

IN THE CIRCUIT COURT OF DANE COUNTY, WISCONSIN

THE STATE OF WISCONSIN,  Plaintiff,  v.  ABBOTT LABORATORIES, INC., ET AL.,  Defendants.	Case No. 04-1709
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**DEFENDANTS MYLAN LABORATORIES INC.'S AND  
MYLAN PHARMACEUTICALS INC.'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF'S WRITTEN DISCOVERY REQUEST NO. 3 (TO ALL DEFENDANTS)**

**TO:** The State of Wisconsin

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Pursuant to Wisconsin Statutes §§ 804.01 and 804.08, the Wisconsin Supreme Court Rules, and the Dane County Circuit Court Rules (the "Wisconsin Rules"), defendants Mylan Laboratories Inc. and Mylan Pharmaceuticals Inc. (collectively, the "Mylan Defendants"), by their undersigned counsel, hereby assert the following responses and objections to Plaintiff's Discovery Request No. 3 (To All Defendants) (the "Document Requests"), dated November 8, 2005 and propounded by plaintiff the State of Wisconsin (the "State"), as follows:

**RESERVATION OF RIGHTS**

The Mylan Defendants expressly incorporate all of the Reserved Rights set forth below into each and every response and objection to the Document Requests. Any specific objections

provided below are made in addition to these Reserved Rights and a failure to reiterate a Reserved Right below shall not constitute a waiver of that or any other objection.

1. These responses and objections 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 documents or information produced in response to the Document Requests; (b) the right to object on any ground to the use of the documents or information produced in response to the Document Requests at any hearing, trial, or other point during this action; (c) the right to object on any ground at any time to a demand for further responses to the Document Requests; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses or objections contained herein.

2. The documents or information supplied herein are for use in this action and for no other purpose.

3. Any statement by the Mylan Defendants that they will produce documents or information responsive to a Document Request does not mean that they possess responsive materials or that such materials exist, only that they will conduct a reasonable search and produce responsive, non-objectionable, non-privileged documents or information. No response or objection made herein, or lack thereof, is an admission by the Mylan Defendants as to the existence or non-existence of any documents or information.

4. The responses and objections made herein are based on the Mylan Defendants' investigation to date of those sources within their control where they reasonably believe responsive documents or information may exist. As to all matters referred to in these responses and objections to the Document Requests, the Mylan Defendants' investigation and discovery continues.

5. The Mylan Defendants will continue to negotiate with the State in good faith to reach reasonable limits on the scope of production. However, it would be extremely burdensome, costly, and wasteful to search for and produce documents or information until such time as the parties agree on a list of what the State has termed “Targeted Drugs.”

6. The specific responses and objections set forth below, and any production made pursuant to the Documents Requests, are based upon, and necessarily limited by, information now available to the Mylan Defendants. The Mylan Defendants reserve the right to amend or supplement these responses and objections with additional documents or information that may become available or come to their attention, and to rely upon such documents or information at any hearing, trial, or other point during this action consistent with the parties’ negotiations and in accordance with the applicable Wisconsin Rules and orders of the Court.

7. The production of documents or information pursuant to the Document Requests shall not be construed as a waiver of the confidentiality of any such documents or information.

### **GENERAL OBJECTIONS**

The Mylan Defendants expressly incorporate all of the General Objections set forth below into each and every response and objection to the Document Requests. Any specific objections provided below are made in addition to these General Objections and a failure to reiterate a General Objection below shall not constitute a waiver of that or any other objection.

1. The Mylan Defendants object to the Document Requests to the extent that they demand the production of documents or information not within the knowledge, possession, custody, or control of the Mylan Defendants, their agents, or their employees, or that are more appropriately sought from third parties to whom requests have been or may be directed.

2. The Mylan Defendants object to the Document Requests to the extent that they demand the production of documents or information that are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence, or are overly broad, unduly burdensome, vague, ambiguous, or duplicative.

3. The Mylan Defendants object to the Document Requests to the extent that they demand the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, the work product doctrine, the joint defense/prosecution privilege, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to the Document Requests, the production of such documents or information shall not constitute a waiver of the Mylan Defendants' right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to the Mylan Defendants' counsel immediately upon discovery thereof.

4. The Mylan Defendants object to the Document Requests to the extent that they demand production of documents or information relating to the Mylan Defendants' 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.

5. The Mylan Defendants object to the Document Requests to the extent that they demand production of documents or information from outside of the statute of limitations applicable to the State's claims in this action, or beyond the time period relevant to this action.

6. The Mylan Defendants object to the Document Requests to the extent that they may be construed as a demand for the production of confidential documents or information relating to a patient. The Mylan Defendants shall not produce any such documents or information to the extent that they are under any obligation to maintain such documents or information in confidence. The Mylan Defendants shall not disclose such material unless the patient grants permission to do so.

7. The Mylan Defendants object to the Document Requests to the extent that they demand production of documents or information containing trade secrets, proprietary or commercially sensitive or other confidential information, and shall not produce documents or information containing any such information unless and until an appropriate protective order or confidentiality agreement is entered in this action.

8. The Mylan Defendants object to the Document Requests to the extent that they demand the production of proprietary documents and information of third parties.

9. The Mylan Defendants object to the Document Requests to the extent that they demand production of documents or information that are publicly available, that are otherwise equally accessible to the State, that have been made available to the State, or that are more appropriately sought from third parties to whom requests have been or may be directed.

10. The Mylan Defendants object to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Document Requests. Any response by the Mylan Defendants that they will produce documents or information in connection with a particular Document Request, or that they have no responsive documents or information, is not intended to indicate that the Mylan Defendants agree with any implication or

any explicit or implicit characterization of facts, events, circumstances, or issues in the Document Requests, or that such implications or characterizations are relevant to this action.

11. The Mylan Defendants object to the Document Requests to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law. The Mylan Defendants will respond to the Document Requests, subject to other objections, as required by applicable Wisconsin law and/or Federal law.

12. The Mylan Defendants reserve the right to withhold the production of any responsive documents or information until the Court has ruled on Defendants' Motion to Dismiss in this action. Although the State has argued that discovery should proceed while the Defendants' Motion to Dismiss is pending because, in part, some Defendants in this action have produced documents and answered discovery requests in other Average Wholesale Price ("AWP") litigation, the Mylan Defendants have not been called upon to provide any of the documents or information requested in the State's Document Requests to plaintiffs in similar AWP litigation brought against them.

13. The Mylan Defendants hereby incorporate by reference as if fully set forth herein any reservation of rights or objections made by any co-defendant in this action to the extent such reservation of rights or objections are not inconsistent with the Mylan Defendants' position in this action.

### **DEFINITIONS**

The Mylan Defendants object to the definitions of the terms and/or words "you," "your," "your company," "document" and "documents" as set forth in Definition No. 4 to the extent that such seek to impose discovery obligations that are broader than, or inconsistent with, the Mylan Defendants' obligations under the Wisconsin Rules. The Mylan Defendants will comply with

the Wisconsin Rules. The Mylan Defendants further object to the definition of the words “document” and “documents” to the extent it requires or seeks to require the Mylan Defendants 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. The Mylan Defendants object to this definition to the extent it requires or seeks to require the Mylan Defendants 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.

#### **SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

Subject to the Reserved Rights and General Objections, and without waiving and expressly preserving all such rights and objections, which are hereby incorporated into the response and objection to each Document Request, the Mylan Defendants respond and object to the State’s Document Requests as follows:

#### **DOCUMENT REQUEST NO. 7:**

All documents listed in Appendix A attached [to the Document Requests] 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.

#### **RESPONSE TO DOCUMENT REQUEST NO. 7:**

The Mylan Defendants object to this Document Request to the extent that it demands production of documents or information that are more appropriately sought from third parties to whom the Document Request has been or should be directed. Subject to and without waiving

such objection, the General Objections, or the Reserved Rights, the Mylan Defendants respond as follows: none of the documents listed in Appendix A attached to the Document Requests pertain to the Mylan Defendants.

**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 TO DOCUMENT REQUEST NO. 8:**

The Mylan Defendants object to Document Request No. 8 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Mylan Defendants object to this Document Request on the grounds that it is vague and ambiguous, particularly with respect to the language “discussing,” “concerning,” “policy and practice,” “disclosures,” “providers,” “pharmacy benefit managers,” “drug price information,” “receive,” and “drug wholesalers.”

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, the Mylan Defendants respond as follows: Non-privileged documents will be produced subject to the Qualified Protective Order entered by the Court of May 11, 2005.

**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 TO DOCUMENT REQUEST NO. 9:**

The Mylan Defendants object to Document Request No. 9 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Mylan Defendants object to this Document Request on the grounds that it is vague and ambiguous, particularly with respect to the language “exemplar,” “agreements,” “relating,” “policies and practices,” “disclosures,” “providers,” “pharmacy benefit managers,” “drug price information,” “receive,” and “wholesalers.”

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, the Mylan Defendants respond as follows: Non-privileged documents will be produced subject to the Qualified Protective Order entered by the Court of May 11, 2005.

**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.

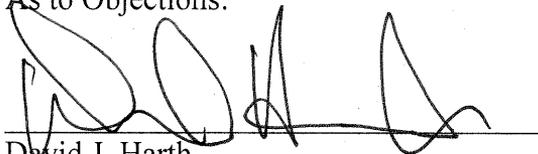
**RESPONSE TO DOCUMENT REQUEST NO. 10:**

The Mylan Defendants object to Document Request No. 10 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Mylan Defendants object to this Document Request on the grounds that it is vague and ambiguous, particularly with respect to the language “any,” “relating,” “claim,” “investigation,” “inaccurate,” “Average Wholesale Price,” “Wholesale Acquisition Cost,” “federal ‘best price’ law or regulation,” “free samples,” “furnished,” and “improper reasons.”

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, the Mylan Defendants respond as follows: No such documents exist.

Dated: January 3, 2006

As to Objections:



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of January 2006, a true and correct copy of Defendants Mylan Laboratories Inc.'s and Mylan Pharmaceuticals Inc.'s Responses and Objections to Plaintiff's Written Discovery Request No. 3 (To All Defendants) was served upon Plaintiff the State of Wisconsin's counsel, listed below, by hand delivery and upon Defendants' counsel by electronic mail.

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