

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

STATE OF WISCONSIN,

CASE NO. 06 C 0582 C

Plaintiff,

Honorable Barbara B. Crabb

v.

AMGEN INC., et al.,

Defendants.

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

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Novartis Pharmaceuticals Corporation ("NPC"), by its undersigned counsel, responds as follows to Plaintiff State of Wisconsin's ("Plaintiff") Second Set of Requests for Production of Documents (to Novartis Pharmaceuticals Corporation) served on or about September 29, 2006 (the "Requests"):

GENERAL OBJECTIONS

NPC 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 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 below.

A. NPC objects to the Requests on the ground they purport to seek overly burdensome detailed information regarding (i) NPC's calculation of AMP, (ii) its policies and practices regarding AMP, and (iii) its payment of Medicaid rebates -- all of which are, at best, only marginally relevant to the causes of actions and allegations asserted in Plaintiff's Second Amended Complaint. Indeed, Plaintiff's Second Amended Complaint is devoid of any reference to AMP or Medicaid rebates. Thus, the Requests are not reasonably calculated to lead to the discovery of admissible evidence and, at this stage of the litigation, are merely Plaintiff's attempt to engage in a massive fishing expedition. Moreover, notwithstanding the marginal relevance of AMP to the claims in this case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e) who was deposed by Plaintiff on September 20, 2006 and provided testimony, on behalf of NPC, about NPC's methodology for calculating AMP (and related topics). During that deposition, the witness testified as to NPC's methodology for calculating AMP and referred Plaintiff to documents, which Plaintiff already has in its possession, describing that methodology. In addition, NPC has produced its actual AMP data, calculated on a quarterly basis, for the drugs named in Exhibits D and E to Plaintiff's Second Amended Complaint. Given that Plaintiff has already obtained sufficient discovery with respect to AMP -- a topic that is, at best, only marginally relevant to the claims in this case -- any additional discovery on this topic would be cumulative and, therefore, would impose needless burden on NPC.

B. 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 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.

C. By responding to these Requests, NPC does not waive or intend to waive any privilege, for any purpose, of any documents or information produced in response to these Requests. In particular, 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.

D. By responding that it will produce documents in response to a particular Request, NPC 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, 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 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.”

E. These responses are based on NPC’s investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. NPC 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 NPC’s attention, and to rely upon such information, documents, or objections in any hearing, trial or other proceeding in this litigation.

F. NPC objects to Plaintiff's "Definitions" to the extent that they purport to expand upon or alter NPC's obligations under the Federal Rules of Civil Procedure.

G. 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, 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 periods 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 that NPC search for and produce documents generated or assembled either prior to January 1, 1997, which was 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 Amended Second Amended Complaint in the action styled *In Re Pharmaceutical Industry Average Wholesale Price Litigation* (D. Mass.), MDL No. 1456, brought by the Nevada Attorney General and containing similar allegations against NPC to those alleged by Plaintiff, was publicly filed, thereby placing the Plaintiff on notice of the allegations against NPC, 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.

H. NPC objects to each Request that purports to require NPC to 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 produce all non-identical documents.

I. 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.

J. NPC objects to these Requests to the extent that they seek production of documents or information not in NPC's 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.

K. 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 entered in this action by the Circuit Court for Dane County, Wisconsin on November 29, 2005, prior to the removal of this action to the United States District Court for the Western District of Wisconsin on or about October 11, 2006.

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

OBJECTIONS TO DEFINITIONS

1. The term "average manufacturer price" or "AMP" means the price Novartis reports or otherwise disseminates as the average manufacturer price for any pharmaceutical that Novartis reports for purposes of the Medicaid program, pursuant to 42 U.S.C. §1396r-8.

OBJECTION: NPC 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 Novartis reports or otherwise disseminates as the average manufacturer price for any Pharmaceutical that Novartis reports.” NPC 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.”

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

REQUEST NO. 11: All Medicaid rebate agreements between: (a) Novartis or its predecessor companies and (b) the federal government, from 1993 to the present.

RESPONSE TO REQUEST NO. 11: In addition to its foregoing General Objections, NPC objects to Request No. 11 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 seeks information that is, at best, only marginally relevant to the causes of action or allegations asserted in Plaintiff’s Second Amended Complaint, which is devoid of any reference to Medicaid rebates. NPC further objects to this Request to the extent that it seeks information created, generated or assembled outside of the time period that is relevant to this litigation. Subject to and without waiving these and the foregoing General Objections, NPC states that there are only two documents responsive to Request No. 11 -- a February 1991 agreement signed by Ciba-Geigy Corporation and a February 1991 agreement signed by Sandoz Pharmaceuticals Corporation -- and that NPC will agree to produce these two documents, without prejudice to its previously stated objections, because the burden of doing so is low.

REQUEST NO. 12: All documents containing, or relating to, the definition of Average Manufacturer Price (AMP).

RESPONSE TO REQUEST NO. 12: In addition to its foregoing General Objections, NPC objects to Request No. 12 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, because the definition of AMP is, at best, only marginally relevant to any of the causes of action or allegations asserted in Plaintiff's Second Amended Complaint, which is devoid of any reference to AMP. In addition, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e) who was deposed by Plaintiff on September 20, 2006 and, on behalf of NPC, provided testimony about NPC's methodology for calculating AMP. During that deposition, the witness also referred Plaintiff to documents, which Plaintiff already has in its possession, describing that methodology. In addition, NPC has produced its actual AMP data, calculated on a quarterly basis, for the drugs named in Exhibits D and E to Plaintiff's Second Amended Complaint. Given that Plaintiff has obtained sufficient discovery on the topic of AMP, Request No. 12 is cumulative and imposes needless burden on NPC.

REQUEST NO. 13: All documents describing, regarding, or relating to any actual or proposed methodology used or considered by Novartis for calculating Average Manufacturer Price (AMP) from 1993 to the present, including but not limited to: all internal Standard Operating Procedures (SOPs), releases or other documents from the federal government (including but not limited to HCFA or CMS), and other documents about which Serafina Oxner testified at deposition on September 20, 2006.

RESPONSE TO REQUEST NO. 13: In addition to its foregoing General Objections, NPC objects to Request No. 13 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, because the methodology used by NPC to calculate AMP is, at best, only marginally relevant to any of the causes of action or allegations asserted in Plaintiff's Second Amended Complaint, which is devoid of any

reference to AMP. In addition, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e) who was deposed by Plaintiff on September 20, 2006 and, on behalf of NPC, provided testimony about NPC's methodology for calculating AMP. During that deposition, the witness also referred Plaintiff to documents, which Plaintiff already has in its possession, describing that methodology. In addition, NPC has produced its actual AMP data, calculated on a quarterly basis, for the drugs named in Exhibits D and E to Plaintiff's Second Amended Complaint. Given that Plaintiff has obtained sufficient discovery on the topic of AMP, Request No. 13 is cumulative and imposes needless burden on NPC.

REQUEST NO. 14: The Medicaid Drug Rebate Program Operational Training Guide (Guide) published and/or distributed by the federal government (including but not limited to HCFA or CMS), including any versions, modifications, or amendments in effect between 1993 and the present, and any documents relating to the Guide.

RESPONSE TO REQUEST NO. 14: In addition to its foregoing General Objections, NPC objects to Request No. 14 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, because the Medicaid Drug Rebate Program Operational Training Guide is, at best, only marginally relevant to any of the causes of action or allegations asserted in Plaintiff's Second Amended Complaint, which is devoid of any reference to Medicaid rebates. NPC further objects to this Request to the extent that it seeks information created, generated, or assembled outside of the time period relevant to this litigation. In addition, NPC objects to this Request on the grounds that, to the extent that the information sought is in the possession of the State or more appropriately sought from third parties, this Request is vexatious and unduly burdensome.

REQUEST NO. 15: All correspondence between Novartis and the federal government (including but not limited to HCFA or CMS) from 1993 to the present relating to any actual or proposed methodology for calculating Average Manufacturer Price (AMP).

RESPONSE TO REQUEST NO. 15: In addition to its foregoing General Objections, NPC objects to Request No. 15 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, because NPC's correspondence with the federal government relating to any actual or proposed methodology for calculating AMP is, at best, only marginally relevant to any of the causes of action or allegations asserted in Plaintiff's Second Amended Complaint, which is devoid of any reference to AMP. In addition, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e) who was deposed by Plaintiff on September 20, 2006 and, on behalf of NPC, provided testimony about NPC's methodology for calculating AMP. During that deposition, the witness also referred Plaintiff to documents, which Plaintiff already has in its possession, describing that methodology. In addition, NPC has produced its actual AMP data, calculated on a quarterly basis, for the drugs named in Exhibits D and E to Plaintiff's Second Amended Complaint. Given that Plaintiff has already obtained sufficient discovery on the topic of AMP, Request No. 15 is cumulative and imposes needless burden on NPC.

REQUEST NO. 16: With regard to the document that was marked by plaintiff as Plaintiff's Exhibit No. 95 at the deposition of Novartis on September 20, 2006, any documents relating to or supporting Novartis's practice of valuing units of "Non-Retail Chrg. Sales," "SPAP Sales," and "Medicaid Unit Sales" at the wholesale acquisition cost (WAC) or ex-factory price when deducting such sales from "Gross Non-Gov't" Sales when calculating Average Manufacturer Price (AMP).

RESPONSE TO REQUEST NO. 16: In addition to its foregoing General Objections, NPC objects to Request No. 16 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, because the methodology

used by NPC to calculate AMP is, at best, only marginally relevant to any of the causes of action or allegations asserted in Plaintiff's Second Amended Complaint, which is devoid of any reference to AMP. In addition, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e) who was deposed by Plaintiff on September 20, 2006 and, on behalf of NPC, provided testimony about NPC's methodology for calculating AMP. During that deposition, the witness also referred Plaintiff to documents, which Plaintiff already has in its possession, describing that methodology. In addition, NPC has produced its actual AMP data, calculated on a quarterly basis, for the drugs named in Exhibits D and E to Plaintiff's Second Amended Complaint. Given that Plaintiff has obtained sufficient discovery on the topic of AMP, Request No. 16 is cumulative and imposes needless burden on NPC.

REQUEST NO. 17: All documents relating to Novartis's policies, practices, or procedures from 1993 to the present regarding the confidentiality of the Average Manufacturer Price (AMP) of Novartis's drugs, including but not limited to policies relating to the confidentiality of AMPs vis-à-vis employees of Novartis (for example, (a) prohibitions on disclosure of AMPs to particular employees or departments within Novartis; or (b) procedures that must be followed for employees to obtain access to AMPs).

RESPONSE TO REQUEST NO. 17: In addition to its foregoing General Objections, NPC objects to Request No. 17 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, because NPC's policies regarding the confidentiality of its AMPs are, at best, only marginally relevant to any of the causes of action or allegations asserted in Plaintiff's Second Amended Complaint, which is devoid of any reference to AMP. NPC further objects to this Request to the extent that it seeks information created, generated, or assembled outside of the time period relevant to this litigation. In addition, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this

case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e) who was deposed by Plaintiff on September 20, 2006 and provided testimony about NPC's policies, practices, and procedures regarding the confidentiality of its AMPs. (See Oxner 9/20/06 Tr. at 136-45.) Given that Plaintiff has obtained sufficient discovery on this topic, Request No. 17 is cumulative and imposes needless burden on NPC.

REQUEST NO. 18: Any documents indicating that Novartis has ever provided AMPs to the State of Wisconsin or the Wisconsin Department of Health and Family Services from 1993 to the present (Novartis need not produce documents relating to the production of AMPs to the State of Wisconsin pursuant to the State's previous discovery requests in this case).

RESPONSE TO REQUEST NO. 18: In addition to its foregoing General Objections, NPC objects to Request No. 18 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, because the provision of NPC's AMPs for its drugs to Plaintiff or the Wisconsin Department of Health and Family Services is, at best, only marginally relevant to any of the causes of action or allegations asserted in Plaintiff's Second Amended Complaint, which is devoid of any reference to AMP. NPC further objects to this Request to the extent that (i) it seeks information relating to NPC's provision of AMPs, without limitation, thus including NPC drugs that were not named in Exhibits D or E to Plaintiff's Second Amended Complaint and, therefore, are not at issue in this litigation, and (ii) it seeks information created, generated, or assembled outside of the time period that is relevant to this litigation. In addition, NPC objects to this Request on the grounds that, to the extent that it seeks NPC's correspondence with Plaintiff, the documents sought -- if they exist -- would be in the possession of the State, and, therefore, this Request is vexatious and unduly burdensome. Moreover, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e)

who was deposed by Plaintiff on September 20, 2006 and provided testimony about whether NPC has ever provided its AMPs to the State of Wisconsin. (See Oxner 9/20/06 Tr. at 145-46.) Given that Plaintiff has obtained sufficient discovery on this topic -- which is, at best, only marginally relevant to the claims in this case -- Request No. 18 is cumulative and imposes needless burden on NPC. Subject to and without waiving these and the foregoing General Objections, NPC states that (i) it will agree to undertake a reasonable search for correspondence with the State of Wisconsin that would be responsive to Request No. 18, and (ii) if such correspondence exists, NPC will agree to produce it, without prejudice to its previously stated objections, because the burden of doing so is relatively low.

REQUEST NO. 19: To the extent that Novartis contends that the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of Novartis's drugs based on the Unit Rebate Amount for Novartis's drugs provided to the State of Wisconsin by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. § 1396r-8, produce all documents that support such contention.

RESPONSE TO REQUEST NO. 19: In addition to its foregoing General Objections, NPC objects to Request No. 19 on the grounds that it purports to require NPC to take a position as to a legal conclusion (*i.e.*, whether Plaintiff was, or was not, at some unspecified time, prohibited from determining the AMPs for NPC drugs based on the rebates paid to Plaintiff by NPC) and then provide discovery with respect to such legal conclusion. As such, this Request targets legal analysis and, therefore, purports to require the production of documents that -- if they existed -- would be protected from disclosure by the attorney-client and/or attorney work product privileges. NPC further objects to this Request on the ground that it is a contention interrogatory and, therefore, not a proper document request. Moreover, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(2) who was deposed by Plaintiff on September 20, 2006 and

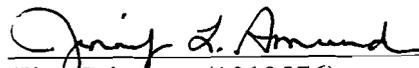
provided testimony, based on her personal knowledge, about this topic. (*See Oxner 9/20/06 Tr.*
at 148-50.)

Dated this 29th day of November, 2006.

Respectfully submitted,

Novartis Pharmaceuticals Corporation

By its attorneys,



Kim Grimmer (1018576)

Jennifer L. Amundsen (1037157)

SOLHEIM BILLING & GRIMMER, S.C.

U.S. Bank Plaza, Suite 301

One South Pinckney Street

P.O. Box 1644

Madison, WI 53701-1644

Of counsel:

Jane W. Parver

Saul P. Morgenstern

Mark Godler

Christine A. Braun

KAYE SCHOLER LLP

425 Park Avenue

New York 10022

(212) 836-8000

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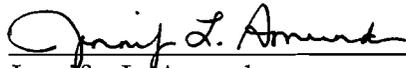
CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2006, a true and correct copy of Novartis Pharmaceuticals Corporation's Response to Plaintiff State of Wisconsin's Second Set of Requests for Production of Documents (To Novartis Pharmaceuticals Corporation) 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 electronically and by First Class Mail upon Attorney Robert S. Libman and mailed by First Class Mail to the following:

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

Dated this 29th day of November, 2006.



Jennifer L. Amundsen