

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

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 05 C 0408 C

ABBOTT LABORATORIES, ET AL.,

Defendants.

DEFENDANTS IVAX CORPORATION AND IVAX PHARMACEUTICALS, INC.'S
RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

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Ivax Corporation and Ivax Pharmaceuticals, Inc. (collectively "Ivax"), by and through its attorneys, makes the following responses to Plaintiff's First Set of Interrogatories ("Requests").

PRELIMINARY STATEMENTS AND GENERAL OBJECTIONS

1. The following preliminary statements and general objections are incorporated into each individual response and any subsequent amendments, supplemental responses, or other changes to these responses.

2. Ivax objects generally to these Requests to the extent that they are in any way inconsistent with, or attempt to expand, Ivax's obligations under the applicable discovery rules.

3. Ivax 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. Ivax will not knowingly produce any documents or identify any information, which is subject to any privilege or protection. Ivax 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. Ivax objects to the Requests as seeking information during the pendency of Defendants' motion to dismiss this action, and without plaintiff having properly alleged claims against Defendants which could give rise to liability.

5. Ivax objects to the definitions in the Requests as vague, ambiguous and unintelligible. Moreover, Ivax objects to these definitions on the grounds that they purport to extend the scope of the Requests beyond the bounds of discoverable information in this case.

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, Ivax reserves the right to move for entry of a protective order in relation to such information or documents.

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

8. Ivax 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. Ivax has not completed its own investigation and discovery. The information provided in the answers herein and in any documents to be made available is based upon reasonable inquiry and the best information known or readily available to Ivax as of the date of this response. Further investigation may reveal additional information that is responsive to these Requests. Ivax reserves the right to continue discovery and investigation into this matter and to present evidence, at trial or otherwise, in accordance with the Wisconsin Rules of Civil Procedure.

9. Ivax further 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.

GENERAL OBJECTIONS TO PLAINTIFF'S DEFINITIONS

In addition to the general objection 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 Ivax's obligations beyond those set forth in the applicable rules, Ivax makes the following objections to Plaintiff's definitions:

1. Ivax 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.” Ivax incorporates by reference its objection to the definition of the term “Pharmaceutical.” Ivax 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. Ivax 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.” Ivax incorporates by reference its objection to the definition of the term “Pharmaceutical.”

3. Ivax 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 Ivax 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.” Ivax 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. Ivax objects to the definition of “Document” to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Ivax’s obligations under the applicable rules. Ivax will comply with the applicable rules. Ivax further objects to this Definition insofar as it calls for Ivax to search for 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. Ivax also objects to this Definition to the extent it requires or purports to require Ivax 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. Ivax objects to the definition of “Incentive” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ivax 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. Ivax 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. Ivax 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.

7. Ivax objects to the definition of “Pharmaceutical” on grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ivax 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. Ivax also 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.

8. Ivax 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.” Ivax incorporates by reference its objection to the definition of the term “Pharmaceutical.”

9. Ivax objects to the definition of “Targeted Drugs” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ivax incorporates by reference its objections to the definition of the term “Defined Period of Time.” Ivax 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. Ivax 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 INTERROGATORIES

Interrogatory No. 1:

Have you ever determined an average sales price or other composite price net of any or all Incentives for a Targeted Drug during the Defined Period of Time? If so, for each Targeted Drug for which you have made such a determination, identify:

- (a) the beginning and ending dates of each period applicable to each such determination;
- (b) the applicable class(es) of trade for which each determination was made;
- (c) each average sales price or composite price determined;
- (d) the person(s) most knowledgeable regarding the determinations;
- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determinations;
- (g) whether you disclosed any average sales price or composite price so determined to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such price was disclosed and the corresponding date of the disclosure; and
- (h) whether any such average sales price or composite price was treated as confidential or commercially sensitive financial information.

Response to Interrogatory No. 1:

Ivax objects to this interrogatory to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this interrogatory on the grounds that it is compound and contains multiple subparts. Ivax objects to this interrogatory as vague and ambiguous in its use of the terms “average sales price,” “other

composite price,” “Incentives,” “Targeted Drug,” “Defined Period of Time,” “class(es) of trade,” “methodology,” “purpose(s) in making such determinations,” “disclosed,” “publisher,” “governmental entity,” and “confidential or commercially sensitive financial information.” Ivax objects to this interrogatory, as have other parties who received it, and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax objects to this interrogatory as overbroad and unduly burdensome.

Interrogatory No. 2:

Identify each electronic database, data table or data file that you now maintain or have maintained during the Defined Period of Time in the ordinary course of business which contains a price for a Targeted Drug. For each such electronic data entity, identify, describe or produce the following:

(a) the name or title of each such database, data table, or data file;

(b) the software necessary to access and utilize such data entities;

(c) describe the structure of each database, data table or data file identified in response to Request No. 2(a) above and identify all files or tables in each such database, data table or data file. For each such file or table, identify all fields and for each field describe its contents, format and location within each file or table record or row.

(d) the current or former employee(s) with the most knowledge of the operation or use of each data entity identified above; and

(e) the custodian(s) of such data entity.

Response to Interrogatory No 2:

Ivax objects to this interrogatory to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this interrogatory on the grounds that it is compound and contains multiple subparts. Ivax objects to this interrogatory as vague and ambiguous in its use of the terms “electronic data base, data table or data file,” “Defined Period of Time,” “price,” “Targeted Drug,” “data entity,” “structure of each database, data table or data file,” “fields,” and “contents, format and location within each file or table record or row.” Ivax objects to this interrogatory and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax objects to this interrogatory as overbroad and unduly burdensome.

Interrogatory No. 3:

Describe each type of Incentive you have offered in conjunction with the purchase of any Targeted Drug. For each such Incentive, identify:

- (a) the type(s) of Incentive(s) offered for each Targeted Drug;
- (b) the class(es) of trade eligible for each Incentive;
- (c) the general terms and conditions of each Incentive;
- (d) the beginning and ending dates of each period during which the Incentive was

offered.

Response to Interrogatory No. 3:

Ivax objects to this interrogatory to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this interrogatory on the

grounds that it is compound and contains multiple subparts. Ivax objects to this interrogatory as vague and ambiguous in its use of the terms “Incentive,” “in conjunction with the purchase of any Targeted Drug,” “Targeted Drug,” “type(s) of Incentive(s),” “class(es) of trade eligible,” and “general terms and conditions.” Ivax objects to this interrogatory and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax objects to this interrogatory as overbroad and unduly burdensome.

Interrogatory No. 4:

Describe in detail how you determined each price you used in the ordinary course of business of each Targeted Drug for each year during the Defined Period of Time and identify the person(s) most knowledgeable in making such determinations for each Targeted Drug for each year.

Response to Interrogatory No. 4:

Ivax objects to this interrogatory to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this interrogatory on the grounds that it is compound and contains multiple subparts. Ivax objects to this interrogatory as vague and ambiguous in its use of the terms “determined,” “price,” “Targeted Drug,” and “Defined Period of Time.” Ivax objects to this interrogatory and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Ivax objects to this interrogatory as overbroad and unduly burdensome.

Interrogatory No. 5:

Have you ever included in your marketing of a Targeted Drug to any customer reference to the difference (or spread) between an AWP or WAC published by First DataBank, Redbook or Medi-span and the list or actual price (to any customer) of any Targeted Drug? If so, provide the following information for each Targeted Drug:

- a. the drug name and NDC;
- b. the beginning and ending dates during which such marketing occurred;
- c. the name, address and telephone number of each customer to whom you marketed a Targeted Drug in whole or in part by making a reference to such difference(s) or spread(s); and
- d. identify any document published or provided to a customer which referred to such difference(s) or spread(s).

Response to Interrogatory No. 5:

Ivax objects to this interrogatory to the extent it calls for information that is protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. Ivax objects to this interrogatory on the grounds that it is compound and contains multiple subparts. Ivax objects to this interrogatory as vague and ambiguous in its use of the terms “marketing,” “Targeted Drug” “AWP or WAC published by First DataBank, Redbook or Medi-span,” “list or actual price (to any customer),” “marketed a Targeted Drug in whole or in part,” and “document published or provided to a customer.” Ivax objects to this interrogatory and to a May 25, 2005 letter from plaintiff’s counsel purporting to define “Targeted Drug” for purposes of these Requests as overbroad and unduly burdensome in that plaintiff has failed to offer

allegations sufficient to support the scope of discovery requested. Ivax objects to this interrogatory as overbroad and unduly burdensome.

Dated: July 15, 2005

A handwritten signature in black ink, appearing to read "B. A. Wessel", written over a horizontal line.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On July 15, 2005, I served the foregoing document described as **DEFENDANTS IVAX CORPORATION AND IVAX PHARMACEUTICALS, INC.'S RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** on each interested party, as stated on the attached service list and upon Defendants' counsel by electronic mail.

- (BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party, as stated on the attached service list. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Irell & Manella LLP, Los Angeles, California. I am readily familiar with Irell & Manella LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

Executed on July 15, 2005, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Debi Del Grande
(Type or print name)

(Signature)

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