

Objections and Responses to Plaintiff's First Set of Requests for Production of Documents as if fully set forth herein.

OBJECTIONS TO INSTRUCTIONS

Merck objects to the Instructions as overbroad, unduly burdensome, and as imposing requirements beyond those set forth in Wis. Stat. Chapter 804.

RESPONSES AND OBJECTIONS TO INDIVIDUAL DOCUMENT REQUESTS

Merck incorporates its General Objections and Objections to Definitions set forth in Merck's Objections and Responses to Plaintiff's First Set of Requests for Production of Documents as if fully set forth herein. The specific objections set forth in each response below are in addition to those objections and unless otherwise specified, Merck's responses are limited in accordance with each of its objections, including its objections to the time frame of the requests. To the extent that Merck provides or offers to produce confidential information, Merck will do so only subject to and in reliance on the Protective Order entered by the Court on November 29, 2005.

DOCUMENT 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 Complaint 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:

To the extent Request No. 7 is addressed to Merck, Merck objects on the grounds that the documents listed in Appendix A appear to be documents produced by other defendants and related to the MDL class action from which Merck has been dismissed. Such documents are outside Merck's possession, custody, or control and the burden of obtaining such documents would be substantially the same for Merck as for the Plaintiff.

DOCUMENT 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:

Merck objects to Request No. 8 on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overly broad, and unduly burdensome. Merck also objects to the Request to the extent it seeks information on the policy and practice of wholesalers on the ground that such information is outside Merck's possession, custody, or control and the burden of obtaining such documents would be substantially the same for Merck as for the Plaintiff. Merck objects to the time frame and will limit its response to the time periods set forth in its General Objections.

Subject to and without waiving its objections, Merck will produce representative sample documents sufficient to show the terms and conditions on which it generally sold Pepcid IV to wholesalers and providers, including any confidentiality provisions with respect to the price for Pepcid IV, if such exist.

DOCUMENT 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:

Merck objects to Request No. 9 on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overly broad, and unduly burdensome, to the extent it seeks information on drugs other than Pepcid IV. Merck also objects to the Request to the extent it seeks information on the policy and practice of wholesalers on the ground that such information is outside Merck's possession, custody, or control and the burden of obtaining such documents

would be substantially the same for Merck as for the Plaintiff. Merck objects to the unlimited time frame and will limit its response to the time periods set forth in its General Objections.

Subject to and without waiving its objections, Merck will produce representative sample documents sufficient to show the terms and conditions on which it generally sold Pepcid IV to wholesalers and providers, including any confidentiality provisions with respect to the price for Pepcid IV, if such exist.

DOCUMENT 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:

Merck objects to Request No. 10 on the grounds that it is overbroad, vague, and ambiguous. Merck further objects to the "former employee" or "agent" component of the Request as overbroad and unduly burdensome. Merck also objects to subparts (d) and (e) of the Request as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and overbroad. Merck objects to the unlimited time frame and will limit its response to the time periods set forth in its General Objections.

Subject to and without waiving its objections, Merck will respond as to transcribed sworn testimony by Merck senior managers with responsibility for pharmaceutical pricing, if any, in investigations or litigation concerning AWP or WAC.

Dated this 9th day of January, 2006

By:



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