

STATE OF WISCONSIN,

Plaintiff,

Case No.: 04-CV-1709
Unclassified Civil: 30703

v.

AMGEN INC., et al.,

Defendants.

**DEFENDANT IVAX PHARMACEUTICALS USA, INC.'S RESPONSES AND
OBJECTIONS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES (TO ALL
DEFENDANTS) AND REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4 (TO
ALL DEFENDANTS)**

Pursuant to Wisconsin Statutes §§ 804.01, 804.08 and 804.09 and Wisconsin Rule of Civil Procedure 804.04, Defendant Ivax Pharmaceuticals USA, Inc. ("Ivax"), by its counsel, asserts these responses and objections to Plaintiff State of Wisconsin's Interrogatories No. 3 (To All Defendants) ("Interrogatories") and Request for Production of Documents No. 4 (To All Defendants) ("Requests"), dated January 12, 2007, and propounded by Plaintiff State of Wisconsin ("Plaintiff", "Wisconsin" or "State"), as follows:

GENERAL OBJECTIONS

Ivax expressly incorporates all of the General Objections set forth below into the Specific Objections for each Interrogatory. 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. These responses are made without in any way waiving or intending to waive: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as

evidence, for any purpose, of any information produced in response to these Interrogatories or Requests; (b) the right to object on any ground to the use of the documents or information produced in response to the Interrogatories or Requests at any hearings or at trial; or (c) the right to object on any ground at any time for further responses to these Interrogatories or Requests.

2. Ivax reserves the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.
3. Ivax has not completed its investigation and discovery in this case. Accordingly, the specific responses set forth below and any production made pursuant to the accompanying document requests are based upon, and necessarily limited by, information now available to Ivax.
4. Ivax states that its responses are subject to the Protective Order entered on November 29, 2005 in this action.
5. Ivax objects to the Interrogatories and Requests to the extent that they demand the production of documents or information containing trade secrets, or proprietary, commercially sensitive or other confidential information.
6. Ivax objects to the disclosure, under any circumstance, of trade secret information where the probative value in this litigation is greatly exceeded by the potential harm to Ivax if the information were to fall into the hands of its competitors, and further asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by the law and the Protective Order entered in this litigation.

7. Ivax objects to the Interrogatories and Requests to the extent they purport to impose duties and obligations on Ivax beyond the duties and obligations under the Wisconsin Rules of Civil Procedure and the applicable local rules. Ivax will comply with its duties and obligations under the Wisconsin Rules of Civil Procedure and the applicable local rules.
8. Ivax states that the information and documents supplied herein are for use in this litigation and for no other purpose.
9. Ivax objects to these Interrogatories and Requests to the extent that they seek information that is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, or are overly broad, unduly burdensome, ambiguous, or vague.
10. Ivax objects to Plaintiff's Interrogatories and Requests to the extent that they seek information protected by the attorney-client privilege, the work product doctrine, or any other immunity, privilege or exemption from discovery recognized by any applicable law or rule. To the extent that any such protected information is inadvertently disclosed in response to these Interrogatories or Requests, the production of such information shall not constitute a waiver of Ivax's right to assert the applicability of any privilege or immunity, and any such information and documents shall be returned to Ivax's counsel immediately upon discovery thereof.
11. Ivax objects to Plaintiff's Interrogatories and Requests to the extent that they seek any information beyond Ivax's possession, custody, or control.

12. Ivax objects to Plaintiff's Interrogatories and Requests to the extent that they call for information that is more appropriately sought from third parties to whom requests have been or may be directed.
13. Ivax objects to the Requests to the extent that they call for the production of publicly available documents or documents that could be obtained from Plaintiff's own files or other sources.
14. Ivax objects to Plaintiff's Interrogatories and Requests to the extent that they explicitly or implicitly characterize facts, events, circumstances, or issues relating to the subject of this litigation.
15. Ivax's responses to Plaintiff's Interrogatories and Requests shall not be construed in any way as an admission that any definition provided by Plaintiff is either factually or legally binding upon Ivax. Neither the fact that an objection is interposed to a particular Interrogatory or Request, nor the fact that no objection is interposed necessarily means that responsive information exists. Ivax's undertaking to furnish information responsive to Plaintiff's Interrogatories and Requests is subject to the general provision that Ivax only agrees to provide information to the extent that it can be identified on the basis of reasonable diligence.
16. Ivax objects to the Interrogatories and Requests to the extent that they demand the production of documents or information from outside of the statute of limitations timeframe applicable to the Plaintiff's claims in this action, or beyond the time period relevant to this action. Ivax objects to the Interrogatories and Requests as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery

of admissible evidence to the extent that they purport to require production of documents or seek information relating to a period of time after the filing of the Complaint on or around June 3, 2004.

17. Ivax objects to the Interrogatories and Requests to the extent they demand production of documents or information relating to Ivax's activities that are outside the scope of the Second Amended Complaint.
18. Ivax objects to the Interrogatories and Requests to the extent that they demand production of documents or information relating to Ivax's activities other than those which concern the State, on the grounds that such documents or information are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.
19. Ivax objects to Plaintiff's definition of "You", "Your" and "Your Company" on the grounds that it is overly broad and unduly burdensome. Ivax further objects to this definition to the extent that it purports to include entities and persons that are not parties to this action.
20. Ivax objects to Plaintiff's definition of "Document" and "Documents" on the grounds that it is vague, ambiguous, and overbroad. Ivax further objects to this definition to the extent it includes documents that are protected by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Ivax further objects to this definition to the extent it seeks to impose obligations on Ivax that are greater than, or inconsistent with, Ivax's obligations under the Wisconsin Rules of Civil Procedure and the applicable local rules. Further, Ivax objects to this definition to the extent that it

purports to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

21. Ivax objects the instructional paragraph preceding the specific Requests on the grounds that these instructions are vague, ambiguous, and overly broad. Ivax further objects to these instructions as overly burdensome insofar as they purport to impose on Ivax obligations inconsistent with, or greater than, Ivax's obligations under the Wisconsin Rules of Civil Procedure and the applicable local rules.
22. Ivax reserves the right to assert additional objections to these Interrogatories and Requests as appropriate to amend or supplement these objections and responses in accordance with the applicable local rules and court orders and based on the results of its continuing investigation.
23. Ivax hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any defendant in this action to the extent such objection or reservation of rights is not inconsistent with Ivax's position in this litigation.

RESPONSES TO SPECIFIC INTERROGATORIES

INTERROGATORY NO. 6:

With respect to any allegation of the Amended Complaint which you denied in your Answer state each fact that supports each such denial.

RESPONSE TO INTERROGATORY NO. 6:

Subject to and without waiving the general and specific objections asserted herein, Ivax states as follows, based on information developed during the course of this case:

- (a) Ivax has not engaged in conduct that was improper, fraudulent, or unlawful as alleged in Plaintiff's Second Amended Complaint.

(b) Claims for reimbursement under the Medicaid and Medicare programs are filed by providers, not Ivax, and Ivax has never caused any provider to file a false claim. Wisconsin pays Medicaid reimbursements directly to Medicaid providers, not to Ivax. The Centers for Medicare and Medicaid Services (“CMS”) pay Medicare reimbursements directly to Medicare providers, not to Ivax. Ivax has not received any money from any Medicaid reimbursement payment made by the State of Wisconsin.

(c) AWP is not defined anywhere in Wisconsin or federal statutes or regulations, and Wisconsin and the federal government (collectively, “Government”) have never provided or directed Ivax to any definition of AWP. Thus, there can be no basis for characterizing an AWP as “true” or “false” and no basis for the alleged injuries the Government allegedly suffered due to Ivax’s alleged reporting of AWPs. The AWP that Ivax sets when it launches a generic drug is established by reference to the corresponding brand name drug. Ivax’s practice of setting AWPs for its generic products at a percentage lower than the therapeutically equivalent brand name drugs’ AWPs is entirely consistent with industry practice. Pursuant to changes in market and competitive conditions, Ivax may occasionally change the AWP for its generic products.

(d) Wholesale Acquisition Cost (“WAC”) is likewise not defined anywhere in Wisconsin’s statutes or regulations, and Wisconsin has never provided or directed Ivax to any definition of WAC. Ivax’s WAC is the invoice price that Ivax charges wholesalers for its products. Ivax sets the WAC at an amount below the AWP for the drug. Pursuant to changes in market and competitive conditions, Ivax may occasionally change the WAC for its generic products.

(e) Ivax reports AWP and WACs to First Data Bank and other pricing compendia. First Data Bank has publicly stated that it reported and published its own AWP and WAC prices after making its own determination concerning the reported values.

(f) For Ivax's products to be eligible for Medicaid coverage, federal law requires Ivax to enter into a Rebate Agreement with the Secretary of Health and Human Services, who enters into the agreement on behalf of states with Medicaid programs, a set of states that includes Wisconsin. *See* 42 U.S.C. § 1396r-8(a)(1). This Rebate Agreement mandates that Ivax pay rebates to Wisconsin based on the Average Manufacturer Price ("AMP") for its products. *See* 42 U.S.C. §1396r-8(b)(3). Both the federal statute and the Rebate Agreement define AMP as the average unit price paid to Ivax by wholesalers for Ivax's products. *See* 42 U.S.C. § 1396r-8(k)(1). Pursuant to the Rebate Agreement, Ivax must include in its AMP calculation certain discounts and other price reductions which reduce the price paid for Ivax's products. While the federal government has maintained AMPs as confidential, Wisconsin Medicaid officials have the materials necessary for determining the AMP for each of Ivax's generic products by performing a simple arithmetic calculation, *viz.*, dividing the Unit Rebate Amount by 11%, the applicable rebate percentage for generic drugs. *See* 42 U.S.C. § 1396-8(c)(3)(A-B). The applicable rebate percentage before January 1, 1994 was 10%. *Id.* Wisconsin Medicaid officials have never asked Ivax to report its AMPs directly to the State. Moreover, Ivax has paid rebates to Wisconsin, significantly lowering the State's costs.

(g) During the relevant time period, the federal statutes and the Medicaid Rebate program did not obligate Ivax to report AWP or WAC.

(h) During the relevant time period, Wisconsin and the federal government have been aware that AWP and WAC do not reflect providers' acquisition costs. Wisconsin has

received directives and/or reports from the federal government that AWP does not reflect the costs to providers for Ivax's drugs. Indeed, any suggestion by Wisconsin that AWP should represent what providers pay for drugs is contradicted by the State's own Medicaid reimbursement methodology. If AWPs were the same as providers' acquisition costs, a provider would not accept payment below AWP without losing money on every transaction. Similarly, the Health Care Financing Administration ("HCFA") (now CMS) has advised the States that WAC is not equal to providers' acquisition costs. Since that time, Plaintiff has received directives and/or reports from the federal government that WAC does not include discounts and price reductions that may affect the net price. The federal government recently defined WAC in the Medicare Reform Act, as follows: "The term 'wholesale acquisition cost' means, with respect to a drug or biological, the manufacturer's list price for the drug or biological to wholesalers or direct purchasers in the United States, *not including prompt pay or other discounts, rebates or reductions in price*, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data." 42 U.S.C. § 1395w-3a(c)(6)(B) (emphasis supplied).

(i) Ivax has never represented to Wisconsin that the AWP published for its products represented actual costs or the average of wholesale prices paid by anyone or that WAC included all price discounts. The evidence will show that Plaintiff was informed by various sources, including drug manufacturers, that AWPs did not represent actual wholesale prices that were paid or charged for drugs. The evidence will likewise show that Plaintiff was informed by various sources, including drug manufacturers, that WAC was the invoice price generally charged to wholesalers and did not include the net effect of discounts from the invoice price (based on a multitude of factors, including volume of purchases, speed of payment, and other

factors), rebates, chargebacks, administrative fees and other cost adjustments which were well known and commonplace in the industry.

(j) Contrary to the allegations made by Plaintiff, reimbursement payments made by Wisconsin Medicaid and the Medicare Part B program were often not based on published AWP's for Ivax's drugs. Since 1990, Wisconsin has reimbursed at the lowest of four possible numbers: (1) the drug's AWP less a certain percentage; (2) the Medicaid provider's reported "usual and customary" charge for a drug; (3) a drug's Federal Upper Limit ("FUL"), a maximum reimbursement rate for a drug formulated and set by the federal government; or (4) the Maximum Allowable Cost ("MAC"), a maximum reimbursement rate for a drug set by Wisconsin. Under the methodology utilized by Medicare Part B to calculate reimbursement and co-payment amounts for generic drugs, the AWP used for reimbursement for a Ivax drug may not be the AWP reported by Ivax. Reimbursement is based on either the AWP of the therapeutically equivalent brand name drug, which cannot be Ivax's AWP, or the median of the AWP's of the therapeutically equivalent generic drugs.

(k) Federal law requires that Wisconsin's Medicaid payments "are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. § 1396a(a)(30)(A). Participation by providers in the Wisconsin Medicaid program is voluntary. To ensure that its Medicaid beneficiaries have adequate access to medical care, the Wisconsin Medicaid program utilizes an AWP-based reimbursement methodology in order to supply the providers with an economic incentive to participate. This allows the State to balance the interests of the beneficiaries, the providers, and the taxpayers.

(l) Medicaid and Medicare reimbursement payments have never been limited by the Government to a provider's acquisition cost for a product by its use of AWP. To the contrary, Wisconsin Medicaid and the Medicare Part B program have used AWP as a benchmark price to ensure providers are able to cover their costs as well as receive a profit, and to provide beneficiaries with access to medical care. Reimbursement for prescription drugs is intended to cover the ingredient cost of the drug, the costs incurred by a provider in dispensing the product, and a reasonable profit to the provider. Wisconsin's dispensing fees do not cover dispensing costs incurred by a provider, nor do they provide for a profit. As a result, the Plaintiff has used, and continues to use, an AWP-based reimbursement methodology in order to compensate for the shortfall in dispensing fees and to ensure that providers earn a profit on Medicaid transactions. Of course, Wisconsin remained completely free at all times to alter its pharmaceutical reimbursement methodology under its Medicaid program to a non-AWP-based system. Indeed, Wisconsin actually has periodically considered, and rejected, alternative reimbursement methodologies, including those based on non-AWP systems. When the federal government switched Medicare reimbursement from an AWP-based system to one based on Average Sales Price, the dispensing fees significantly increased.

(m) Through its AWP-based reimbursement methodology, Wisconsin's Medicaid program knowingly provides larger "spreads" or margins for generic drugs than for branded products in order to provide incentives for pharmacies to dispense generic drugs. Generics typically cost less than the brand-name drug. Accordingly, even though Wisconsin's reimbursement for a generic drug may give a provider a larger "spread" than reimbursement for a branded drug, the total reimbursement payment for the generic drug will remain lower than that for a brand-name drug, which results in money saved for the State of Wisconsin. Indeed, as

“spreads” for generic drugs increase, Wisconsin reaps the benefits, because these larger spreads increase incentives for providers to dispense generic drugs. Furthermore, contrary to Plaintiff’s claims, Ivax does not benefit from these increased spreads.

(n) As the Plaintiff’s own claims data will confirm, prices charged in market transactions by providers, wholesalers and others exceed the AWP’s of generic products.

Ivax makes a good faith effort below to identify by example the facts set forth above that provide the basis for Ivax’s denials of the specific allegations in the Second Amended Complaint:

Paragraph (a) supports Ivax’s denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 2, 3, 25, 27, 32, 39, 40, 41, 43, 48-50, 52-60, 64-66, 70, 71, 73, 75-77, 80-82, 84-86, 94-95, 97-100.

Paragraph (b) supports Ivax’s denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 32, 50, 54, 60, 65, 73, 80-82, 84-86, 94-95, 97-100.

Paragraph (c) supports Ivax’s denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 40, 43, 48-50, 52, 58-60, 65-66, 70-71, 73, 75, 80-82, 84-86, 94-95, 97-100.

Paragraph (d) supports Ivax’s denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 40, 48-50, 52, 54, 59, 60, 65, 73, 75, 80-82, 84-86, 94-95, 97-100.

Paragraph (e) supports Ivax’s denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 40, 48-50, 52-54, 65, 70, 73, 78, 80-82, 84-86, 94-95, 97-100.

Paragraph (f) supports Ivax’s denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 50, 59-60, 66, 80-82, 84-86, 94-95, 97-100.

Paragraph (g) supports Ivax's denial of the following allegations in the Second Amended Complaint: ¶¶ 25, 27, 39-40, 50, 53, 55, 58-60, 65-66, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (h) supports Ivax's denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 39-40, 50, 53, 55, 58-60, 65-66, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (i) supports Ivax's denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 39, 43, 48-50, 52-53, 57, 59-60, 65-66, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (j) supports Ivax's denial of the following allegations in the Second Amended Complaint: ¶¶ 25, 27, 39, 40, 50, 64-65, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (k) supports Ivax's denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 32, 40-41, 50, 60, 66, 80-82, 84-86, 94-95, 97-100.

Paragraph (l) supports Ivax's denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 50, 60, 65, 70-71, 80-82, 84-86, 94-95, 97-100.

Paragraph (m) supports Ivax's denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 40-41, 50, 58, 60, 65-66, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (n) supports Ivax's denial of the following allegations in the Second Amended Complaint: ¶¶ 1, 25, 27, 43, 50, 53, 58, 60, 66, 80-82, 84-86, 94-95, 97-100.

This response notwithstanding, Ivax objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, and fails to identify with sufficient particularity the information sought. Ivax objects to this Interrogatory on the grounds that it purports to impose obligations that exceed those imposed by the Wisconsin Rules of Civil Procedure and the applicable local rules. Ivax further objects to this Interrogatory as premature because discovery remains in the early stages. Ivax states that evidence which refutes the State's allegations is located in materials that are in the possession of Plaintiff, the federal government, and third parties.

INTERROGATORY NO. 7:

Identify each document that supports each such denial.

RESPONSE TO INTERROGATORY NO. 7:

Ivax refers to and incorporates herein its objections and responses to Plaintiff's Interrogatory No. 6. Subject to and without waiving the general and specific objections asserted herein, Ivax states that, pursuant to diligent review and investigation to date, the following categories of documents, among others, generally support its denials to allegations of Plaintiff's Second Amended Complaint:

(a) Documents Ivax will produce in response to Wisconsin's Requests and Interrogatories.

(b) Documents in the possession, custody and control of Plaintiff and other documents generated, obtained and reviewed by Plaintiff, based upon information obtained from Plaintiff's document production and other documents to date and depositions of its employees, including, but not limited to, the following:

- (i) Documents referring to proposed changes to Wisconsin's Medicaid pharmaceutical reimbursement methodology;
- (ii) Documents referring to providers' profits on the sale of products reimbursed by Wisconsin;
- (iii) Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
- (iv) Studies conducted by the Wisconsin Department of Agriculture, Trade and Consumer Protection, the University of Wisconsin, Congressman Tom Barrett, the Federal Trade Commission, HCFA, Dr. David Kreling, and various other consultants and entities concerning pharmaceutical pricing and reimbursement;
- (v) Governor's budget proposals related to Medicaid and documents analyzing those proposals;

- (vi) Issue papers written by the Legislative Fiscal Bureau and the Department of Health Family Services (“DHFS”) on pharmaceutical reimbursement;
- (vii) OIG, GAO, CBO and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
- (viii) Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
- (ix) Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
- (x) Issues, briefing, and concept papers on pharmaceutical reimbursement costs by the Office of Strategic Finance;
- (xi) Written testimony of DHFS Secretary concerning pharmaceutical reimbursement;
- (xii) Emails between DHFS and the Governor’s office concerning pharmaceutical reimbursement;
- (xiii) Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
- (xiv) Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
- (xv) Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
- (xvi) Documents related to the Governor’s Pharmacy Reimbursement Commission;
- (xvii) Budget documents from the Department of Administration related to pharmaceutical reimbursement;
- (xviii) Audits of Wisconsin’s Medicaid program;
- (xix) Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement; and
- (xx) Media articles discussing pharmaceutical reimbursement.

(c) Documents received, or expected to be received, from third-parties including, but

not limited to, the following:

- (i) Federal Government;
 - (ii) Other states;
 - (iii) Third-parties subpoenaed in this case; and
 - (iv) Wholesaler data produced by third-parties.
- (d) Documents obtained or produced by other defendants.

This response notwithstanding, Ivax objects to Interrogatory No. 7 on the grounds that it seeks information that is publicly available or outside Ivax's possession, custody, or control. This response is subject to and without waiver of the foregoing general and specific objections.

INTERROGATORY NO. 8:

With respect to each affirmative defense you assert in your Answer to the Amended Complaint state facts which support that defense.

RESPONSE TO INTERROGATORY NO. 8:

Ivax refers to and incorporates herein its objections and responses to Plaintiff's Interrogatory No. 6 and No. 7. Subject to and without waiving the general and specific objections asserted herein, Ivax states that it makes a good faith effort below to identify by example facts as appropriate at this stage in the litigation that support its affirmative defenses:

a. Ivax's First, Sixteenth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Thirtieth, Thirty-first, Thirty-second, and Thirty-eighth Affirmative Defenses are legal in nature and therefore require no reference to facts for support.

b. For its Second Affirmative Defense, Ivax adopts the facts set forth in subparagraphs a through m of its response to Plaintiff's Sixth Interrogatory.

c. For its Third Affirmative Defense, Ivax adopts the facts set forth in subparagraphs j, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

d. For its Fourth Affirmative Defense, Ivax adopts the facts set forth in subparagraphs b, e, g, h, i, j, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

e. For its Fifth Affirmative Defense, Ivax adopts the facts set forth in subparagraphs b, e, f, h, i, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

f. Ivax's Sixth Affirmative Defense is legal in nature. Moreover, tolling of the applicable statutes of limitations is not appropriate for the reasons set forth in subparagraphs f, h, i, k, l, and m of Ivax's response to Plaintiff's Sixth Interrogatory.

g. For its Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Twenty-ninth, and Thirty-seventh Affirmative defenses, Ivax adopts the facts set forth in subparagraphs f, h, i, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

h. For its Thirteenth Affirmative Defense, Ivax adopts the facts set forth in subparagraphs b and e of its response to Plaintiff's Sixth Interrogatory.

i. For its Fourteenth and Fifteenth Affirmative Defenses, Ivax adopts the facts set forth in subparagraphs a, c, d, e, and f of its response to Plaintiff's Sixth Interrogatory.

j. For its Seventeenth Affirmative Defense, Ivax states that Plaintiff has not proven it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).

k. For its Eighteenth Affirmative Defense, Ivax states that the Medicare Prescription Drug, Improvement and Modernization Act of 2003 changed pharmaceutical reimbursement under Medicare from an AWP-based system to an ASP-based system.

l. For its Nineteenth Affirmative Defense, Ivax states that, based upon Plaintiff's production to date, it appears that Plaintiff undertook few, if any, studies to determine EAC.

m. For its Twentieth Affirmative Defense, Ivax states that the reimbursement methodologies, which set the amount the providers received for claims submitted under the

Medicare and Medicaid programs, were established through a political process with varying political goals, including the goals that providers volunteer to participate in the programs and that such participating providers earn a profit on the drugs dispensed or administered under the programs. In fact, to ensure adequate access to medical care, Wisconsin Medicaid utilizes an AWP-based reimbursement methodology that allegedly provides for the so-called “spread” — alleged by the Plaintiff to be the difference between a provider’s acquisition cost for a drug and the amount of reimbursement the provider is paid for the drug. This “spread” created by the Medicare and Medicaid programs is an integral element in maintaining the viability of the programs, particularly in light of the inadequate dispensing fees provided for under such programs. Upon information and believe, Ivax states that Wisconsin and other payors have long been aware of the existence of the “spread” and have managed, maintained and utilized that same “spread” they have created to ensure adequate access to pharmaceuticals for the indigent and other customer groups, and to adequately reimburse providers.

n. For its Twenty-fifth Affirmative Defense, Ivax states that Wisconsin’s Medicaid program is funded by Wisconsin and the federal government. The federal government’s portion of the funding varies from year to year but is always at least 50% of Wisconsin’s total expenditure on Medicaid.

o. For its Thirty-third Affirmative Defense, Ivax states that, to the extent that it has engaged in lobbying or related efforts before Congress and/or other regulatory agencies, such conduct is protected by the First Amendment to the United States Constitution, its Wisconsin corollary, and the *Noerr-Pennington* doctrine.

p. For its Thirty-fourth Affirmative Defense, Ivax states that its conduct was justified by legitimate, pro-competitive business concerns and that it has not engaged in any conduct that has restrained competition.

q. For its Thirty-fifth and Thirty-sixth Affirmative Defenses, Ivax adopts any and all applicable facts asserted by any other defendant not otherwise asserted herein.

This response notwithstanding, Ivax objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, and fails to identify with sufficient particularity the information sought. Ivax object to this Interrogatory on the grounds that it purports to impose obligations that exceed those imposed by the Wisconsin Rules of Civil Procedure and the applicable local rules. Ivax further objects to this Interrogatory as premature, discovery remains in the early stages. Ivax states that evidence which refutes the State's allegations is located in materials that are in the possession of Plaintiff, the federal government, and third parties.

INTERROGATORY NO. 9:

Identify each document that supports the facts upon which you base each such affirmative defense.

RESPONSE TO INTERROGATORY NO. 9:

Ivax refers to and incorporates herein its objections and responses to Plaintiff's Interrogatory No. 8. Subject to and without waiving the general and specific objections asserted herein, Ivax states that, pursuant to diligent review and investigation to date, the following categories of documents, among others, generally support its denials to allegations of Plaintiff's Second Amended Complaint:

(a) Documents Ivax will produce in response to Wisconsin's Documents Requests and Interrogatories.

(b) Documents in the possession, custody and control of Plaintiff and other documents generated, obtained and reviewed by Plaintiff, based upon information obtained from Plaintiff's document production and other documents to date and depositions of its employees, including, but not limited to, the following:

- (i) Documents referring to proposed changes to Wisconsin's Medicaid's pharmaceutical reimbursement methodology;
- (ii) Documents referring to providers' profits on the sale of products reimbursed by Wisconsin;
- (iii) Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
- (iv) Studies conducted by the Wisconsin Department of Agriculture, Trade and Consumer Protection, the University of Wisconsin, Congressman Tom Barrett, the Federal Trade Commission, HCFA, Dr. David Kreling, and various other consultants and entities concerning pharmaceutical pricing and reimbursement;
- (v) Governor's budget proposals related to Medicaid and documents analyzing those proposals;
- (vi) Issue papers written by the Legislative Fiscal Bureau and the Department of Health Family Services ("DHFS") on pharmaceutical reimbursement;
- (vii) OIG, GAO, CBO and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
- (viii) Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
- (ix) Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
- (x) Issues, briefing, and concept papers on pharmaceutical reimbursement costs by the Office of Strategic Finance;
- (xi) Written testimony of DHFS Secretary concerning pharmaceutical reimbursement;

- (xii) Emails between DHFS and the Governor's office concerning pharmaceutical reimbursement;
- (xiii) Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
- (xiv) Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
- (xv) Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
- (xvi) Documents related to the Governor's Pharmacy Reimbursement Commission;
- (xvii) Budget documents from the Department of Administration related to pharmaceutical reimbursement;
- (xviii) Audits of Wisconsin's Medicaid program;
- (xix) Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement; and
- (xx) Media articles discussing pharmaceutical reimbursement.

(c) Documents received, or expected to be received, from third-parties including, but not limited to, the following:

- (i) Federal Government;
- (ii) Other states;
- (iii) Third-parties subpoenaed in this case; and
- (iv) Wholesaler data produced by third-parties.

(d) Documents obtained or produced by other defendants.

Ivax objects to Interrogatory No. 9 on the grounds that it seeks information that is publicly available or outside Ivax's possession, custody, or control. This response is subject to and without waiver of the foregoing general and specific objections.

INTERROGATORY NO. 10:

Have you ever communicated directly with any official of the State of Wisconsin about the prices of any of your drugs, including AWP, WACs, or any other prices irrespective of the nomenclature used.

RESPONSE TO INTERROGATORY NO. 10:

Subject to and without waiving the general and specific objections asserted herein, Ivax states in good faith that the evidence will show that various drug manufacturers communicated to Wisconsin what AWP and WACs represented. Further, Ivax has produced or will produce price notification letters and contract files that may be responsive to this Interrogatory.

This response notwithstanding, Ivax objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, and fails to identify with sufficient particularity the information sought. Ivax further objects to this Interrogatory on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including “communicated,” “official,” “AWP,” “WACs,” and “other prices irrespective of the nomenclature used.” Ivax likewise objects to this Interrogatory to the extent that it seeks information concerning pharmaceutical products not at issue in this litigation. Ivax further objects to this Interrogatory to the extent that it purports to require Ivax to identify information that is already within Wisconsin’s possession, custody, or control. Ivax further objects to this Interrogatory as premature, insofar as discovery is in the early stages and evidence that refutes the Plaintiff’s allegations includes materials within the possession of the State, the federal government, and third parties.

INTERROGATORY NO. 11:

If the answer to Interrogatory No. 10 is yes, identify all such communications by date, time, and purpose, the persons who communicated this information, the persons to whom this information was communicated, who said what to whom or who wrote what to

whom, and identify any documents containing or describing the information communicated to Wisconsin officials.

RESPONSE TO INTERROGATORY NO. 11:

Subject to and without waiving the general and specific objections asserted herein, Ivax refers Plaintiff to its response to Interrogatory No. 10.

This response notwithstanding, Ivax objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, and fails to identify with sufficient particularity the information sought. Ivax further objects to this Interrogatory on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including “communications” and “Wisconsin officials.” Ivax further objects to this Interrogatory to the extent that it seeks information not in Ivax’s possession, custody, or control. Ivax further objects to this Interrogatory to the extent that it seeks documents containing confidential and proprietary information. Ivax likewise objects to this Interrogatory to the extent that it seeks information concerning pharmaceutical products not at issue in this litigation. Ivax further objects to this Interrogatory to the extent that it purports to require Ivax to identify information that is already within Wisconsin’s possession, custody, or control.

SPECIFIC REQUESTS AND OBJECTIONS TO DOCUMENT REQUESTS

The General Objections stated above apply to and are incorporated into each and every individual response to the individual Requests set forth below, whether or not expressly incorporated by reference in any individual response. Ivax also responds and objects specifically to the individual Requests as follows:

DOCUMENT REQUEST NO. 12:

Produce each document identified in response to Interrogatory Nos. 7, 9 and 11.

RESPONSE TO DOCUMENT REQUEST NO. 12:

Ivax refers to and incorporates herein its objections and responses to Plaintiff's Interrogatories numbered 7, 9, and 11.

In addition to the foregoing General Objections, Ivax objects to this request on the grounds that it is overly broad, unduly burdensome, and purports to require Ivax to search for and produce duplicate copies of documents that have already been produced to Plaintiff. Ivax objects to this Request to the extent that it seeks documents unrelated to the drugs at issue in this litigation. Moreover, Ivax objects to the extent that this Request seeks to circumvent any protective order entered in another State.

Without waiving and subject to these objections, Ivax will search for documents in its possession identified in response to Interrogatories Nos. 7, 9 and 11, and will make non-privileged, responsive documents available for review, inspection, and copying at a mutually convenient time. Ivax also directs Plaintiff to its own production and productions by third-parties.

DOCUMENT REQUEST NO. 13:

Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.).

RESPONSE TO DOCUMENT REQUEST NO. 13:

Ivax objects to this Request on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Ivax further objects to this Request as overbroad and unduly burdensome because, among other things, it seeks information for an unspecified period of time. Ivax further objects to this Request on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including but not limited to "wholesalers," "drugs," "resale," and "Brand Name Prescription Drugs Antitrust Litigation". Moreover, Ivax further

objects to this Request to the extent that it seeks documents not in Ivax's possession, custody, or control. Ivax also objects to this Request to the extent that it seeks documents that are protected by protective orders in other actions. Ivax likewise objects to this Request to the extent that it seeks documents containing confidential or proprietary information. Ivax further objects to this Request to the extent that it seeks information concerning pharmaceutical products not at issue in this litigation.

Dated: June 27, 2007

AS TO ALL OBJECTIONS:

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Certificate of Service

I, Jennifer G. Levy, hereby certify that on this 27th day of June, 2007, a true and correct copy of the foregoing was served on all counsel of record by Lexis Nexis File & Serve®.

/s/ Jennifer G. Levy _____
Jennifer G. Levy