

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

STATE OF WISCONSIN,

Plaintiff,

Case No.: 05 C 0408C

v.

ABBOTT LABORATORIES, ET AL.,

Defendants.

**DEFENDANT TEVA PHARMACEUTICALS USA, INC.'S RESPONSES AND
OBJECTIONS TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Teva Pharmaceuticals USA, Inc. ("Teva"), by its undersigned counsel, hereby responds to Plaintiff's First Set of Requests for Production of Documents to All Defendants (the "Requests") as follows:

GENERAL OBJECTIONS

Teva expressly incorporates all of the General Objections set forth below into the Specific Objections for each Request. Any specific objections provided are made in addition to these General Objections and failure to reiterate a General Objection below does not constitute a waiver of that or any other objection.

1. Teva objects to Plaintiff's definitions and instructions to the extent they purport to impose discovery obligations on Teva beyond the parameters of the Federal Rules, and Teva will not comply with any such non-conforming definitions and instructions.

2. Teva 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. Teva further objects to this definition to the extent that it purports to set an accurate or legally significant definition of AMP, which is a term legally defined by federal statute.

3. Teva objects to the definition of the term “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous.

4. Teva objects to the definition of “Defined Period of Time” as set forth in Definition No. 3, to the extent it seeks information outside of the limitations period applicable to the claims in the Complaint, or beyond the time period relevant to this litigation. Teva further objects to this Definition on the grounds that it is overly broad, vague and ambiguous.

5. Teva objects to the definition of “Document” as set forth in definition No. 4 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with Teva’s obligations under the Federal Rules. Teva also objects to the Definition to the extent it requires Teva to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different format; (c) produce data, fields, records, or reports about produced documents or data; (d) produce documents or data on any particular media; (e) search for and/or produce documents or data on back-up tapes; or (f) produce proprietary software, data, programs, or databases.

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

7. Teva objects to the definition of “National Sales Data” in Definition No. 6 to the extent that it requests information beyond the State of Wisconsin. Teva further objects to this definition to the extent it seeks information outside the relevant time period of the litigation and

information about drugs not at issue on the grounds that such information is not relevant nor reasonably calculated to the discovery of admissible evidence.

8. Teva objects to the definition of the term “Pharmaceutical” as set forth in Definition No. 7 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome. Teva further objects to this definition to the extent it seeks information outside the relevant time period of the litigation and information about drugs not at issue on the grounds that such information is not relevant nor reasonably calculated to the discovery of admissible evidence.

9. Teva objects to the definition of the term “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, vague, ambiguous and unduly burdensome, particularly with respect to “actual acquisition cost,” “purchase price,” “third party payors,” “gross profit actually or potentially realized,” and “purchasers.”

10. Teva objects to the definition of the term “Targeted Drugs” as set forth in Definition No. 9 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome.

11. Teva objects to the footnote instruction on page 4 of the Plaintiffs’ First Set of Requests for Production of Documents identified by an asterisk (“*”) and to each Request to the extent that it demands electronic materials be produced in specified formats on the grounds that such demand is unduly burdensome or imposes discovery obligations that are broader than Teva’s obligations under the Federal Rules. Teva will make available for inspection documents that explain and render usable any electronic data, including the record layout of the electronic data and the operation of software utilized to maintain the electronic data.

12. Teva objects to the Requests to the extent they seek the production of documents containing information subject to the attorney-client communication privilege, work product doctrine, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents are inadvertently produced in response to the Requests, the disclosure of such documents shall not constitute a waiver of Teva's right to assert the applicability of any privilege or immunity to the documents, and any such documents shall be returned to Teva's counsel immediately upon discovery thereof.

13. Teva objects to the Requests to the extent they purport to require production of confidential, proprietary, commercially sensitive, or trade secret information regarding its products, business activities, and strategies.

14. Teva objects to any Requests that seek production of documents which: (a) are not in Teva's custody, control or possession; (b) are already in Plaintiff's custody, control or possession; (c) are publicly available; (d) are obtainable with equal or greater facility by the Plaintiff; or (d) is more appropriately sought from third-parties to whom requests have been made or directed.

15. Teva objects to each and every request as irrelevant, overbroad, unduly burdensome, vague, and not reasonably calculated to lead to admission of relevant evidence to the extent that they require production of documents and/or information relating to pharmaceuticals not at issue in this litigation.

16. Teva objects to the Requests to the extent they seek documents relating to Teva's activities other than those relating to the State of Wisconsin, on the grounds that such documents

are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

17. Teva objects to any implications and to any explicit or implicit characterizations of the facts, events, circumstances, or issues in the Requests. Any response by Teva is not intended to indicate that Teva agrees with any such implications or characterizations, or that such implications or characterizations are relevant to this litigation.

18. Teva objects to the Requests to the extent they purport to impose obligations beyond or inconsistent with those imposed by applicable law. Teva will respond to the Requests, subject to other objections, as required by applicable federal law.

19. Teva objects to each and every Request to the extent it seeks information not contained in documents that exist and requires Teva to create, compile or develop new documents.

20. Teva states that its investigation into the allegations of this matter is ongoing, and Teva reserves the right, but undertakes no obligation beyond that required by the applicable federal law, to supplement, clarify or amend these responses as additional information comes to light.

21. Teva hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any co-defendant in this action to the extent such objection or reservation or rights is not inconsistent with Teva's position in this litigation.

SPECIFIC OBJECTIONS

Subject to the General Objections, and without waiving and expressly preserving all such objections, Teva responds to Plaintiff's individually numbered Requests as follows:

REQUEST NO. 1:

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

RESPONSE:

Teva objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, to the extent that the Request seeks documents in the custody, control or possession of third-parties, the request is both improper and unduly burdensome. Subject to and without waiving these objections, to the extent such documents exist and are in Teva's custody, control or possession, Teva will produce non-privileged responsive documents.

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.*

RESPONSE:

Teva objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, to the extent that the Request seeks documents in the custody, control or possession of third-parties, the request is both improper and unduly burdensome. Subject to and without waiving these objections, to the extent such documents exist and are in Teva's custody, control or possession, Teva will produce non-privileged responsive documents.

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.

RESPONSE:

Teva objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, not reasonably calculated to lead to the discovery of admissible evidence, and calls for the production of documents containing information protected by the attorney-client privilege and/or work product doctrine. Teva further objects to the term "Average Wholesale Price" ("AWP") as vague and ambiguous. Moreover, to the extent that the Request calls for documents in the custody, control or possession of third-parties, the Request is both improper and unduly burdensome.

REQUEST NO. 4:

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

RESPONSE:

Teva objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Teva further objects to the term "average sales price" and "composite price" as vague and ambiguous.

REQUEST NO. 5:

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

RESPONSE:

Teva objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, to the extent that the Request seeks documents in the custody, control or possession of third-parties, the request is both improper and unduly burdensome. Subject to and without waiving these objections, to the extent such documents exist and are in Teva's custody, control or possession, Teva will produce non-privileged responsive documents.

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.

RESPONSE:

Teva objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, to the extent that the Request seeks documents in the custody, control or possession of third-parties, the request is both improper and unduly burdensome.

Dated: July 15, 2005

TEVA PHARMACEUTICALS USA, INC.

By its attorneys,



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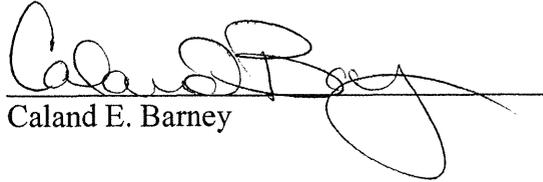
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2005, a true and correct copy of Teva Pharmaceuticals, USA Inc.'s Responses And Objections To Plaintiff's First Set of Request For Production of Documents was served upon the Plaintiff's counsel listed below by U.S. Mail and upon Defendants' counsel by electronic mail.

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