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STATE OF WISCONSIN, )  
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 Plaintiff, )  
 )  
 v. )  
 )  
 AMGEN INC., *ET AL.*, )  
 )  
 Defendants. )

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Case No. 04-CV-1709

**TAP PHARMACEUTICAL PRODUCTS INC.'S RESPONSES TO PLAINTIFF'S WRITTEN DISCOVERY REQUEST NO. 3 (TO ALL DEFENDANTS)**

Pursuant to Wisconsin Rule of Civil Procedure 804.9, defendant TAP Pharmaceutical Products Inc. ("TAP"), by its attorneys, responds to Plaintiff's Written Discovery Request No. 3 (To All Defendants) (the "Requests") as follows:

**PRELIMINARY STATEMENT**

1. TAP serves these responses while defendants' motions to dismiss Plaintiff's Amended Complaint are pending. After Plaintiff served its first set of written discovery on defendants, defendants moved to stay discovery while defendants' motions to dismiss are pending. At the hearing on defendants' stay motion, the Court advised Plaintiff to narrow its requests and to seek only limited discovery from defendants while defendants' motions to dismiss are pending. Until such time as the Court rules on defendants' motions to dismiss, TAP objects to the Requests as being unduly burdensome and as imposing enormous and potentially unnecessary expense on TAP. TAP has therefore prepared these responses consistent with the Court's directive.

2. TAP's responses to the Requests are based on information available at this time. TAP's investigation for information responsive to the Requests continues. TAP reserves the

right to supplement and/or amend these responses (and its production of documents) at any time before trial.

3. Where TAP states herein that it will produce or has produced documents in accordance with the Wisconsin Rules of Civil Procedure, it will produce such documents to the extent that they exist and can be reasonably obtained.

4. TAP's specific objections to each request are in addition to the general limitations and objections set forth in this and the next sections. These limitations and objections form a part of the response to each and every request and are set forth here to avoid repetition. Thus, the absence of a reference to a general objection should not be construed as a waiver of the general objection as to a specific request.

5. By stating that TAP will produce any documents or things responsive to a particular request, TAP does not represent that any such documents or things exist or are within its custody, care, or control.

6. The information and documents supplied herein are for use in this litigation and for no other purpose.

7. All documents and information that TAP agrees to make available to Plaintiff in response to the Requests will be made available pursuant to the Temporary Qualified Protective Order that was entered on or about May 11, 2005, and which was made the final governing Protective Order in this case on November 29, 2005.

8. To the extent the Requests seek documents or information relating to Lupron<sup>®</sup>, a TAP product, TAP objects to producing this information because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the State has settled and released any of its claims in this case relating to Lupron<sup>®</sup>. Specifically, on

September 27, 2001, TAP and the State completely settled any all of the State's Medicaid-based claims relating to Lupron<sup>®</sup>. Furthermore, on July 15, 2005, the State executed another settlement agreement with TAP whereby the State agreed to completely settle and release any other purported claims possessed by the State relating to the marketing, pricing or sale of Lupron<sup>®</sup>. This settlement was subsequently approved by the Honorable Richard G. Stearns, a federal judge in Boston, who is overseeing the settlement of a nationwide class action relating to Lupron<sup>®</sup>. Finally, any purported claim belonging to any Wisconsin resident that could potentially be asserted by the State in its parens patriae capacity has been completely settled and released by a nationwide class-action settlement relating to the pricing, marketing and sale of Lupron<sup>®</sup>. See *In re Lupron<sup>®</sup> Marketing and Sales Practices Litigation*, 228 F.R.D. 75 (D. Mass May 12, 2005). Under these settlements, released claims include any claims against any person or entity relating to Lupron<sup>®</sup> transactions where the cost, reimbursement amount, or price of Lupron<sup>®</sup> was based in any part on AWP or any other price for Lupron<sup>®</sup>. Furthermore, as a releasor, the State has agreed that it will not seek to establish liability based, in whole or in part, on any released claims. Once all settlement funds are dispersed, the State has agreed to dismiss with prejudice any of its Lupron<sup>®</sup>-related claims in this case. Thus, the State should not be entitled to any Lupron<sup>®</sup>-related discovery in this case. TAP and the State originally agreed to defer any dispute over the discoverability of any Lupron<sup>®</sup>-related information in this matter until after the settlement was finally approved and the State had dismissed all of its Lupron<sup>®</sup>-related claims with prejudice. The State now contends that it did not so agree. Regardless of the parties' dispute over the agreement to defer, TAP submits that it would be premature to address Lupron<sup>®</sup>-related discovery before the Lupron<sup>®</sup> claims in this matter are dismissed with prejudice.

## GENERAL OBJECTIONS TO REQUESTS

1. TAP generally objects to the Requests to the extent they seek information or documents not relevant to the issues in this action and not reasonably calculated to lead to the discovery of admissible evidence.
2. TAP generally objects to the Requests to the extent they seek information that is protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, consulting-expert privilege, joint-defense privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule or doctrine.
3. TAP generally objects to the Requests to the extent they seek confidential and/or proprietary information.
4. TAP generally objects to the Requests to the extent they exceed the scope of discovery permitted under the Wisconsin Rules of Civil Procedure, Wisconsin law, or other applicable law or Court order.
5. TAP generally objects to the Requests to the extent they are duplicative of Plaintiff's other discovery requests.
6. TAP generally objects to the Requests to the extent that: (a) the discovery sought by any request is unreasonably cumulative or duplicative, or is obtainable from some other source (including, but not limited to, a public source) that is more convenient, less burdensome, or less expensive; and (b) compliance with any request would be unduly burdensome, unduly expensive, harassing, annoying, or oppressive.
7. TAP generally objects to the Requests to the extent they seek information about products not named in the Amended Complaint.

8. TAP's responses to the Requests are made without in any way waiving: (a) the right to object on the grounds of competency, relevancy, materiality, privilege, or other grounds of admissibility as evidence for any purpose in any subsequent proceeding in this action or any other action; and (b) the right to object on any ground to other discovery requests involving or relating to the subject matter of the Requests. Furthermore, TAP is providing responses in an effort to expedite discovery in this action and not as an indication or admission by TAP of the relevancy, materiality or admissibility of the responses. TAP preserves all objections to Plaintiff's use of such responses at trial.

9. To the extent applicable, TAP adopts and incorporates by reference any objections to the Requests made by any other defendant in this matter.

#### **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. TAP objects to Plaintiff's "Definitions" and "Instructions" contained within the Requests to the extent Plaintiff intends to expand upon or alter TAP's obligations under the Wisconsin Rules of Civil Procedure. TAP will comply with the applicable Wisconsin Rules of Civil Procedure in providing its responses and objections to the Requests.

2. TAP objects to the definition of the term "Document" as vague and ambiguous. TAP further objects to this definition to the extent it seeks to impose discovery obligations that exceed or are inconsistent with the requirements of the Wisconsin Rules of Civil Procedure. TAP further objects to this definition to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, the consulting expert privilege, the joint-defense privilege or any other privilege or exemption recognized under Wisconsin or other applicable law. TAP further objects to this definition to the extent it seeks to: (i) require TAP to produce documents or data in a particular form or format; (ii) convert information into a

particular file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, or other information; or (vii) violate any licensing agreement or copyright laws.

### **SPECIFIC OBJECTIONS AND RESPONSE TO DOCUMENT REQUESTS**

**REQUEST NO. 7:** All documents listed in Appendix A attached hereto in unredacted form. Each of these documents is identified in the Third Amended Master Consolidated Class Action Complaint Amended to Comply With the Court's Class Certification Order on the page listed in Appendix A and with the bates number identified in Appendix A. (Those without bates numbers are otherwise identified, e.g., paragraph 290).

**ANSWER:** In addition to its General Objections, TAP objects to this Request because it:

(i) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because it is seeking documents related to Lupron<sup>®</sup>, which is not at issue in this litigation (*see* paragraph 8 of the Preliminary Statement above); (ii) is vague and ambiguous; and (iii) seeks documents that are publicly available and/or outside TAP's possession, custody, or control.

**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.

**ANSWER:** In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome to the extent it seeks information over a twelve-year period and to the extent it seeks information outside TAP's possession, custody, or control; (ii) is vague and ambiguous, particularly with respect to the phrase "policy and practice" and "drug price information," and the terms "disclosures" and "providers"; (iii) seeks confidential and/or proprietary information; (iv) seeks information that is neither relevant nor reasonably calculated

to lead to the discovery of admissible evidence; and (v) seeks information protected by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such documents exist, responsive documents, if any, that TAP has produced in MDL 1456.

**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.

**ANSWER:** In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome in seeking documents over an indefinite period of time, and is not limited to agreements between TAP and providers or pharmacy benefit managers in Wisconsin; (ii) is vague and ambiguous, particularly with respect to the phrases "exemplar agreements" and "drug price information," and the terms "policies," "practices," and "disclosures"; (iii) seeks confidential and/or proprietary information; and (iv) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such documents exist, responsive documents, if any, that TAP has produced in MDL 1456.

**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.

**ANSWER:** In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably

calculated to lead to the discovery of admissible evidence to the extent it seeks statements or depositions concerning Lupron®; (ii) is vague and ambiguous, particularly with respect to the terms “claim,” “investigation,” “providers,” and “inaccurate,” and the phrases “improper reasons,” “Average Wholesale Price,” “Wholesale Acquisition Cost,” “federal ‘best price’ law or regulation,” and “free samples”; and (iii) seeks confidential and/or proprietary information or documents that may not be produced pursuant to a protective order entered in another proceeding; (iv) seeks information protected by the attorney-client privilege and/or the work-product doctrine.

Dated: January 9, 2006

DEFENDANT TAP PHARMACEUTICAL  
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