

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

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05 C 0408C
)	
ABBOTT LABORATORIES, ET AL.,)	
)	
Defendants.)	

**TAP PHARMACEUTICAL PRODUCTS INC.'S RESPONSES TO
PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant TAP Pharmaceutical Products Inc. ("TAP") responds to Plaintiff's Second Set of Requests for Production of Documents (the "Requests") as follows:

PRELIMINARY STATEMENT

A. TAP serves these responses while defendants' motion to dismiss Plaintiff's Amended Complaint is pending. After Plaintiff served its first set of written discovery to defendants, defendants moved to stay discovery while defendants' motion to dismiss is pending. At the hearing on defendants' stay motion, the Wisconsin state court advised Plaintiff to narrow its requests and to seek only limited discovery from defendants while defendants' motion to dismiss is pending. TAP has prepared these responses consistent with the Wisconsin state court's directive.

B. TAP's investigation for information responsive to the Requests continues. TAP's responses to the Requests are based on information available at this time. TAP reserves the right to supplement and/or amend these responses at any time before trial.

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

D. 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.

E. 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.

F. Any information and/or documents supplied in response to the Requests is for use in this litigation and for no other purpose.

G. Any documents and information that TAP agrees to make available to Plaintiff in response to the Requests will be made available pursuant to either: (a) the Temporary Qualified Protective Order that was entered in the State court action on or about May 11, 2005; or (b) the Protective Order entered in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, No. 01 CV 12257 (PBS) (D. Mass.), on or about December 13, 2002.

H. H. To the extent that the Interrogatories seek information relating to Lupron[®], 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. The State has agreed to settle and release any of its claims in this case relating to Lupron[®]. Released claims include any claims against any person or entity relating to Lupron[®] transactions where the cost,

reimbursement amount or price of the Lupron[®] was based in any part on AWP or any other price for Lupron[®]. TAP and the State have submitted their settlement agreement to the Honorable Richard G. Stearns, a federal judge in Boston who is overseeing a nationwide class action settlement with respect to Lupron[®], for final approval. *In re Lupron Marketing and Sales Practices Litigation*, Case No. 01-CV-10861, MDL No. 1430 (RGS) (D. Mass). If and when Judge Stearns approves the settlement agreement between TAP and the State, the State has agreed to dismiss with prejudice any of its Lupron[®]-related claims in this case. Furthermore, a releasor, such as the State, agrees that it will not seek to establish liability based, in whole or in part, on any released claims. Thus, the State should not be entitled to any Lupron[®]-related discovery in this case. TAP and the State originally agreed to defer any dispute over the discoverability of any Lupron[®]-related information in this matter until after Judge Stearns approves (or disapproves) the settlement agreement and, if it is approved, the State dismisses any of its Lupron[®]-related claims in this case 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[®]-related discovery before the Lupron[®] claims in this matter are dismissed with prejudice.

GENERAL OBJECTIONS TO REQUESTS

I. 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, the consulting expert privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule or doctrine.

J. TAP generally objects to the Requests to the extent they seek confidential and/or proprietary information.

K. TAP generally objects to the Requests to the extent they exceed the scope of discovery permitted under the Federal Rules of Civil Procedure, Wisconsin law, or other applicable law.

L. TAP generally objects to the Requests to the extent they are duplicative of Plaintiff's other discovery requests.

M. 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.

N. TAP generally objects to the Requests to the extent they seek information about products not named in the Amended Complaint.

O. 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 these 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.

P. To the extent applicable, TAP adopts and incorporates by reference any objection to Plaintiff's written discovery requests made by any other defendant in this matter.

OBJECTIONS TO DEFINITIONS

Q. 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 Federal 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, or any other privilege or exemption recognized under federal, 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 RESPONSES TO DOCUMENT REQUESTS

REQUEST NO. 1: Produce each document or thing which was identified by, or exchanged with, any party to the litigation styled *Walker v. TAP Pharmaceutical Products, Inc.*, Case No. CPM L-682-01 (in the Superior Court, Cape May, New Jersey) as a trial exhibit or as a potential trial exhibit, and any document which had the purpose or effect of identifying one or more documents or things as a potential trial exhibit to another party in the litigation.

ANSWER: TAP incorporates by reference the objections set forth in paragraph H above. In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome in seeking "each document or thing ... identified by, or exchanged with, any party ... as a trial exhibit or potential trial exhibit;" and "any document which had the purpose or effect of identifying ... a potential trial exhibit;" (ii) is vague and ambiguous, particularly with respect to the terms "thing," "identified," "exchanged," "potential trial exhibit," "purpose" and "effect;" (iii) seeks confidential and/or proprietary information, or information

subject to a protective order; and (iv) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP further objects to producing any Lupron[®]-related information from *Walker v. TAP Pharmaceutical Products, Inc.* because that matter involved only one TAP product, Lupron[®]; the State, pending approval from the Court in MDL 1430, has agreed to settle, release, and dismiss with prejudice any of its claims in this case relating to Lupron[®]. See *In re Lupron Marketing and Sales Practices Litigation*, Case No. 01-CV-10861, MDL No. 1430 (RGS) (D. Mass).

REQUEST NO. 2: Produce the deposition testimony of any witness taken in the case styled *Walker v. TAP Pharmaceutical Products, Inc.*, Case No. CPM L-682-01 (in the Superior Court, Cape May, New Jersey) or any other sworn statement exchanged in discovery with any other party to that case, regardless of the manner in which the statement was obtained.

ANSWER: TAP incorporates by reference the objections set forth in paragraph H above. In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad; (ii) vague and ambiguous; (iii) seeks confidential and/or proprietary information, or information subject to a protective order; and (iv) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP further objects to producing deposition testimony from *Walker v. TAP Pharmaceutical Products, Inc.* because that matter involved only one TAP product, Lupron[®]; the State, pending approval from the Court in MDL 1430, has agreed to settle, release, and dismiss with prejudice any of its claims in this case relating to Lupron[®]. See *In re Lupron Marketing and Sales Practices Litigation*, Case No. 01-CV-10861, MDL No. 1430 (RGS) (D. Mass).

REQUEST NO. 3: Produce the deposition testimony of any witness taken in the case styled *In re: LUPRON MARKETING AND SALES PRACTICES LITIGATION*; MDL No. 1430, Master File No. 01-CV-10861; (in the United States District Court, District of Massachusetts) or any other sworn statement exchanged in discovery with any other party to that case, regardless of the manner in which the statement was obtained.

ANSWER: TAP incorporates by reference the objections set forth in paragraph H above. In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad; (ii) vague and ambiguous, particularly with respect to the terms "sworn statement" and "exchanged;" and (iii) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP further objects to producing information from *In re Lupron Marketing and Sales Practices Litigation*, MDL No. 1430, Case No. 01-CV-10861 (RGS) (D. Mass), because that matter involved only one TAP product, Lupron®; the State, pending approval from the Court in MDL 1430, has agreed to settle, release, and dismiss with prejudice any of its claims in this case relating to Lupron®. *See In re Lupron Marketing and Sales Practices Litigation*, Case No. 01-CV-10861, MDL No. 1430 (RGS) (D. Mass).

Dated: July 22, 2005

Respectfully Submitted,

DEFENDANT TAP PHARMACEUTICAL
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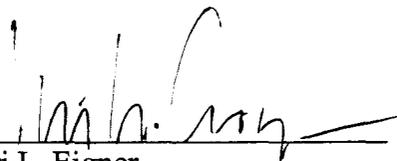
CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2005, I mailed by first class mail and by electronic mail, copies of TAP Pharmaceutical Products Inc.'s Responses to Plaintiff's First Set of Interrogatories; TAP Pharmaceutical Products Inc.'s Responses to Plaintiff's Second Set of Requests for Production of Documents; and TAP Pharmaceutical Products Inc.'s Answer to Plaintiff's First Set of Requests for Production of Documents to:

Ms. Cynthia R. Hirsch Wisconsin Department of Justice P.O. Box 7857 Madison, WI 53707-7857	Mr. P. Jeffrey Archibald Archibald Consumer Law Office 1914 Monroe Street Madison, WI 53711
Mr. William P. Dixon Miner Barnhill & Galland, P.E. 44 East Mifflin Street, Suite 803 Madison, WI 53703	

and to all defense counsel of record by electronic mail.

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