

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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**NOVARTIS PHARMACEUTICALS CORPORATION'S RESPONSE TO PLAINTIFF  
STATE OF WISCONSIN'S FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS (TO NOVARTIS PHARMACEUTICALS CORPORATION)**

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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 First Set of Requests for Production of Documents (to Novartis Pharmaceuticals Corporation) served on or about July 11, 2006 (the "Requests"):

**GENERAL OBJECTIONS**

NPC expressly incorporates by reference all of the General Objections and Objections to Definitions set forth in NPC's Response to Plaintiff's First and Third Sets of Requests for Production of Documents to All Defendants (attached hereto as Exhibits 1 and 2, respectively). Unless otherwise specified herein, NPC will search for and produce non-privileged responsive documents that were generated or assembled on or after January 1, 1997, which was the date NPC was created by operation of merger following approval of the Federal Trade Commission on December 17, 1996, and before June 12, 2003, the date on which the AMCC Complaint was

filed in MDL No. 1456. Any specific objections provided below are made in addition to these General Objections and a failure to reiterate a General Objection below does not constitute a waiver or limitation of that or any other objection. To the extent that NPC states that it will produce documents responsive to any Request, such statement is made subject to, and without waiver or limitation of, all specific objections stated in response to such Request and all General Objections set forth in NPC's Responses to Plaintiff's First and Third Sets of Requests for Production of Documents to All Defendants. To the extent that NPC provides or agrees to produce confidential information, NPC will only do so subject to and in reliance on the Protective Order entered by the Court on November 29, 2005.

#### **REQUEST FOR PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1:** All documents relating to First DataBank's publication of Average Wholesale Prices ("AWPs") for Novartis's drugs that were not identical to the Average Wholesale Prices ("AWPs") reported by Novartis to First DataBank, including, but not limited to, documents relating to communications between Novartis and the Novartis "managed care account" through which, according to the June 23, 2006 deposition testimony of Michael Conley, Novartis learned this fact in or around July 2002.

**RESPONSE TO REQUEST NO. 1:** In addition to its foregoing General Objections, NPC objects to Request No. 1 on the grounds that it is vague and ambiguous with respect to the language "not identical to" and "this fact." Subject to and without waiving the foregoing General and Specific Objections, NPC states that it has already produced documents responsive to Request No. 1 and, to the extent such additional documents exist in NPC's possession, it will produce additional non-privileged documents responsive to Request No. 1.

**REQUEST NO. 2:** All documents relating to any action Novartis considered or actually took to stop, object to, oppose, or otherwise express its disagreement with, First DataBank's publication of Average Wholesale Prices ("AWPs") for Novartis's drugs that were not identical to the Average Wholesale Prices ("AWPs") reported by Novartis to First DataBank.

**RESPONSE TO REQUEST NO. 2:** In addition to its foregoing General Objections, NPC objects to Request No. 1 on the grounds that it is vague and ambiguous with respect to the language “any action,” “considered,” “actually took,” “stop, object to, oppose, or otherwise express its disagreement with,” and “not identical to.” Subject to and without waiving the foregoing General and Specific Objections, NPC states that it has already produced documents responsive to Request No. 2 and, to the extent such additional documents exist in NPC’s possession, NPC will produce additional non-privileged documents responsive to Request No. 2.

**REQUEST NO. 3:** All documents relating to the markup or margin above a wholesaler’s actual net acquisition cost applied by a wholesaler when selling or re-selling drugs to retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors.

**RESPONSE TO REQUEST NO. 3:** In addition to its foregoing General Objections, NPC objects to Request No. 3 on the grounds that it is vague and ambiguous with respect to the language “markup,” “margin,” “wholesaler,” “applied” and “actual net acquisition cost.” NPC further objects to this Request on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it purports to require information relating to “drugs,” thus including drugs that are not manufactured, marketed or distributed by NPC and/or drugs not at issue in this litigation, and because it purports to require information relating to the prices paid to wholesalers by third-parties for those drugs. Subject to and without waiving the foregoing General and Specific Objections, NPC states that, to the extent such documents exist in NPC’s possession, it will produce non-privileged documents responsive to Request No. 3.

**REQUEST NO. 4:** All documents relating to Novartis’s decision to set the Average Wholesale Price (“AWP”) for Diovan at 25% above the Wholesale Acquisition Cost (“WAC”) and report such AWP’s to First DataBank or the Red Book, including, but not limited to, documents indicating that Novartis set the AWP at 25% above WAC and/or reported such AWP’s to First DataBank or the Red Book in order to match the AWP of a competitor’s product.

**RESPONSE TO REQUEST NO. 4:** Subject to and without waiving the foregoing General Objections, NPC states that, to the extent such documents exist in NPC's possession, it will produce non-privileged documents responsive to Request No. 4.

**REQUEST NO. 5:** Novartis Pharmacy Benefit Report: Facts and Figures, 2000 edition, and all other editions of the Novartis Pharmacy Benefit Report from 1997 to the present.

**RESPONSE TO REQUEST NO. 5:** In addition to its foregoing General Objections, NPC objects to Request No. 5 to the extent that it purports to require NPC to produce documents that were generated or assembled outside of the relevant time period for this litigation. Subject to and without waiving the foregoing General and Specific Objections, NPC states that it will produce all editions of the Novartis Pharmacy Benefit Report: Facts and Figures, from January 1, 1997 to June 12, 2003.

**REQUEST NO. 6:** All documents relating to Novartis's decision in or around March 2005 to stop reporting Average Wholesale Prices ("AWPs") to First DataBank, the Red Book, and other third party journals.

**RESPONSE TO REQUEST NO. 6:** In addition to its foregoing General Objections, NPC objects to Request No. 6 to the extent that it purports to require NPC to produce documents that were generated or assembled outside of the relevant time period for this litigation and to produce information that is protected from disclosure by the attorney-client and work-product privileges. Subject to and without waiving the foregoing General and Specific Objections, NPC states that, to the extent such documents exist in NPC's possession, it will produced non-privileged documents generated or assembled during the period between January 1, 1997 to June 12, 2003 that are responsive to Request No. 6.

**REQUEST NO. 7:** All documents relating to Novartis's decision to include in its communications with First DataBank, the Red Book, and other third party journals the following (or similar) language:

“As used herein, the term “AWP” constitutes a reference for this Novartis product, set as a percentage above the price which the product is offered generally to wholesalers.

Notwithstanding the inclusion of the term “price” in “Average Wholesale Price,” AWP is not intended to be a “price” charged by Novartis for any product to any customer.”

**RESPONSE TO REQUEST NO. 7:** In addition to its foregoing General Objections, NPC objects to Request No. 7 on the grounds that it is vague and ambiguous with respect to the language “similar.” NPC further objects to the extent this Request purports to require it to produce information that is protected from disclosure by the attorney-client and work-product privileges. Subject to and without waiving the foregoing General and Specific Objections, NPC states that, to the extent such documents exist in NPC’s possession, it will produce non-privileged documents responsive to Request No. 7.

**REQUEST NO. 8:** All documents relating to communications by Novartis to any person in the Wisconsin Medicaid program using the same or similar language referenced in Request No. 7, or otherwise communicating that Novartis’s AWP’s were neither prices that were actual averages of wholesale prices, nor prices that were actually paid by retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors.

**RESPONSE TO REQUEST NO. 8:** In addition to its foregoing General Objections, NPC objects to Request No. 8 on the grounds that it is vague and ambiguous with respect to the language “same or similar,” “otherwise communicating,” “prices” and “actual averages of wholesale prices.” NPC further objects to this Request on the grounds that to the extent that the information sought is in the possession of the State, this Request is vexatious and unduly burdensome. Subject to and without waiving the foregoing General and Specific Objections, NPC states that, to the extent such documents exist in NPC’s possession, it will produce non-privileged documents responsive to Request No. 8.

**REQUEST NO. 9:** Any “gross to net calculations” for any targeted drug with regard to direct or indirect sales to retail pharmacies, long-term care pharmacies, mail-order pharmacies, or doctors.

**RESPONSE TO REQUEST NO. 9:** In addition to its foregoing General Objections, NPC objects to Request No. 9 on the grounds that it is vague and ambiguous with respect to the language “with regard to.” Additionally, NPC objects to the extent that Request No. 9 seeks

information concerning NPC's total revenue associated with the targeted drugs on the grounds that the Request is overly broad, unduly burdensome and not calculated to lead to the discovery of relevant or admissible evidence. Additionally, NPC's gross to net calculations are not broken down by class of trade or by unit, and are created for entire product families, not for specific NDC codes. NPC creates the gross to net calculations to estimate the net sales dollars NPC will receive for a particular product family in a quarter, after certain adjustments, such as deductions of discounts to managed care entities, Medicaid rebates, and returns, have been factored in. Thus, NPC's gross to net calculations have no relation to Plaintiff's claims, which are limited to the allegations that Wisconsin Medicaid overpaid entities other than NPC for NPC drugs because they do not represent any price paid by any entity that purchases NPC drugs. Additionally, NPC refers Plaintiff to Decision & Report of Discovery Master: Plaintiff's Motion to Compel [Novartis Pharmaceuticals], dated May 2, 2006, in which Special Discovery Master Eich denied Plaintiff's motion to compel NPC to produce similar information, in the form of "net revenue reports," stating that documents showing the net revenue realized by NPC for its drugs, as opposed to the price paid by any particular entity, are "not relevant, within the meaning of § 804.01(2)(a), *Stats.*, in that they are not likely to lead to the discovery of admissible evidence relevant to the claims being advanced by the State in this case."

**REQUEST NO. 10:** All documents regarding First DataBank's publication of clinical information relating to Diovan and Elidel that was inconsistent with the package inserts for those products provided by Novartis to First DataBank (about which Michael Conley testified at deposition on June 23, 2006).

**RESPONSE TO REQUEST NO. 10:** In addition to its foregoing General Objections, NPC objects to Request No. 10 on the grounds that it refers to information not relevant to the State's claims, which are limited to Wisconsin Medicaid's alleged overpayment for drugs, and is not

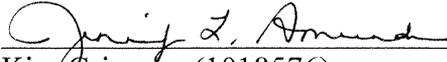
reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing General and Specific Objections, NPC states that, to the extent such documents exist in NPC's possession, it will produce non-privileged documents responsive to Request No. 10.

Dated this 10th day of August, 2006.

Respectfully submitted,

Novartis Pharmaceuticals Corporation

By its attorneys,

  
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# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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THE STATE OF WISCONSIN

Plaintiff,

v.

CASE NO. 05 C 408 C

Honorable Barbara B. Crabb,

ABBOTT LABORATORIES, INC., ET AL.

Defendants.

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

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Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, Defendant Novartis Pharmaceuticals Corporation ("Novartis"), by its undersigned counsel, responds as follows to Plaintiff's First Set of Requests for Production of Documents to All Defendants served on or about January 27, 2005 (the "Requests"):

**GENERAL OBJECTIONS**

Novartis expressly incorporates all of the General Objections set forth below into each Response to the Requests. Any specific objections provided below are made in addition to these General Objections and a failure to reiterate a General Objection below does not constitute a waiver or limitation of that or any other objection. To the extent that Novartis states that it will produce documents responsive to any Request, such statement is made subject to, and without waiver or limitation of, all specific objections stated in response to such Request and all General Objections set forth below.

A. By responding to these Requests, Novartis 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 or information 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. By responding to these Requests, Novartis does not waive or intend to waive any privilege, for any purpose, of any documents or information produced in response to these Requests, and, in particular, Novartis 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. Novartis will produce a timely privilege log in accordance with the applicable rules and Court orders.

C. By responding that it will produce documents in response to a particular Request, Novartis does not assert that it has responsive materials or that such materials exist, only that it will conduct a reasonable search and make available responsive, nonprivileged documents. No objection, or lack thereof, is an admission by Novartis as to the existence or non-existence of any documents. Where Novartis already has 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 Novartis’ investigation to date of those sources within its control where it reasonably believes responsive documents or information may

exist. Novartis reserves the right to amend or supplement these responses in accordance with the applicable rules and Court orders with additional information, documents, or objections that may become available or come to Novartis' attention, and to rely upon such information, documents, or objections in any hearing, trial or other proceeding in this litigation..

E. Novartis objects to Plaintiff's "Definitions," "Rules of Construction" and "Instructions" to the extent that they purport to expand upon or alter Novartis' obligations under the Federal Rules of Civil Procedure.

F. Novartis objects to collecting and producing the broad range of information Plaintiff seeks before Plaintiff has identified in its Complaint which Novartis pharmaceutical products it claims to have overpaid for and how and what it overpaid for such products. Although Plaintiff has offered to narrow the definition of "Targeted Drug" currently found in the Document Request, Novartis has advised Plaintiff that as part of its first round of production, it will produce sales data, including sales data resident in the (i) Integrated Managed Healthcare Contracting System and (ii) Distribution System, for the period January 1, 1997 through June 12, 2002, for the following Novartis drugs which are named in the Amended Master Consolidated Class Action Complaint filed in the action styled *In Re: Pharmaceutical Industry Average Wholesale Price Litigation* (D. Mass.), MDL No. 1456 (hereinafter, the "AMCC Complaint"): (1) Clozaril; (2) Comtan; (3) Estraderm; (4) Exelon; (5) Femara; (6) Lamisil; (7) Lescol; (8) Lotensin; (9) Lotrel; (10) Miacalcin; (11) Parlodel; (12) Ritalin; (13) Starlix; (14) Tegretol; (15) Tegretol-XR; and (16) Trileptal (hereinafter, the "Novartis AMCC Drugs"). Novartis has also advised Plaintiff that it is Novartis' hope and expectation that Plaintiff will be able to narrow other outstanding Interrogatories based on what it learns from the data and information concerning the Novartis AMCC Drugs and that such data and information

will demonstrate that many of Plaintiff's claims do not warrant or justify Plaintiff's exceedingly broad and burdensome Document Requests.

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

H. Novartis objects to collecting and producing the broad range of information Plaintiff seeks prior to producing sales transaction or other summary data that will demonstrate that many of Plaintiff's claims do not warrant or justify Plaintiff's exceedingly broad and burdensome Requests. Novartis has advised Plaintiff that it will produce such sales transaction or other summary data first, in the hope and expectation that Plaintiff will be able to narrow other outstanding Requests based on what they learn from such discovery.

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

J. Given the confidential and proprietary nature of the documents requested, Novartis' production of documents is pursuant to the Qualified Protective Order limiting the scope of disclosure, review and dissemination of documents previously entered by Judge Moria Kreuger, Dane County Circuit Court, on May 11, 2005. Novartis will begin its production of non-privileged responsive documents on or about July 25, 2005, and will continue to provide documents or data thereafter on a rolling basis in as expeditious and efficient a manner as possible as it completes its review and processing of such documents and data.

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

**A. OBJECTIONS TO DEFINITIONS**

1. The term “average manufacturer price” or “AMP” means the price you report or otherwise disseminate as the average manufacturer price for any pharmaceutical (see definition below) that you report for purposes of the Medicaid program, pursuant to 42 U.S.C. §1396r-8.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “Pharmaceutical,” and objects to the definition of “Average Manufacturer Price” and “AMP” as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language “the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report.” Novartis further objects to this definition to the extent that it purports to set an accurate or legally significant definition of the term “AMP” or “average manufacturer price.”

2. The term “Chargeback” means any payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “Pharmaceutical,” and objects to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous with respect to the language “payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.”

3. The term “Defined Period of Time” means from January 1, 1993 to the present and Documents relating to such period even though created before that period.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “Document,” and objects to the definition of “Defined Period of Time” as set forth in Definition No. 3 on the grounds that it is overly broad and unduly burdensome, and vague and ambiguous with respect to the language “Documents relating to such period.” Novartis further objects to this definition to the extent it seeks information outside of the limitations periods applicable to the claims in the Complaint, or beyond the time period relevant to this litigation, on the grounds that such documents are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Novartis’ production of any documents outside of the limitations periods applicable to the claims in the Complaint in this action does not constitute a waiver by Novartis of this objection. In addition, Novartis objects to the definition of “Defined Period of Time” to the extent that it purports to require that Novartis search for and produce documents generated or assembled either prior to January 1, 1997, which was the date Novartis was created by operation of merger following approval by the Federal Trade Commission on December 17, 1996, or after June 12, 2003, the date on which the AMCC Complaint was filed in MDL No. 1456, on the ground that such documents are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to Definition No. 3, and to each Request that purports to require Novartis to produce “all” documents described by such Request, as unduly burdensome, cumulative, duplicative and vexatious on its face. Novartis 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), Novartis will produce all non-identical documents.

4. The term “Document” means any writing or recording of any kind, including, without limitation, agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, electronic mail (e-mail),

facsimiles (faxes), film, graphs, letters, memos, maps, minutes (particularly Board of Directors and/or Executive Committee meeting minutes), notes, notices, photographs, reports, schedules, summaries, tables, telegrams, and videotapes in any medium, whether written, graphic, pictorial, photographic, electronic, phonographic, mechanical, taped, saved on computer disk, hard drives, tape drives, or otherwise, and every non-identical copy. Different versions of the same document, such as different copies of a written record bearing different handwritten notations, are different documents within the meaning of the term as used. In case originals or original non-identical copies are not available, "Document" includes copies of originals or copies of non-identical copies as the case may be.

**OBJECTION:** Novartis objects to the definition of "Document" as set forth in Definition No. 4 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Novartis' obligations under the Federal Rules of Civil Procedure. Novartis further objects to this definition to the extent it requires or seeks to require Novartis to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement, copyright laws, or proprietary rights of any third party.

5. The term "Incentive" means anything of value provided to a customer or other party to induce that customer to purchase, promote, prescribe, dispense or administer a pharmaceutical (see definition below) or course of treatment; to reward a customer or other party for purchasing, promoting, prescribing, dispensing or administering a pharmaceutical or course of treatment; or which had, will have, or is intended to have, the effect of lowering the cost of a pharmaceutical to the customer in any way, regardless of the time the "incentive" was provided (for example, at the time of invoicing, shipment, or payment, or monthly, quarterly, annually, or at any other time or on any other basis) and regardless of its name. As used in this definition, the term "customer or other party" includes, but is not limited to, a drug wholesaler, physician, clinic, store chain, pharmacy, pharmaceutical benefit manager, hospital, federal or state government agency, health maintenance organization, or other managed care organization. The term "incentive" therefore includes, but is not limited to, payments or proposed payments in cash or in kind; chargebacks (see definition above); credits, discounts such as return-to-practice discounts, prompt-pay discounts, volume discounts, on-invoice discounts, or off-invoice discounts; rebates such as market-share rebates, access rebates, or bundled-drug rebates; free goods or samples; credits, administrative fees or administrative fee reimbursements; marketing fees; stocking fees; conversion fees; patient education fees; off-invoice pricing; educational or other grants; research funding; payments for participation in clinical trials; honoraria; speaker's fees or payments; patient education fees; or consulting fees.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “Chargeback,” and objects to the definition of “Incentive” as set forth in Definition No. 5 on the grounds that it is overly broad and unduly burdensome, and vague and ambiguous with respect to the language “anything of value,” “provided,” “customer,” “reward a customer or other party for promoting, prescribing, dispensing or administering a Pharmaceutical or course of treatment; or which had, will have, or is intended to have, the effect of lowering the cost of a Pharmaceutical to the customer in any way, regardless of the time the ‘Incentive’ was provided . . . and regardless of its name,” “credits,” “discounts,” “return to practice discounts,” “prompt pay discounts,” “volume discounts,” “on-invoice discounts,” “off-invoice discounts,” “rebates,” “market share rebates,” “access rebates,” “bundled drug rebates,” “free goods or samples,” “administrative fees or administrative fee reimbursements,” “marketing fees,” “stocking fees,” “conversion fees,” “patient education fees,” “off-invoice pricing,” “educational or other grants,” “research funding,” “clinical trials,” “honoraria,” “speaker’s fees,” “patient education fees” and “consulting fees.” Novartis further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

6. The term “national sales data” means data sufficient to identify for each sales transaction involving each targeted drug (see definition below) the following information:

- a. transaction date;
- b. transaction type;
- c. your product number;
- d. product description;
- e. package description;
- f. NDC;
- g. NDC unit quantity;
- h. NDC unit invoice price;

- i. NDC unit WAC (assigned by you);
- j. contract price;
- k. invoice price;
- l. customer name, identification number, address and class of trade;
- m. all paid or distributed incentives (see definition above);
- n. all accrued Incentives calculated at any time, identifying the amount of the accrual, its nature or type, the date of the accrual, and other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.

**OBJECTION:** Novartis incorporates by reference its objections to the definitions of the terms “Targeted Drugs” and “Incentives,” and objects to the definition of “National Sales Data” in Definition No. 6 on the grounds that it is overly broad and unduly burdensome, and vague and ambiguous with respect to the language “data sufficient to identify for each sales transaction,” “transaction type,” “your product number,” “product description,” “package description,” “WAC,” “NDC,” “NDC Unit Quantity,” “NDC unit invoice price,” “you,” “contract price,” “invoice price,” “identification number,” “paid or distributed Incentives,” “accrued Incentives,” “calculated at any time” and “other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.” In addition, Novartis further objects to this definition to the extent that it (i) refers to information not relevant to the State’s claims, which are limited to Wisconsin, (ii) seeks information from beyond the time period relevant in this litigation, or (iii) seeks information about drugs not named in the Complaint, 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.

7. The term “Pharmaceutical” means any drug or other product, whether sold by you, or any other manufacturer, which requires a physician’s or other prescriber’s prescription, including, but not limited to, biological products such as hemophilia factors and intravenous solutions.

**OBJECTION:** Novartis objects to the definition of “Pharmaceutical” in Definition No. 7 on the grounds that it is overly broad, unduly burdensome and vague and ambiguous with respect to the language “any drug,” “administered,” “other product,” “you,” “prescription,” and “biological products.” In addition, Novartis objects to this Definition to the extent that it (i) refers to information not relevant to the State’s claims, which are limited to Wisconsin, (ii) seeks information from beyond the time period relevant in this litigation, or (iii) seeks information about drugs not named in the Complaint, 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.

8. The term “Targeted Drugs” means those drugs manufactured by you which have total utilization under the Medicaid and Medicare Part B program exceeding \$10,000.00 during the Defined Period of Time in the state of Wisconsin.

**OBJECTION:** Novartis incorporates by reference its objection to the definitions of the terms “Defined Period of Time” and “Pharmaceutical,” and objects to the definition of “Targeted Drugs” as set forth in Definition No. 9 on the grounds that it is overly broad and unduly burdensome and vague and ambiguous with respect to the language “you” and “total utilization.” In addition, Novartis objects to this Definition to the extent that it (i) refers to information not relevant to the State’s claims, which are limited to Wisconsin, (ii) seeks information from beyond the time period relevant in this litigation, or (iii) seeks information about drugs not named in the Complaint, 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.

**B. OBJECTIONS TO INSTRUCTION**

\*Documents are to be produced in electronic format with all documentation required to identify files and fields by name, content and format, and explanations for all coded data. Acceptable electronic format for documents which in their native form are organized as

word processing documents, or printed documents other than tabular reports (documents comprised principally of text, or of a combination of text and graphics) is searchable Adobe Acrobat portable document format (.pdf). Acceptable electronic format for documents which in their native form are organized as spreadsheets is Microsoft Excel format (.xls). Acceptable electronic format for documents which in their native form are comprised principally of tabular data, or tabular reports with fixed column widths or field lengths is fixed-field ASCII text (.txt). Acceptable electronic format for documents which in their native form are comprised principally of electronic data in one or more data tables, files, or other data entries, is delimited ASCII text (.csv).

**OBJECTION:** Novartis objects to this Instruction to the extent that it seeks to impose on Novartis the obligation to produce electronic materials in specified formats. Novartis further objects to this instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

**SPECIFIC RESPONSES AND OBJECTIONS TO  
REQUEST FOR PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1:** All National Sales Data for each Targeted Drug during the Defined Period of Time.\*

**RESPONSE TO REQUEST NO. 1:** In addition to the foregoing General Objections, Novartis objects to Request No. 1 on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving this objection and the foregoing General Objections, Novartis will produce sales data, including sales data resident in the (i) Integrated Managed Healthcare Contracting System and (ii) Distribution System, for the period January 1, 1997 through June 12, 2002 for the following Novartis AMCC Drugs):

1. Clozaril
2. Comtan
3. Estraderm
4. Exelon
5. Femara
6. Lamisil
7. Lescol
8. Lotensin

9. Lotrel
10. Miacalcin
11. Parlodel
12. Ritalin
13. Starlix
14. Tegretol
15. Tegretol-XR
16. Trileptal

**REQUEST NO. 2:** All Documents containing AMPs as reported or calculated by you for the Targeted Drugs or a spread sheet or database showing all reported and calculated AMPs for each Targeted Drug over the Defined Period of Time which lists when such AMPs were reported or calculated, and the quarter to which each AMP applies.\*

**RESPONSE TO REQUEST NO. 2:** In addition to the foregoing General Objections, Novartis objects to Request No. 2 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to this request on the grounds that it is vague and ambiguous with respect to the language “all,” “reported or calculated,” “you,” “spreadsheet” and “database.” Subject to this and the foregoing General Objections, Novartis will produce non-privileged responsive documents, including Broadcast faxes, quarterly average manufacturer price calculation reports, and sales data resident in the Integrated Managed Healthcare Contracting System, which includes potentially responsive data, for the period of the First Quarter of 1997 through the Fourth Quarter of 2003 for the Novartis AMCC Drugs.

**REQUEST NO. 3:** All Documents created by you, or in your possession, that discuss or comment on the difference (or Spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price (to any purchaser) of any defendants’ Pharmaceuticals or any Pharmaceuticals sold by other manufacturers. Documents which merely list the AWP or WAC price and the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this request.

**RESPONSE TO REQUEST NO. 3:** In addition to the foregoing General Objections, Novartis objects to Request No. 3 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to

this request on the grounds that it is vague and ambiguous with respect to the language “all,” “created,” “you,” “in your possession,” and “Pharmaceuticals sold by other Pharmaceutical manufacturers.” Subject to and without waiving this and the foregoing General Objections, Novartis will produce non-privileged documents created during the period January 1, 1997 through June 12, 2003 that discuss or comment on a difference (or spread) between any average wholesale price or wholesale acquisition cost and the list or actual sales price (to any purchaser) for the Novartis AMCC Drugs or any pharmaceutical products sold by other manufacturers.

**REQUEST NO. 4:** All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of Plaintiff’s First Set of Interrogatories to All Defendants.\*

**RESPONSE TO REQUEST NO. 4:** In addition to the foregoing General Objections, Novartis objects to Request No. 4 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to this Request on the grounds that it is vague and ambiguous with respect to the language “all,” “average sales price,” and “composite price.” Subject to and without waiving this and the foregoing General Objections, Novartis has no documents which are responsive to Request No. 4.

**REQUEST NO. 5:** All Documents sent to or received from First DataBank, Redbook and Medi-span regarding the price of any Targeted Drug.

**RESPONSE TO REQUEST NO. 5:** In addition to the foregoing General Objections, Novartis objects to Request No. 5 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to this request on the grounds that it is vague and ambiguous with respect to the language “all,” “received,” “regarding” and “price.” Subject to and without waiving this and the foregoing General Objections, Novartis will produce non-privileged documents created during the period

January 1, 1997 through June 12, 2003 which were sent to or received from First DataBank, Redbook and Medi-span concerning the price of the Novartis AMCC Drugs and other Novartis pharmaceutical products.

**REQUEST NO. 6:** All Documents in your possession prepared by IMS Health regarding a Targeted Drug or the competitor of a Targeted Drug regarding pricing, sales or market share.

**RESPONSE TO REQUEST NO. 6:** In addition to the foregoing General Objections, Novartis objects to Request No. 6 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 is not limited to pricing, price reporting, average wholesale price, the relationship between average wholesale price and wholesale acquisition cost, or any other issue in this litigation, and to the extent that it seeks information that Novartis is prohibited by its contract with IMS Health from disclosing. Subject to and without waiving these and the foregoing General Objections, Novartis will produce non-privileged, non-restricted documents in its possession which were prepared by IMS Health during the period January 1, 1997 through June 12, 2003 which concern the average wholesale price for the Novartis AMCC Drugs.

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Dated: July 15, 2005

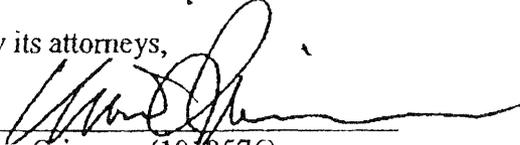
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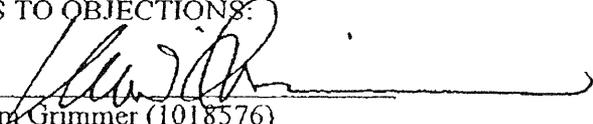
Respectfully submitted,

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# **EXHIBIT 2**

STATE OF WISCONSIN

CIRCUIT COURT  
Branch 7

DANE COUNTY

---

STATE OF WISCONSIN,

Plaintiff,

Case No. 04-CV-1709

Unclassified - Civil: 30703

v.

AMGEN INC., et al.,

Defendants.

---

**NOVARTIS PHARMACEUTICALS CORPORATION'S RESPONSE TO  
PLAINTIFF STATE OF WISCONSIN'S WRITTEN  
DISCOVERY REQUEST NO. 3 (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 ("Novartis"), by its undersigned counsel, responds as follows to Plaintiff State of Wisconsin's Written Discovery Request No. 3 (To All Defendants) on or about November 9, 2005 (the "Requests"):

**GENERAL OBJECTIONS**

Novartis expressly incorporates by reference all of the General Objections set forth in Novartis's Response to Plaintiff's First Set of Requests for Production of Documents to All Defendants. Any specific objections provided below are made in addition to these General Objections and a failure to reiterate a General Objection below does not constitute a waiver or limitation of that or any other objection. To the extent that Novartis states that it will produce documents responsive to any Request, such statement is made subject to, and without waiver or limitation of, all specific objections stated in response to such Request and all General Objections set forth below.

## **A. OBJECTIONS TO DEFINITIONS**

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

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “you,” and objects to the definition of “your” and “your company” as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language “all persons acting or purporting to act on behalf of defendants or their subsidiaries or predecessors.”

2. The term “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 or 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 clipping, tables tabulations, financial statement, working papers, tallies, maps, drawings, diagrams, sketches, x-rays, chart labels, packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, telegrams, telexes, telefacsimiles, tape, 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 insertion, or marking of any kind which is part of another document, is to be considered a separate document.

**OBJECTION:** Novartis 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, Novartis’s obligations under the Wisconsin Rules. Novartis further objects to this definition to the extent it requires or seeks to require Novartis to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format; (iii) produce data, fields, records, or reports about produced

documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement, copyright laws, or proprietary rights of any third party.

**B. 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.

**OBJECTION:** Novartis objects to this Instruction to the extent that it seeks to impose on Novartis the obligation to produce electronic materials in specified formats. Novartis further objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

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.

**OBJECTION:** Novartis objects to this Instruction to the extent that it seeks to impose on Novartis the obligation to produce electronic materials in specified formats. Novartis further objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

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 documents);

(d) The name and title of each person to whom the contents of the documents have been communicated by copy, exhibition, reading, or summary;

(e) A description of the nature and subject matter of the document is protected from disclosure;

(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 subparagraph(s) (a) through (f) above.

**OBJECTION:** Novartis objects to this instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

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.

**OBJECTION:** Novartis objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

## DOCUMENT 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 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 REQUEST NO. 7:** None of the documents listed in Appendix A are Novartis documents, and, therefore, Novartis has no documents which are responsive to Request No. 7.

**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 received from the defendant or drug wholesalers from 1993 to the present.

**RESPONSE TO REQUEST NO. 8:** In addition to its foregoing General Objections, Novartis objects to 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. Novartis further objects to this request on the grounds that it is vague and ambiguous with respect to Novartis' "practice concerning disclosures," in that Novartis does not make the disclosures in question, and the term "providers," which includes a broad range of providers which are not relevant to this lawsuit. Subject to and without waiving these and the foregoing General Objections, Novartis will produce non-privileged documents created during the period 1993 through June 12, 2003 which discuss or concern Novartis' policy regarding the disclosures that physicians, physicians groups and/or pharmacy benefit managers may make of the drug price information they received from Novartis during that period.

**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 REQUEST NO. 9:** In addition to its foregoing General Objections, Novartis objects to 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. Novartis further objects to this request on the grounds that it is vague and ambiguous with respect to Novartis' "practice concerning disclosures," in that Novartis does not make the disclosures in question, and the term "providers," which includes a broad range of providers which are not relevant to this lawsuit. Subject to and without waiving these and the foregoing General Objections, Novartis will produce representative agreements created during the period 1993 through June 12, 2003 between Novartis and physicians and/or physicians groups or between Novartis and pharmacy benefit managers which set forth Novartis' policy regarding the disclosures that such entities may make of the drug price information they received from Novartis during that period.

**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 REQUEST NO. 10:** In addition to the foregoing General Objections, Novartis objects to 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. Novartis also objects to this Request on the grounds that it is vague and ambiguous with respect to the language "agent" and "any claim." Novartis further objects to Request No. 10 to the extent that it suggests or implies that Novartis misrepresented its Average Wholesale Price or Wholesale Acquisition Cost to any publication, person, entity, or official; violated a federal "best price" law or regulation; or furnished free samples to providers for improper reasons. Subject to and without waiving this and the foregoing General Objections, Novartis states that it will produce sworn statements or deposition testimony of current and former Novartis employees to

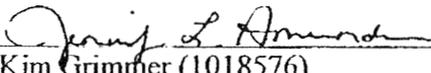
the extent that such employees have provided sworn statements or deposition testimony specifically concerning Novartis's practices relating to any claim or investigation about or connected with (a) the accuracy of Novartis's published Average Wholesale Price (AWP); (b) the accuracy of Novartis's published or published Wholesale Acquisition Cost (WAC); (c) Novartis's representations concerning its AWP or WAC to any publication, person, entity, or official; (d) Novartis's compliance with a federal "best price" law or regulation; or (e) the furnishing of free samples by Novartis's agents to providers who allegedly later sought improper reimbursement for such samples, subject to the terms of the Protective Order entered in this case on November 29, 2005.

Dated this 9<sup>th</sup> day of January, 2006.

Respectfully submitted,

Novartis Pharmaceuticals Corporation

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STATE OF WISCONSIN

CIRCUIT COURT  
Branch 7

DANE COUNTY

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STATE OF WISCONSIN,

Plaintiff,

v.

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

AMGEN INC., et al.,

Defendants.

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**CERTIFICATE OF SERVICE**

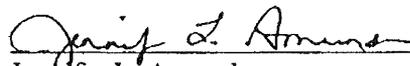
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I hereby certify that I caused a true and correct copy of Defendant Novartis Pharmaceuticals Corporation's Responses to Plaintiff State of Wisconsin's Written Discovery Request No. 3 (To All Defendants) to be served by electronic mail upon the attorneys listed on the attached document on January 9, 2006.

I also certify that I caused a true and correct copy of this document to be served electronically and by First Class U.S. Mail upon Robert S. Libman, and mailed by First Class U.S. Mail to the following:

Atty. Cynthia Hirsch  
Atty. Charles Barnhill  
Atty. William P. Dixon  
Atty. Jeffrey Archibald.

Dated this 9th day of January, 2006.

  
\_\_\_\_\_  
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