

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

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STATE OF WISCONSIN, :

Plaintiff, :

v. :

Case No.: 05 C 408 C

:

ABBOTT LABORATORIES, et al., :

Defendants. :

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**DEFENDANT SANDOZ INC.'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure ("FRCP"), defendant Sandoz Inc. ("Sandoz"), by its attorneys, hereby asserts its Responses and Objections to Plaintiff State of Wisconsin's ("the State") First Set of Requests for Production of Documents (the "First Document Requests"), that were served prior to the removal of this action to this Court, as follows:

In making these objections and responses, Sandoz deems the States' First Document Requests as having been propounded under the FRCP and responds pursuant to the FRCP. The objections and written responses set forth herein are being offered pursuant to a prior agreement with counsel for the State to provide written responses to the First Document Requests on or before July 15, 2005. However, Sandoz reserves its right to seek a stay of discovery before this Court or before the court to which the multi-district litigation, In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1446, has been assigned; Defendants will seek to have this action transferred to that multi-district litigation. Moreover, by

providing these responses, Sandoz does not agree to produce documents in advance of any case management order or discovery schedule entered by this Court or by the court presiding in In re Pharmaceutical Industry Average Wholesale Price Litigation.

### **GENERAL OBJECTIONS**

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

1. By objecting and responding to these First 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 First 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 First Document Requests at any hearings or at trial; (e) any objections to any further Requests involving or relating to the subject matter of the First Document Requests; (f) any privileges, rights, or immunity under the applicable FRCP, Federal Rules of Evidence, statutes, or common law.

2. By stating herein that it agrees at an appropriate time to 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 agrees that, at the appropriate time, 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 information.

3. Sandoz objects to the First Document Requests as they were not served upon Sandoz pursuant to the requirements of WIS. STAT. § 804.09 and in violation of the stay entered by the State of Wisconsin Circuit Court (“Wisconsin Circuit Court”) in its Order dated April 8, 2005. Notwithstanding this objection, Sandoz has accepted service of the First Document Requests. Sandoz further objects to the First Document Requests to the extent that the State purports to amend them by the letter from its counsel, Miner, Barnhill & Galland, P.C. to counsel for Sandoz, dated May 20, 2005 in a manner unauthorized by the Wisconsin Rules of Civil Procedures or FRCP. In making the objections and responses set forth herein, Sandoz understands the State to have merely offered, as a possible compromise, to narrow its definition of “Targeted Drugs” to the over 300 formulations of 52 drugs marketed by Sandoz, that are identified in Exhibit A to that letter.

4. Sandoz objects to the First Document Requests to the extent that they are premature and were propounded by the State in violation of the Wisconsin Circuit Court’s stay entered on April 8, 2005. Sandoz further objects to the extent that the First Document Requests are premature in that they seek a response while the Defendants’ motion to dismiss this action is *sub judice*. Sandoz further objects that it has had inadequate time to complete its investigation and discovery relating to this action and any Objections set forth below are based upon, and necessarily limited to, information that has been ascertained thus far.

Pursuant to FRCP 26(e), 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 might be taken in this action.

5. Sandoz objects to each Definition and Request to the extent it imposes or purports to impose discovery obligations greater than, or inconsistent with, Sandoz's obligations under the FRCP and to the extent that the State seeks discovery beyond that permitted by such Rules.

6. Sandoz objects to each Definition 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.

7. Sandoz objects to each Definition 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 constructed as a waiver of the confidentiality of any such document or information. Sandoz reserves its right to withhold production prior to the entry of a protective order by this Court or the court presiding in the MDL.

8. Sandoz objects to each Definition 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. At the appropriate time, Sandoz will only disclose information and produce documents that are within its possession, custody, or control.

9. Sandoz objects to each Definition 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.

10. Sandoz objects to each Definition and Request to the extent it is duplicative or redundant of other Definitions 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.

11. Sandoz objects to each Definition and Request 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 agrees that at an appropriate time it 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.

12. Sandoz objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the First 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 First Document Requests, or that such implications or characterizations are relevant to this action.

13. Sandoz 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, including the terms “the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report.” Sandoz further objects to this definition to the extent that it purports to set an accurate or legally significant definition of the terms Average Manufacture Price or AMP and Sandoz refers to the statutes and regulation for the definition of this term.

14. Sandoz objects to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous, including the terms “payment, credit or other adjustment,” “purchaser of a drug,” “difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.” Sandoz further objects to this definition to the extent that it purports to set an accurate or legally significant definition of the term Chargeback and to the extent it differs from the common usage and understanding of the term in the industry.

15. Sandoz 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. Sandoz further objects to this definition to the extent that it seeks information of 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.

16. Sandoz objects to the definition of “Document” in Definition No. 4 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Sandoz’

obligations under the FRCP. 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.

17. Sandoz objects to the definition of “Incentive” as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Sandoz further objects to this definition 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.

18. Sandoz objects to the definition of “National Sales Data” as set forth in Definition No. 6 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Sandoz objects to this definition to the extent that it seeks information or documents on “National Sales” that are not relevant to the State’s claims, which are limited to reimbursements made in the State of Wisconsin. Sandoz further objects to the definition of National Sales Data to the extent it incorporates other objectionable definitions, including “Incentive” and “Targeted Drugs.”

19. Sandoz objects to the definition of “Pharmaceutical” as set forth in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Sandoz further objects to this definition to the extent that it seeks to impose on Sandoz the burden to ascertain or obtain information in the exclusive possession of its customers or other non parties to this action.

20. Sandoz objects to the definition of “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Sandoz further

objects to this definition to the extent that it seeks to impose on Sandoz the burden to ascertain or obtain information in the possession of its customers or other non parties to this action.

21. Sandoz objects to the definition of “Targeted Drugs” as set forth in Definition No. 9 to the extent that it is vague and ambiguous and inconsistent with the drugs identified in Exhibit A to the State’s letter of May 20, 2005. Sandoz further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation or information about drugs not named in the Amended Complaint on the grounds that such information is not relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

In addition, as set forth above in General Objection No. 9, Sandoz objects that this Definition requires Sandoz to undertake the burden of identifying drugs relevant to the State’s claims when such information is 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, and/or the burden on the State or its officers, employees, agents, agencies or departments to identify the drugs relevant to its claims is substantially the same or less than the burden on Sandoz.

### **SPECIFIC OBJECTIONS**

#### **Request No. 1:**

**All National Sales Data for each Targeted Drug during the Defined Period of Time.**

#### **Objection to Request No. 1:**

In addition to the foregoing General Objections, Sandoz objects to Request No. 1 on the grounds that it is overly broad, vague and ambiguous, unduly burdensome, and designed to harass and annoy Sandoz. For example, on its face, this Request may be reasonably construed

to require Sandoz to first perform numerous calculations to identify the drugs subject to the State's request, then search its files covering the period from 1993 to the present for all documents containing data related to Sandoz' sales of those identified drugs, and then organize that data from the manner in which it is maintained to the manner called for by the State's request.

Sandoz also objects to Request No. 1 on the grounds that calls for the production of information or documents not relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Sandoz further objects to Request No. 1 to the extent that it purports to require Sandoz to disclose information or produce documents for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State or its officers, employees, agents, agencies or departments as it is for Sandoz, or for which responsive information or documents are available in the public domain

Subject to and without waiving the foregoing objections, Sandoz agrees that at an appropriate time it will conduct a reasonable search for and produce non-privileged documents responsive to a properly narrowed request.

**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.**

**Objection to Request No. 2:**

In addition to the foregoing General Objections, Sandoz objects to Request No. 2 on the grounds that it is overly broad, unduly burdensome, and seeks documents neither relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably

calculated to lead to the discovery of admissible evidence. Sandoz incorporates by reference its objection to the Definition “Targeted Drugs” and objects to Request No. 2 on the grounds that the phrases “reported or calculated” is overly broad, vague, and ambiguous. Sandoz further objects to Request No. 2 on the grounds that it purports to require Sandoz to disclose information or produce documents for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State or its officers, employees, agents, agencies or departments as it is for Sandoz, or for which responsive information or documents are available in the public domain. Sandoz also objects to Request No. 2 to the extent it seeks information 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, Sandoz agrees that it will at an appropriate time produce non-privileged documents sufficient to show the AMP reported by Sandoz to the Centers for Medicare and Medicaid Services for any Sandoz drug determined to be at issue in this action for the time period determined to be relevant to this action.

**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 of 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.**

**Objection to Request No. 3:**

In addition to the foregoing General Objections, Sandoz objects to Request No. 3 on the grounds that it is overly broad, vague, and ambiguous, particularly the phrases “discuss or

comment,” “other manufacturers,” “difference (or Spread),” “Average Wholesale Price,” “Wholesale Acquisition Cost,” “list or actual sales price,” and “purchaser” are overly broad, vague, and ambiguous. For example, this Request may be reasonably construed to require Sandoz to search its files covering the period from 1993 to the present for any document mentioning the term “Spread,” with reference to any “Pharmaceutical” manufactured by any defendant in this action, literally thousands of drugs. The State’s attempt to narrow this Request by omitting documents lacking any “comment or discussion . . . about the spread” does not resolve the ambiguity of this Request and imposes on Sandoz the burden of deducing what type of references to the “Spread” are sought by this request.

Sandoz also objects to this Request to the extent it seeks documents neither relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Sandoz also objects to Request No. 3 on the grounds that it requires Sandoz to disclose information and produce documents outside of Sandoz’ possession, custody, or control; to seek information and produce documents about persons not currently employed or associated with Sandoz; or to provide or seek information and produce documents regarding non parties. Sandoz further objects to Request No. 3 on the grounds that it purports to require Sandoz to disclose information or produce documents for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State or its officers, employees, agents, agencies or departments as it is for Sandoz, or for which responsive information or documents are available in the public domain. Sandoz further objects to Request No. 3 to the extent it seeks information 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, Sandoz agrees that at an appropriate time it will produce non-privileged documents responsive to a properly narrowed request.

**Request No. 4:**

**All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of the State's First Set of Requests to All Defendants.**

**Objection to Request No. 4:**

In addition to the foregoing General Objections, Sandoz objects to Request No. 4 on the grounds that the phrase "average sales price" and "composite price" are overly broad, vague, and ambiguous and Sandoz hereby incorporates by reference its objections and response to Interrogatory No. 1.

Sandoz also objects to this Request to the extent it seeks documents neither relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Sandoz further objects to Request No. 4 on the grounds that it purports to require Sandoz to disclose information or produce documents for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State as or its officers, employees, agents, agencies or departments as it is for Sandoz, or for which responsive information or documents are available in the public domain. Sandoz further objects to Request No. 4 to the extent it seeks information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or protection against disclosure.

**Request No. 5:**

**All Documents sent to or received from First DataBank, Redbook and Medi-span regarding the price of any Targeted Drug.**

**Objection to Request No. 5:**

In addition to the foregoing General Objections, Sandoz objects to Request No. 5 on the grounds that it is overly broad, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Sandoz also objects to the extent that the Request seeks documents not relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to admissible evidence, nor relevant to the time period relevant to this action. Sandoz also objects to Request No. 5 on the grounds that it requires Sandoz to disclose information and produce documents outside of Sandoz' possession, custody, or control; to seek information and produce documents about persons not currently employed or associated with Sandoz; or to provide or seek information and produce documents regarding non parties. Sandoz further objects to Request No. 5 to the extent it seeks reported prices on the grounds that the Request purports to require Sandoz to disclose information or produce documents which are available in the public domain, or for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State as or its officers, employees, agents, agencies or departments as it is for Sandoz.

Subject to and without waiving the foregoing objections, Sandoz will produce at an appropriate time non-privileged documents sent to or received from First DataBank, Redbook and Medi-span to the extent such documents include a price for any Sandoz drug determined to be at issue in this action.

**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.**

**Objection to Request No. 6:**

In addition to the foregoing General Objections, Sandoz objects to Request No. 6 on the grounds that the phrases “regarding,” “the competitor,” and “pricing, sales or market share” are overly broad, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Sandoz also objects to the extent that the Request seeks documents not relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to admissible evidence, nor relevant to the time period relevant to this action. For example, this Request requires Sandoz to search for IMS Health documents that refer to, not only Sandoz’ drugs, but also to the unidentified drugs that the State considers “competitor[s]” of Sandoz’ drugs.

Subject to and without waiving the foregoing objections, Sandoz agrees that at an appropriate time it will conduct a reasonable search for and produce responsive, non-privileged documents that were prepared by IMS Health to the extent such documents include information about the price, sales, or market share of any Sandoz drug determined to be at issue in this action.

Dated at Milwaukee, Wisconsin, on July 15, 2005.

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

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