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## BY FIRST CLASS MAIL

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Re: State of Wisconsin v. Amgen Inc., et al.  
Dane County Case No. 04-CV-1709

Dear Counsel:

Enclosed please find Novartis Pharmaceuticals Corporation's Responses and Objections to Plaintiff State of Wisconsin's Eighth Set of Requests for Production of Documents To All Defendants.

The original has been retained pursuant to the statute.

If you have any questions, please do not hesitate to call me.

Sincerely,



Christine A. Braun

Encl.

cc: All Counsel of Record (by LexisNexis File and Serve)

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**STATE OF WISCONSIN,**

Plaintiff,

Case No. 04-CV-1709  
Unclassified - Civil: 30703

v.

**AMGEN INC., et al.,**Defendants.

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**NOVARTIS PHARMACEUTICALS CORPORATION'S RESPONSES AND  
OBJECTIONS TO PLAINTIFF'S EIGHTH SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

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Pursuant to Wisconsin Statutes §§ 804.01 and 804.09, the Wisconsin Supreme Court Rules, and the Dane County Circuit Court Rules (collectively, the "Wisconsin Rules"), Defendant Novartis Pharmaceuticals Corporation ("NPC"), by its undersigned counsel, responds as follows to Plaintiff State of Wisconsin's ("Plaintiff") Eighth Set of Requests for Production of Documents To All Defendants (the "Requests") served on or about July 22, 2008:

**GENERAL OBJECTIONS**

A. By responding to these Requests, NPC does not waive or intend to waive: (i) any objections as to the competency, relevancy, materiality, or admissibility as evidence, for any purpose, of any documents or information produced in response to these Requests; (ii) the right to object on any ground to the use of the documents produced in response to these Requests at any hearing or trial; (iii) the right to object on any ground at any time to a demand for further responses to these Requests; or (iv) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

B. NPC objects to each Request to the extent that it purports to seek information protected by the attorney-client privilege, work-product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections.

C. By responding that it will produce documents in response to a particular Request, NPC does not warrant that it has responsive materials or that such materials exist, only that it will conduct a reasonable search and make available responsive, non-privileged documents. No objection, or lack thereof, is an admission by NPC as to the existence or non-existence of any documents. Where NPC has already identified specific documents responsive to a particular Request and states that it will produce responsive documents “including” certain specifically identified documents, “including” means “including but not limited to.”

D. These Responses are based on NPC’s investigation to date of those sources within its control where it reasonably believes responsive information or documents may exist. NPC reserves the right to amend or supplement these Responses in accordance with the Wisconsin Rules with additional information, documents, or objections that may become available or come to NPC’s attention, and to rely upon such information, documents, or objections in any hearing, trial or other proceeding in this litigation.

E. NPC objects to Plaintiff’s “Definitions” and “Instructions” to the extent that they purport to expand upon or alter NPC’s obligations under the Wisconsin Rules.

F. NPC objects to each Request to the extent that it purports to require NPC to identify and/or produce “all” documents described by such Request as unduly burdensome, cumulative, duplicative, and vexatious on its face. NPC will search for and produce documents sufficient to provide the information or data sought by specific Requests, and where appropriate

(*i.e.*, where non-identical documents provide additional relevant information), NPC will identify and/or produce such documents.

G. NPC objects to these Requests to the extent that they seek information not contained in documents that currently exist at NPC and purport to require NPC to create, compile or develop new documents.

H. NPC objects to these Requests to the extent that they seek production of information or documents not in NPC's possession, custody or control, publicly available information, information or documents equally available to Plaintiff, or information or documents more appropriately sought from third parties to whom subpoenas or requests could be or have been directed.

I. NPC objects to these Requests to the extent that they seek information about conduct outside of the State of Wisconsin.

J. Given the confidential and proprietary nature of the documents requested, NPC's production of documents is subject to and in reliance upon the Protective Order limiting the scope of disclosure, review, and dissemination of documents previously entered by the Circuit Court for Dane County on November 29, 2005.

K. NPC objects to these Requests to the extent that they seek information outside the limitations periods applicable to the claims in the Second Amended Complaint ("Complaint"), or beyond the time period relevant to this litigation, on the grounds that such information is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. NPC's production of any documents outside of the limitations period applicable to the claims in the Second Amended Complaint in this action does not constitute a waiver by NPC of this objection. In addition, NPC objects to these Requests to

the extent that they purport to require NPC to search for and produce information pertaining to the time period prior to January 1, 1997, the date NPC was created by operation of merger following approval by the Federal Trade Commission on December 17, 1996, or after September 30, 2003, the date on which the State of Nevada's Second Amended Complaint in *State of Nevada v. Am. Home Prods. Corp., et al.*, Cause No.CV-N-02-0202-ECR (D. Nev.), brought by the Nevada Attorney General and containing similar allegations against NPC as those alleged by Plaintiff, was publicly filed, thereby placing the Plaintiff on notice, no later than that date, of the allegations against NPC, 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. NPC's production of any documents outside of these dates does not constitute a waiver of this objection.

L. NPC hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any other Defendant in this action to the extent that such objection or reservation of rights is not inconsistent with NPC's position in this action.

M. The documents and information provided in response to these Requests are for use in this litigation and for no other purpose.

#### **OBJECTIONS TO DEFINITIONS**

1. The terms "you," "your," or "your company" shall mean the each defendant, and its subsidiaries, divisions, predecessors, officers, agents and all other persons acting or purporting to act on behalf of each defendant or its subsidiaries or predecessors.

N. NPC objects to the definition of "you," "your," and "your company" as set forth in Definition No. 1 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and states that all responses herein are on behalf of Defendant Novartis Pharmaceuticals Corporation only.

2. The words “document” and “documents” are used in the broadest possible sense and refer, without limitation, to all written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communications or representations of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, as well as audio or video recordings of communications, oral statement, conversations or events. This definition includes, but is not limited to, any and all of the following: day-timers, journals, logs, calendars, handwritten notes, correspondence, minutes, records, messages, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables tabulations, financial statements, working papers, tallies, maps, drawings, diagrams, sketches, x-rays, charts labels, packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. Any preliminary versions, drafts, or revisions of any of the foregoing, any document which has or contains any attachment, enclosure, comment, notation, addition, insertion, or marking of any kind which is not a part of another document, or any document which does not contain a comment, notation, addition, insertion, or marking of any kind which is part of another document, is to be considered a separate document.

O. NPC objects to the definition of “document” and “documents” as set forth in Definition No. 2 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, NPC’s obligations under the Wisconsin Rules.

### **OBJECTIONS TO INSTRUCTIONS**

1. In responding to these requests, defendants are required to produce all responsive documents that are in the possession, custody, or control of any of them or any of their agents.

P. NPC objects to Instruction No. 1 as vague, ambiguous, overly broad and unduly burdensome to the extent that it requires NPC to speculate about the existence of responsive information that may or may not exist in the possession of third parties. NPC further objects to Instruction No. 1 to the extent that it purports to seek information protected by the attorney-client privilege, work product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections. In addition, NPC objects to

Instruction No. 1 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, NPC's obligations under the Wisconsin Rules. NPC states that it will search for and produce documents in accordance with the Wisconsin Rules.

2. All documents that respond, in whole or in part, to any portion of the production requests below shall be produced in their entirety, including all attachments and enclosures.
3. If you withhold any document requested on the basis of a claim that it is protected from disclosure by privilege, work product, or otherwise, provide the following information separately for each such document:
  - (a) the name and title of every author, sender, addressee, and recipient by category;
  - (b) the date of the document;
  - (c) the name and title of each person (other than stenographic or clerical assistants) participating in preparation of the document;
  - (d) the name and title of each person to whom the contents of the document have been communicated by copy, exhibition, reading, or summary;
  - (e) a description of the nature and subject matter of the document;
  - (f) a statement of the basis on which it is claimed that the document is protected from disclosure; and
  - (g) the name and title of the person supplying the information requested in subparagraphs (a)-(f) above.
4. Notwithstanding a claim that a document is protected from disclosure, any document so withheld must be produced with the portion claimed to be protected excised.

Q. NPC objects to Instructions Nos. 2-4 to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, NPC's obligations under the Wisconsin Rules. NPC states that it will search for and produce documents in accordance with the Wisconsin Rules.

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

NPC incorporates by reference each of the foregoing General Objections, Objections to Definitions, and Objections to Instructions in each of the following Responses and

Objections to Document Requests as if fully set forth within each. NPC further incorporates by reference each Specific Objection set forth below in each of the following Responses to individual Document Requests as if fully set forth within each. To the extent that NPC states that it will search for and produce documents responsive to any Request, such responses are provided subject to, and without waiver or limitation of, all General and Specific Objections.

**REQUEST FOR PRODUCTION NO. 23:** Attached hereto as Exh. 1 is a copy of a blank form entitled “HDMA Standard Product Information Pharmaceutical Products.” Please produce all such forms that you have completed (as to any or all of the information on such forms) for any of your drugs from January 1, 1991 to the present as well as all documents that identify each person or entity, if any (including but not limited to Cardinal Health, McKesson Corporation, or Amerisource Bergen Corporation, or any of their predecessor entities), to whom you sent or provided any such forms and the dates that you sent or provided such forms to any such person or entity.

**OBJECTION TO REQUEST FOR PRODUCTION NO. 23:** NPC objects to Request for Production No. 23 on the ground that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents relating to “your drugs,” without limitation to the NPC drugs at issue in this action.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:** NPC states that it has already produced documents responsive to Request for Production No. 23 in prior productions to Plaintiff and will undertake a reasonable search for and produce additional responsive documents, if any exist.

**REQUEST FOR PRODUCTION NO. 24:** Any documents reflecting communications with drug wholesalers (including but not limited to Cardinal Health, McKesson Corporation, or Amerisource Bergen Corporation, or any of their predecessor entities) relating to: (a) AWP, SWP, WAC, MAC, FUL, or direct price; or (b) any pricing compendia including but not limited to First DataBank, Medispan, and Red Book.

**OBJECTIONS TO REQUEST FOR PRODUCTION NO. 24:** NPC objects to Request for Production No. 24 on the grounds that it is overly broad, unduly burdensome, and not reasonably

calculated to lead to the discovery of admissible evidence: (i) in that it seeks “[a]ny documents reflecting communications with drug wholesalers,” without limitation to documents reflecting communications between drug wholesalers and NPC; and (ii) to the extent that it is not limited to the NPC drugs at issue in this action. NPC further objects to Request for Production No. 24 on grounds of relevance to the extent that: (i) it seeks documents relating to “any pricing compendia” other than First DataBank, whereas the Complaint alleges that Plaintiff “has chosen First DataBank as its primary price source” and nowhere alleges that Plaintiff used any other compendia as its source of pricing information; and (ii) it seeks documents relating to “SWP,” because Wisconsin did not use “SWP” for reimbursement of prescription drugs.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:** NPC states that it has already produced to Plaintiff a substantial number of documents responsive to Request for Production No. 24. For example, NPC produced its Broadcast Faxes. NPC will undertake a reasonable search for and produce additional responsive documents, if any exist.

**REQUEST FOR PRODUCTION NO. 25:** Documents relating to any contract or agreement with any health-care provider (including but not limited to retail pharmacies (chain or independent), doctors, or long-term care facilities) to share in the profits earned by such provider in connection with the providers sale or dispensing of any of your prescription drugs.

**OBJECTIONS TO REQUEST FOR PRODUCTION NO. 25:** NPC objects to Request for Production No. 25 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks: (i) “[d]ocuments relating to any contract or agreement with any health-care provider” without limitation to contracts or agreements between health-care providers and NPC; and (ii) documents relating to “your prescription drugs,” without limitation to the NPC drugs at issue in this action. NPC further objects to Request for Production No. 25 on the ground that the phrase “share in the

profits earned by such provider in connection with the providers [sic] sale or dispensing of any of your prescription drugs” is vague and ambiguous.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25:** NPC states that it believes that it has not entered into contracts or agreements with any healthcare provider to “share in the profits earned by such provider in connection with the provider’s sale or dispensing” of any of the NPC drugs at issue in this action; in the event that a reasonable search of NPC’s records yields any such contracts or agreements, NPC will produce them.

Dated this 21<sup>st</sup> day of August, 2008.

Respectfully submitted

Novartis Pharmaceuticals Corporation

By its attorneys,



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STATE OF WISCONSIN

CIRCUIT COURT  
Branch 7

DANE COUNTY

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**STATE OF WISCONSIN,**

Plaintiff,

Case No. 04-CV-1709  
Unclassified - Civil: 30703

v.

**AMGEN INC., et al.,**

Defendants.

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**CERTIFICATE OF SERVICE**

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I hereby certify that on this 21st day of August, 2008, a true and correct copy of Novartis Pharmaceuticals Corporation's Responses and Objections to Plaintiff State of Wisconsin's Eighth Set of Requests for Production of Documents To All Defendants was served on all counsel of record via LexisNexis File and Serve.

I also certify that I caused a true and correct copy of this document to be served by First Class Mail upon the following attorneys:

Atty. P. Jeffrey Archibald  
Atty. Charles Barnhill  
Atty. William P. Dixon  
Atty. Cynthia R. Hirsch  
Atty. Robert S. Libman

Dated this 21<sup>st</sup> day of August, 2008.

  
Christine A. Braun