

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THE STATE OF WISCONSIN

Plaintiff,

CASE NO. 05-C-408-C

v.

ABBOTT LABORATORIES, INC., ET AL.

Defendants.

**SEPARATE DEFENDANT DEY, INC.'S RESPONSES
AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

PLEASE TAKE NOTICE that Defendant Dey, Inc. ("Dey") hereby responds and objects to Plaintiff the State of Wisconsin ("Plaintiff," the "State," or "Wisconsin")'s Requests for Production propounded to separate Defendant Dey Inc., dated January 27, 2005, as amended by the letter of Michael Winget-Hernandez to Christopher Palermo, dated June 3, 2005 (the "Requests"):

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. Any production of documents is made without waiving or intending to waive, but to the contrary intending to preserve and preserving: (a) the right to object, on the grounds of competency, relevancy, materiality, privilege, or admissibility as evidence for any purpose, or any other ground, to the use of the documents produced in this or any subsequent or other proceeding; and (b) the right to object on any ground to other requests for documents, interrogatories, or other discovery proceedings involving or relating to the subject matter of the Requests.

2. The information contained herein and any documents supplied in connection with the Requests are for use in this litigation only and shall be used for no other purpose.

3. Where Dey states herein that it will produce documents, it will produce such documents in accordance with the Federal Rules of Civil Procedure and pursuant to the Temporary Qualified Protective Order entered on May 11, 2005 in the action entitled State of Wisconsin v. Abbott Laboratories, Inc., et al., in the Circuit Court of Dane County, Wisconsin (the "Protective Order"), to the extent such documents exist and can reasonably be obtained.

4. The responses made herein are based on Dey's investigation to date of those sources within its control where it reasonably believes responsive documents may exist, including a reasonable number of outside sales representatives. Dey reserves the right to amend or supplement these responses in accordance with applicable rules and court orders.

5. Dey objects to the Requests to the extent they seek the production of documents or things not within Dey's possession, custody, or control.

6. Dey objects to the Requests to the extent they impose on Dey an obligation to search or produce electronic mail ("email") or other electronically stored data in any format on the grounds that such Requests are overly broad, unduly burdensome, harassing, and not reasonably limited in scope. Dey will confer with Plaintiff to determine a mutually agreeable protocol for Dey and Plaintiff to respond to document requests concerning electronic mail and electronic data.

7. Dey objects to the Requests to the extent they require Dey to create documents or 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.

8. Dey objects to the Requests to the extent they purport to require Dey to create or analyze data that Plaintiff has the ability to create or analyze by reviewing the documents and data that Dey has produced or will produce.

9. Dey objects to the Requests to the extent they seek deposition testimony and witness statements that are subject to protective orders in other jurisdictions.

10. Dey objects to the Requests to the extent they seek the production of data or documents containing confidential or proprietary information, including, without limitation, customer identities, customer pricing, customer purchasing habits, trade secrets, and information of a commercially sensitive nature or that is protected from disclosure by statute. Dey will produce such documents pursuant to the Protective Order.

11. Dey objects to the Requests as overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence to the extent they seek documents or information concerning pharmaceutical products not at issue in this litigation. Dey will provide documents and information relating only to pharmaceutical products listed in the Amended Complaint, namely generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate.

12. Dey objects to the Requests as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent they seek documents concerning any discontinued product dated after the date of such product's discontinuation.

13. Dey objects to the Requests as overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence to the extent they purport to require production of documents compiled over a 12-year period – *i.e.*, from January 1, 1993 to the present.

14. Dey objects to the Requests as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent they purport to require production of documents dated prior to the periods of statutory limitation applicable to the claims in the Amended Complaint. Dey further objects to the Requests to the extent they seek documents created after the filing of the Complaint on June 3, 2004.

15. Dey objects to the Requests to the extent they purport to impose on Dey obligations that exceed those imposed by the Federal Rules of Civil Procedure.

16. Dey objects to the Requests to the extent they seek documents protected by the attorney-client privilege, the medical records privilege, the work product doctrine, the consulting expert privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule, or doctrine.

17. Dey objects to the Requests to the extent they are unduly burdensome, overbroad, oppressive, or seek documents irrelevant to this action or not reasonably calculated to lead to the discovery of admissible evidence.

18. Dey objects to the Requests to the extent they are duplicative or redundant.

19. Dey objects to the Requests to the extent they seek documentation that is duplicative of other materials that Dey will produce in response to Plaintiff's discovery requests.

20. Dey objects to the Requests to the extent they are vague, ambiguous, or do not identify with sufficient particularity the documents sought.

21. Dey objects to the Requests to the extent they seek documents relating to health insurance programs not relevant to the allegations in the Amended Complaint on the grounds that such documents are neither relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence.

22. Dey objects to the Requests to the extent they seek documents relating to Dey's activities that are outside the scope of the allegations in the Amended Complaint.

23. Subject to and without waiving the foregoing general objections or specific objections set forth herein, Dey will produce responsive documents or make them available for inspection and designation for copying at or near Dey's offices in Napa, California.

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

25. Dey hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any co-defendant in this action to the extent such objection or reservation of rights is not inconsistent with Dey's position in this litigation.

OBJECTIONS TO DEFINITIONS AND INSTRUCTION

26. Dey objects to Plaintiff's definition of "Average Manufacturer Price" or "AMP"

on the grounds that it is vague and ambiguous.

27. Dey objects to Plaintiff's definition of "Chargeback" on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome.

28. Dey objects to Plaintiff's definition of "Defined Period of Time" as vague and ambiguous. Dey further objects to this definition as overbroad and unduly burdensome to the extent it purports to include within its scope documents or information wholly unrelated to any issue in this litigation.

29. Dey objects to Plaintiff's definition of "Document" on the grounds that it is vague, ambiguous, and overbroad. Dey further objects to this definition to the extent it includes documents that are protected by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this definition to the extent it seeks to impose obligations on Dey that are greater than, or inconsistent with, Dey's obligations under the Federal Rules of Civil Procedure. Dey further objects to this definition to the extent it purports to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

30. Dey objects to Plaintiff's definition of "Incentive" on the grounds that it is vague and ambiguous because, *inter alia*, it utilizes numerous vague, ambiguous, or undefined terms and phrases. Dey further objects to this definition as grossly overbroad and unduly burdensome to the extent it purports to include within its scope documents or information wholly unrelated to any issue in this litigation. Dey further objects to this definition to the extent it seeks to impose obligations on Dey that are greater than, or inconsistent with, Dey's obligations under the Federal Rules of Civil Procedure. Dey further objects to this definition to the extent it purports

to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

31. Dey objects to Plaintiff's definition of "National Sales Data" on the grounds that it is vague and ambiguous because, *inter alia*, it utilizes numerous vague, ambiguous, or undefined terms and phrases. Dey further objects to this definition as grossly overbroad and unduly burdensome to the extent it purports to seek virtually every document or all information in any way related to Dey's business activities. Dey further objects to this definition to the extent it purports to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

32. Dey objects to Plaintiff's definition of "Pharmaceutical" as vague and ambiguous. Dey further objects to this definition as overbroad and unduly burdensome to the extent it purports to include within its scope documents or information concerning people or entities over whom Dey has no control or who have no authorization to act on behalf of Dey, or concerning actions wholly unrelated to Dey. Dey's responses to the Requests are made on behalf of Dey only.

33. Dey objects to Plaintiff's definition of "Spread" as vague and ambiguous because, *inter alia*, it contains numerous vague, ambiguous, or undefined terms and phrases. Dey further objects to this definition as grossly overbroad and unduly burdensome. Dey further objects to this definition to the extent it purports to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

34. Dey objects to Plaintiff's definition of "Targeted Drugs" as vague and ambiguous and to the extent that the definition of "Targeted Drugs" includes drugs that are not listed in the Amended Complaint.

35. Dey objects to the definition of any word or phrase defined in the "DEFINITIONS" section but not thereafter used in any of the Requests on the grounds that such definition is irrelevant and prolix.

36. Dey objects to the instructional paragraph following the individual Requests prefaced by an asterisk ("*") (the "Instruction") on the grounds that the Instruction is vague, ambiguous, and overly broad. Dey further objects to the Instruction as unduly burdensome to the extent it seeks to impose on Dey obligations inconsistent with, or greater than, Dey's obligations under the Federal Rules of Civil Procedure.

SPECIFIC RESPONSES AND OBJECTIONS TO THE REQUESTS

The General Objections and Reservations of Rights and the Objections to Definitions stated above apply to and are incorporated into each and every individual response to the individual Requests set forth below, whether or not expressly incorporated by reference in any individual response. Dey also responds and objects specifically to the individual Requests as follows:

REQUESTS FOR PRODUCTION

REQUEST NO. 1

All National Sales Data for each Targeted Drug during the Defined Period of Time.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this request as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin or the

drugs that are listed in the Amended Complaint. Dey further objects to this request as vague and ambiguous because, *inter alia*, it contains terms that are themselves vague or ambiguous, including “national sales data” and “targeted drug.” Dey further objects to this request to the extent it seeks documents containing proprietary information, trade secrets, or information of a competitively sensitive nature. Dey also objects to this request to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Dey’s obligations under the Federal Rules of Civil Procedure. Dey further objects to this request to the extent it seeks documents that are duplicative of other materials Dey will produce in response to Plaintiff’s Requests.

Subject to and without waiving the foregoing general and specific objections, Dey will produce transaction-level data for all direct sales and indirect sales (to the extent it is possible to calculate indirect sales from chargeback data) for the drugs listed in the Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate).

REQUEST NO. 2

All Documents containing AMPs as reported or calculated by you for the Targeted Drugs or a spread sheet or database showing all reported and calculated AMPs for each Targeted Drug over the Defined Period of Time which lists when such AMPs were reported or calculated, and the quarter to which each AMP applies.

DEY’S RESPONSE AND OBJECTIONS

Dey objects to this request as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin or the drugs listed in the Complaint. Dey further objects to this request as vague and ambiguous because, *inter alia*, it contains terms that are themselves vague, ambiguous, or undefined, including “Targeted Drug.” Dey further objects to this Request as unintelligible. Dey further

objects to this request to the extent it seeks documents containing proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this request to the extent it seeks documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this request as grossly overbroad and unduly burdensome because it seeks documents without regard to their relevance to any issue in this action. Dey also objects to this request to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Dey's obligations under the Federal Rules of Civil Procedure. Dey further objects to this request to the extent it seeks documents that are duplicative of other materials Dey will produce in response to Plaintiff's Requests.

Subject to and without waiving the foregoing general and specific objections, Dey will produce AMP calculation documentation for the drugs listed in the Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate).

REQUEST NO. 3

All Documents created by you, or in your possession, that discuss or comment on the difference (or Spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price (to any purchaser) of any of defendants' Pharmaceuticals or any Pharmaceuticals sold by other manufacturers. Documents which merely list the AWP or WAC price and the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this request.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this request as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin. Dey further objects to this request as vague and ambiguous because, *inter alia*, it contains terms that are themselves vague, ambiguous, or undefined, including "spread," "actual sales price," and

“list...price.” Dey further objects to this Request as unintelligible. Dey further objects to this request to the extent it seeks documents containing proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this request to the extent it seeks documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this request as grossly overbroad and unduly burdensome because it seeks documents without regard to their relevance to any issue in this action. Dey also objects to this request to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Dey’s obligations under the Federal Rules of Civil Procedure. Dey further objects to this request to the extent it seeks documents that are duplicative of other materials Dey will produce in response to Plaintiff’s Requests.

Subject to and without waiving the foregoing general and specific objections, Dey will produce documentation that may be responsive to this Request for the drugs listed in the Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate).

REQUEST NO. 4

All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of Plaintiff’s First Set of Interrogatories to All Defendants.

DEY’S RESPONSE AND OBJECTIONS

Dey objects to this request as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin. Dey further objects to this request as vague and ambiguous because, *inter alia*, it contains terms that are themselves vague, ambiguous, or undefined, including “average sales price” and “composite price” Dey further objects to this request to the extent it seeks documents containing proprietary

information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this request to the extent it seeks documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey also objects to this request to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Dey's obligations under the Federal Rules of Civil Procedure. Dey further objects to this request to the extent it seeks documents that are duplicative of other materials Dey will produce in response to Plaintiff's Requests. Dey incorporates its objections to Interrogatory No. 1 of Plaintiff's First Set of Interrogatories to All Defendants, as if fully set forth herein.

Subject to and without waiving the foregoing general and specific objections, Dey directs Plaintiffs to Dey's Interrogatory Responses which set forth the documents Dey will produce in response to this Request.

REQUEST NO. 5

All Documents sent to or received from First Databank, Redbook and Medi-span regarding the price of any Targeted Drug.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this request as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin or the drugs listed in the Complaint. Dey further objects to this request as vague and ambiguous, including "Targeted Drug." Dey further objects to this request to the extent it seeks documents containing proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this request as overbroad and unduly burdensome to the extent it seeks documents without regard to their relevance to any issue in this action. Dey also objects to this request to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Dey's obligations under the Federal Rules of Civil Procedure. Dey further

objects to this request to the extent it seeks documents that are duplicative of other materials Dey will produce in response to Plaintiff's Requests.

Subject to and without waiving the foregoing general and specific objections, Dey will produce price notification letters that Dey sent to price reporting databases for the drugs listed in the Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate).

REQUEST NO. 6

All Documents in your possession prepared by IMS Health regarding a Targeted Drug or the competitor of a Targeted Drug regarding pricing, sales or market share.

DEY'S RESPONSE AND OBJECTIONS

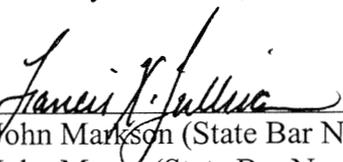
Dey objects to this request as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin. Dey further objects to this request as vague and ambiguous because, *inter alia*, it contains terms that are themselves vague, ambiguous, or undefined, including "Targeted Drug" and "market share." Dey further objects to this request to the extent it seeks documents containing proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this request as grossly overbroad and unduly burdensome to the extent it seeks documents without regard to their relevance to any issue in this action. Dey also objects to this request to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Dey's obligations under the Federal Rules of Civil Procedure. Dey further objects to this request to the extent it seeks documents that are duplicative of other materials Dey will produce in response to Plaintiff's Requests.

Subject to and without waiving the foregoing general and specific objections, Dey will produce internal market share reports and information received from IMS Health for the

drugs listed in the Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate).

Dated: July 15, 2005

Respectfully submitted,

By: 
John Markson (State Bar No. 1018620)
John Moore (State Bar No. 1010235)
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