



responses and objections as follows:

**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. 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' pricing practices, including their conduct respecting AWP, were consistent with long-standing and well-known industry practices, were lawful and not deceptive, and were found to be lawful and not deceptive by the only court that has considered the issue. See In re AWP.
2. The J&J Defendants did not engage in conduct that was improper, fraudulent, or unlawful as alleged in Plaintiff's Second Amended Complaint.

3. 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.
4. The J&J Defendants did not publish the AWP for their products. The AWP for the J&J Defendants’ products were published by the pricing compendia.
5. 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.
6. It was commonly known within certain governmental agencies and within the pharmaceutical industry and among those involved with reimbursement that published AWP did not represent actual averages of wholesale prices.
7. 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 did not represent actual averages of wholesale prices for the J&J Defendants’ products.
8. 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.
9. Plaintiff has periodically considered, and rejected, alternative pharmaceutical reimbursement methodologies, including methodologies that were not AWP-based.
10. In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.
11. Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP.
12. The J&J Defendants did not misrepresent or inflate the wholesale acquisition cost (“WAC”) or AWP for their products.
13. The J&J Defendants sold percentages of each of their products at or near WAC.

14. The J&J Defendants operates in a competitive environment as a result of which contracts and pricing terms are properly protected confidential business information.
15. 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.
16. Plaintiff was free at all times to change its pharmaceutical reimbursement under its Medicaid program to a non-AWP-based methodology.
17. The J&J Defendants are unaware of Plaintiff ever enacting a statutory or regulatory definition of AWP.
18. 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.
19. The J&J Defendants never affirmatively represented to Plaintiff that the AWP published for their products represented an actual average of wholesale prices.
20. 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.

**SUPPLEMENTAL RESPONSES:**

Allegation 1. The J&J Defendants object to identifying “each fact” that supports their denial of the Plaintiff’s false assertion that the J&J Defendants engaged in an “unlawful scheme”, that that they have “taken advantage” of the market for prescription drugs, that they have published “phony” AWP’s, that they have engaged in “deceptive practices”, that their prices were kept “secret” from Plaintiff, that they willfully schemed to cause Wisconsin to pay providers “windfall profits” or that they used the “lure of windfall profits” competitively. Notwithstanding their objections, the J&J Defendants’ state that their denial is based on the fact that their pricing practices, including their conduct respecting AWP, were consistent with long-

standing and well-known industry practices, were lawful and not deceptive, and were found to be lawful and not deceptive by the only court that has considered the issue. In re AWP. Evidentiary support for the J&J Defendants' denials is set forth in the discovery and trial record in In re AWP. Plaintiff is also referred to the depositions previously given by the J&J Defendants in this case and in In re AWP, and to the depositions of James J. Vavra, Kimberly Smithers, Larry Reed, Thomas Scully, and Christopher Decker. Moreover, Plaintiff's employees have acknowledged that the Plaintiff's claims are baseless in an email that the J&J Defendants will identify by production number upon request.

Allegation 2. See Response to Allegation 1. The J&J Defendants' conduct was not "unlawful."

Allegation 3. See Response to Allegation 1. The J&J Defendants' did not engage in a "deceptive scheme."

Allegations 4-11. Not applicable to the J&J Defendants.

Allegation 12. The J&J Defendants deny that Johnson & Johnson is engaged in the business of manufacturing and selling pharmaceuticals. See Deposition of Christine Poon in In re AWP, and declaration of Thomas Hiriak in support of the J&J Defendants' motion for summary judgment in In re AWP. See also Annual Report of Johnson & Johnson, available at <http://jnj.v1.papiervirtuel.com/report/2007030901>. The J&J Defendants also deny that Ortho Biotech Products, L.P.'s principal place of business is located at 700 U.S. Highway 202, Raritan, New Jersey. Ortho Biotech Products, L.P.'s principal place of business is located in Bridgewater, New Jersey. See <http://www.orthobiotech.com/contact.html>.

Allegation 13-23. Not applicable to the J&J Defendants.

Allegation 24. Allegation 24 states a conclusion of law, not fact.

Allegation 25. Allegation 25 states a conclusion of law, not fact.

Allegation 26. The J&J Defendants object to identifying “each fact” that supports their denial of the Plaintiff’s characterization of the “essential structure” of the pharmaceutical market. Notwithstanding their objection, the J&J Defendants state that a more accurate description of the pharmaceutical market is set forth in the Tutorial given by Gregory Bell and Fiona Scott Morton in In re AWP.

Allegation 27. The J&J Defendants object to identifying “each fact” that supports their denial based on lack of knowledge and information sufficient to form a belief as to the Plaintiff’s claim that the market for prescription drugs is “differs in two crucial respects from most markets.” See Response to Allegation 26.

Allegation 28. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s characterization of the first alleged “crucial” difference between the market for prescription drugs and “most markets.” See Response to Allegation 26.

Allegation 29. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s characterization of the second alleged “crucial” difference between the market for prescription drugs and “most markets.” See Response to Allegation 26.

Allegation 30. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s claim that the J&J Defendants engaged in an “unlawful scheme.” Notwithstanding their objection, the J&J Defendants state that they did not “cause” Wisconsin Medicaid or other payors to pay Wisconsin’s providers more than acquisition cost for prescription drugs. Rather, it appears from the evidence that Wisconsin Medicaid knowingly and intentionally elected, based on public policy and/or political considerations, to pay Wisconsin’s Medicaid providers more than acquisition cost. (See, e.g., Depositions of James Vavra and

Christopher Decker). Plaintiff apparently intends its Medicaid reimbursement formula to provide Medicaid providers a profit over acquisition cost. (See, e.g., Vavra Deposition, Ex. 4). For example, Wisconsin elected in 1975 not to pay acquisition cost after it was encouraged to do so by Lieutenant Governor Martin J. Schrieber. (See, e.g., Vavra Deposition, Exs. 4 and 12). Plaintiff elected in 1976 not to pay acquisition cost after the Medicaid Pharmacy Task Force appointed by Governor Patrick J. Lacey encouraged it to do so. (See, e.g., Jan. 16, 1976 Memo. from Robert Durkin to Medicaid Pharmacy Task Force). Plaintiff elected in 1989 not to pay acquisition cost after considering that it had the option to do so. (See, e.g., WI-Prod-AWP-097939). Plaintiff elected not to pay acquisition cost after being advised by HCFA in 1989 that EAC should not be based on undiscounted AWP. (See, e.g., WI-Prod-AWP-097949). Plaintiff elected not to pay acquisition cost after it was proposed as part of the Governor's 1995-1997 Biennial Budget Bill. (See, e.g., Office of Policy and Budget, Elizabeth Barron, Budget Section, July 5, 1995). Plaintiff elected not to reduce pharmaceutical reimbursement from AWP-10% to AWP-18% after such reduction was proposed by as part of the Governor's 1999-2001 Biennial Budget Bill. (See, e.g., WI-Prod-AWP-108297; WI-Prod-AWP-44639; WI-Prod-AWP-108022; WI-Prod-AWP-097609; WI-Prod-AWP-097695; see also Oct. 15, 1998 Letter from State Representative David A. Brandemuehl to Secretary Joe Lekan, Oct. 8, 1998 Note from State Senator Brian D. Rude to Kevin \_\_\_\_\_, Oct. 16, 1998 Letter from Governor Tommy G. Thompson to Chris Decker, Oct. 26, 1998 Letter from Joe Lekan to State Senator Brian Rude, Oct. 26, 1998 Letter from Joe Lekan to State Representative David A. Brandemuehl). Plaintiff elected not to implement a planned reduction in pharmaceutical reimbursement from AWP-10% to AWP-15% in 1998. (See, e.g., WI-Prod-AWP-044636). Plaintiff elected not to implement a proposed reduction in pharmaceutical reimbursement from AWP-10% to AWP-15% after such

reduction was proposed by as part of the Governor's 2001-2003 Biennial Budget Bill. (See, e.g., WI-Prod-AWP-117906; see also Nov. 6, 2000 Letter from Morton Pharmacy to Governor Tommy Thompson; WI-Prod-AWP-117936; WI-Prod-AWP-117910; WI-Prod-AWP-118056; WI-Prod-AWP-117931). Plaintiff did not reduce pharmaceutical reimbursement after being told by the OIG in 2002 that retail pharmacies in Wisconsin were purchasing brand name pharmaceuticals at or about the published WAC price. (See, e.g., WI-Prod-AWP-104215). Plaintiff elected not to reduce pharmaceutical reimbursement from AWP-11.25% to AWP-15%. (See, e.g., WI-Prod-AWP-109462; WI-Prod-AWP-121428; WI-Prod-AWP-108880; WI-Prod-AWP-110606; WI-Prod-AWP-061664). Plaintiff elected not to reduce pharmaceutical reimbursement from AWP-13% to AWP-16% after Governor Doyle proposed such reduction in 2004. (See, e.g., WI-Prod-AWP-111935; WI-Prod-AWP-105387; WI-Prod-AWP-110628; WI-Prod-AWP-105387; WI-Prod-AWP-111642; WI-Prod-AWP-110754; WI-Prod-AWP-11038; WI-Prod-AWP-11609; WI-Prod-AWP-111831). The J&J Defendants further state that they typically preferred lower AWP's to higher AWP's, because lower AWP's made their drugs less costly to payers in comparison to drugs with higher AWP's. (See, e.g., Deposition of William Parks; see also Deposition of Patricia Kay Morgan). In 2002, representatives of the J&J Defendants notified the Centers for Medicare and Medicaid Services (CMS) that First DataBank (FDB) unilaterally increased certain of their AWP's, and was told by CMS that CMS was aware of FDB's action. (See Deposition of Larry Reed; WI-JJ00018998-99; WI-JJ00020645).

Allegation 31. The J&J Defendants object to identifying "each fact" that supports their denial based on lack of knowledge and information sufficient to form a belief as to the purpose of Wisconsin's Medicaid program.

Allegation 32. The J&J Defendants object to identifying “each fact” that supports their denial based on lack of knowledge and information sufficient to form a belief as to the size of Wisconsin’s Medicaid program and the reasons pharmaceutical companies participate in said program.

Allegation 33. The J&J Defendants object to identifying “each fact” that supports their denial based on lack of knowledge and information sufficient to form a belief as to the Plaintiff’s description of its legal obligations. Notwithstanding their objections, the J&J Defendants state that “estimated acquisition cost” (EAC) as used in federal law and regulations is a legal term of art that differs from actual acquisition cost. (See, e.g., WI-Prod-AWP-104226 referencing WI-Prod-AWP-104223; WI-Prod-AWP-104215; Deposition for James Vavra.) Plaintiff has repeatedly certified to CMS that its EAC methodology is consistent with federal law. (See, e.g., Deposition of James Vavra).

Allegation 34. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s claim that the J&J Defendants hid their wholesale prices and their knowledge of the prices at which wholesalers sell to providers. Notwithstanding their objection, the J&J Defendants state that they (except Johnson & Johnson) reported WAC prices to pricing services and typically sold their brand name drugs to wholesalers at WAC minus a small prompt pay discount. (See, e.g., Deposition of William Parks). The fact that wholesalers purchase brand name drugs at or about WAC was known to Plaintiff. (See, e.g., WI-Prod-AWP-108022; WI-Prod-AWP-097609). Insofar as the J&J Defendants have been able to determine, Plaintiff never asked manufacturers, including the J&J Defendants, for information regarding wholesale prices. (See, e.g., Deposition of James Vavra). First DataBank and others, including Plaintiff, have described AWP as “Ain’t What’s Paid” (see, e.g., Deposition of Patricia Kay

Morgan; see also WI-AWP-Prod-090070; WI-AWP-Prod-094800). Numerous documents reflect Plaintiff's understanding that AWP did not represent a price that was typically paid by providers. (See, e.g., Wi-Prod-AWP-106223; PSW\_00009050; WI-AWP-Prod-108065; PSW\_00006120; PSW\_00005576; WI-AWP-Prod-108297; WI-AWP-Prod-044636; WI-AWP-Prod-108022; WI-AWP-Prod-097609; WI-AWP-Prod-097695; WI-AWP-Prod-094800; WI-AWP-Prod-117907; WI-AWP-Prod-117910; WI-AWP-Prod-104215).

Allegation 35. The J&J Defendants object to identifying "each fact" that supports their denial based on lack of knowledge and information sufficient to form a belief of Plaintiff's claim that FDB, "for virtually the entire time period relevant here," represented that its published prices reflect actual average wholesale prices. Notwithstanding their objections, the J&J Defendants state that FDB and others have represented that AWP is not an average of prices charged by wholesalers to providers. (See, e.g., Deposition of Patricia Kay Morgan; see also Medicaid and Medicare Drug Pricing: Strategy to Determine Market Prices, at 15-16 (June 21, 2004); U.S. Department of Health and Human Services, Health Care Finance Administration, "Pharmacy Reimbursement Rates: Their Adequacy and Impact on Medicaid Beneficiaries" (June 1994); Department of Health Education and Welfare, Reimbursement of Drug Cost-Medical Assistance Program, 39 Fed. Reg. 230 at 41480 (Nov. 27, 1974); Medicare Action Transmittal No. 84-12, reprinted in Medicare and Medicaid Guide (CCH) § 34,157 at 2 (1984); HHS Report, Physicians' Costs for Chemotherapy Drugs, (Nov. 1992); H.R. Rep. 108-178(II), at 197 (July 15, 2003); Medicaid and Medicare Drug Pricing: Strategy to Determine Market Prices, at 15-16 (June 21, 2004); see also Response to Allegation 34).

Allegation 36. The J&J Defendants object to identifying "each fact" that supports their denial based on lack of knowledge and information sufficient to form a belief of

Plaintiff's claim that it did not intend to pay providers more than acquisition cost. Notwithstanding their objections, the J&J Defendants state that there is evidence that shows that Plaintiff intended to pay providers more than acquisition cost. (See, e.g., Deposition of James Vavra; WI-AWP-Prod-110433; Vavra Exs. 4 and 6; see also Response to Allegation 30).

Allegation 37. The J&J Defendants object to identifying "each fact" that supports their denial based on lack of knowledge and information sufficient to form a belief as to the truth of Plaintiff's allegations regarding its relationship with FDB and EDS.

Allegation 38. The J&J Defendants object to identifying "each fact" that supports their denial based on lack of knowledge and information sufficient to form a belief as to the truth of Plaintiff's allegations regarding its use of data supplied by EDS.

Allegation 39. The J&J Defendants object to identifying "each fact" that supports their denial based on lack of knowledge and information sufficient to form a belief as to the truth of Plaintiff's allegations concerning its dependence on FDB. Notwithstanding their objections, the J&J Defendants state that there is evidence that the information FDB provides to EDS comes from wholesalers, not from pharmaceutical companies. (See, e.g., Deposition of Patricia Kay Morgan). Plaintiff was not required to use, and was therefore not dependent upon, AWP-related information provided by FDB. (See, e.g., Deposition of James Vavra).

Allegation 40. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that they defeated the intent of the Medicaid Program to pay providers at a rate no greater than acquisition cost, that they reported inflated AWPs to FDB or otherwise, that they knew FDB would misrepresent their true wholesale prices, that they engaged in a scheme to increase the spread and/or to incentivize providers to choose their drugs based on their allegedly higher AWPs. Notwithstanding these objections, the J&J Defendants

state that there is evidence that Plaintiff intended to intended to pay providers more than acquisition cost, (see, e.g., Response to Allegations 30 and 36), that FDB's AWP's do not purport to represent "true wholesale prices" (see, e.g., Response to Allegation 35), and that the J&J Defendants typically prefer lower AWP's instead of higher AWP's because it makes their drugs less costly to payers in comparison to drugs with larger AWP's (see, e.g., Response to Allegation 30).

Allegation 41. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that they market their products to by pointing out that their drugs have higher spreads. Notwithstanding their objections, the J&J Defendants state that they do not market their drugs in comparison to competitor drugs based on their higher spreads. Evidentiary support for the J&J Defendants' denials is set forth in the discovery and trial record in In re AWP. Plaintiff is also referred to the depositions previously given by the J&J Defendants in this case, and to the deposition of Thomas Scully, and Christopher Decker. There is evidence that the J&J Defendants typically prefer lower AWP's instead of higher AWP's, because it makes their drugs less costly to payers in comparison to drugs with higher AWP's. (See, e.g., Deposition of William Parks; see also Deposition of Patricia Kay Morgan). In 2002, representatives of the J&J Defendants notified the Centers for Medicare and Medicaid Services (CMS) that First DataBank (FDB) unilaterally increased certain of their AWP's, and was told by CMS that CMS was aware of FDB's action. (See Depositions of Larry Reed; WI-JJ00018998-99; WI-JJ00020645).

Allegation 42. Not applicable to the J&J Defendants.

Allegation 43. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that they inflated their AWP's. Notwithstanding their

objections, the J&J Defendants state that they did not inflate their AWP. (See, e.g., Response to Allegation 1). Otherwise not applicable to the J&J Defendants.

Allegation 44. Not applicable to the J&J Defendants.

Allegation 45. Not applicable to the J&J Defendants.

Allegation 46. Not applicable to the J&J Defendants.

Allegation 47. Not applicable to the J&J Defendants.

Allegation 48. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s claim that the alleged wholesaler data annexed to the Complaint evidences that AWP are “false.” Notwithstanding their objections, the J&J Defendants state that their AWP are not “false.” (See, e.g., Response to Allegation 1).

Allegation 49. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s claim that their WACs are “false” because of secret discounts given to purchasers other than Medicaid and Medicare. Notwithstanding their objections, the J&J Defendants state that their WACs are not “false.” (See, e.g., Response to Allegation 34; see also In re AWP).

Allegation 50. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s claim that they have succeeded in a drug pricing scheme by exacerbating the complexities of the incredibly huge, and dauntingly complex, drug market, and by purposely concealing their pricing scheme from Wisconsin Medicaid and other payors. Notwithstanding their objections, the J&J Defendants state that they have not participated in a drug pricing scheme by exacerbating the complexities of the incredibly huge, and dauntingly complex, drug market, and by purposely concealing their pricing scheme from Wisconsin Medicaid and other payors. (See, e.g., Response to Allegation 1). The J&J Defendants also state

that Plaintiff knows, and/or has access to, discounted pricing based on its direct purchases of some or all of J&J Defendants' drugs at discounted prices. (See, e.g., Deposition of James Vavra).

Allegation 51. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that Plaintiff lacks the resources to keep track of current published prices. Notwithstanding their objections there is evidence that Wisconsin was able to keep track of current published pricing by contracting with EDS. (See, e.g., Deposition of Kimberly Smithers).

Allegation 52. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that they have further exacerbated the inherent complexities of the drug market by utilizing marketing schemes which conceal the true price of their drugs. (See, e.g., Response to Allegation 1). Notwithstanding their objections, the J&J Defendants also state that there is evidence that Plaintiff knows, and/or has access to, information concerning discounted pricing based on its direct purchases of some of all of J&J Defendants' drugs at discounted prices. (See Deposition of James Vavra).

Allegation 53. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that they hide their true prices by providing contractual chargebacks to providers or otherwise. Notwithstanding their objections, the J&J Defendants typically do not offer contractual chargebacks or other price reductions to retail pharmacies. (See, e.g., Deposition of William Parks). In the case of Procrit, Ortho Biotech provided retail pharmacy rebates, but those rebates ended in 1999, and were not hidden. (See, e.g., Depositions and Declarations of Thomas Hiriak in In re AWP). Procrit's average selling prices are disclosed

to the public by CMS. Procrit physician contracts specify that Procrit's pricing must be disclosed to federal and state agencies as required by law or upon request. (Id.)

Allegation 54. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that Wisconsin is prevented by the J&J Defendants' contracts with providers from learning the true cost of their drugs. Notwithstanding their objections, the J&J Defendants state that they typically do not offer contracted pricing to retail pharmacies, and that Wisconsin is not prevented by the Procrit physician contracts from obtaining Procrit prices. (See, e.g., Response to Allegation 53). The J&J Defendants also state that there is evidence that Plaintiff knows, and/or has access to, information concerning discounted pricing based on its direct purchases of some of all of J&J Defendants' drugs at discounted prices. (See Deposition of James Vavra).

Allegation 55. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that charging different customers different prices "obscure[s] the true price of their drugs." Notwithstanding these objections, the J&J Defendants state that all of the prices they charge are "true" prices. (See, e.g., Response to Allegation 1).

Allegation 56. Not applicable to the J&J Defendants.

Allegation 57. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's claim that have hidden their motives for utilizing an inflated AWP from the public, and that it is apparent that one reason they intentionally manipulated the nation's drug reimbursement system was to compete for market share on the basis of a phony price spread instead of the true selling price of their drugs or the medicinal efficacy of their drugs to the public. Notwithstanding their objections, the J&J Defendants state that they have not utilized inflated AWPs, have not hidden inflated AWPs from the public, have not intentionally

manipulated the nation’s drug reimbursement system, and have not competed for market share on the basis of a phony price spread instead of the true selling price of their drugs or the medicinal efficacy of their drugs. (See, e.g., Response to Allegation 1).

Allegation 58. The J&J Defendants object to identifying “each fact” that supports their denial of the allegations in paragraph 58, which merely repeat allegations made elsewhere in Plaintiff’s Complaint. Notwithstanding their denials, the J&J Defendants refer to their Responses to Allegations 1, 30, 34, 35, and 40.

Allegation 59. Not applicable to the J&J Defendants.

Allegation 60. The J&J Defendants object to identifying “each fact” that supports their denial of the allegations in paragraph 60, which merely repeat allegations made elsewhere in Plaintiff’s Complaint. Notwithstanding their denials, the J&J Defendants refer to their Responses to Allegations 1, 30, 34, 35, and 40.

Allegation 61. The J&J Defendants object to identifying “each fact” that supports their denial based on lack of knowledge and information sufficient to form a belief as to the truth of Plaintiff’s allegations concerning enrollment in and expenditures by Wisconsin’s Medicaid programs.

Allegation 62. The J&J Defendants object to identifying “each fact” that supports their denial based on lack of knowledge and information sufficient to form a belief as to the truth of Plaintiff’s allegation that there are exceptions to its policy of reimbursing pharmacies and physicians for drugs at AWP minus a percentage.

Allegation 63. The J&J Defendants object to identifying “each fact” that supports their denial based on lack of knowledge and information sufficient to form a belief as to

the truth of Plaintiff's allegations concerning the manner in which it establishes its MAC program, or the manner in which CMS establishes FULs.

Allegation 64. The J&J Defendants object to identifying "each fact" that supports their denial of Plaintiff's allegation that they knew that Plaintiff relied on the J&J Defendants' reported AWP's. Notwithstanding their objections, the J&J Defendants state that there is evidence that Plaintiff did not rely on information reported by the J&J Defendants but instead utilized AWP's supplied by EDS which, in turn, obtained AWP's from FDB, which in turn obtained AWP's from wholesalers. (See, e.g., Deposition of Kim Smithers and Deposition of Patricia Kay Morgan).

Allegation 65. The J&J Defendants object to identifying "each fact" that supports their denial of the allegations in paragraph 65, which merely repeat allegations made elsewhere in Plaintiff's Complaint. Notwithstanding their denials, the J&J Defendants refer to their Responses to Allegations 1, 30, 34, 35, and 40..

Allegation 66. The J&J Defendants object to identifying "each fact" that supports their denial of the allegation that Plaintiff paid more for the J&J Defendants' drugs than it would have paid if the J&J Defendants published "true wholesale prices." Notwithstanding their objections, the J&J Defendants state that there is evidence that Wisconsin's use of the AWP's supplied by EDS did not cause Plaintiff to pay more than it otherwise would have paid had the AWP's supplied by EDS been lower. (See, e.g., Responses to Allegations 30, 34 and 35).

Allegation 67. The J&J Defendants refer to the relevant statutes and regulations governing Medicare, and otherwise admit that Medicare is the federal insurance program that covers persons 65 and older and certain disabled persons.

Allegation 68. The J&J Defendants refer to the relevant statutes and regulations governing Medicare, and otherwise state that paragraph 68 contains conclusions of law to which no answer is required.

Allegation 69. The J&J Defendants object to identifying “each fact” that supports their denial based on lack of knowledge and information sufficient to form a belief as to the truth of Plaintiff’s allegations concerning what “is at issue here.” Notwithstanding their objections, the J&J Defendants refer to the relevant statutes and regulations governing Medicare, and otherwise state that paragraph 69 contains conclusions of law to which no answer is required.

Allegation 70. The J&J Defendants deny that they have falsely reported the AWP for any of their drugs (see, e.g., Response to Allegation 1) and state that the remaining allegations of paragraph 70 consist of conclusions of law to which no answer is required.

Allegation 71. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s allegations in paragraph 71, which merely repeat allegations made elsewhere in Plaintiff’s Complaint. Notwithstanding their objections, the J&J Defendants state that there is evidence that Wisconsin’s Medicare recipients would not have paid lower co-pays because the AWP’s published for the J&J Defendants’ drugs were within the range expected by the government, and that the claims of said Medicare recipients (except those who timely opted out of Class 1) were dismissed on the merits in In re AWP.

Allegation 72. The J&J Defendants state that paragraph 72 contains conclusions of law to which no answer is required and deny any remaining allegations in paragraph 72 as to the J&J Defendants based on the fact that the J&J Defendants dealt honestly with the Plaintiff. (See, e.g., Response to Allegation 1).

Allegation 73. The J&J Defendants state that paragraph 73 contains conclusions of law to which no answer is required and deny any remaining allegations in paragraph 73 as to the J&J Defendants based on the fact that they complied with all applicable laws. (See, e.g., In re AWP).

Allegation 74. The J&J Defendants state that paragraph 74 contains conclusions of law to which no answer is required.

Allegation 75. Not applicable to the J&J Defendants. (See, e.g., “Medicare Drug Reimbursements: A Broken System for Patients and Taxpayers,” Joint Hearing Before the Subcommittee on Health and the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, September 21, 2001, Serial No. 107-65, at 54-55).

Allegation 76. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s allegations that the J&J Defendants willfully ignored, and continue to ignore, the duty to Wisconsin to behave honestly, case law uniformly holding their pricing practices are unlawful, Wisconsin’s clear statutory prohibition of their conduct, and reprimands of Congress. Notwithstanding their objections, the J&J Defendants state that paragraph 76 contains conclusions of law to which no answer is required or, in the case of alleged reprimands of Congress, is inapplicable to the J&J Defendants.

Allegation 77. The J&J Defendants state that paragraph 77 contains conclusions of law to which no answer is required.

Allegation 78. The J&J Defendants object to identifying “each fact” that supports their denial of Plaintiff’s allegations in paragraph 78, which merely repeat allegations made elsewhere in Plaintiff’s Complaint. Notwithstanding their objections, the J&J Defendants state that there is evidence that Wisconsin’s Medicare recipients would not have paid lower co-pays

because the AWP's published for the J&J Defendants' drugs were within the range expected by the government, and that the claims of said Medicare recipients (except those who timely opted out of Class 1) were dismissed on the merits in In re AWP.

Allegations 79 through 100. The J&J Defendants state that paragraph 79 through 100 contain conclusions of law to which no answer is required. To the extent that these paragraphs allege facts, the J&J Defendants refer Plaintiff to their Responses to paragraphs 1 through 78, supra.

**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.

**SUPPLEMENTAL RESPONSE:**

See documents and testimony referenced in the Supplemental Responses to Interrogatory 6.

**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 word-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 AWP's.
- 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 AWPs.
- 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 AWP.
- 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 AWP.
- Plaintiff cannot establish that it was damaged by the J&J Defendants’ conduct.
- Since at least 1975, Plaintiff was aware that the published AWP 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.
- 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 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 AWP’s 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 AWP’s did not represent actual averages of wholesale prices.
- 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. 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.

**SUPPLEMENTAL RESPONSE:**

See facts referenced in the Supplemental Responses to Interrogatory 6.

**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.

**SUPPLEMENTAL RESPONSE:**

See documents and testimony referenced in the Supplemental Responses to Interrogatory 6.

**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.

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

**RESPONSES AND OBJECTIONS TO REQUEST FOR PRODUCTION**

**REQUEST NO. 12:**

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:**

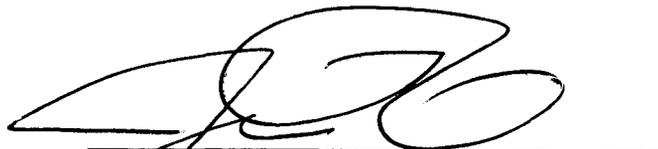
Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.)

**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.

October 2, 2007



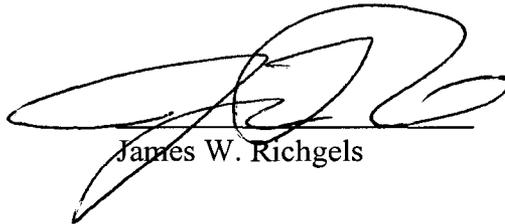
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**Certificate of Service**

I, James W. Richgels, hereby certify that on this 2nd day of October 2007, a true and correct copy of the previously served **J&J DEFENDANTS' SUPPLEMENTAL 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