

STATE OF WISCONSIN

CIRCUIT COURT  
Branch 9

DANE COUNTY

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STATE OF WISCONSIN,

Plaintiff,

Case No.: 04-CV-1709

v.

ABBOTT LABORATORIES, *et al.*,

Defendants.

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**IVAX CORPORATION AND IVAX PHARMACEUTICALS, INC.'S RESPONSES AND  
OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S SIXTH SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Wisconsin Rules of Civil Procedure §§ 804.01 and 804.09, Defendants Ivax Corporation and Ivax Pharmaceuticals, Inc. (collectively referred to herein as "Ivax"), by their counsel, hereby respond and object to Plaintiff's Sixth Set for Requests for Production of Documents to All Defendants ("Requests"), dated January 14, 2008, and propounded by Plaintiff State of Wisconsin ("Plaintiff", "Wisconsin" or "State"). Plaintiff's Requests are set forth verbatim below, each of which is followed by Ivax's response. Each response is made subject to the objections and conditions within that response as well as to the General Objections set forth below. Ivax responds as follows:

**GENERAL OBJECTIONS**

Ivax expressly incorporates all of the General Objections set forth below into the Specific Objections for each Request. Any specific objections provided are made in addition to these General Objections and failure to reiterate a General Objection below does not constitute a waiver of that or any other objection.

1. These responses are made without in any way waiving or intending to waive: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information produced in response to these Requests; (b) the right to object on any ground to the use of the documents or information produced in response to these Requests at any hearings or at trial; or (c) the right to object on any ground at any time for further responses to these Requests.
2. Ivax reserves the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.
3. Ivax has not completed its investigation and discovery in this case. Accordingly, the specific responses set forth below and any production made pursuant to the accompanying document requests are based upon, and necessarily limited by, information now available to Ivax.
4. Ivax states that its responses are subject to all applicable protective orders, including the May 11, 2005 Protective Order entered in this case, case management orders, and other directives of courts of competent jurisdiction.
5. Ivax objects to the Requests to the extent that they demand the production of documents or information containing trade secrets, or proprietary, commercially sensitive or other confidential information.
6. Ivax objects to the disclosure, under any circumstance, of trade secret information where the probative value in this litigation is greatly exceeded by the potential harm to Ivax if the information were to fall into the hands of its competitors, and further asserts each and

every applicable privilege and rule governing confidentiality to the fullest extent provided by the law and the Protective Order entered into by Defendants and Plaintiff in this litigation on May 11, 2005.

7. Ivax objects to the Requests to the extent they purport to impose duties and obligations on Ivax beyond the duties and obligations under the Wisconsin Statutes, Rules of Civil Procedure and the applicable local rules. Ivax will comply with its duties and obligations under the Wisconsin Statutes, Rules of Civil Procedure and the applicable local rules.
8. Ivax states that any information and documents supplied herein are for use in this litigation and for no other purpose.
9. Ivax objects to these Requests to the extent that they seek information that is 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, or vague.
10. Ivax objects to Plaintiff's Requests to the extent that they seek information protected by the attorney-client privilege, the work product doctrine, or any other immunity, privilege or exemption from discovery recognized by any applicable law or rule. To the extent that any such protected information is disclosed in response to these Requests, the production of such information is inadvertent and shall not constitute a waiver of Ivax's right to assert the applicability of any privilege or immunity, and any such information and documents shall be returned to Ivax's counsel immediately upon discovery thereof, and any and all copies of same shall be contemporaneously destroyed.

11. Ivax objects to Plaintiff's Requests to the extent that they seek any information beyond Ivax's possession, custody, or control.
12. Ivax objects to Plaintiff's Requests to the extent that they call for information that is more appropriately sought from third parties to whom requests have been or may be directed.
13. Ivax objects to the Requests to the extent that they call for the production of publicly available documents or documents that could be obtained from Plaintiff's own files or other sources.
14. Ivax objects to Plaintiff's Requests to the extent that they explicitly or implicitly characterize facts, events, circumstances, or issues relating to the subject of this litigation.
15. Ivax's responses to Plaintiff's Requests shall not be construed in any way as an admission that any definition provided by Plaintiff is either factually or legally binding upon Ivax. Neither the fact that an objection is interposed to a particular Request, nor the fact that no objection is interposed necessarily means that responsive information exists. Ivax's undertaking to furnish information responsive to Plaintiff's Requests is subject to the general provision that Ivax only agrees to provide information to the extent that it can be identified on the basis of reasonable diligence.
16. Ivax objects to the Requests to the extent that they demand the production of documents or information from outside of the relevant and binding statute of limitations timeframe applicable to the Plaintiff's claims in this action. Ivax further objects to the Requests to the extent they purport to require Ivax to produce documents relating to drugs other than those the State alleges are attributable to Ivax and are specifically at issue in this

litigation. As such, unless otherwise stated herein, the “Subject Drugs” for purposes of these responses shall mean those drugs specifically identified by the State in Exhibit E to the Second Amended Complaint as attributable to Ivax, less any drugs the State should choose to remove from that list. Furthermore, Ivax objects to the Requests as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they purport to require production of documents or seek information relating to a period of time after the filing of the original Complaint on or around June 3, 2004. Accordingly, unless otherwise stated herein, the “Relevant time period” for purposes of these responses shall not post-date June 3, 2004.

17. Ivax objects to the Requests to the extent they demand production of documents or information relating to Ivax’s activities that are outside the scope of the Complaint.
18. Ivax objects to the Requests to the extent that they demand production of documents or information relating to Ivax’s activities other than those which concern the State, on the grounds that such documents or information are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.
19. Ivax objects to the Requests to the extent they call for Ivax to restore and produce archived data that presently exists on media no longer utilized by Ivax and which requires the use of equipment and/or software no longer used or maintained by Ivax, on the grounds that the request is overly broad, unduly burdensome, duplicative, and not reasonably calculated to lead to the discovery of admissible evidence. Ivax further objects to the Requests to the extent that they seek production of any data that does not

reside in complete form in an active and readily acceptable format, is presently unreadable or unusable, or cannot be verified as accurate.

20. Ivax objects to Plaintiff's definition of "You", "Your" and "Your Company" on the grounds that it is overly broad and unduly burdensome. Ivax further objects to this definition to the extent that it purports to include entities and persons that are not parties to this action.
21. Ivax objects to Plaintiff's definition of "Document" and "Documents" on the grounds that it is vague, ambiguous, and overbroad. Ivax further objects to this definition to the extent that it includes documents that are protected by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Ivax further objects to this definition to the extent that it seeks to impose obligations on Ivax that are greater than, or inconsistent with, Ivax's obligations under the Wisconsin Statutes, Rules of Civil Procedure and the applicable local rules. Further, Ivax objects to this definition to the extent that 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.
22. Ivax objects to the instructional paragraph preceding the specific Requests on the grounds that these instructions are vague, ambiguous, and overly broad. Ivax further objects to these instructions as overly burdensome insofar as they purport to impose on Ivax obligations inconsistent with, or greater than, Ivax's obligations under the Wisconsin Statutes, Rules of Civil Procedure and the applicable local rules.

23. Ivax reserves the right to assert additional objections to these Requests as appropriate to amend or supplement these objections and responses in accordance with the applicable local rules and court orders and based on the results of its continuing investigation.
24. Ivax hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any defendant in this action to the extent such objection or reservation of rights is not inconsistent with Ivax's position in this litigation.

### **RESPONSES TO SPECIFIC REQUESTS**

**DOCUMENT REQUEST NO. 20:** The following documents relating to the Together Rx programs:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient cost of covered prescription drugs, including but not limited to, any formula for reimbursement based on the average wholesale price ("AWP") of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility requirements for participation in the Together Rx programs; and
- (e) documents identifying your prescription drugs covered by the Together Rx programs.

### **RESPONSE TO REQUEST NO. 20:**

In addition to the General Objections set forth above, Ivax objects to Request No. 20 to the extent that it seeks documents that go beyond the scope and subject matter of Plaintiff's claims, which are limited to the Subject Drugs reimbursed in Wisconsin during the Relevant time period. In addition, Ivax objects to this Request as vague and ambiguous. Moreover, Ivax

objects to this Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Ivax further objects to this Request to the extent that it seeks documents or information which may be derived or ascertained from documents already within the State's knowledge, possession, custody and/or control, and to the extent that it seeks production of documents or information from other sources not within possession, custody or control of Ivax, or that are obtainable by the State with equal or greater facility. Ivax objects to this Request to the extent that it seeks documents or information that are subject to the attorney-client privilege, work product doctrine, or any other applicable privilege, doctrine or immunity.

Subject to and without waiving the foregoing, Ivax states that it did not participate in the Together Rx program with regard to any of its Subject Drugs during the Relevant time period, and therefore has no documents responsive to this Request.

**DOCUMENT REQUEST NO. 21:** All documents relating to any program of yours that provides, or is marketed as providing, a discount or savings to consumers for any of your prescription drugs. Examples of such programs are the Novartis Savings Program a/k/a the Novartis Care Plan (Novartis Care Card), Pfizer for Living Program (Pfizer Share Card), Pfizer U Share Prescription Drug Discount Card, and the GlaxoSmithKline Orange Card. This request includes, but is not limited to, the following documents:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient cost of covered prescription drugs, including but not limited to, any formula for reimbursement based on the AWP of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility requirements for participation in the program; and
- (e) documents identifying your prescription drugs covered by the program.

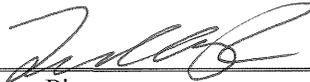
**RESPONSE TO REQUEST NO. 21:**

In addition to the General Objections set forth above, Ivax objects to Request No. 21 to the extent that it seeks documents that go beyond the scope and subject matter of Plaintiff's claims, which are limited to the Subject Drugs reimbursed in Wisconsin during the Relevant time period. In addition, Ivax objects to this Request as vague and ambiguous. Moreover, Ivax objects to this Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Ivax further objects to this Request to the extent that it seeks documents or information which may be derived or ascertained from documents already within the State's knowledge, possession, custody and/or control, and to the extent that it seeks production of documents or information from other sources not within possession, custody or control of Ivax, or that are obtainable by the State with equal or greater facility. Ivax objects to this Request to the extent that it seeks documents or information that are subject to the attorney-client privilege, work product doctrine, or any other applicable privilege, doctrine or immunity.

Subject to and without waiving the foregoing, Ivax states that it did not participate in any programs such as those described in Request No. 21 with regard to any of its Subject Drugs during the Relevant time period, and therefore has no documents responsive to this Request.

Dated: February 13, 2008

**AS TO ALL OBJECTIONS:**



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**CERTIFICATE OF SERVICE**

I, Lester Pines, hereby certify that on this 13th day of February, 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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Lester Pines