
STATE OF WISCONSIN,

Plaintiff,

Case No. 04-CV-1709

Unclassified - Civil: 30703

v.

AMGEN INC., et al.,

Defendants.

**NOVARTIS PHARMACEUTICALS CORPORATION'S RESPONSES AND
OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S INTERROGATORIES
NO. 3 (TO ALL DEFENDANTS) AND REQUESTS FOR PRODUCTION OF
DOCUMENTS NO. 4 (TO ALL DEFENDANTS)**

Pursuant to Wisconsin Statutes §§ 804.01, 804.08, and 804.09, the Wisconsin Supreme Court Rules, and the Dane County Circuit Court Rules (collectively, the "Wisconsin Rules"), Defendant Novartis Pharmaceuticals Corporation ("NPC"), by its undersigned counsel, responds as follows to Plaintiff State of Wisconsin's Interrogatories No. 3 (To All Defendants) (the "Interrogatories") and Request for Production of Documents No. 4 (To All Defendants) ("the Requests"), served on or about January 12, 2007:

GENERAL OBJECTIONS

NPC expressly incorporates all of the General Objections set forth below into each Response to the Interrogatories and Requests. Any specific objections provided below are made in addition to these General Objections, and a failure to reiterate a General Objection below does not constitute a waiver or limitation of that or any other objection. To the extent that NPC states that it will provide information or produce documents responsive to any Interrogatory or Request, such statement is made subject to, and without waiver or limitation of, all specific objections stated in response to such Interrogatory or Request and all General Objections set forth below.

A. By responding to these Interrogatories and Requests, NPC does not waive or intend to waive: (i) any objections as to the competency, relevancy, materiality, or admissibility as evidence, for any purpose, of any information or documents produced in response to these Interrogatories and Requests; (ii) the right to object on any ground to the use of the information or documents produced in response to these Interrogatories and Requests at any hearing or trial; (iii) the right to object on any ground at any time to a demand for further responses to these Interrogatories and Requests; or (iv) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

B. By responding to these Interrogatories and Requests, NPC does not waive or intend to waive any privilege, for any purpose, of any documents produced in response to these Interrogatories and Requests. In particular, NPC objects to each Interrogatory and Request to the extent that it purports to seek information protected by the attorney-client privilege, work-product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections.

C. By responding that it will produce information or documents in response to a particular Interrogatory or Request, NPC does not warrant that it has responsive materials or that such materials exist, only that it will conduct a reasonable search and make available responsive, non-privileged information or documents. No objection, or lack thereof, is an admission by NPC as to the existence or non-existence of any information or documents. Where NPC already has identified specific documents responsive to a particular Request and states that it will produce responsive documents “including” certain specifically identified information or documents, “including” means “including but not limited to.”

D. These responses are based on NPC's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. NPC reserves the right to amend or supplement these responses in accordance with the Wisconsin Rules and Court orders with additional information, documents, or objections that may become available or come to NPC's attention, and to rely upon such information, documents, or objections in any hearing, trial or other proceeding in this litigation.

E. NPC objects to Plaintiff's "Definitions" and "Instructions" to the extent that they purport to expand upon or alter NPC's obligations under the Wisconsin Rules and Court orders.

F. NPC objects to these Interrogatories and Requests to the extent that they seek information outside the limitations periods applicable to the claims in the Second Amended Complaint, or beyond the time period relevant to this litigation, on the grounds that such information is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. In addition, NPC objects to these Interrogatories and Requests to the extent that they purport to require that NPC search for and produce documents generated or assembled either prior to January 1, 1997, which was the date NPC was created by operation of merger following approval by the Federal Trade Commission on December 17, 1996, or after September 30, 2003, the date on which the State of Nevada's Amended Second Amended Complaint in the action styled *In Re Pharmaceutical Industry Average Wholesale Price Litigation* (D. Mass.), MDL No. 1456, brought by the Nevada Attorney General and containing similar allegations against NPC to those alleged by Plaintiff, was publicly filed, thereby placing the Plaintiff on notice of the allegations against NPC, on the ground that

such documents are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. NPC's production of any documents created, generated, or assembled outside of the period from January 1, 1997 to September 30, 2003 does not constitute a waiver of this objection.

G. NPC objects to each Interrogatory and Request that purports to require NPC to produce "all" documents described by such Interrogatory or Request as unduly burdensome, cumulative, duplicative, and vexatious on its face. NPC will search for and produce documents sufficient to provide the information or data sought by specific Interrogatories and Requests, and where appropriate (*i.e.*, where non-identical documents provide additional relevant information), NPC will produce all non-identical documents.

H. NPC objects to these Interrogatories and Requests to the extent that they seek information not contained in documents that currently exist at NPC and purport to require NPC to create, compile or develop new documents.

I. NPC objects to these Interrogatories and Requests to the extent that they seek production of information or documents not in NPC's custody or control, publicly available information or documents, information or documents equally available to Plaintiff, or information or documents more appropriately sought from third parties to whom subpoenas or requests could be or have been directed.

J. Given the confidential and proprietary nature of the information and documents requested, NPC's production of information and documents is subject to and in reliance upon the

Protective Order entered in this action by the Circuit Court for Dane County, Wisconsin on November 29, 2005.

K. The information and documents produced in response to these Interrogatories and Requests are for use in this litigation and for no other purpose.

OBJECTIONS TO DEFINITIONS

1. The terms “you,” “your,” or “your company” shall mean the defendants, and their subsidiaries, divisions, predecessors, officers, agents and all other persons acting or purporting to act on behalf of defendants or their subsidiaries or predecessors.

OBJECTION: NPC objects to Definition No. 1 as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and states that all responses contained herein are on behalf of Defendant Novartis Pharmaceuticals Corporation.

2. The words “document” and “documents” are used in the broadest possible sense and refer, without limitation, to all written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communications or representations of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, as well as audio or video recordings of communications, oral statement, conversations or events. This definition includes, but it not [sic] limited to, any and all of the following: day-timers, journals, logs, calendars, handwritten notes, correspondence, minutes, records, messages, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial statements, working papers, tallies, maps, drawings, diagrams, sketches, x-rays, charts, labels, packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. Any preliminary versions, drafts, or revisions of any of the foregoing, any document which has or contains any attachment, enclosure, comment, notation, addition, insertion, or marking of any kind which is not part of another document, or any document which does not contain a comment, notation, addition, insertion, or marking of any kind which is part of another document, is to be considered a separate document.

OBJECTION: NPC objects to Definition No. 2 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, NPC's obligation under the Wisconsin Rules. NPC further objects to this definition to the extent it requires NPC to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes (or other non-readily accessible media); (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement, copyright laws, or proprietary rights of any third party.

**SPECIFIC RESPONSES 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.

RESPONSE TO INTERROGATORY NO. 6: In addition to its foregoing General Objections and Objections to Definitions, NPC specifically objects to Interrogatory No. 6 on the grounds that it is overly broad, unduly burdensome, harassing, intended to multiply NPC's costs of defense, and unreasonably attempts to shift Plaintiff's burden of proof to NPC by requiring NPC to "prove" a negative – the absence of proof of Plaintiff's allegations. Plaintiff's Second Amended Complaint contains 100 paragraphs, many of which include multiple allegations of evidentiary fact. Yet, Interrogatory No. 6 purports to require NPC to identify facts in support of each and every denial – no matter how insignificant or minor the allegation – when it is Plaintiff's burden to prove its allegations, not NPC's burden to disprove them. This type of blunderbuss interrogatory is particularly objectionable in light of the fact that NPC has produced more than 100,000 pages of documents in discovery to date (as well as a significant amount of

data and two knowledgeable witnesses, pursuant to Wis. Stat. § 804.05(2)(e), for deposition by Plaintiff). Finally, assuming *arguendo*, that Interrogatory No. 6 is not objectionable on the grounds previously stated, it is a premature contention interrogatory at this stage of discovery because (i) Plaintiff has not yet reviewed all of the documents that will be produced by NPC in this litigation, because NPC continues to make its rolling production, and (ii) Interrogatory No. 6 purports to require NPC to articulate theories of its case that are not yet fully formulated, but that continue to develop as discovery progresses.

INTERROGATORY NO. 7: Identify each document that supports each such denial.

RESPONSE TO INTERROGATORY NO. 7: In addition to its foregoing General Objections and Objections to Definitions, NPC specifically objects to Interrogatory No. 7 on the grounds set forth in its Response to Interrogatory No. 6, above.

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.

RESPONSE TO INTERROGATORY NO. 8: In addition to its foregoing General Objections and Objections to Definitions, NPC specifically objects to Interrogatory No. 8 on the grounds that it is overly broad, unduly burdensome, harassing, and intended to multiply NPC's costs of defense. Interrogatory No. 8 purports to require NPC to provide a narrative account of all of the factual support for all of the affirmative defenses asserted in its Answer. This type of blunderbuss interrogatory is particularly objectionable in light of the fact that NPC has produced more than 100,000 pages of documents in discovery to date (as well as a significant amount of data and two knowledgeable witnesses, pursuant to Wis. Stat. § 804.05(2)(e), for deposition by Plaintiff). In addition, certain affirmative defenses asserted by NPC are based on the words and

acts of Plaintiff, and, therefore, proof of these defenses (or counter-proof) should be within Plaintiff's own knowledge. NPC further objects to Interrogatory No. 8 to the extent it seeks information regarding NPC's legal conclusions, including information protected from discovery by the work product doctrine, the attorney-client privilege, or other applicable privilege or protection. Moreover, assuming *arguendo*, that Interrogatory No. 8 is not objectionable on the grounds previously stated, it is a premature contention interrogatory at this stage of discovery because (i) Plaintiff has not yet reviewed all of the documents that will be produced by NPC in this litigation, because NPC continues to make its rolling production, and (ii) Interrogatory No. 8 purports to require NPC to articulate theories of its case that are not yet fully formulated, but that continue to develop as discovery progresses.

INTERROGATORY NO. 9: Identify each document that supports the facts upon which you base each such affirmative defense.

RESPONSE TO INTERROGATORY NO. 9: In addition to its foregoing General Objections and Objections to Definitions, NPC specifically objects to Interrogatory No. 9 on the grounds set forth in its Response to Interrogatory No. 8, above.

INTERROGATORY NO. 10: Have you ever communicated directly with any official of the State of Wisconsin about the prices of any of your drugs, including AWP's, WACs, or any other prices irrespective of the nomenclature used.

RESPONSE TO INTERROGATORY NO. 10: In addition to its foregoing General Objections, NPC objects to Interrogatory No. 10 on the grounds 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 "your drugs" thus including NPC drugs that are not named in the Second Amended Complaint and, therefore, not at issue in this

litigation, and (ii) it is not limited by timeframe. Subject to and without waiving the foregoing General and Specific Objections, NPC states that it has communicated directly with Plaintiff regarding the prices of its drugs.

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 documents containing or describing the information communicated to Wisconsin officials.

RESPONSE TO INTERROGATORY NO. 11: Subject to and without waiving the foregoing General Objections, NPC states that it has entered into two supplemental Medicaid rebate agreements with Plaintiff (that were signed by both NPC and Plaintiff), which it will produce in response to Document Request No. 12, below. NPC's response to this Interrogatory includes communications between employees of NPC and employees of Plaintiff but excludes any indirect communications between NPC and Plaintiff via agents of the Plaintiff, such as Provider Synergies, or other third parties.

SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 12: Produce each document identified in response to Interrogatory Nos. 7, 9 and 11.

RESPONSE TO DOCUMENT REQUEST NO. 12: NPC has not identified any documents in response to Interrogatory Nos. 7 and 9, because those interrogatories are overly broad, unduly burdensome, harassing, and intended to multiply the costs of NPC's defense. (*See Responses to Interrogatory Nos. 7 and 9, above.*) Subject to and without waiving the foregoing General Objections, NPC states that it will produce the two supplemental Medicaid rebate agreements that are identified in NPC's Response to Interrogatory No. 11 – despite the fact that these

agreements were created outside of the relevant period of January 1, 1997 through September 30, 2003 – because the burden of doing so is *de minimis*.

DOCUMENT REQUEST NO. 13: Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94C 897 (N.D.Ill.)

RESPONSE TO DOCUMENT REQUEST NO. 13: In addition to its foregoing General Objections, NPC objects 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 purports to require information relating to "drugs" without specification as to which "drugs," thus including drugs that are not manufactured, marketed, or distributed by NPC and/or drugs not at issue in this litigation, and (ii) to the extent it purports to require NPC to produce all documents "relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94C 897 (N.D. Ill.)" regardless of whether such documents relate to any issues in this case, belong to NPC, or are otherwise protected from disclosure pursuant to applicable privileges or work product doctrines. In addition, Request No. 13 is vexatious and unduly burdensome to the extent that (i) it is duplicative of Request No. 3 in Plaintiff's First Set of Requests for Production of Documents to NPC, in response to which NPC has already agreed to produce documents, and (ii) the information sought is in the possession of Plaintiff or more appropriately sought from third parties. Subject to and without waiving the foregoing General and Specific Objections, NPC states that it has searched for, and will continue to undertake a reasonable search for, documents in its possession, custody, or control, commenting on, concerning, or about how or to what extent wholesalers mark up the NPC drugs at issue in this litigation -- including the documents it produced in the *Brand Name Prescription Drugs Antitrust Litigation* to the extent that such

documents are reasonably available, and -- to the extent that it finds any -- it will produce non-privileged documents responsive to Request No. 13.

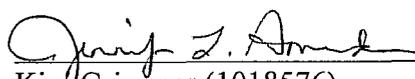
AS TO OBJECTIONS:

Dated this 14th day of March, 2007.

Respectfully submitted,

Novartis Pharmaceuticals Corporation

By its attorneys,



Kim Grimmer (1018576)

Jennifer L. Amundsen (1037157)

SOLHEIM BILLING & GRIMMER, S.C.

U.S. Bank Plaza, Suite 301

One South Pinckney Street

P.O. Box 1644

Madison, WI 53701-1644

Of counsel:

Jane W. Parver

Saul P. Morgenstern

Mark Godler

Christine A. Braun

KAYE SCHOLER LLP

425 Park Avenue

New York 10022

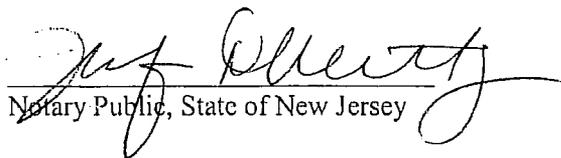
(212) 836-8000

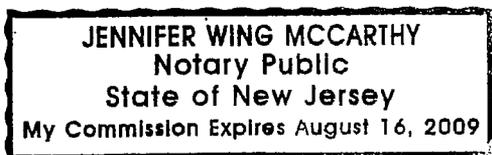
VERIFICATION

I, Ann Harmon, am Vice-President Finance, Managed Markets for Novartis Pharmaceuticals Corporation. I have been authorized by Novartis Pharmaceuticals Corporation to provide this verification on its behalf. I have reviewed the above interrogatory responses, which were prepared in reliance on information from officers, agents, employees and/or records of Novartis Pharmaceuticals Corporation. The responses are true and correct to the best of my knowledge, information, and belief.


ANN HARMON

Subscribed and sworn to before me
this 9th day of March, 2007.


Notary Public, State of New Jersey



STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

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

v.

AMGEN INC., et al.,

Defendants.

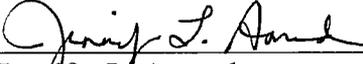
CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2007, a true and correct copy of Novartis Pharmaceuticals Corporation's Responses and Objections to Plaintiff State of Wisconsin's Interrogatories No. 3 (To All Defendants) and Requests for Production of Documents No. 4 (To All Defendants) was served on all counsel of record via LexisNexis File and Serve.

I also certify that I caused a true and correct copy of this document to be served electronically and by First Class Mail upon Attorney Robert S. Libman and mailed by First Class Mail to the following:

Atty. Cynthia R. Hirsch
Atty. Charles Barnhill
Atty. William P. Dixon
Atty. P. Jeffrey Archibald

Dated this 14th day of March, 2007.



Jennifer L. Amundsen