

STATE OF WISCONSIN,

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Plaintiff,

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Case No.: 04 CV 1709

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v.

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AMGEN INC., ET AL.,

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Defendants.

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**PHARMACIA CORPORATION'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Wisconsin Rule of Civil Procedure 804.08, defendant Pharmacia Corporation ("Pharmacia"), by its attorneys, hereby asserts the following responses and objections to the First Set of Interrogatories of Plaintiff, the State of Wisconsin, by its Attorney General, Peggy Lautenschlager ("the State"), as follows:

**GENERAL OBJECTIONS**

1. These responses are made without in any way waiving or intending to waive: (i) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, information or documents 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 the Interrogatories at any hearings or at trial; or (iii) the right to object on any ground at any time for further responses to the Interrogatories; or (iv) its right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

2. Pharmacia has not completed its investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the accompanying

document requests are based upon, and necessarily limited by, information now available to Pharmacia.

3. The information and documents supplied herein are for use in this litigation and for no other purpose.

4. Pharmacia objects to these Interrogatories to the extent that they seek documents and information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, are overly broad, unduly burdensome, ambiguous and vague.

5. Pharmacia objects to these Interrogatories to the extent they call for the production of documents or information protected from disclosure under the attorney-client privilege, the work product doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to these Interrogatories, the production of such documents or information shall not constitute a waiver of Pharmacia's right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to Pharmacia's counsel immediately upon discovery thereof.

6. Pharmacia objects to these Interrogatories to the extent that they seek documents and information not within Pharmacia's possession, custody, or control or are more appropriately sought from third parties to whom requests have been or may be directed.

7. Pharmacia objects to these Interrogatories to the extent that they seek production of publicly available documents or information, or that which plaintiff can obtain from other sources.

8. Pharmacia objects to these Interrogatories to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information.

Pharmacia will not produce any responsive information, including confidential business, trade secret or proprietary information, until an appropriate Protective Order or Confidentiality Agreement has been entered in this case.

9. Pharmacia objects to these Interrogatories to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, Pharmacia's obligations under the Wisconsin Rules of Civil Procedure.

10. Pharmacia objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories. Pharmacia's response that it will produce documents in connection with a particular request, or that it has no responsive documents, is not intended to indicate that Pharmacia agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories or that such implications or characterizations are relevant to this action.

11. Pharmacia reserves the right to withhold the production of any responsive information until the court has ruled on Defendants' Motion to Dismiss in this case.

12. Pharmacia 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." Pharmacia incorporates by reference its objection to the definition of the term "Pharmaceutical." Pharmacia further objects to this definition to the extent that it purports to set an accurate or legally significant definition of AMP.

13. Pharmacia 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.” Pharmacia incorporates by reference its objection to the definition of the term “Pharmaceutical.”

14. Pharmacia 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, particularly with respect to the language “Documents relating to such period,” and incorporates by reference its objection to the definition of the term “document.” Pharmacia objects to this definition to the extent that it seeks information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

15. Pharmacia objects to the definition of “Document” as set forth in Definition No. 4 on the grounds that it is vague and ambiguous with respect to the language “writing,” “recording,” any kind,” “agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, facsimiles (faxes), film, graphs, letters, memos, maps, minutes,” “Executive Committee minutes,” “notes, notices, photographs, reports, schedules, summaries, tables, and telegrams,” “medium,” “written, graphic, pictorial, photographic, electronic, emails, phonographic, mechanical, taped,” “hard drives, data tapes” and “copies.” Pharmacia further objects to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Pharmacia’s obligations under the Wisconsin Rules of Civil Procedure. Pharmacia further objects to this definition to the extent it requires or seeks to require Pharmacia (i) to produce documents or data in a particular form or format; (ii) to convert documents or data into a particular or different file format; (iii) to produce data, fields, records, or reports about produced documents or data; (iv) to produce documents or data on any particular media; (v) to search for and/or produce any documents or data on back-up

tapes; (vi) to produce any proprietary software, data, programs, or databases; or (vii) to violate any licensing agreement or copyright laws.

16. Pharmacia objects to the definition of “Incentive” as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, ambiguous and vague, particularly with respect to the language “anything of value,” “provided,” “customer,” “lower the consideration paid for a drug, regardless of the time it 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.” Pharmacia incorporates by reference its objection to the definition of the term “Chargeback.” Pharmacia further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

17. Pharmacia objects to the definition of “National Sales Data” in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. Pharmacia further objects on the grounds that this definition is vague and ambiguous with respect to the language “data sufficient to identify for each sales transaction,” “transaction type,” “your product number,” “package description,” “WAC,” “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.” Pharmacia incorporates by reference its objection to the definition of the term “Targeted Drugs.” Pharmacia objects to this definition to the extent that it refers to information not relevant to the

State's claims, which are limited to Wisconsin. Pharmacia further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended 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.

18. Pharmacia objects to the definition of "Pharmaceutical" in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language "any drug, "other product," "you," "any other manufacturer," "biological' products" and "intravenous solutions." Pharmacia objects to this Definition to the extent that it refers to information not relevant to the State's claims, which are limited to Wisconsin. Pharmacia further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended 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.

18. Pharmacia objects to the definition of "Spread" as set forth in Definition No. 8 on the grounds that it is overly broad, vague and ambiguous, particularly with respect to the language "third party payors," "gross profit actually or potentially realized" and "purchasers." Pharmacia incorporates by reference its objection to the definition of the term "Pharmaceuticals."

19. Pharmacia objects to the definition of "Targeted Drugs" on the grounds that it is overly broad and unduly burdensome. Pharmacia further objects to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language "you" and "total utilization." Pharmacia incorporates by reference its objection to the definition of the term

“Defined Period of Time.” Pharmacia objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Pharmacia further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended 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 INTERROGATORIES**

**INTERROGATORY NO. 1:** Have you ever determined an average sales price or other composite price net of any or all Incentives for a Targeted Drug during the Defined Period of Time? If so, for each Targeted Drug for which you have made such a determination, 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) each average sales price or composite price determined;
- (d) the person(s) most knowledgeable regarding the determinations;
- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determinations;
- (g) whether you disclosed any average sales price or composite price so determined to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such price was disclosed and the corresponding date of the disclosure; and

(h) whether any such average sales price or composite price was treated as confidential or commercially sensitive financial information.

**RESPONSE TO INTERROGATORY NO. 1:** In addition to the General Objections set forth above, Pharmacia 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. Pharmacia objects to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “determined,” “average sales price or other composite price net of any or all Incentives,” “determination,” “methodology,” “disclosed,” “publisher, customer, or governmental entity” and “such price.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “Incentive,” “Targeted Drugs” and “Defined Period of Time.” Pharmacia objects to this interrogatory to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pharmacia objects to this interrogatory to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pharmacia further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

**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 a price for a Targeted Drug. For each such electronic data entity, identify, describe or produce the following:

- (a) the name or title of each such database, data table, or data file;
- (b) the software necessary to access and utilize such data entities;
- (c) describe the structure of each database, data table or data file identified in

response to Request No. 2(a) above and identify all files or tables in each such database, data

table or data file. For each such file or table, identify all fields and for each field describe its contents, format and location within each file or table' record or row.

(d) the current or former employee(s) with the most knowledge of the operation or use of each data entity identified above; and

(e) the custodians of such data entity.

**RESPONSE TO INTERROGATORY NO. 2:** In addition to the General Objections set forth above, Pharmacia 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. Pharmacia objects to this interrogatory on the grounds that it is vague and ambiguous with respect to the language “electronic database, data table or data file,” “you,” “ordinary course of business,” “price,” “software necessary to access and utilize such data entities,” “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.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “Defined Period of Time” and “Targeted Drug.” Pharmacia objects to this interrogatory to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pharmacia objects to this interrogatory to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pharmacia further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

**INTERROGATORY NO. 3:** Describe each type of Incentive you have offered in conjunction with the purchase of any Targeted Drug. For each such Incentive, identify:

- (a) the type(s) of Incentive(s) offered 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.

**RESPONSE TO INTERROGATORY NO. 3:** In addition to the General Objections set forth above, Pharmacia 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. Pharmacia objects to this interrogatory on the grounds that it is vague and ambiguous with respect to the language “type of Incentive,” “you,” “offered,” “class(es) of trade eligible” and “general terms and conditions.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “Incentive” and “Targeted Drugs.” Pharmacia objects to this interrogatory to the extent that it seeks information outside the time period relevant to this litigation and to the extent that it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pharmacia objects to this interrogatory to the extent that it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pharmacia further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

**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:** In addition to the General Objections set forth above, Pharmacia 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. Pharmacia objects to this interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “determined,” “price” and “ordinary course of business.”

Pharmacia incorporates by reference its objections to the State's definitions of the terms "Targeted Drug" and "Defined Period of Time." Pharmacia objects to this interrogatory to the extent it seeks information not relevant to the State's claims, which are limited to Wisconsin. Pharmacia objects to this interrogatory to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pharmacia further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

**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 which such marketing occurred;
- c. the name, address and telephone number of each customer to whom you marketed a Targeted Drug in whole or in part by making a 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:** In addition to the General Objections set forth above, Pharmacia 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. Pharmacia objects to this interrogatory on the grounds that it is vague and ambiguous with

respect to the language “you,” “ever included,” “your,” “marketing,” “customer,” “reference to the difference (or spread) between an AWP or WAC,” “published,” “list or actual price” and “provided.” Pharmacia incorporates by reference its objections to the State’s definitions of the term “Targeted Drug.” Pharmacia objects to this interrogatory to the extent that it seeks information outside the time period relevant to this litigation and to the extent that it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pharmacia objects to this interrogatory to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pharmacia further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

Dated: March 23, 2005

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