

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

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STATE OF WISCONSIN,	:	
Plaintiff,	:	
v.	:	Case No.: 05 C 408 C
	:	
ABBOTT LABORATORIES, et al.,	:	
Defendants.	:	

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**DEFENDANT SANDOZ INC.'S RESPONSES AND OBJECTIONS  
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure ("FRCP"), defendant Sandoz Inc., by its attorneys, hereby asserts its Responses and Objections to Plaintiff State of Wisconsin's ("the State") First Set of Interrogatories ("First Interrogatories"), that were served prior to the removal of this action to this Court, as follows:

In making these objections and responses, Sandoz deems the States' First Interrogatories as having been propounded under the FRCP and responds pursuant to the FRCP. The objections and written responses set forth herein are being offered pursuant to a prior agreement with counsel for the State to provide written responses to the First Document Requests on or before July 15, 2005. However, Sandoz reserves its right to seek a stay of discovery before this Court or before the court to which the multi-district litigation, In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1446, has been assigned; Defendants will seek to have this action transferred to that multi-district litigation. Moreover, by

providing these responses, Sandoz does not agree to produce documents in advance of any case management order or discovery schedule entered by this Court or by the court presiding in In re Pharmaceutical Industry Average Wholesale Price Litigation.

### **GENERAL OBJECTIONS**

The following General Objections apply to each Definition and Interrogatory and shall have the same force and effect as if fully set forth as a Specific Objection to each Definition and Interrogatory:

1. By objecting and responding to these First Interrogatories, Sandoz does not in any way waive or intend to waive (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information or documents that may be provided or produced in response to the First Interrogatories; (b) any objections as to the vagueness, ambiguity, or other infirmity in the form of any Interrogatory; (c) any objections based on the undue burden imposed by any Interrogatory; (d) any objections to the use of the documents or information that may be produced in response to the First Interrogatories at any hearings or at trial; (e) any objections to any further interrogatories involving or relating to the subject matter of the First Interrogatories; (f) any privileges, rights, or immunity under the applicable FRCP, Federal Rules of Evidence, statutes, or common law.

2. By stating herein that it agrees at an appropriate time to produce documents or information in response to a particular Interrogatory, Sandoz does not assert that it has responsive documents or information or that such materials exist, only that it agrees that, at the appropriate time, it will conduct a reasonable search of its files most likely to contain responsive documents or information and produce responsive, non-objectionable, non-privileged documents

revealed by such investigation. No objection made herein, or lack thereof, is an admission by Sandoz as to the existence or non-existence of any information.

3. To the extent that Sandoz agrees to produce at an appropriate time documents in response to an Interrogatory from which an answer to the Interrogatory may be derived or ascertained, Sandoz incorporates by reference all objections set forth in its written response to the State's First Requests for the Production of Documents.

4. Sandoz objects to the First Interrogatories as they were not upon Sandoz pursuant to the requirements of WIS. STAT. § 804.08 and in violation of the stay entered by the State of Wisconsin Circuit Court ("Wisconsin Circuit Court") in its Order dated April 8, 2005. Notwithstanding this objection, Sandoz has accepted service of the First Interrogatories. Sandoz further objects to the First Interrogatories to the extent that the State purports to amend them by the letter from its counsel, Miner, Barnhill & Galland, P.C. to counsel for Sandoz, dated May 20, 2005 in a manner unauthorized by the Wisconsin Rules of Civil Procedures or the FRCP. In making the objections and responses set forth herein, Sandoz understands the State to have merely offered, as a possible compromise, to narrow its definition of "Targeted Drugs" to the over 300 formulations of 52 drugs marketed by Sandoz that are identified in Exhibit A to that letter.

5. Sandoz objects to the First Interrogatories to the extent that they are premature and were propounded by the State in violation of the Wisconsin Circuit Court's stay entered on April 8, 2005. Sandoz further objects to the extent that the First Interrogatories are premature in that they seek a response while Defendants' motion to dismiss this action is *sub judice*. Sandoz further objects that it has had inadequate time to complete its investigation and discovery relating

to this action and any Objections set forth below are based upon, and necessarily limited to, information that has been ascertained thus far.

Pursuant to FRCP 26(e) Sandoz accordingly reserves its right to amend, supplement, and/or to withdraw any General or Specific Objection set forth herein on the basis of documents or information found during its investigation or any discovery that might be taken in this action.

6. Sandoz objects to each Definition and Interrogatory to the extent it imposes discovery obligations greater than, or inconsistent with, Sandoz's obligations under the Federal Rules of Civil Procedure and to the extent that the State seeks discovery beyond that permitted by such Rules.

7. Sandoz objects to each Definition and Interrogatory to the extent it seeks information or documents protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or protection against disclosure.

8. Sandoz objects to each Definition and Interrogatory to the extent it seeks the production of proprietary or commercially sensitive information, including but not limited to, personal financial information, confidential and/or proprietary research, procedures and processes relating to the pricing of pharmaceuticals, current and past marketing plans and methods, and current and past business planning and financial information. Sandoz' production of any document or provision of information pursuant to these Interrogatories shall not be constructed as a waiver of the confidentiality of any such information or document. Sandoz reserves its right to withhold production prior to the entry of a protective order by this Court or the court presiding in the MDL.

9. Sandoz objects to each Definition and Interrogatory to the extent it requires Sandoz to disclose information or produce documents outside of Sandoz' possession, custody, or

control and/or no longer in existence, to seek information about or produce documents from persons not currently employed or associated with Sandoz, or to provide or search for information or documents in the possession, custody or control of non parties. At the appropriate time, Sandoz will only disclose information and produce documents that are within its possession, custody, or control.

10. Sandoz objects to each Definition and Interrogatory to the extent it seeks information or documents already in the State's possession, custody, or control or in the possession, custody, or control of any of the State's officers, employees, agents, agencies, or departments. Sandoz further objects to each Definition and Interrogatory to the extent it requires Sandoz to search for information publicly available or to search for information or documents for which the burden of deriving or ascertaining the information or documents is substantially the same for or less the State or any of its officers, employees, agents, agencies, or departments as it is for Sandoz.

11. Sandoz objects to each Definition and Interrogatory to the extent it is duplicative or redundant of other Definitions or Interrogatories or other discovery requests propounded by the State. Each written response and/or document that may be produced in response to a specific Interrogatory is deemed to be produced in response to every other Interrogatory or discovery request of the State to which the written response, document, or information is or may be responsive.

12. Sandoz objects to each Definition and Interrogatory as unduly burdensome to the extent it seeks the provision or production of "any" or "all" documents on a subject matter. Subject to and without waiver of this objection, and subject to resolution of Sandoz' other objections set forth herein, Sandoz agrees that at an appropriate time it will produce non-

privileged documents that are located following a reasonable search of those Sandoz' files that are most likely to contain documents or information responsive to these Interrogatories.

13. Sandoz objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the First Interrogatories. Sandoz' written response or production of documents or information in connection with a particular Interrogatory is not intended to indicate that Sandoz agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the First Interrogatories, or that such implications or characterizations are relevant to this action.

14. Sandoz 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, including the terms "the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report." Sandoz further objects to this definition to the extent that it purports to set an accurate or legally significant definition of the terms Average Manufacture Price or AMP and refers to the statutes and regulation for the definition of this term.

15. Sandoz objects to the definition of "Chargeback" as set forth in Definition No. 2 on the grounds that it is vague and ambiguous, including the terms "payment, credit or other adjustment," "purchaser of a drug," "difference between the purchaser's acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price." Sandoz further objects to this definition to the extent that it purports to set an accurate or legally significant definition of the term Chargeback and to the extent it differs from the common usage and understanding of the term in the industry.

16. Sandoz 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. Sandoz further

objects to this definition to the extent that it seeks information of documents from outside the statute of limitations applicable to the State's claims, beyond the time period relevant to this action, and beyond the time period reasonably anticipated to encompass probative information that is relevant to the claims in this action.

17. Sandoz objects to the definition of "Document" in Definition No. 4 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Sandoz' obligations under the FRCP. Sandoz further objects to this definition to the extent it would require Sandoz to produce multiple copies of the same document or to conduct an unduly burdensome search for duplicative information including, among other things, electronic databases containing overlapping information.

18. Sandoz objects to the definition of "Incentive" as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Sandoz further objects to this definition to the extent that it seeks information or documents from outside the statute of limitations applicable to the State's claims, beyond the time period relevant to this action, and beyond the time period reasonably anticipated to encompass probative information that is relevant to the claims in this action.

19. Sandoz objects to the definition of "National Sales Data" as set forth in Definition No. 6 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Sandoz objects to this definition to the extent that it seeks information or documents on "National Sales" that are not relevant to the State's claims, which are limited to reimbursements made in the State of Wisconsin. Sandoz further objects to the definition of National Sales Data to the extent it incorporates other objectionable definitions, including "Incentive" and "Targeted Drugs."

20. Sandoz objects to the definition of “Pharmaceutical” as set forth in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Sandoz further objects to this definition to the extent that it seeks to impose on Sandoz the burden to ascertain or obtain information in the exclusive possession of its customers or other non parties to this action.

21. Sandoz objects to the definition of “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Sandoz further objects to this definition to the extent that it seeks to impose on Sandoz the burden to ascertain or obtain information in the possession of its customers or other non parties to this action.

22. Sandoz objects to the definition of “Targeted Drugs” as set forth in Definition No. 9 to the extent that it is vague and ambiguous and inconsistent with the drugs identified in Exhibit A to the State’s letter of May 20, 2005. Sandoz 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 not relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

In addition, as set forth above in General Objection No. 10, Sandoz objects that this Definition requires Sandoz to undertake the burden of identifying drugs relevant to the State’s claims when such information is already in the State’s possession, custody, or control or in the possession, custody, or control of any of the State’s officers, employees, agents, agencies, or departments, and/or the burden on the State or its officers, employees, agents, agencies or departments to identify the drugs relevant to its claims is substantially the same or less than the burden on Sandoz.

## SPECIFIC OBJECTIONS

### 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.

### Objection to Interrogatory No. 1:

In addition to the foregoing General Objections, Sandoz objects to Interrogatory No. 1 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome, particularly with regard to the phrases “average sales price,” “composite net price,” “class(es)” of trade,” “purpose(s) in making such determinations,” and “composite price.” Sandoz also objects to this Interrogatory to the extent that it seeks information or documents neither relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

For example, on its face, this Interrogatory may be reasonably construed to require Sandoz to first perform numerous calculations to identify the drugs subject to the State's request, then search its files covering the period from 1993 to the present for data referring to those drugs, and then to ascertain whether the undefined terms "average sales price" and "composite net price" are revealed by such data.

**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 Interrogatory 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 custodian(s) of such data entity.**

**Objection to Interrogatory No. 2:**

In addition to the foregoing General Objections, Sandoz objects to Interrogatory No. 2 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome, particularly with regard to the phrases "price," "electronic data entity," "structure," "data table," "data file," "knowledge of the operation," and "custodian." Sandoz also objects to this Interrogatory to the extent that it seeks information or documents neither relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

For example, this Interrogatory may be reasonably construed to require Sandoz first to first perform numerous calculations to identify the drugs subject to the State's request, then to deduce what information or data the State seeks by its reference to "price," and then to search its files covering the period from 1993 to the present for all databases, data tables, or data files referring to those drugs to ascertain whether they reveal information about the undefined "price" of the drugs identified by Sandoz.

Subject to and without waiving the foregoing objections, Sandoz agrees that at an appropriate time it will respond to a properly narrowed Interrogatory.

**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.**

**Objection to Interrogatory No. 3:**

In addition to the foregoing General Objections, Sandoz objects to Interrogatory No. 3 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome particularly with regard to the phrases "class(es) of trade," "eligible," "conjunction with" and "offered." Sandoz also objects to this Interrogatory to the extent that it seeks information or documents relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

For example, this Interrogatory may be reasonably construed to require Sandoz to search its files for any documents relating to all of Sandoz' customers, which currently total over

30,000, over the last twelve years, to determine whether, if any, of what the State considers an “Incentive” has been offered to such customers in connection with the sale of a “Targeted Drug.”

**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.**

**Objection to Interrogatory No. 4:**

In addition to the foregoing General Objections, Sandoz objects to Interrogatory No. 4 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome, particularly with regard to the terms “price,” “determinations,” and “ordinary course of business.” Sandoz further objects to the extent that this Interrogatory is cumulative and duplicative of Interrogatory No. 1. Sandoz also objects to the extent that this Interrogatory seeks information or documents neither relevant to the subject matter of this action, relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

For example, this Interrogatory can be reasonably construed to require Sandoz first to first perform numerous calculations to identify the drugs subject to the State’s request, next to deduce what information or data the State seeks by its references to “price,” and then to search its files covering the period from 1993 to the present for any documents which include a “determination” of “price,” and then to conduct an investigation to determine how the “price” was determined and the person most knowledgeable about such determination.

**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).**

**Objection to Interrogatory No. 5:**

In addition to the foregoing General Objections, Sandoz objects to Interrogatory No. 5 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome, particularly with regard to the phrases “marketing,” “customer reference,” “list or actual price,” “marketed a Target Drug in whole or in part.”

For example, this Interrogatory may be reasonably construed to require Sandoz to first perform numerous calculations to identify the drugs subject to the State’s request, then to search its files for any documents relating to all of Sandoz’ customers, which currently total over 30,000, over the last twelve years, for any reference to a “Spread,” a search which is particularly burdensome and overbroad in light of the fact not all of Sandoz’ current 30,000 customers market drugs in the State of Wisconsin.

Dated at Milwaukee, Wisconsin, on July 15, 2005.

FRIEBERT, FINERTY & ST. JOHN, S.C.

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