

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

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 05 C 0408 C

ABBOTT LABORATORIES, ET AL.,

Defendants.

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**DEFENDANTS WATSON PHARMA, INC.'S AND WATSON PHARMACEUTICALS,  
INC.'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS TO ALL DEFENDANTS**

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Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Wisconsin Statutes §§ 804.01, and 804.09, Watson Pharma, Inc. and Watson Pharmaceuticals, Inc. (collectively "Watson"), by and through its attorneys, makes the following responses to Plaintiff's First Set of Requests for Production of Documents to All Defendants ("Requests").

**GENERAL OBJECTIONS**

Watson 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 the General Objections, and failure to reiterate a General Objection does not constitute a waiver of that, or any, objection.

1. During the pendency of Watson's motion to dismiss this action and without Plaintiff having properly alleged claims against Defendants which could give rise to liability, Watson objects to production of documents that have not already been produced to the

plaintiffs in In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL Docket No. 1456 (“AWP MDL”) with respect to any drug not specifically identified in Plaintiff’s Complaint.

2. Watson objects generally to these Requests to the extent that they are in any way inconsistent with, or attempt to expand, Watson’s obligations under applicable law and court rules.

3. Watson objects to the Requests in their entirety to the extent that the Requests seek or purport to require identification of information and/or production of documents protected from discovery by the attorney-client privilege, the attorney work product doctrine, and/or other privileges or immunities. Watson will not knowingly produce any documents or identify any information that is subject to any privilege or protection. Watson does not intend to waive any right of privilege or confidentiality. If any privileged or confidential matters are inadvertently made available for inspection, such disclosure was not intentional and should not be viewed as, and is not, a voluntary waiver of any privilege or right of confidentiality.

4. Watson objects to the Requests to the extent that they call for the production of documents or information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

5. Watson objects to the Requests to the extent that they are overly broad, unduly burdensome, vague, ambiguous, oppressive, and/or duplicative.

6. To the extent that any information or documents that are withheld on the basis of any objection or on any agreement of the parties are later determined by the Court to be discoverable, Watson reserved the right to move for entry of any protective order in relation to such information or documents.

7. Watson objects to the Requests to the extent they seek information or documents of a confidential or proprietary nature. Watson will not provide any such information except pursuant to the terms of an appropriate protective order.

8. Watson objects to any Request that seeks information which: (a) is outside the knowledge, custody, control, or possession of Watson, its agents, or employees; (b) is already in Plaintiff's custody, control, or possession; (c) is publicly available; (d) is obtainable with equal or greater facility by the Plaintiff; or (e) is more appropriately sought from third parties to whom requests have been made or directed.

9. Watson objects to the Requests to the extent that they seek information relating to Watson's activities other than those relating to the State of Wisconsin on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

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

11. Watson objects to any and every Request to the extent that it seeks information that would require Watson to create, compile, or develop new data or sources of information.

12. Watson objects to Plaintiff's requests regarding the production of documents in a particular electronic format as unduly burdensome.

13. Watson reserves the right to challenge the competence, relevancy, materiality, and admissibility at trial or otherwise, of any information or documents provided in response to this discovery request.

14. Watson reserves the right to make any changes in these responses if it appears that omissions or errors have been made therein, or if further or more accurate information is available. Watson has not completed its own investigation and discovery. The information provided in the responses herein and in any documents to be made available is based upon reasonable inquiry and the best information known or readily available to Watson as of the date of this response. Further investigation may reveal additional information that is responsive to these Requests. Watson reserves the right to continue discovery and investigation into this matter and to present evidence, at trial or otherwise.

15. Watson 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 of rights is not inconsistent with Watson's position in this litigation.

#### **GENERAL OBJECTIONS TO PLAINTIFF'S DEFINITIONS**

Watson objects generally to Plaintiff's definitions to the extent that they purport to extend the scope of the Requests beyond the bounds of discoverable information in this case and to expand Watson's obligations beyond those set forth in the applicable rules. In addition, Watson makes the following objections to Plaintiff's definitions:

1. Watson objects to the definition of "Average Manufacturer Price" and "AMP" on the grounds that it is vague and ambiguous with respect to the language "the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report." Watson incorporates by reference its objection to the definition of the term

“Pharmaceutical.” Watson 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.

2. Watson objects to the definition of “Chargeback” on the grounds that it is vague and ambiguous with respect to the language “payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.” Watson incorporates by reference its objection to the definition of the term “Pharmaceutical.”

3. Watson objects to the definition of “Defined Period of Time” to the extent it seeks information outside of the limitations periods applicable to the claims in the Complaint, or beyond the time period relevant to this litigation. Such information is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. The production or provision of any information or materials by Watson outside of the limitations periods applicable to the claims in the Complaint does not constitute waiver of this objection to Plaintiff’s “Defined Period of Time.” Watson further objects to this Definition on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous, particularly with respect to the language “Documents relating to such period even though created before that period,” and incorporates by reference its objection to the definition of the term “Document.”

4. Watson objects to the definition of “Document” to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Watson’s obligations under the applicable rules. Watson further objects to this definition insofar as it calls for Watson to search the information that was not generated in the form of written or printed records, or to

create or re-create printouts from electronic data compilations, on the grounds that such a request would be unduly burdensome and oppressive. Watson also objects to this Definition to the extent it requires or purports to require Watson to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different file 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 any documents or data on back-up tapes; (f) produce any proprietary software, data, programs, or databases; or (g) violate any licensing agreement or copyright laws.

5. Watson objects to the definition of “Incentive” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Watson incorporates by reference its objections to the definitions of the term “Chargeback, “ and further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

6. Watson objects to the definition of “National Sales Data” to the extent that it refers to information not relevant to the Plaintiff’s claims, which are limited to Wisconsin. Watson further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information about drugs not named in the Complaint, or on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

7. Watson objects to the definition of “Pharmaceutical” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Watson further objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Watson also objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information that is neither relevant

to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

8. Watson objects to the definition of "Spread" on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous, particularly with respect to the language "actual acquisition cost," "purchase price," "third party payors," "gross profit actually or potentially realized," and "purchasers." Watson incorporates by reference its objection to the definition of the term "Pharmaceutical."

9. Watson objects to the definition of "Targeted Drugs" on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Watson incorporates by reference its objections to the definition of the term "Defined Period of Time." Watson further objects to this definition to the extent that it refers to information not relevant to the State's claims, which are limited to Wisconsin. Watson further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation and/or information about drugs not named in the Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

### **RESPONSES TO INDIVIDUAL REQUESTS**

#### Request No. 1:

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

#### Response to Request No. 1:

Watson objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this Request and to a May 25, 2005 letter from Plaintiff's counsel purporting to define "Targeted Drug" for purposes

of these Requests as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this Request as vague and ambiguous in its use of the terms “National Sales Data,” “Targeted Drug,” and “Defined Period of Time.” Subject to, and without waiving the foregoing General Objections and Specific Objections, Watson will produce copies of documents previously provided in the AWP MDL that pertain to the drug(s) identified in the State’s Complaint.

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 to Request No. 2:

Watson objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this request and to a May 25, 2005 letter from Plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this request as vague and ambiguous in its use of the terms “AMPs,” “reported or calculated,” “Targeted Drugs,” “all reported and calculated AMPs,” “Defined Period of Time,” and “quarter to which each AMP applies.” Subject to, and without waiving the foregoing general and specific objections, Watson will produce copies of documents previously provided in the AWP MDL that pertain to the drug(s) identified in the State’s Complaint.

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 to Request No. 3:

Watson objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this Request as vague and ambiguous in its use of the terms "discuss or comment," "difference (or Spread)," "Average Wholesale Price," "Wholesale Acquisition Cost," "list or actual sales price (to any purchaser)," "defendants' Pharmaceuticals," and "any Pharmaceuticals sold by other manufacturers." Subject to, and without waiving the foregoing general and specific objections, Watson will produce copies of documents previously provided in the AWP MDL that pertain to the drug(s) identified in the State's Complaint.

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 to Request No. 4:

Watson objects to this Request as overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this

request and to a May 25, 2005 letter from Plaintiff's counsel purporting to define "Targeted Drug" for purposes of these Requests as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this Request as vague and ambiguous in its use of the terms "average sales price," and "composite price." Watson incorporates its objection to Plaintiffs' Interrogatory No. 1. Subject to, and without waiving the foregoing general and specific objections, Watson will produce copies of documents previously provided in the AWP MDL that pertain to the drug(s) identified in the State's Complaint.

Request No. 5:

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

Response to Request No. 5:

Watson objects to this Request as overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this request and to a May 25, 2005 letter from Plaintiff's counsel purporting to define "Targeted Drug" for purposes of these Requests as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this Request as vague and ambiguous in its use of the terms "regarding the price," and "Targeted Drug." Subject to, and without waiving the foregoing general and specific objections, Watson will produce copies of documents previously provided in the AWP MDL that pertain to the drug(s) identified in the State's Complaint.

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 to Request No. 6:

Watson objects to this Request as overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this Request and to a May 25, 2005 letter from Plaintiff's counsel purporting to define "Targeted Drug" for purposes of these Requests as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this request as vague and ambiguous in its use of the terms "IMS Health," "regarding a Targeted Drug," "Targeted Drug," "competitor of a Targeted Drug," and "regarding pricing, sales or market share." Subject to, and without waiving the foregoing general and specific objections, Watson will produce copies of documents previously provided in the AWP MDL that pertain to drug(s) identified in the State's Complaint.

Dated: August 3, 2005

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**CERTIFICATE OF SERVICE**

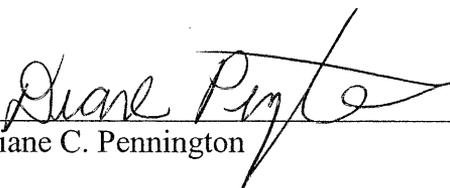
I hereby certify that on this 3<sup>rd</sup> day of August, 2005, a true and correct copy of Defendants Watson Pharma, Inc.'s and Watson Pharmaceuticals, Inc.'s Response to Plaintiff's First Set of Requests for Production of Documents to all Defendants was served upon the Plaintiff's Counsel listed below by U.S. Mail and upon Defendants' counsel by electronic mail.

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