

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No. 04 CV 1709
)	
v.)	
)	
AMGEN INC., et al.,)	
)	
Defendants.)	
)	
)	

IMMUNEX'S RESPONSES AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S WRITTEN DISCOVERY REQUEST NO. 3 (TO ALL DEFENDANTS)

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

PRELIMINARY STATEMENT

1. These responses and objections 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 that may be applicable at a trial or other hearing or proceeding, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Immunex's responses and objections 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 the Requests is accurate or complete.

3. Immunex's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and Immunex 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 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, Immunex 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.

4. Immunex'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.

5. Until the Court has ruled on defendants' motion to dismiss Plaintiff's First Amended Complaint, Immunex objects to the Requests as being unduly burdensome and as imposing enormous and potentially unnecessary expense on Immunex. Notwithstanding this objection, and without waiving it, Immunex will negotiate in good faith with Plaintiff regarding the scope of its discovery requests, and provide limited discovery, despite the pendency of these motions.

6. Immunex is responding on its own behalf, and not on behalf of Amgen Inc. (of which Immunex is a wholly-owned subsidiary), which has been named as a separate defendant in these proceedings and is separately represented by counsel.

7. Immunex's responses to the Requests are submitted without prejudice to Immunex's right to produce evidence of any subsequently discovered fact.

Immunex accordingly reserves its right to provide further responses and to supplement any production of documents hereunder as additional facts are ascertained and/or additional documents are located.

GENERAL OBJECTIONS

Immunex objects generally to the Requests as follows:

1. Immunex expressly incorporates by reference its General Objections and Limitations from its Responses to Plaintiff's First Set of Interrogatories to all Defendants.

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

3. Immunex objects to each request to the extent that it calls for the identification or production of documents or information not relevant to the issues in this action and is not reasonably calculated to lead to the discovery of admissible evidence.

4. Immunex 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. Immunex further objects to this definition to the extent that it purports to require Immunex 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 Immunex as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

5. Immunex objects to each request to the extent that it seeks information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, by any common interest or joint defense agreement, or by any other applicable privilege or protection. Immunex agrees to prepare and provide Plaintiff with a listing or log of documents withheld on the grounds of privilege at the conclusion of its final production.

6. Immunex objects to each request to the extent that it calls for production of documents or information not within its possession, custody or control. In responding to these requests, Immunex has undertaken or will undertake a diligent and reasonable search of documents and information within Immunex's current possession, custody or control.

7. Immunex objects to each request to the extent that it calls for information that is confidential, proprietary, and/or a trade secret of a third party. Any such materials produced will be subject to the Final Protective Order entered in this action.

8. Immunex objects to each request to the extent that it seeks disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

9. Immunex expressly incorporates the above 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.

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: Immunex objects to Request No. 7 on the grounds that it is ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Immunex further objects to Request No. 7 because the only documents requested of Immunex are publicly available or outside Immunex's possession, custody or control.

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: Immunex 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. Immunex 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 Immunex's possession, custody and control.

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: Immunex 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. Immunex further objects to Request No. 9 on the grounds that the phrases "exemplar agreements," "drug price information," and "disclosures" are vague and undefined. Immunex also objects to this request on the grounds that the request may call for information and documents outside Immunex's possession, custody and control and that it is not limited to a particular time frame.

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 accurate, 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: Immunex 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. Immunex further objects to Request No. 10 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. Immunex further objects to Request No. 10 to the extent it seeks

documents or information related to non-Immunex employees. Immunex further objects to Request No. 10 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. Immunex further objects to Request No. 10 on the grounds that it is not limited to a particular time frame.

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Michael R. Fitzpatrick 1036112
BRENNAN, STEIL & BASTING, S.C.
One E. Milwaukee Street
Janesville, WI 53547-1148
Telephone: (608) 743-2942
Facsimile: (608) 756-9000

David J. Burman
Kathleen M. O'Sullivan
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
(206) 359-8000 (phone)
(206) 359-9000 (fax)

Attorneys for Immunex Corporation

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