



- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
- b. that any statement or characterization in Plaintiff's Requests is accurate or complete.

3. The J&J Defendants' responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and the J&J Defendants reserve the right to amend their responses and to raise any additional objections it may have in the future. These responses are made based upon the typical or usual interpretation of words contained in Plaintiff's Requests, unless a specific definition or instruction has been provided and/or agreed upon.

4. The J&J Defendants' responses to Plaintiff's Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

5. The J&J Defendants' responses to Plaintiff's Requests are submitted without prejudice to the J&J Defendants' right to produce evidence of any subsequently discovered fact. The J&J Defendants accordingly reserve their right to provide further responses and answers as additional facts are ascertained.

### **GENERAL OBJECTIONS**

The J&J Defendants object generally to Plaintiff's Requests as follows:

1. The J&J Defendants object to Plaintiff's "Definitions" to the extent Plaintiff intends to expand upon or alter the J&J Defendants' obligations under the Wisconsin Rules of Procedure, in responding to Plaintiff's Requests. The J&J Defendants will comply with the Wisconsin Rules of Civil Procedure in providing their responses to Plaintiff's Requests.

2. The J&J Defendants object to the definition of the word "Document(s)" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose

obligations beyond those imposed by the applicable Wisconsin Rules of Civil Procedure. The J&J Defendants further object to this definition to the extent that it purports to require the J&J Defendants to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by the J&J Defendants as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. The J&J Defendants object to Plaintiff's Requests to the extent they call for the identification or production of documents or information not relevant to the issues in this action or not reasonably calculated to lead to the discovery of admissible evidence.

4. The J&J Defendants object to Plaintiff's Requests to the extent they seek information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, any common interest or joint defense agreement, or any other applicable privilege or protection.

5. The J&J Defendants object to Plaintiff's Requests to the extent they call for information not within the J&J Defendants' possession, custody or control. In responding to Plaintiff's Requests, the J&J Defendants have undertaken or will undertake a reasonably diligent and reasonable search of documents and information within the J&J Defendants' current possession, custody or control.

6. The J&J Defendants object to Plaintiff's Requests to the extent they

call for information that is confidential, proprietary, and/or a trade secret of a third-party or is protected from disclosure by an agreement with a third-party.

7. The J&J Defendants object to Plaintiff's Requests to the extent they seek disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

8. The J&J Defendants expressly incorporate the above General Objections into each specific response to Plaintiff's Requests set forth below as if set forth in full therein. A response to Plaintiff's Requests shall not operate as a waiver of any applicable specific or general objection.

### **ANSWERS AND OBJECTIONS TO 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.

**ANSWER:** The J&J Defendants object to Interrogatory No. 6 on the grounds that it is overly broad and unduly burdensome. The J&J Defendants further object to this Interrogatory to the extent it seeks information protected by the work-product doctrine. The J&J Defendants also object to this Interrogatory to the extent it seeks information related to the J&J Defendants' denials that are based in whole or part on the application of applicable laws or legal conclusions. Moreover, the J&J Defendants object to this Interrogatory to the extent that it seeks information relating to Plaintiff's Amended Complaint, which the J&J Defendants did not answer. The J&J Defendants also object to this Interrogatory as premature because the J&J Defendants have not yet fully identified all facts that may support their denials since investigation and discovery remain ongoing.

The J&J Defendants also object to this Interrogatory to the extent it essentially would require the J&J Defendants to identify facts and information designed to prove a negative.

Notwithstanding the J&J Defendants' general and specific objections, and without waiving them, the J&J Defendants answer that, based upon diligent review and investigation to date, the following facts, among others, generally support their denials to the allegations of Plaintiff's Second Amended Complaint:

1. The J&J Defendants did not engage in conduct that was improper, fraudulent, or unlawful as alleged in Plaintiff's Second Amended Complaint.
2. The J&J Defendants do not have a policy encouraging or supporting the marketing or manipulating of the spread between the published average wholesale price ("AWP") and the actual acquisition costs ("AAC") for their products. Instead, the J&J Defendants' policies provide that their products should be marketed primarily based on their clinical efficacy and other product attributes.
3. The J&J Defendants did not publish the AWP's for their products. The AWP's for the J&J Defendants' products were published by the pricing compendia.
4. It was commonly known within certain governmental agencies and within the pharmaceutical industry and among those involved with reimbursement that there was a mark-up between the wholesale acquisition costs ("WAC") and the published AWP's.
5. It was commonly known within certain governmental agencies and within the pharmaceutical industry and among those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.
6. Plaintiff, including the Secretary of the Department of Health and Family Services ("DHFS"), Division of Health Care Financing, Governor's Office, Legislative Fiscal Bureau, Joint Committee on Finance, and Department of Administration, was aware that published AWP's did not represent actual averages of wholesale prices for the J&J Defendants' products.
7. Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
8. Plaintiff has periodically considered, and rejected, alternative pharmaceutical reimbursement methodologies, including methodologies that were not AWP-based.

9. In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.
10. Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP.
11. The J&J Defendants did not misrepresent or inflate the wholesale acquisition cost ("WAC") or AWP for their products.
12. The J&J Defendants sold percentages of each of their products at or near WAC.
13. The J&J Defendants operates in a competitive environment as a result of which contracts and pricing terms are properly protected confidential business information.
14. As a matter of company policy, the J&J Defendants do not encourage or support the use of free drugs or grants as a means of discounting the overall price of their products.
15. Plaintiff was free at all times to change its pharmaceutical reimbursement under its Medicaid program to a non-AWP-based methodology.
16. The J&J Defendants are unaware of Plaintiff ever enacting a statutory or regulatory definition of AWP.
17. Plaintiff was free at all times to require pharmaceutical manufacturers to provide it with their Best Price and/or AMP data as a condition of preferred access to their drugs by Medicaid beneficiaries.
18. The J&J Defendants never affirmatively represented to Plaintiff that the AWP published for their products represented an actual average of wholesale prices.
19. Plaintiff was aware that pharmaceutical manufacturers provided discounts to customers.

The J&J Defendants expressly reserve the right to supplement this

Interrogatory Answer in the future.

**INTERROGATORY NO. 7:**

Identify each document that supports each such denial.

**ANSWER:** The J&J Defendants object to Interrogatory No. 7 on the same grounds as those set forth in their Answer to Interrogatory No. 6 and incorporates those objections herein. In addition, the J&J Defendants object to Interrogatory No. 7 to the extent it seeks information that is publicly available or outside the J&J Defendants' possession, custody and control.

Notwithstanding the J&J Defendants' general and specific objections, and without waiving them, the J&J Defendants answer that, based upon diligent review and investigation to date, the following categories of documents, among others, generally support their denials to the allegations of Plaintiff's Second Amended Complaint:

1. Documents the J&J Defendants have produced, offered to produce, or will produce, in response to Wisconsin's First Set of Requests for Production and its Written Discovery Request No. 3 in a manner to be negotiated and agreed upon between the parties including, but not limited to, the following:
  - Communications with the pricing compendia;
  - Sales and other data;
  - Communications between sales representatives and customers;
  - Customer contracts;
  - Pricing committee minutes; and
  - Other documents.
  
2. 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:
  - Documents referring to proposed changes to Wisconsin Medicaid's pharmaceutical reimbursement methodology;
  - Documents referring to pharmacists' profits on the sale of products reimbursed by Wisconsin Medicaid;
  - Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
  - Studies conducted by 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;

- Governor’s budget proposals related to Medicaid and documents analyzing those proposals;
  - Issue papers written by the Legislative Fiscal Bureau and the Department of Health Family Services (“DHFS”) on pharmaceutical reimbursement;
  - OIG, GAO, CBO, and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
  - Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
  - Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
  - Issues, briefing, and concept papers on pharmaceutical reimbursement and costs by the Office of Strategic Finance;
  - Written testimony of DHFS Secretary concerning pharmaceutical reimbursement;
  - Emails between DHFS and the Governor’s office concerning pharmaceutical reimbursement;
  - Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
  - Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
  - Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
  - Documents related to the Governor’s Pharmacy Reimbursement Commission;
  - Budget documents from the Department of Administration related to pharmaceutical reimbursement;
  - Audits of Wisconsin’s Medicaid program;
  - Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement; and
  - Media articles discussing pharmaceutical reimbursement.
3. Documents received, or expected to be received, from third-parties including, but not limited to, the following:
- Federal government;
  - Other states;
  - Third-parties subpoenaed in this case; and
  - Wholesaler data produced by third-parties.

The J&J Defendants expressly reserve the right to supplement this

Interrogatory Answer in the future.

**INTERROGATORY NO. 8:**

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

**ANSWER:** The J&J Defendants object to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. The J&J Defendants further object to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work-product doctrine. The J&J Defendants also object to this Interrogatory to the extent it seeks information related to the J&J Defendants' denials that are based in whole or part on the application of applicable laws or legal conclusions. Moreover, the J&J Defendants object to this Interrogatory to the extent that it seeks information relating to Plaintiff's Amended Complaint, which the J&J Defendants did not answer. The J&J Defendants also object to this Interrogatory as premature because the J&J Defendants have not yet fully identified all facts that may support their denials since investigation and discovery remain ongoing. The J&J Defendants also object to this Interrogatory to the extent it essentially would require the J&J Defendants to identify facts and information designed to prove a negative.

Notwithstanding the J&J Defendants' general and specific objections, and without waiving them, the J&J Defendants answer that, based upon diligent review and investigation to date, the following facts, among others, generally support the J&J Defendants' Affirmative Defenses, as set forth in their Answer to Plaintiff's Second Amended Complaint:

**Affirmative Defenses Nos. 1, 16, 17, 20, 35:**

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for the J&J Defendants' products.

- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWPs.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defenses Nos. 2-4:

- Based upon Plaintiff's production to date, it appears that Plaintiff undertook few, if any, studies to determine EAC.

Affirmative Defense No. 5:

- Plaintiff submitted state plans and state plan amendments to the federal government concerning the rate at which it would reimburse pharmaceuticals under its Medicaid Program. These plans were reviewed and approved by the federal government.

Affirmative Defense No. 6:

- The J&J Defendants' products are sold in interstate commerce.

Affirmative Defense Nos. 7, 12, 13, 15, 26-27, 29, 37, 40-42

- These defenses are purely legal in nature and thus, require no reference to facts for support.

Affirmative Defenses Nos. 8, 18, 24

- Plaintiff cannot establish that it was damaged by the J&J Defendants' conduct. Plaintiff adopted the reimbursement methodology to further program objectives.
- Plaintiff cannot establish that any increase in the J&J Defendants' market share was attributable to the J&J Defendants' allegedly unlawful conduct as opposed to other factors.
- Plaintiff cannot establish that any increase in the J&J Defendants' market share was the result of Plaintiff's payments.

Affirmative Defense No. 9

- To the extent that the J&J Defendants have engaged in lobbying or related efforts before Congress and/or other regulatory agencies, such conduct is protected by the First Amendment and *Noerr-Pennington*.

Affirmative Defenses Nos. 10, 25-27

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for the J&J Defendants' products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP's.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.
- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.
- Plaintiff has not proven it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).
- The J&J Defendants did not cause providers to make a false statement to Plaintiff.
- Attorney General is not authorized to seek forfeitures under § 100.26(4) and § 100.264(2).
- The J&J Defendants sold percentages of each of their products at or near WAC.
- Plaintiff was aware that pharmaceutical manufacturers provided discounts to customers.

- Plaintiff cannot establish that the J&J Defendants' discounts to providers had the effect of injuring competition.
- Plaintiff did not confer any benefit on the J&J Defendants.

Affirmative Defense No. 11

- Plaintiff has not proven it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).

Affirmative Defense No. 14

- By the onset of the time period at issue in this suit, it was already established industry practice for the pricing compendia to publish AWP's that were higher than actual acquisition costs for pharmaceuticals. It also was commonly known and widely understood that AWP's did not represent actual averages of wholesale prices.

Affirmative Defense No. 18

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for the J&J Defendants' products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP's.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.
- The J&J Defendants did not cause providers to make a false statement to Plaintiff.
- Plaintiff cannot establish that the J&J Defendants' discounts to providers had the effect of injuring competition.
- Plaintiff did not confer any benefit on the J&J Defendants.

Affirmative Defense No. 19

- Medicare Prescription Drug, Improvement and Modernization Act of 2003, 42 U.S.C. § 1395, changed pharmaceutical reimbursement under Medicare from an AWP-based system to an ASP-based system.

Affirmative Defense No. 21

- The J&J Defendants did not control the AWPs published by the pricing compendia.
- Since at least 1975, Plaintiff was aware that the published AWPs did not represent actual averages of wholesale prices for the J&J Defendants' products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWPs.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 22

- Plaintiff has not named as defendants parties who received the alleged "excessive" reimbursements.

Affirmative Defense No. 23

- The J&J Defendants' conduct and activities are distinct from and independent of the conduct and activities of the other defendants named in this action.

Affirmative Defense No. 24

- Plaintiff continues to reimburse providers, who participate in the Medicaid program, for pharmaceuticals based on published AWPs.

- Plaintiff cannot establish that it was damaged by the J&J Defendants' conduct.
- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for the J&J Defendants' products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP's.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 28

- Plaintiff has provided no particularized allegations (the "who, what, when, where and how") describing the J&J Defendants' allegedly fraudulent conduct.

Affirmative Defense No. 30

- Plaintiff did not confer a benefit on the J&J Defendants.
- Any increased sales and/or market share the J&J Defendants received during the relevant time period was not the result of unlawful conduct.
- Plaintiff cannot establish that any increase in the J&J Defendants' market share was attributable to the J&J Defendants' allegedly unlawful conduct as opposed to other factors.
- Plaintiff cannot establish that any increase in the J&J Defendants' market share was the result of Plaintiff's payments.
- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for the J&J Defendants' products.

- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWPs.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 31

- Plaintiff has not proven it complied with Wis. Stat. § 165.25(1).

Affirmative Defense No. 32

- A written rebate agreement exists between the J&J Defendants and the Secretary of the Department of Health and Human Services (“HHS”), on behalf of HHS and certain States, entitled, “Rebate Agreement Between the Secretary of Health and Human Services and the Manufacturer Identified in Section XI of this Agreement”, which was entered into pursuant to 42 U.S.C. § 1396r-8.

Affirmative Defense No. 33

- The reimbursement rates set for Wisconsin’s Medicaid program and Medicare Part B are lawful, government-set rates.

Affirmative Defense No. 34, 36

- The J&J Defendants have never represented that the AWPs published by the pricing compendia represent actual averages of wholesale prices for their products.
- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that published AWPs did not represent actual averages of wholesale prices.
- Since at least 1975, Plaintiff was aware that the published AWPs did not represent actual averages of wholesale prices for the J&J Defendants’ products.

- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWPs.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 38

- Plaintiff has not proven it complied with Wis. Stat. § 100.18(11)(d).

Affirmative Defense No. 39

- Plaintiff has not named as defendants parties who received the alleged “excessive” reimbursements.
- Plaintiff cannot establish that any alleged overcharge or supracompetitive price was passed on to the State.

Affirmative Defense No. 42

- Any and all applicable facts asserted by any other defendant not otherwise asserted herein.

The J&J Defendants expressly reserve the right to supplement this

Interrogatory Answer in the future.

**INTERROGATORY NO. 9:**

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

**ANSWER:** The J&J Defendants object to Interrogatory No. 9 on the same grounds as those set forth in their Answer to Interrogatory No. 8 and incorporates these objections herein. In addition, the J&J Defendants object to this Interrogatory to the extent

it seeks information that is publicly available or outside the J&J Defendants' possession, custody and control.

Notwithstanding the J&J Defendants' general and specific objections, and without waiving them, the J&J Defendants answer that, based upon diligent review and investigation to date, the following categories of documents, among others, generally support the Affirmative Defenses asserted in the J&J Defendants' Answer to Plaintiff's Second Amended Complaint:

1. Documents the J&J Defendants have produced, offered to produce, or will produce, in response to Wisconsin's First Set of Requests for Production and its Written Discovery Request No. 3 in a manner to be negotiated to and agreed upon between the parties including, but not limited to, the following:
  - Communications with the pricing compendia;
  - Sales and other data;
  - Communications between sales representatives and customers;
  - Customer contracts;
  - Pricing committee minutes; and
  - Other documents.
  
2. 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:
  - Documents referring to proposed changes to Wisconsin Medicaid's pharmaceutical reimbursement methodology;
  - Documents referring to pharmacists' profits on the sale of products reimbursed by Wisconsin Medicaid;
  - Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
  - State plans and state plan amendments;
  - Studies conducted by 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;
  - Governor's budget proposals related to Medicaid and documents analyzing those proposals;

- Issue papers written by the Legislative Fiscal Bureau and DHFS on pharmaceutical reimbursement;
  - OIG, GAO, CBO, and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
  - Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
  - Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
  - Issues, briefing, and concept papers on pharmaceutical reimbursement and costs by the Office of Strategic Finance;
  - Written testimony of DHFS Secretary concerning pharmaceutical reimbursement;
  - Emails between DHFS and the Governor's office concerning pharmaceutical reimbursement;
  - Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
  - Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
  - Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
  - Documents related to the Governor's Pharmacy Reimbursement Commission;
  - Budget documents from the Department of Administration related to pharmaceutical reimbursement;
  - Audits of Wisconsin's Medicaid program;
  - Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement;
  - Media articles discussing pharmaceutical reimbursement; and
  - Rebate contract between Plaintiff and the J&J Defendants.
3. Documents received, or expected to be received, from third-parties including, but not limited to, the following:
- Federal government;
  - Other states;
  - Third-parties subpoenaed in this case; and
  - Wholesaler data produced by third-parties.

The J&J Defendants expressly reserve the right to supplement this Interrogatory Answer in the future.

**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 AWPs, WACs, or any other prices irrespective of the nomenclature used?

**ANSWER:** The J&J Defendants object to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. The J&J Defendants further object to this Interrogatory because “any official of the State” is vague and undefined and because this Interrogatory is not limited by timeframe.

Notwithstanding the J&J Defendants’ general and specific objections, and without waiving them, the J&J Defendants answer that, based upon diligent review and investigation to date, other than communications with Provider Synergies regarding placement on Wisconsin’s Preferred Drug List, they are aware of two meetings with Wisconsin State Medicaid relating to pricing. First, a meeting was held relating to Duragesic pricing in the spring of 2005. The focus of this meeting was the relative cost of Duragesic to Wisconsin Medicaid compared to its generic competitors. A second meeting relating to the pricing of a new product not at issue in this suit was held in early 2007. Discovery, however, remains ongoing. Consequently, the J&J Defendants expressly reserve the right to supplement this Interrogatory Answer in the future.

**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.

**ANSWER:** The J&J Defendants object to Interrogatory No. 11 on the ground that it is overly broad and unduly burdensome. The J&J Defendants further object to this Interrogatory on the ground that it is not limited by timeframe.

Notwithstanding the J&J Defendants’ general and specific objections, and without waiving them, the J&J Defendants state as follows: The attendees at the spring 2005 meeting referenced above included Russ Pederson and Rich Albertoni from Wisconsin

Medicaid and Gregory Aronin, Tod Holdworth, and Rob Robinson from the J&J Defendants. The participants at the early 2007 meeting referenced above included Carrie Gray from Wisconsin Medicaid and Gregory Aronin and Rebecca Lucan Stuart from the J&J Defendants.

## **RESPONSES AND OBJECTIONS TO REQUEST FOR PRODUCTION**

### **REQUEST NO. 12:**

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

**RESPONSE:** The J&J Defendants object to Request No. 12 on the ground that it is overly broad and unduly burdensome. The J&J Defendants further object to this Interrogatory to the extent it seeks documents that are publicly available or outside the J&J Defendants' possession, custody and control.

Notwithstanding the J&J Defendants' general and specific objections, and without waiving them, the J&J Defendants agree to produce non-privileged documents identified in their Answers to Interrogatory Nos. 7, 9, and 11 in a manner to be negotiated and agreed upon between the parties. The J&J Defendants also direct Plaintiff to its own production and productions by third-parties.

### **REQUEST NO. 13:**

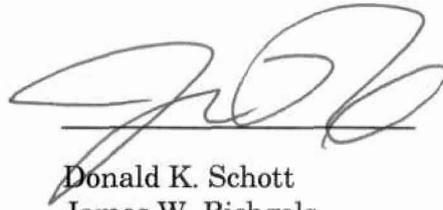
Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.)

### **RESPONSE:**

The J&J Defendants object to Request No. 13 on the ground that it is overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because (i) it reports to require information relating to "drugs" without

specification as to which “drugs,” thus including drugs that are not manufactured, marketed, or distributed by the J&J Defendants and/or drugs not at issue in this litigation, and (ii) to the extent it purports to require the J&J Defendants to produce all documents “relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.)” regardless of whether such documents relate to any issues in this case, belong to the J&J Defendants, or are otherwise protected from disclosure pursuant to applicable privileges or work product doctrines. In addition, the J&J Defendants object to this Request because it is duplicative of Request No. 3 in Plaintiff’s First Set of Requests for Production of Documents to the J&J Defendants, in response to which the J&J Defendants have already agreed to produce documents. The J&J Defendants further object to this Request to the extent it seeks information in the possession of Plaintiff or more appropriately sought from third parties.

March 22, 2007



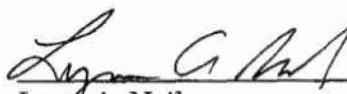
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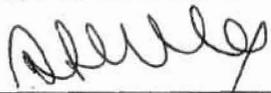
*Attorneys for the J&J Defendants*

Verification

I, Lynn A. Neils, hereby certify that I have reviewed the forgoing **J&J DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES AND FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS** and that these are true and correct to the best of my knowledge based on all available information.

  
Lynn A. Neils

Subscribed and sworn to before me  
this 20th day of March, 2007.

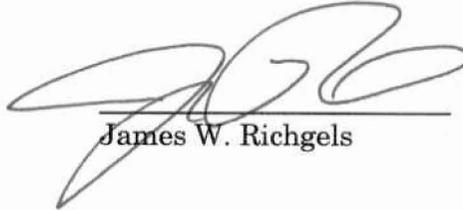


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Notary Public, State of New York

**ADEELA MANGI**  
Notary Public, State of New York  
No. 02MAS158961  
Qualified in New York County  
Commission Expires Jan. 18, 2011

**Certificate of Service**

I, James W. Richgels, hereby certify that on this 22nd day of March 2007, a true and correct verified copy of the previously served **J&J DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES AND FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS** was served on all counsel of record by Lexis Nexis File & Serve®.



James W. Richgels