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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

AMGEN INC., et. al.,

Defendants.

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PLAINTIFF'S RESPONSE TO SANDOZ INC.'S FIRST<sup>1</sup> REQUEST FOR  
PRODUCTION OF DOCUMENTS

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**GENERAL OBJECTIONS:**

1. The Plaintiff OBJECTS to the “definitions” to the extent that these “definitions” deviate from the ordinary and accepted meaning of the term. In particular, the Plaintiff specifically OBJECTS to the following “definitions.”

a. Plaintiff OBJECTS to definition numbers 17, 18, 20, and 27 on the ground that Defendants’ suggested definitions are overbroad. To comply with this “definition” would be to make every Request over burdensome.

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<sup>1</sup> This is not Sandoz “first” request. Sandoz, jointly with the other Defendants, submitted three previous requests to produce documents.

b. Plaintiff OBJECTS to definition number 25 on the ground that definition is not only inconsistent with ordinary usage but that it is not possible to answer a demand served upon it expecting that a response can be given from all the persons or entities described in this “definition.” To comply with this “definition” would be to make every Request over burdensome.

2. The Plaintiff OBJECTS to those Requests that seeks documents dated prior to January 1, 1993. Because records prior to 1993 are outside the scope of this lawsuit, and because of logistical difficulties retrieving information or knowledge back beyond that period of time, those Requests are overbroad and producing responsive information is unduly burdensome. Notwithstanding this objection, the Plaintiff has produced documents irrespective of their date or age to the extent these records were readily available.

3. The Plaintiff OBJECTS to these Requests to the extent they demand documents predicated on “what the Plaintiff knew,” or “relied on,” or documents about when the Plaintiff became “aware” of an act, event, fact or occurrence or when and/or why the Plaintiff did not become “aware” of something or some event, on the ground that all Requests asked in that regard demand irrelevant information, are unduly burdensome and are not likely to lead to the discovery of relevant and admissible evidence. Furthermore, the State of Wisconsin is not a person so as to facilitate the determination of what it “knew” or did not “know.” Not only is this purported “knowledge” of the government not relevant, but it is not identifiable. Notwithstanding this objection, the Plaintiff has herein and previously produced documents responsive to the Requests below. The

Defendants may draw whatever inferences they desire from these documents including what a natural person associated with the document knew or might not have known.

4. The Plaintiff OBJECTS to these Requests to the extent that they demand the production of documents that are as easily and readily available to the Defendants as they are to the Plaintiff.

Subject to the foregoing objections, the Plaintiff responds as follows:

### **REQUEST FOR DOCUMENTS TO BE PRODUCED**

#### **REQUEST NO. 1:**

All Documents Concerning requests or claims for reimbursement for the purchase of any of the Subject Drugs pursuant to any Program.

#### **ANSWER:**

The Plaintiff OBJECTS to this request on the ground that the request is vague, ambiguous and overbroad. Notwithstanding this objection, Plaintiff submits that it has already provided all relevant documents pertaining to claims for reimbursement within the state's Medical Assistance Program. Requests or claims for reimbursement for the purchase of drugs would be reflected in the claims data produced by the Plaintiff from data provided to it by EDS.

**REQUEST NO. 2:**

All Documents Concerning the calculation, processing, or payment of claims for the Subject Drugs, including, but not limited to, examples of all Provider claim forms used during any period for which You claim damages.

**ANSWER:**

The Plaintiff OBJECTS to this request on the ground that asking for all documents “concerning the calculation... of claims” is vague and ambiguous. Notwithstanding this objection, Plaintiff submits that it has already provided all relevant documents relating to the process and payment of claims. *See* Plaintiff’s answer to Defendants’ Second Request for Production of Documents number 1. Moreover, the current Provider claim forms are available on the Wisconsin Department of Health and Family Services Medical Assistance website. Finally, *See* Defendants’ Notice of Deposition pursuant to Wis. Stat. 804.05 relating to Provider Agreements.

**REQUEST NO. 3:**

All Documents Concerning Communications with Providers Concerning reimbursement for any of the Subject Drugs.

**ANSWER:**

The Defendant has withdrawn this request.

**REQUEST NO. 4:**

Documents sufficient to show the actual net price paid by You for the purchase of any of the Subject Drugs, including but not limited to contracts for the purchase of any of

the Subject Drugs. Purchase in this context means actual acquisition as opposed to reimbursement. This request includes Documents from any State entity that purchases drugs, including but not limited to the Bureau of Prisons and State Universities.

**ANSWER:**

Please *See* Plaintiff's answer to Defendants' Second Request for Production of Documents number 27. *See* also Defendants' third party subpoena to the Minnesota Multistate Buying Group and documents demanded therein. Finally, *See* the Cardinal data previously produced to the Defendants which can be used, (and have been used), by the Defendants to locate payments made by state agencies under the Minnesota Multistate Buying Group. The Plaintiff OBJECTS to producing data from "State Universities" on the ground that purchases made at teaching hospitals are made within a class of trade and resulting purchase price which has no relevance to the retail class of trade at issue in this litigation and is therefore irrelevant and effort to locate and produce this information would be over burdensome.

**REQUEST NO. 5:**

All Documents Concerning actual or proposed audits of claims submissions and/or invoices.

**ANSWER:**

The Plaintiff OBJECTS to this request on the ground that "proposed audits of claims submissions" is vague and ambiguous. Notwithstanding this objection, *See* Plaintiff's answer to Defendants' previous request to produce number 24 which previously asked for audit documents. Finally, please also *See* the deposition transcript

and related documents for Alan White which dealt in part to audits done by DHFS Bureau of Program Integrity.

**REQUEST NO. 6:**

All Documents Concerning Your decision to rely or not rely upon Wholesale Acquisition Cost (“WAC”) in calculating reimbursement of Multiple Source Drugs.

**REQUEST NO. 7:**

All Documents Concerning Your decision to rely or not rely upon Average Wholesale Price (“AWP”) in calculating reimbursement of Multiple Source Drugs.

**REQUEST NO. 8:**

All Documents Concerning Your decision to rely or not rely upon Direct Price in calculating reimbursement of Multiple Source Drugs.

**REQUEST NO. 9:**

All Documents Concerning Your decision to rely or not rely upon AAC in setting reimbursement rates for Multiple Source Drugs.

**ANSWER:**

Requests numbers six through nine all make essentially the same demand for documents and are thus responded to collectively herein. The Plaintiff generally reimbursed Providers for the distribution of pharmaceutical products based on the average wholesale price reported by the Defendants. For documents relating to

reimbursement based on AWP, please *See generally* Plaintiff's earlier production. Specifically, please *See* Plaintiff's answer to Defendants' Second Request for Production of Documents numbers 4, 8, 19, 33, and 34.

The defendant did reimburse some drugs manufactured by some Defendants for a brief time using "direct price." For specific documents relating to direct price, please *See* the documents that the Defendants marked and used during the deposition of Mike Boushon.

For specific documents relating to "actual acquisition costs," please *See* Plaintiff's answer to Defendants' Second Request for Production of Documents number 13(c). Please also *See* the depositions of Boushon, Rowlands, Collins and Gray, in which it was stated that the Plaintiff would not know whether the invoices that it receives are those that are consistent with how the defendant has defined this term. Therefore, the Plaintiff does not possess any records from third parties clearly showing their "actual acquisition cost."

Beyond the documents referenced above, the Plaintiff OBJECTS to these requests generally on the ground that they are overbroad and therefore unduly burdensome. For example, number 7 may be interpreted to include every document already produced as part of the legislative process.

Lastly, Plaintiff OBJECTS to these requests to the extent they relate to "Your decision." The "decision" how to reimburse is made in Wisconsin through the legislative process, as proposed by the Legislature and as signed or modified by the Governor. It is not possible, therefore, to discern what motivated or upon what each participant in the legislative process relied on.

**REQUEST NO. 10:**

Documents relating to the Wisconsin MAC list of prices, including but not limited to:

- (a) Wisconsin MAC lists or prices in effect since 1977;
- (b) Documents sufficient to show the period during which each Wisconsin MAC list was in effect;
- (c) Documents reflecting the reimbursement rate applicable to each drug on the Wisconsin MAC list;
- (d) Documents concerning Your decision to add or delete drugs from the Wisconsin MAC list;
- (e) Documents Concerning the implementation, use of, change of, or deletion of a MAC price; and
- (f) Documents Concerning how each MAC was calculated, including but not limited to the prices used in calculating each MAC.

**ANSWER:**

Plaintiff submits that it has already provided all relevant documents. *See* Plaintiff's answer to Defendants' Second Request for Production of Documents numbers 4, 8, 19, 20, 22, 33 and 56. More importantly, (d), (e), and (f) above were questions asked of and answered by Roma Rowlands, Mike Boushon, and Ted Collins.

Defendant can determine the MAC price from the claims data which has already been produced. The current MAC table is available online. The Plaintiff OBJECTS to the request in that it demands documents before the relevant period of time in this case on the ground that it is over burdensome and not likely to lead to the discovery of relevant

and admissible evidence. Notwithstanding this objection, Plaintiff does not have MAC tables going back to 1977. The Plaintiff maintains in its database only the last ten pricing segments for any particular drug. The duration of the period these ten segments covers depends on the frequency the manufacturer or the State changed the reimbursement price. The Plaintiff will produce that data to the defendant at a mutually convenient time and date, but *See* Request No. 12 below.

**REQUEST NO. 11:**

All Documents Concerning any research or price determinations made by Wisconsin Medicaid's fiscal agent(s), including, but not limited to EDS and its subcontractors, for the Subject Drugs.

**ANSWER:**

The Plaintiff OBJECTS to this request on the ground that "price determinations" is vague and ambiguous and on the ground that asking for all "research" is overbroad. Notwithstanding this objection, Plaintiff submits that it has already provided all relevant documents that it has in its possession. The Plaintiff further OBJECTS on the ground that this information may be available directly from EDS<sup>2</sup> and is therefore equally accessible to the defendant as it is to the Plaintiff.

**REQUEST NO. 12:**

All drug pricing files prepared Concerning the Subject Drugs.

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<sup>2</sup> Plaintiff received notice that a deposition of EDS will be taken on December 19, 2007.

**ANSWER:**

The Plaintiff has already produced the claims data to the Defendants. That data allows the Defendants to compute reimbursement rates. The Plaintiff already produced to the defendant the pricing file the Plaintiff received from First Data Bank. To the extent this defendant intends “drug pricing files” to mean something else, Plaintiff OBJECTS on the ground that it is ambiguous.

**REQUEST NO. 13:**

All non-privileged Documents relating to any actions taken or considered concerning the civil complaints that have been filed by You or any department or agency thereof concerning the pricing of pharmaceuticals, reimbursements for the purchase of pharmaceuticals, or participation in the Medicaid program.

**ANSWER:**

The Plaintiff OBJECTS to this request with regard to its application to “participation in the Medicaid Program” on the ground that it is ambiguous and most likely overbroad. Notwithstanding this objection, any civil action, (i.e. filed in circuit court), would be done by the Office of the Wisconsin Attorney General. Upon information and belief, no civil action, other than this action, has been filed concerning the pricing of pharmaceutical products by a manufacturer.

**REQUEST NO. 14:**

All Documents sent to or received from the Listservs “MMA\_STATES,” “PHARMACY\_MMA-L,” [NMPAAtalk@listbot.com](mailto:NMPAAtalk@listbot.com), or any other Listserv to which you

subscribe or belong that distributes communications Concerning drug pricing, including but not limited to documents sufficient to identify each Person who subscribed or belonged to each such Listserv.

**ANSWER:**

The Plaintiff OBJECTS to this request on the ground that it does not provide sufficient information from which a reasonable effort can be undertaken to determine whether the Plaintiff possesses any relevant and responsive documents.

**REQUEST NO. 15:**

All Documents sent to or received from any pharmacy or trade association Concerning any matter related to Medicaid drug reimbursement or Rebates.

**ANSWER:**

*See* Plaintiff's answer to Defendants' Second Request for Production of Documents number 13.

**REQUEST NO. 16:**

Any Document that discusses, describes, or refers to the following:

- (a) 1997 HHS-OIG report entitled Medicaid Pharmacy – Actual Acquisition Cost of Generic Prescription Drug Products (A-06-97-00011) (Aug. 1997);
- (b) 2002 HHS-OIG report entitled Medicaid Pharmacy – Actual Acquisition Cost of Generic Prescription Drug Products (A-06-01-00053) (Mar. 2002);

- (c) Wholesale Pricing of Prescription Drugs in Wisconsin, A Study by the Wisconsin Department of Agriculture, Trade and Consumer Protection (July 28, 1995).

**ANSWER:**

The plaintiff OBJECTS to this Request on the ground that asking for every document that “describes” or “refers to” is overbroad and unduly burdensome. The Plaintiff also OBJECTS to this request on the ground that “discusses” is ambiguous. Notwithstanding these objections, upon information and belief, Plaintiff possesses no documents, other than what has already been produced, responsive to (a) and (b) above. The Plaintiff will make any documents in the possession of the Wisconsin Department of Agriculture, Trade and Consumer Protection available to the defendant at a mutually convenient date and time.

**REQUEST NO. 17:**

All Documents supporting, refuting, or otherwise Concerning the allegation in Paragraphs 56 and 88 of the Second Amended Complaint that Sandoz made use of incentives to induce providers to purchase their drugs.

**ANSWER:**

All documents responsive to this Request have already been produced.

**REQUEST NO. 18:**

All Documents supporting, refuting, or otherwise Concerning the allegation in Paragraphs 40, 43, 49, 59 and 65 of the Second Amended Complaint that Sandoz

knowingly and willfully reported false, misleading and inflated AWP, WAC, and/or Direct Price information.

**ANSWER:**

All documents responsive to this Request have already been produced.

**REQUEST NO. 19:**

All Documents supporting, refuting, or otherwise Concerning the allegation in Paragraphs 34, 53-56, 59 and 65 of the Second Amended Complaint that Sandoz knowingly and willfully falsified and concealed the true market pricing information, including AWP, WAC, and/or Direct Price, for their respective drugs from Wisconsin Medicaid.

**ANSWER:**

All documents responsive to this Request have already been produced.

**REQUEST NO. 20:**

All documents supporting, refuting, or otherwise Concerning the allegation in Paragraphs 49, 53-54, 58 and 88 of the Second Amended Complaint that Sandoz has entered into secret agreements to conceal the lowest prices charged for their pharmaceutical products.

**ANSWER:**

All documents responsive to this Request have already been produced.

**REQUEST NO. 21:**

All Documents supporting, refuting, or otherwise Concerning the allegation in Paragraphs 40-41 of the Second Amended Complaint that Sandoz marketed the “spread.”

**ANSWER:**

All documents responsive to this Request have already been produced.

**REQUEST NO. 22:**

All documents supporting, refuting, or otherwise Concerning the allegation in Paragraph 99 of the Second Amended Complaint that Sandoz manipulated AWP's in order to gain or maintain a competitive advantage in the market.

**ANSWER:**

All documents responsive to this Request have already been produced.

**REQUEST NO. 23:**

All Documents Concerning Rebates for the Subject Drugs, including but not limited to all documents Concerning:

- (a) Documents sufficient to show Your claims for Rebates for the Subject Drugs;
- (b) All Documents Concerning Your calculation of claims for Rebates for the Subject Drugs; and
- (c) Invoices for Rebates sent to Sandoz for the Subject Drugs.

**ANSWER:**

The Plaintiff OBJECTS to this request on the ground that “rebates” is ambiguous. Wisconsin participates in at least two different and distinct rebate programs. Additionally, Plaintiff OBJECTS to this request on the ground that documents concerning rebates are not relevant to the issues in this case and not likely to lead to the discovery of relevant information and are a burden to reproduce. Lastly, any invoices that the Plaintiff sent to the defendant Sandoz would be in Sandoz’s possession.

Notwithstanding these objections, one component of the AMP rebate is utilization. This amount can be derived from the claims data already produced to the defendant. Another component is the AMP. This calculation was and is made by Sandoz and therefore anything relevant to the AMP would be in defendant’s own possession. Finally, *See* Plaintiff’s answer to Defendants’ Second Request for Production of Documents numbers 28 and 33.

**REQUEST NO. 24:**

All First DataBank Documents in Your possession Concerning First DataBank’s editorial policies, National Drug Data File (“NDDF”), customer program specifications, data elements, algorithms, or other information available to customers.

**ANSWER:**

*See* Plaintiff’s answer to Defendants’ Second Request for Production of Documents number 32.

**REQUEST NO. 25:**

All Documents Concerning Communications with the pricing compendia, including but not limited to First DataBank and Medi-Span, regarding pricing or reimbursement of drugs.

**ANSWER:**

*See* Plaintiff's answer to Defendants' Second Request for Production of Documents number 32. Additionally, please *See* the documents previously provided to the defendant that the Plaintiff acquired from Redbook.

**REQUEST NO. 26:**

All Documents Concerning Wisconsin Medicaid's and/or the State of Wisconsin's assurances, as required by 42 C.F.R. § 447.333, to HCFA and/or CMS that Wisconsin Medicaid's expenditures for drugs listed in accordance with 42 C.F.R. § 447.331(b) are in accordance with payment limits specified in 42 C.F.R. § 447.331(b), including, but not limited to, the assurances provided to HCFA/CMS and all documents supporting such assurances.

**ANSWER:**

*See* Plaintiff's answer to Defendants' Second Request for Production of Documents numbers 2-7.

**REQUEST NO. 27:**

All Documents Concerning Wisconsin Medicaid's and/or the State of Wisconsin's assurances, as required by 42 C.F.R. § 447.333, to HCFA and/or CMS that

Wisconsin Medicaid's expenditures for multiple source drugs listed in accordance with 42 C.F.R. § 447.332(a) are in accordance with upper limits specified in 42 C.F.R. § 447.332(b), including, but not limited to, the assurances provided to HCFA/CMS and all documents supporting such assurances.

**ANSWER:**

*See* Plaintiff's answer to Defendants' Second Request for Production of Documents numbers 2-7.

**REQUEST NO. 28:**

All Documents Concerning Communications between the State and wholesalers, pharmacies, buying groups, or any other entity, regarding Wisconsin MACs or prices for any Subject Drug, including but not limited to Communications between the State and McKesson, Cardinal, VetNet and IPC.

**ANSWER:**

All documents that currently exist relating to this request have already been produced. Please *See* the testimony of Ted Collins for further elaboration on his electronic access to this information.

**REQUEST NO. 29:**

All Documents Concerning Communications between Sandoz and the State regarding Medicaid Rebates.

**ANSWER:**

*See* answer number 23 above

**REQUEST NO. 30:**

All Documents Concerning the State's consideration of AMP in determining Medicaid reimbursement, including but not limited to efforts to calculate AMPs based on URAs (Unit Rebate Amounts).

**ANSWER:**

All documents relating to this request have already been produced. "The State" does not consider AMP in determining Medicaid reimbursement.

**REQUEST NO. 31:**

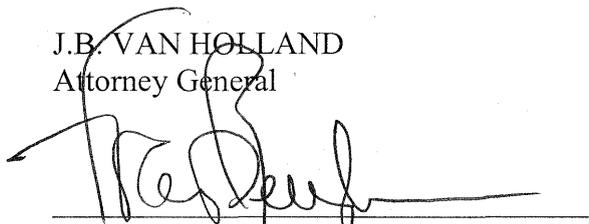
All Documents Concerning the AMP information provided by Sandoz to the State.

**ANSWER:**

*See answer numbers 23 and 30 above.*

Dated this 26th day of November, 2007.

J.B. VAN HOLLAND  
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