

STATE OF WISCONSIN
CIRCUIT COURT Branch 7
DANE COUNTY

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STATE OF WISCONSIN, :
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Plaintiff, :
 :
v. :
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 :
AMGEN INC., et al., :
 :
Defendants. :
-----X

Case No.: 04CV1709
Unclassified Civil: 30703

**DEFENDANT SANDOZ INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFF STATE OF WISCONSIN'S WRITTEN DISCOVERY
REQUEST NO. 3 (TO ALL DEFENDANTS)**

Pursuant to Wisconsin Rules of Civil Procedure, WIS. STAT. §§ 804.01 and 804.09 (2003-04), defendant Sandoz Inc. ("Sandoz" or the "Company"), by its attorneys, hereby asserts its Responses and Objections to Plaintiff State of Wisconsin's ("the State") Written Discovery Request No. 3 (To All Defendants) (the "Third Document Requests"), as follows:

GENERAL OBJECTIONS

The following General Objections apply to each Definition, Instruction, and Request and shall have the same force and effect as if fully set forth as a Specific Objection to each Definition, Instruction, and Request:

1. By objecting and responding to these Third Document Requests, Sandoz does not in any way waive or intend to waive: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information or documents that may be produced in response to the Third Document Requests; (b) any objections

as to the vagueness, ambiguity, or other infirmity in the form of any Request; (c) any objections based on the undue burden imposed by any Request; (d) any objections to the use of the documents or information that may be produced in response to the Third Document Requests at any hearings or at trial; (e) any objections to any further Requests involving or relating to the subject matter of the Third Document Requests; or (f) any privileges, rights, or immunity under the applicable Wisconsin Rules of Civil Procedure, Wisconsin Rules of Evidence, statutes, or common law.

2. By stating herein that it will produce documents or information in response to a particular Request, Sandoz does not assert that it has responsive documents or information or that such materials exist, only that it will conduct a reasonable search of its files most likely to contain responsive documents or information and produce responsive, non-objectionable, non-privileged documents revealed by such investigation. No objection made herein, or lack thereof, is an admission by Sandoz as to the existence or non-existence of any document or information.

3. Sandoz objects to the extent that the Third Document Requests are premature in that they seek a response while the Defendants' motion to dismiss this action is *sub judice* and until that motion is decided, the requests impose potentially undue burden and expense on Sandoz. Sandoz further states that its investigation and discovery is ongoing and its Objections and Responses herein are based upon, and necessarily limited to, information that has been ascertained thus far. Accordingly, Sandoz reserves its right to amend, supplement, and/or to withdraw any General or Specific Objection set forth herein on the basis of documents or information found during its investigation or any discovery that may be taken in this action.

4. Sandoz objects to each Definition, Instruction, and Request to the extent it imposes or purports to impose discovery obligations greater than, or inconsistent with, Sandoz'

obligations under the Wisconsin Rules of Civil Procedure and statutes and to the extent that the State seeks discovery beyond that permitted by such Rules and statutes.

5. Sandoz objects to each Definition, Instruction, and Request to the extent it seeks information or documents protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or protection against disclosure. Any inadvertent production of any privileged or protected information or document by Sandoz shall not constitute a specific or general waiver of any privilege or protection and shall not preclude Sandoz from objecting to disclosure on any other basis.

6. Sandoz objects to each Definition, Instruction, and Request to the extent it seeks the production of proprietary or commercially sensitive information, including but not limited to, personal financial information, confidential, and/or proprietary research, procedures and processes relating to the pricing of pharmaceuticals, current and past marketing plans and methods, and current and past business planning and financial information. Sandoz' production of any document or provision of information pursuant to these Requests shall not be construed as a waiver of the confidentiality of any such document or information and shall be subject to the Protective Order, as amended by the Court's order of November 29, 2005.

7. Sandoz objects to each Definition, Instruction, and Request to the extent it requires Sandoz to disclose information or produce documents outside of Sandoz' possession, custody, or control, and/or no longer in existence, to seek information about or produce documents from persons not currently employed or associated with Sandoz, or to provide or search for information or produce documents in the possession, custody or control of non parties. Sandoz will only disclose information and produce documents that are within its possession, custody, or control.

8. Sandoz objects to each Definition, Instruction, and Request to the extent it seeks information or documents already in the State's possession, custody, or control, or in the possession, custody, or control of any of the State's officers, employees, agents, agencies, or departments. Sandoz further objects to each Definition and Request to the extent it requires Sandoz to search for information publicly available or to search for information or documents for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State or any of its officers, employees, agents, agencies, or departments as it is for Sandoz.

9. Sandoz objects to each Definition, Instruction, and Request to the extent it is duplicative or redundant of other Definitions, Instructions, or Requests, or other discovery requests propounded by the State. Each written response and/or document that may be produced in response to a specific Request is deemed to be produced in response to every other Request or discovery request of the State to which the written response, document, or information is or may be responsive.

10. Sandoz objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Third Document Requests. Sandoz' written response or production of documents or information in connection with a particular Request is not intended to indicate that Sandoz agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Third Document Requests, or that such implications or characterizations are relevant to this action.

11. Sandoz objects to each Request that does not specify a defined period of time, or requests documents from 1993 to the present, on the grounds that such Requests impose an undue burden on Sandoz to the extent that they seek information not relevant to the State's

claims nor reasonably calculated to lead to the discovery of admissible evidence. Unless expressly stated, Sandoz' Responses are limited to the six-year period prior to the State's filing of its complaint against Sandoz, on November 1, 2004.

12. Sandoz objects to the definitions of "you," "your" and "your company" in Definition No. 1 to the extent they extend or purport to extend to any corporate entity other than Sandoz Inc., or to the extent they include or purport to include persons other than the present officers, directors, employees, agents, attorneys, or representatives of Sandoz who have knowledge of the events relevant to the instant litigation. Sandoz will only disclose information and produce documents that are within its possession, custody, or control.

13. Sandoz objects to the definition of "Document" in Definition No. 2 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Sandoz' obligations under the Wisconsin Rules of Civil Procedure and statutes. Sandoz further objects to this definition to the extent it would require Sandoz to produce multiple copies of the same document or to conduct an unduly burdensome search for duplicative information including, among other things, electronic databases containing overlapping information.

14. Sandoz objects to Instruction No. 1 as unduly burdensome to the extent it seeks the provision or production of "any" or "all" documents on a subject matter. Subject to and without waiver of this objection, and subject to resolution of Sandoz' other objections set forth herein, Sandoz will produce non-privileged documents that are located following a reasonable search of those Sandoz' files that are most likely to contain documents or information responsive to these Requests.

15. Sandoz objects to Instructions Nos. 2, 3, and 4 to the extent that they impose or purport to impose discovery obligations greater than, or inconsistent with, Sandoz' obligations

under the Wisconsin Rules of Civil Procedure and statutes, in particular WIS. STAT. § 804.01(2)(a), and to the extent that the State seeks discovery beyond that permitted by such Rules and statutes.

16. Sandoz objects to Instructions Nos. 3 and 4 to the extent that they impose or purport to impose discovery obligations regarding privileged information and/or documents greater than, or inconsistent with, Sandoz' obligations under the Wisconsin Rules of Civil Procedure and statutes, in particular WIS. STAT. §§ 804.01(2)(a) and 905.03(2), and to the extent that the State seeks discovery beyond that permitted by such Rules and statutes. Any inadvertent production of any privileged or protected information or document by Sandoz shall not constitute a specific or general waiver of any privilege or protection and shall not preclude Sandoz from objecting to disclosure on any other basis.

SPECIFIC OBJECTIONS AND RESPONSES

Sandoz incorporates the foregoing general objections to the Definitions, Instructions, and Requests into each of Sandoz' objections to the specific requests. The general objections shall have the same force and effect as if fully set forth therein:

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 based numbers are otherwise identified, e.g., paragraph 290).

Response to Request No. 7:

Request No. 7 does not apply to Sandoz because Sandoz is not named in the Third Amended Master Consolidated Class Action Complaint Amended to Comply With the Court's

Class Certification Order and none of the documents identified in Appendix A were produced by Sandoz.

Request No. 8:

Documents discussing or concerning the policy and practice of each defendant concerning the disclosures providers and pharmacy benefit managers may make of the drug price information they receive from the defendant or drug wholesalers from 1993 to the present.

Response to Request No. 8:

In addition to the foregoing General Objections, Sandoz objects to Request No. 8 on the grounds that it is unduly burdensome, designed to harass and annoy Sandoz, overly broad, and vague and ambiguous. For example, on its face, this Request seeks not only written documents revealing any Company policy concerning the confidentiality of product pricing information, but the terms “discussing or concerning” as used in the Request may be reasonably construed to also require Sandoz to search for, collect, and review internal communications between Company employees to determine whether there is any mention of any such policy. Further, the undefined terms “providers” and “pharmacy benefit managers” are vague and ambiguous. As used in Request No. 8, the terms “providers” and “pharmacy benefit managers” also impose an undue burden to the extent that they may be reasonably construed to require Sandoz to conduct an investigation of each of its customers to determine the nature of their business operations. Sandoz further objects to this Request to the extent that it is duplicative of the State’s First Set of Interrogatories to All Defendants Interrogatories (“First Interrogatories”) Nos. 1(g) and (h) which may be construed to seek documents relating to communications between Sandoz and its customers about product pricing.

Sandoz also objects to Request No. 8 on the grounds that it calls for the production of information or documents neither relevant to any issue in the instant litigation nor

reasonably calculated to lead to the discovery of admissible evidence. In particular, this Request seeks information or documents from outside the statute of limitations applicable to the State's claims, beyond the time period relevant to this action, and beyond the time period reasonably anticipated to encompass probative information that is relevant to the claims in this action. Sandoz further objects to this Request to the extent it seeks information or documents protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or protection against disclosure.

Subject to and without waiving the foregoing objections, including Sandoz' General Objection No. 11 as to the relevancy and burden imposed by the State's request for documents dating from 1993 to the present, Sandoz states that for the period of January 1, 1993, to November 1, 2004, it will produce any non-privileged written policy regarding the disclosure of product pricing information Sandoz furnished to entities that to Sandoz' knowledge function as a retail pharmacy or provide pharmacy benefit management services.

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 the foregoing General Objections, Sandoz objects to Request No. 9 on the grounds that it is overly broad, unduly burdensome, and designed to harass and annoy Sandoz. In particular, Sandoz objects to the phrases "providers" and "pharmacy benefit managers" for the reasons stated in its written response to Request No. 8. Sandoz further objects to the extent that this Request calls for "exemplar agreements" relating to the defendants' "policies and practices relating to the disclosures such entities may make of the drug price

information they receive from [Sandoz]" on the grounds that it is duplicative of Request No. 8. Sandoz also objects to Request No. 9 to the extent that it is duplicative of the State's First Interrogatories Nos. 1(g) and (h) which may be reasonably construed to seek information regarding Sandoz' calculation of sales prices to its customers and whether such prices were "treated as confidential." Moreover, Sandoz objects to Request No. 9 as vague and ambiguous, and unduly burdensome because it provides no guidance as to the type and number of "exemplar agreements" Sandoz would need to search for and produce to satisfy the Request.

Subject to and without waiving the foregoing objections, to the extent Sandoz has entered into agreements with entities that to Sandoz' knowledge function as retail pharmacies or provide pharmacy benefit management services, and such agreements contain a provision regarding the disclosure of Sandoz' product pricing information, Sandoz will produce four such agreements.

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, Sandoz objects to Request No. 10 on the grounds that it is overly broad, vague and ambiguous, and designed to harass and annoy Sandoz. In particular, the undefined phrases "any claim or investigation about or connected with," "Average Wholesale Price," "Wholesale Acquisition Cost," "inaccurate," and "improper reasons" are overly broad and vague and ambiguous. Sandoz also objects to Request No. 10 on

the grounds that it requires Sandoz to seek information and produce documents from and/or about persons not currently employed or associated with Sandoz, or to provide or seek information and produce documents regarding such persons.

Sandoz further objects to Request No. 10 on the grounds that it is unduly burdensome to the extent that it seeks information or documents from outside the statute of limitations applicable to the State's claims, beyond the time period relevant to this action, and beyond the time period reasonably anticipated to encompass probative information that is relevant to the claims in this action. For example, on its face, this Request may be reasonably construed to require Sandoz to identify every former employee, including some whom have not been affiliated with Sandoz since 1993, determine whether such individuals ever gave a sworn statement or deposition relating to claims or investigations tenuously related to this action, and of which Sandoz has no knowledge, obtain copies of any such statements, and review them for possible responsiveness.

Sandoz also objects to Request No. 10 to the extent that it requires or purports to require Sandoz to produce any information or documents subject to a protective order or filed under seal. Sandoz further objects to this Request to the extent that it requires or purports to require Sandoz to produce information regarding drugs inconsistent with the drugs identified in Exhibit A to the State's letter of May 20, 2005.

Subject to and without waiving the foregoing objections, Sandoz states that it has no documents responsive to Request No. 10.

Dated at Milwaukee, Wisconsin this 9th day of January, 2006.

FRIEBERT, FINERTY & ST. JOHN, S.C.

By: 
Shannon A. Allen

Two Plaza East – Suite 1250
330 East Kilbourn Avenue
Milwaukee, WI 53202

Of counsel:

WHITE & CASE LLP
Wayne A. Cross
Michael J. Gallagher
Paul Olszowka
Maja Fabula
1155 Avenue of the Americas
New York, New York 10036
Telephone: (212) 819-8200
Facsimile: (212) 354-8113

*Attorneys for Defendant
Sandoz Inc.*

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