

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

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 05 C 0408 C

ABBOTT LABORATORIES, ET AL.,

Defendants.

DEFENDANTS IVAX CORPORATION AND IVAX PHARMACEUTICALS, INC.'S
RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS

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Ivax Corporation and Ivax Pharmaceuticals, Inc. (collectively "Ivax"), by and through its attorneys, makes the following responses to Plaintiff's First Set of Requests for Production of Documents ("Requests").

PRELIMINARY STATEMENTS AND GENERAL OBJECTIONS

1. The following preliminary statements and general objections are incorporated into each individual response and any subsequent amendments, supplemental responses, or other changes to these responses.

2. Ivax objects generally to these Requests to the extent that they are in any way inconsistent with, or attempt to expand, Ivax's obligations under the applicable discovery rules.

3. Ivax objects to the Requests in their entirety to the extent that the Requests seek or purport to require identification of information and/or production of documents protected from discovery by the attorney-client privilege, the attorney work product doctrine and/or other privileges or immunities. Ivax will not knowingly produce any documents or identify any information, which is subject to any privilege or protection. Ivax does not intend to waive any right of privilege or confidentiality. If any privileged or confidential matters are inadvertently made available for inspection, such disclosure was not intentional and should not be viewed as, and is not, a voluntary waiver of any privilege or right of confidentiality.

4. Ivax objects to the Requests as seeking information during the pendency of Defendants' motion to dismiss this action, and without plaintiff having properly alleged claims against Defendants which could give rise to liability.

5. Ivax objects to the definitions in the Requests as vague, ambiguous and unintelligible. Moreover, Ivax objects to these definitions on the grounds that they purport to extend the scope of the Requests beyond the bounds of discoverable information in this case.

6. To the extent that any information or documents that are withheld on the basis of any objection or on any agreement of the parties are later determined by the Court to be discoverable, Ivax reserves the right to move for entry of a protective order in relation to such information or documents.

7. Ivax objects to the Requests to the extent they seek information or documents of a confidential or proprietary nature. Ivax will not provide any such information except pursuant to the terms of an appropriate protective order.

8. Ivax reserves the right to make any changes in these responses if it appears that omissions or errors have been made therein, or if further or more accurate information is available. Ivax has not completed its own investigation and discovery. The information provided in the responses herein and in any documents to be made available is based upon reasonable inquiry and the best information known or readily available to Ivax as of the date of this response. Further investigation may reveal additional information that is responsive to these Requests. Ivax reserves the right to continue discovery and investigation into this matter and to present evidence, at trial or otherwise, in accordance with the Wisconsin Rules of Civil Procedure.

9. Ivax further reserves the right to challenge the competence, relevancy, materiality and admissibility at trial or otherwise, of any information or documents provided in response to this discovery request.

10. Ivax objects to plaintiff's requests regarding the production of documents in a particular electronic format as unduly burdensome.

GENERAL OBJECTIONS TO PLAINTIFF'S DEFINITIONS

In addition to the general objection to Plaintiff's definitions to the extent that they purport to extend the scope of the Requests beyond the bounds of discoverable information

in this case and to expand Ivax's obligations beyond those set forth in the applicable rules, Ivax makes the following objections to Plaintiff's definitions:

1. Ivax objects to the definition of "Average Manufacturer Price" and "AMP" on the grounds that it is vague and ambiguous with respect to the language "the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report." Ivax incorporates by reference its objection to the definition of the term "Pharmaceutical." Ivax further objects to this definition to the extent that it purports to set an accurate or legally significant definition of AMP, which is a term legally defined by federal statute.

2. Ivax objects to the definition of "Chargeback" on the grounds that it is vague and ambiguous with respect to the language "payment, credit, or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser's acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price." Ivax incorporates by reference its objection to the definition of the term "Pharmaceutical."

3. Ivax objects to the definition of "Defined Period of Time" to the extent it seeks information outside of the limitations periods applicable to the claims in the Complaint, or beyond the time period relevant to this litigation. Such information is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. The production or provision of any information or materials by Ivax outside of the limitations periods applicable to the claims in the Complaint does not constitute waiver of this objection to Plaintiff's "Defined Period of Time." Ivax further objects to this Definition on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous, particularly with respect to the language "Documents relating to

such period even though created before that period,” and incorporates by reference its objection to the definition of the term “Document.”

4. Ivax objects to the definition of “Document” to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Ivax’s obligations under the applicable rules. Ivax will comply with the applicable rules. Ivax further objects to this Definition insofar as it calls for Ivax to search for information that was not generated in the form of written or printed records, or to create or re-create printouts from electronic data compilations, on the grounds that such a request would be unduly burdensome and oppressive. Ivax also objects to this Definition to the extent it requires or purports to require Ivax to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different file format; (c) produce data, fields, records, or reports about produced documents or data; (d) produce documents or data on any particular media; (e) search for and/or produce any documents or data on back-up tapes; (f) produce any proprietary software, data, programs, or databases; or (g) violate any licensing agreement or copyright laws.

5. Ivax objects to the definition of “Incentive” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ivax incorporates by reference its objections to the definitions of the term “Chargeback,” and further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

6. Ivax objects to the definition of “National Sales Data” to the extent that it refers to information not relevant to the Plaintiff’s claims, which are limited to Wisconsin. Ivax further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information about drugs not named in the

Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

7. Ivax objects to the definition of “Pharmaceutical” on grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ivax further objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Ivax also objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information about drugs not named in the Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

8. Ivax objects to the definition of “Spread” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous, particularly with respect to the language “actual acquisition cost,” “purchase price,” “third party payors,” “gross profit actually or potentially realized,” and “purchasers.” Ivax incorporates by reference its objection to the definition of the term “Pharmaceutical.”

9. Ivax objects to the definition of “Targeted Drugs” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ivax incorporates by reference its objections to the definition of the term “Defined Period of Time.” Ivax further objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Ivax further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation and/or information about drugs not named in the Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

RESPONSES TO INDIVIDUAL REQUESTS

Request No. 1:

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

Response to Request No. 1:

Ivax objects to this request to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this request as vague and ambiguous in its use of the terms “National Sales Data,” “Targeted Drug,” and “Defined Period of Time.”

Ivax objects to this request and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly

burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax objects to this request as overbroad and unduly burdensome.

Subject to, and without waiving the foregoing general and specific objections, Ivax will produce copies of documents previously provided in other matters relating to Average

Wholesale Prices which pertain to the drug(s) identified in the State’s complaint.

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.

Response to Request No 2:

Ivax objects to this request to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this request as vague and ambiguous in its

use of the terms “AMPs,” “reported or calculated,” “Targeted Drugs,” “all reported and calculated AMPs,” “Defined Period of Time,” and “quarter to which each AMP applies.” Ivax objects to this request and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax objects to this request as overbroad and unduly burdensome. Subject to, and without waiving the foregoing general and specific objections, Ivax will produce copies of documents previously provided in other matters relating to Average Wholesale Prices which pertain to the drug(s) identified in the State’s complaint.

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 manufactures. 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.

Response to Request No. 3:

Ivax objects to this request to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this request as vague and ambiguous in its use of the terms “discuss or comment,” “difference (or Spread),” “Average Wholesale Price,” “Wholesale Acquisition Cost,” “list or actual sales price (to any purchaser),” “defendants’ Pharmaceuticals,” and “any Pharmaceuticals sold by other manufacturers.”

Ivax objects to this request as overbroad and unduly burdensome. Subject to, and without waiving the foregoing general and specific objections, Ivax will produce copies of documents previously provided in other matters relating to Average Wholesale Prices which pertain to the drug(s) identified in the State's complaint.

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.

Response to Request No. 4:

Ivax objects to this request to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this request as vague and ambiguous in its use of the terms "average sales price," and "composite price." Ivax objects to this request and to a May 25, 2005 letter from plaintiff's counsel purporting to define "Targeted Drug" for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax objects to this request as overbroad and unduly burdensome. Ivax incorporates its objections to Plaintiff's Interrogatory Number 1. Subject to, and without waiving the foregoing general and specific objections, Ivax will produce copies of documents previously provided in other matters relating to Average Wholesale Prices which pertain to the drug(s) identified in the State's complaint.

Request No. 5:

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

Response to Request No. 5:

Ivax objects to this request to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this request as vague and ambiguous in its use of the terms “regarding the price,” and “Targeted Drug.” Ivax objects to this request and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax objects to this request as overbroad and unduly burdensome. Subject to, and without waiving the foregoing general and specific objections, Ivax will produce copies of documents previously provided in other matters relating to Average Wholesale Prices which pertain to the drug(s) identified in the State’s complaint.

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.

Response to Request No. 6:

Ivax objects to this request to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this request as vague and ambiguous in its use of the terms “IMS Health,” “regarding a Targeted Drug,” “Targeted Drug,” “competitor of a Targeted Drug,” and “regarding pricing, sales or market share.” Ivax objects to this request and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax

objects to this request as overbroad and unduly burdensome. Subject to, and without waiving the foregoing general and specific objections, Ivax will produce copies of documents previously provided in other matters relating to Average Wholesale Prices which pertain to the drug(s) identified in the State's complaint.

Dated: July 15, 2005



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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On July 15, 2005, I served the foregoing document described as **DEFENDANTS IVAX CORPORATION AND IVAX PHARMACEUTICALS, INC.'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** on each interested party, as stated on the attached service list and upon Defendants' counsel by electronic mail.

- (BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party, as stated on the attached service list. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Irell & Manella LLP, Los Angeles, California. I am readily familiar with Irell & Manella LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

Executed on July 15, 2005, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Debi Del Grande

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