comply With the Court’s Class Certification Order on the page listed in Appendix A and with the bates number identified in Appendix A. (Those without bates numbers are otherwise identified, e.g., paragraph 290).

**RESPONSE:** Ben Venue objects to Request No. 7 on the grounds that it is ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Ben Venue further objects to Request No. 7 to the extent that it calls for the production of documents that are publicly available or outside Ben Venue’s possession, custody or control.

Subject to and without waiving the foregoing objections, Ben Venue will produce, subject to the protections of the Final Protective Order, copies of the documents identified in Exhibit A with the prefix “MDL BV.” Further, to the extent the document control numbers listed in Exhibit A with the prefix “MDL BV” denote only a portion of a larger document, Ben Venue will produce the document in its entirety.

**REQUEST NO. 8:**

Documents discussing or concerning the policy and practice of each defendant concerning the disclosures providers and pharmacy benefit managers may make of the drug price information they receive from the defendant or drug wholesalers from 1993 to the present.

**RESPONSE:** Ben Venue objects to Request No. 8 on the grounds that it is overly broad, unduly burdensome, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Ben Venue further objects to Request No. 8 on the grounds that the phrases “drug price information” and “disclosures” are vague and undefined and on the grounds that the request may call for information and documents outside Ben Venue’s possession, custody and control. Subject to and without waiving the foregoing objections, Ben Venue will produce responsive documents, if any.

**REQUEST NO. 9:**

Exemplar agreements between each defendant and providers and pharmacy benefit managers applying defendants’ policies and practices relating to the disclosures such entities may make of the drug price information they receive from defendant or wholesalers.

**RESPONSE:** Ben Venue objects to Request No. 9 on the grounds that it is overly broad, unduly burdensome, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Ben Venue further objects to Request No. 9 on the grounds

that the phrases “exemplar agreements,” “drug price information,” and “disclosures” are vague and undefined. Ben Venue also objects to this request on the grounds that the request may call for information and documents outside Ben Venue’s possession, custody and control and that it is not limited to a particular time frame. Subject to and without waiving the foregoing objections, Ben Venue will produce responsive documents, if any.

**REQUEST NO. 10:**

Any sworn statement or deposition of any current or former employee or agent relating to any claim or investigation about or connected with: a) whether the defendant’s published Average Wholesale Price (AWP) was or is inaccurate, or b) whether the defendant’s published Wholesale Acquisition Cost (WAC) was or is inaccurate, or c) whether the defendant misrepresented its Average Wholesale Price or Wholesale Acquisition Cost to any publication, person, entity, or official, or d) whether the defendant violated a federal “best price” law or regulation, or e) whether the defendant’s agents furnished free samples to providers for improper reasons.

**RESPONSE:** Ben Venue objects to Request No. 10 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Ben Venue further objects on the grounds that the terms “claim,” “investigation,” “accurate” “inaccurate” and “improper reasons” are vague and ambiguous and that the phrases “Average Wholesale Price,” “Wholesale Acquisition Cost,” “federal ‘best price’ law or regulation,” and “free samples” are undefined. Ben Venue objects to this request to the extent it seeks documents or information related to non-Ben Venue employees. Ben Venue further objects to this request to the extent it calls for a legal conclusion or seeks documents that may not be produced pursuant to a protective order in another proceeding. Ben Venue also objects on the grounds that Request No. 10 is not limited to a particular time frame.

Subject to and without waiving the foregoing objections, Ben Venue states that, to its knowledge and based on its investigation to date, it is unaware of any current or former Ben

Venue employee having given deposition testimony in connection with any government investigation or civil litigation relating to (i) the accuracy of AWP or WAC information published for Ben Venue products, (ii) whether Ben Venue made misrepresentations relating to WAC or AWP, (iii) whether Ben Venue “violated federal ‘best price’ laws or regulations,” or (iv) whether Ben Venue employees provided “free samples” to providers for “improper reasons.”

Dated this 9<sup>th</sup> day of January, 2006.

Respectfully submitted,



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