

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

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THE STATE OF WISCONSIN

Plaintiff,

v.

CASE NO. 05 C 408 C

Honorable Barbara B. Crabb

ABBOTT LABORATORIES, INC., ET AL.

Defendants.

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**NOVARTIS PHARMACEUTICALS CORPORATION'S  
RESPONSES AND OBJECTIONS TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES**

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Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, Defendant Novartis Pharmaceuticals Corporation ("Novartis"), by its undersigned counsel, responds as follows to Plaintiff's First Set of Interrogatories served on or about January 27, 2005 (the "Interrogatories"):

**GENERAL OBJECTIONS**

Novartis expressly incorporates all of the General Objections set forth below into each Response to the Interrogatories. 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 Novartis states that it will provide information or produce documents responsive to any Interrogatory, such statement is made subject to, and without waiver or limitation of, all specific objections stated in response to such Interrogatory and all General Objections set forth below.

A. By responding to these Interrogatories, Novartis 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 documents or information produced in response to these Interrogatories; (ii) the right to object on any ground to the use of the documents or information produced in response to these Interrogatories 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; 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, Novartis does not waive or intend to waive any privilege, for any purpose, of any documents or information produced in response to these Interrogatories, and, in particular, Novartis objects to each Interrogatory 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. Novartis will produce a timely privilege log in accordance with the applicable rules and Court orders.

C. By responding that it will produce information or documents in response to a particular Interrogatory, Novartis does not assert that it has responsive information or documents materials or that such materials exist, only that it will conduct a reasonable search and make available responsive, nonprivileged information or documents. No objection, or lack thereof, is an admission by Novartis as to the existence or non-existence of any information or documents.

D. These responses are based on Novartis' investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. Novartis reserves the right to amend or supplement these responses in accordance with the applicable rules and Court orders with additional information, documents, or objections that may

become available or come to Novartis' attention, and to rely upon such information, documents, or objections in any hearing, trial or other proceeding in this litigation..

E. Novartis objects to Plaintiff's "Definitions," "Rules of Construction" and "Instructions" to the extent that they purport to expand upon or alter Novartis' obligations under the Federal Rules of Civil Procedure.

F. Novartis objects to collecting and producing the broad range of information Plaintiff seeks before Plaintiff has identified in its Complaint which Novartis pharmaceutical products it claims to have overpaid for and how and what it overpaid for such products. Although Plaintiff has offered to narrow the definition of "Targeted Drug" currently found in the Interrogatories, Novartis has advised Plaintiff that as part of its first round of production, it will produce sales data, including sales data resident in the (i) Integrated Managed Healthcare Contracting System and (ii) Distribution System, for the period January 1, 1997 through June 12, 2002, for the following Novartis drugs which are named in the Amended Master Consolidated Class Action Complaint filed in the action styled *In Re: Pharmaceutical Industry Average Wholesale Price Litigation* (D. Mass), MDL No. 1456 (hereinafter, the "AMCC Complaint"): (1) Clozaril; (2) Comtan; (3) Estraderm; (4) Exelon; (5) Femara; (6) Lamisil; (7) Lescol; (8) Lotensin; (9) Lotrel; (10) Miacalcin; (11) Parlodel; (12) Ritalin; (13) Starlix; (14) Tegretol; (15) Tegretol-XR; and (16) Trileptal (hereinafter, the "Novartis AMCC Drugs"). Novartis has also advised Plaintiff that it is Novartis' hope and expectation that Plaintiff will be able to narrow other outstanding Interrogatories based on what it learns from the data and information concerning the Novartis AMCC Drugs and that such data and information will demonstrate that many of Plaintiff's claims do not warrant or justify Plaintiff's exceedingly broad and burdensome Interrogatories.

G. Novartis objects to these Interrogatories to the extent that they purport to require the production of information or documents not in Novartis' 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.

H. Given the confidential and proprietary nature of the documents requested, Novartis' production of documents is pursuant to the Qualified Protective Order limiting the scope of disclosure, review and dissemination of documents previously entered by Judge Moria Kreuger, Dane County Circuit Court, on May 11, 2005. Novartis will begin its production of non-privileged responsive documents on or about July 25, 2005, and will continue to provide documents or data thereafter on a rolling basis in as expeditious and efficient a manner as possible as it completes its review and processing of such documents and data.

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

**A. OBJECTIONS TO DEFINITIONS**

1. The term "average manufacturer price" or "AMP" means the price you report or otherwise disseminate as the average manufacturer price for any pharmaceutical (see definition below) that you report for purposes of the Medicaid program, pursuant to 42 U.S.C. §1396r-8.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term "Pharmaceutical," and objects to the definition of "Average Manufacturer Price" and "AMP" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language "the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report." Novartis further objects to this definition to the extent that

it purports to set an accurate or legally significant definition of the term “AMP” or “average manufacturer price.”

2. The term “Chargeback” means any payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “Pharmaceutical,” and objects to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous with respect to the language “payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.”

3. The term “Defined Period of Time” means from January 1, 1993 to the present and Documents relating to such period even though created before that period.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “Document,” and objects to the definition of “Defined Period of Time” as set forth in Definition No. 3 on the grounds that it is overly broad and unduly burdensome, and vague and ambiguous with respect to the language “Documents relating to such period.” Novartis further objects to this definition to the extent it seeks information outside of the limitations periods applicable to the claims in the Complaint, or beyond the time period relevant to this litigation, on the grounds that such documents are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Novartis’ production of any documents outside of the limitations periods applicable to the claims in the Complaint in this action does not constitute a waiver by Novartis of this objection. In addition, Novartis objects to the definition of “Defined Period of Time” to the extent that it purports to require that Novartis search for and produce documents generated or assembled either prior to January 1, 1997, which

was the date Novartis was created by operation of merger following approval by the Federal Trade Commission on December 17, 1996, or after June 12, 2003, the date on which the AMCC Complaint was filed, 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. Novartis further objects to Definition No. 3, and to each Interrogatory that purports to require Novartis to produce “all” documents described by such Interrogatory, as unduly burdensome, cumulative, duplicative and vexatious on its face. Novartis will search for and produce documents sufficient to provide the information or data sought by specific Interrogatories, and where appropriate (*i.e.*, where non-identical documents provide additional relevant information), Novartis will produce all non-identical documents.

4. The term “Document” means any writing or recording of any kind, including, without limitation, agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, electronic mail (e-mail), facsimiles (faxes), film, graphs, letters memos, maps, minutes (particularly Board of Directors and/or Executive Committee meeting minutes), notes notices, photographs, reports, schedules, summaries, tables, telegrams, and videotapes in any medium, whether written, graphic, pictorial, photographic, electronic, phonographic, mechanical, taped, saved on computer disk, hard drives, tape drives, or otherwise, and every non-identical copy. Different versions of the same document, such as different copies of a written record bearing different handwritten notations, are different documents within the meaning of the term as used. In case originals or original non-identical copies are not available, “Document” includes copies of originals or copies of non-identical copies as the case may be.

**OBJECTION:** Novartis objects to the definition of “Document” as set forth in Definition No. 4 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Novartis’ obligations under the Federal Rules of Civil Procedure. Novartis further objects to this definition to the extent it requires or seeks to require Novartis 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; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement, copyright laws, or proprietary rights of any third party.

5. The term “Incentive” means anything of value provided to a customer or other party to induce that customer to purchase, promote, prescribe, dispense or administer a pharmaceutical (see definition below) or course of treatment; to reward a customer or other party for purchasing, promoting, prescribing, dispensing or administering a pharmaceutical or course of treatment; or which had, will have, or is intended to have, the effect of lowering the cost of a pharmaceutical to the customer in any way, regardless of the time the “incentive” was provided (for example, at the time of invoicing, shipment, or payment, or monthly, quarterly, annually, or at any other time or on any other basis) and regardless of its name. As used in this definition, the term “customer or other party” includes, but is not limited to, a drug wholesaler, physician, clinic, store chain, pharmacy, pharmaceutical benefit manager, hospital, federal or state government agency, health maintenance organization, or other managed care organization. The term “incentive” therefore includes, but is not limited to, payments or proposed payments in cash or in kind; chargebacks (see definition above); credits, discounts such as return-to-practice discounts, prompt-pay discounts, volume discounts, on-invoice discounts, or off-invoice discounts; rebates such as market-share rebates, access rebates, or bundled-drug rebates; free goods or samples; credits, administrative fees or administrative fee reimbursements; marketing fees; stocking fees; conversion fees; patient education fees; off-invoice pricing; educational or other grants; research funding; payments for participation in clinical trials; honoraria; speaker’s fees or payments; patient education fees; or consulting fees.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “Chargeback,” and objects to the definition of “Incentive” as set forth in Definition No. 5 on the grounds that it is overly broad and unduly burdensome, and vague and ambiguous with respect to the language “anything of value,” “provided,” “customer,” “reward a customer or other party for promoting, prescribing, dispensing or administering a Pharmaceutical or course of treatment; or which had, will have, or is intended to have, the effect of lowering the cost of a Pharmaceutical to the customer in any way, regardless of the time the ‘Incentive’ was provided . . . and regardless of its name,” “credits,” “discounts,” “return to practice discounts,” “prompt pay discounts,” “volume discounts,” “on-invoice discounts,” “off-invoice discounts,” “rebates,” “market share rebates,” “access rebates,” “bundled drug rebates,” “free goods or samples,” “administrative fees or administrative fee reimbursements,” “marketing fees,” “stocking fees,” “conversion fees,” “patient education fees,” “off-invoice pricing,” “educational or other grants,”

“research funding,” “clinical trials,” “honoraria,” “speaker's fees,” “patient education fees” and “consulting fees.” Novartis further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

6. The term “national sales data” means data sufficient to identify for each sales transaction involving each targeted drug (see definition below) the following information:

- a. transaction date;
- b. transaction type;
- c. your product number;
- d. product description;
- e. package description;
- f. NDC;
- g. NDC unit quantity;
- h. NDC unit invoice price;
- i. NDC unit WAC (assigned by you);
- j. contract price;
- k. invoice price;
- l. customer name, identification number, address and class of trade;
- m. all paid or distributed incentives (see definition above);
- n. all accrued Incentives calculated at any time, identifying the amount of the accrual, its nature or type, the date of the accrual, and other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.

**OBJECTION:** Novartis incorporates by reference its objections to the definitions of the terms “Targeted Drugs” and “Incentives,” and objects to the definition of “National Sales Data” in Definition No. 6 on the grounds that it is overly broad and unduly burdensome, and vague and ambiguous with respect to the language “data sufficient to identify for each sales transaction,” “transaction type,” “your product number,” “product description,” “package description,”

“WAC,” “NDC,” “NDC Unit Quantity,” “NDC unit invoice price,” “you,” “contract price,” “invoice price,” “identification number,” “paid or distributed Incentives,” “accrued Incentives,” “calculated at any time” and “other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.” In addition, Novartis further objects to this definition to the extent that it (i) refers to information not relevant to the State’s claims, which are limited to Wisconsin, (ii) seeks information from beyond the time period relevant in this litigation, or (iii) seeks information about drugs not named in the Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

7. The term “Pharmaceutical” means any drug or other product, whether sold by you, or any other manufacturer, which requires a physician’s or other prescriber’s prescription, including, but not limited to, biological products such as hemophilia factors and intravenous solutions.

**OBJECTION:** Novartis objects to the definition of “Pharmaceutical” in Definition No. 7 on the grounds that it is overly broad, unduly burdensome and vague and ambiguous with respect to the language “any drug,” “administered,” “other product,” “you,” “prescription,” and “biological products.” In addition, Novartis objects to this Definition to the extent that it (i) refers to information not relevant to the State’s claims, which are limited to Wisconsin, (ii) seeks information from beyond the time period relevant in this litigation, or (iii) seeks information about drugs not named in the Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

8. The term “Targeted Drugs” means those drugs manufactured by you which have total utilization under the Medicaid and Medicare Part B program exceeding \$10,000.00 during the Defined Period of Time in the state of Wisconsin.

**OBJECTION:** Novartis incorporates by reference its objection to the definitions of the terms “Defined Period of Time” and “Pharmaceutical,” and objects to the definition of “Targeted Drugs” as set forth in Definition No. 9 on the grounds that it is overly broad and unduly burdensome and vague and ambiguous with respect to the language “you” and “total utilization.” In addition, Novartis objects to this Definition to the extent that it (i) refers to information not relevant to the State’s claims, which are limited to Wisconsin, (ii) seeks information from beyond the time period relevant in this litigation, or (iii) seeks information about drugs not named in the Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

**SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES**

**INTERROGATORY NO. 1:** Have you ever determined or calculated a unit price, average sales price, aggregate sales figure, or other numerical price or sales figure for a Targeted Drug net of any or all Incentives during the Defined Period of Time? If so, for each Targeted Drug for which you have made such a determination or calculation, identify:

- a. the beginning and ending dates of each period applicable to each such determination;
- b. the applicable class(es) of trade for which each determination was made;
- c. the numerical figure(s) determined or calculated;
- d. the current or former employee(s) with the most knowledgeable of the determinations or calculations;
- e. the methodology used to determine or calculate such numerical figure(s);
- f. your purpose(s) in making such determinations or calculations;
- g. whether you disclosed (“disclosed” in this context refers to the first publication of the information to each person or entity to whom the information was provided, only, and not subsequent communications of the same information to the same person or entity) the numerical figure(s) to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such numerical figure was disclosed and the corresponding date of the disclosure; and

h. whether the numerical figure(s) is/was (are/were) treated as confidential, proprietary, or commercially-sensitive financial information.

**RESPONSE TO INTERROGATORY NO. 1:** Novartis incorporates by reference its objections to the State's definitions of the terms "Incentive," "Targeted Drugs" and "Defined Period of Time," and objects to Interrogatory No. 1 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to Interrogatory No. 1 on the grounds that it is vague and ambiguous with respect to the language "you," "determined," "unit price," "average sales price," "aggregate sales figure," other numerical price or sales figure," "Targeted Drug net of any or all Incentives" "class of trade," "methodology," "publisher, customer, or governmental entity" and "such numerical figure." Subject to and without waiving these and the foregoing General Objections, Novartis states that it will produce non-privileged records from which answers to Interrogatory No. 1 may be derived in accordance with Rule 33(d) of the Federal Rules of Civil Procedure, and that following Plaintiff's review of such records, Novartis will provide Plaintiff with the name of the Novartis employee with the most knowledge concerning questions Plaintiff may have regarding unit price, average sales price, aggregate sales figures, or other numerical price or sales figures net of any or all incentives during the period January 1, 1997 through June 12, 2003.

**INTERROGATORY NO. 2:** Identify each electronic database, data table or data file that you now maintain or have maintained during the Defined Period of Time in the ordinary course of business which contains (or contained) a price for a Targeted Drug or an Incentive related to a Targeted Drug. For each such electronic database, data table or data file, identify, describe or produce the following:

- a. the name or title of each such database, data table, or data file;
- b. the software you use or used to access and utilize the database, data table, or data file;
- c. the time period covered by the database, data table, or data file;

d. the time period during which the database, data table, or data file was in use in the ordinary course of business;

e. describe each database, data table or data file and identify, as to each database, all files or tables in each such database; as to each data table or file, and with respect to each such field, give its position in the table or file, the field length and data format, provide a brief description of the use to which such information was put in the ordinary course of business, and identify the source of the information contained in the field. If a field is normally populated automatically, identify the program(s) and the name(s) of the file(s) or table(s) from which the field is or was populated. If a field is normally populated by data entry, identify the person(s) typically responsible for such data entry;

f. the current or former employee(s) with the most knowledge of the operation or use of the database, data table, or data file; and

g. the custodian(s) of the database, data table, or data file.

**RESPONSE TO INTERROGATORY NO. 2** Novartis incorporates by reference its objections to the State's definitions of the terms "Defined Period of Time" and "Targeted Drug," and objects to Interrogatory No. 2 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to Interrogatory No. 2 on the grounds that it is vague and ambiguous with respect to the language "each," "electronic database, data table or data file," "you," "ordinary course of business," "price," "software you use or used to access and utilize the database, data table, or data file," "structure of each database, data table, or data file," "fields," "format and location within each file or table record or row" and "operation or use." Subject to and without waiving these and the foregoing General Objections, Novartis states that it will produce non-privileged records from which answers to Interrogatory No. 2 may be derived in accordance with Rule 33(d) of the Federal Rules of Civil Procedure, and that following Plaintiff's review of such records, Novartis will provide Plaintiff with the name of the Novartis employee with the most knowledge of the operation or use of the database, data table, or data file about which Plaintiff may have questions.

**INTERROGATORY NO. 3:** Describe each type of Incentive you have offered or made available that was associated with of any Targeted Drug during the Defined Period of Time. For each such Incentive, identify:

- a. the type(s) of Incentive(s) offered or available for each Targeted Drug;
- b. the class(es) of trade eligible for each Incentive;
- c. the general terms and conditions of each Incentive; and
- d. the beginning and ending dates of each period during which the Incentive was offered or available; and
- e. for each year during the Defined Period of Time, the current or former employee(s) with most knowledge regarding the Incentive.

**RESPONSE TO INTERROGATORY NO. 3:** Novartis incorporates by reference its objections to the State's definitions of the terms "Incentive," "Targeted Drugs," and "Defined Period of Time," and objects to Interrogatory No. 3 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to Interrogatory No. 3 on the grounds that it is vague and ambiguous with respect to the language "type" "you," "offered," "associated," "class(es) of trade" and "general terms and conditions." Subject to and without waiving these and the foregoing General Objection, Novartis states that it will produce non-privileged records from which answers to Interrogatory No. 3 may be derived in accordance with Rule 33(d) of the Federal Rules of Civil Procedure, and that following Plaintiff's review of such records, Novartis will provide Plaintiff with the name of the Novartis employee with the most knowledge regarding incentives about which Plaintiff may have questions for each year during the period 1997 through 2003.

**INTERROGATORY NO. 4:** Describe in detail how you determined each price you used in the ordinary course of business of each Targeted Drug for each year during the Defined Period of Time and identify the person(s) most knowledgeable in making such determinations for each Targeted Drug for each year.

**RESPONSE TO INTERROGATORY NO. 4:** Novartis incorporates by reference its objections to the State's definitions of the terms "Targeted Drug" and "Defined Period of Time," and objects to Interrogatory No. 4 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to Interrogatory No. 4 on the grounds that it is vague and ambiguous with respect to the language "each." Subject to and without waiving these and the foregoing General Objections, Novartis states it will produce non-privileged records from which answers to Interrogatory No. 4 may be derived in accordance with Rule 33(d) of the Federal Rules of Civil Procedure, and will also produce, subject to the terms of the Qualified Protective Order previously entered by Judge Moria Kreuger, Dane County Circuit Court on May 11, 2005, the deposition transcript of Gary Rosenthal, Novartis' Vice President of Finance and Administration, taken on Thursday, June 24, 2004 in the action captioned *In Re: Pharmaceutical Industry Average Wholesale Price Litigation* (D. Mass.), MDL No. 1456, pursuant to Fed. R. Civ. P. 30(b)(6). As Mr. Rosenthal testified in the course of his deposition, with respect to pricing new pharmaceutical products, Novartis attempts to assess the benefit or value of a particular product to each of the parties involved in the prescribing, paying for or consuming of such products, *i.e.*, patients, physicians, payors, as well as published available information regarding the reported WAC pricing for therapeutically competitive products. With respect to determining whether to institute a price change for a particular product, Novartis generally reviews its historical pricing actions, published available information regarding the reported WAC pricing for therapeutically competitive products, and internally-generated financial analysis of the ramifications of potential

price changes. Following Plaintiff's review of Mr. Rosenthal's deposition transcript and the documents otherwise produced by Novartis, Novartis will provide Plaintiff with the names of the persons most knowledgeable about questions Plaintiff may have regarding pricing determinations for Novartis' pharmaceutical products.

**INTERROGATORY NO. 5:** Have you ever included in your marketing of a Targeted Drug to any customer reference to the difference (or spread) between an AWP or WAC published by First DataBank, Redbook or Medi-span and the list or actual price (to any customer) of any Targeted Drug? If so, provide the following information for each Targeted Drug:

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

**RESPONSE TO INTERROGATORY NO. 5:** Novartis incorporates by reference its objections to the State's definitions of the terms "Targeted Drug," "Defined Period of Time," and "Spread," and objects to Interrogatory No. 5 on the grounds that it is overly broad and unduly and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to Interrogatory No. 5 on the grounds that it is vague and ambiguous with respect to the language "you," "ever included," "your," "aspect," "marketing," "customer," "reference," "any," "published," "list or actual price" and "provided." Subject to and without waiving these and the foregoing General Objections, Novartis states that based upon its investigation to date, Novartis is not aware of any instance in which it included in its marketing of any Novartis pharmaceutical product to any customer a reference to the difference (or spread) between an average wholesale price or wholesale acquisition cost published by First DataBank, Redbook or Medi-span and the list or actual price (to any customer) of any Novartis pharmaceutical product.

Dated: July 16, 2005

OF COUNSEL:

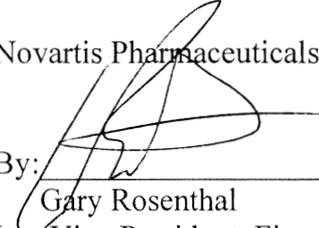
Jane W. Parver  
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AS TO OBJECTIONS:

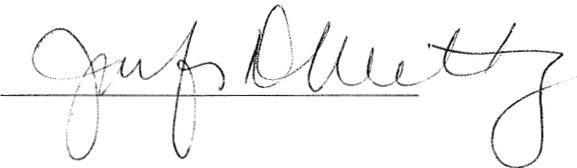
A handwritten signature in black ink, appearing to read 'Kim Grimmer', written over a horizontal line.

Kim Grimmer  
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Novartis Pharmaceuticals Corporation

By:   
Gary Rosenthal  
Its: Vice-President, Finance and Administration

Subscribed to and sworn to before me this  
14<sup>th</sup> day of July, 2005

  
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Notary Public, State of New Jersey  
My commission expires: 8/16/2009

