

**STATE OF WISCONSIN  
CIRCUIT COURT BRANCH 7  
DANE COUNTY**

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STATE OF WISCONSIN,	:	
Plaintiff,	:	
v.	:	Case No.: 04-CV-1709
	:	Judge Krueger
AMGEN INC., et al.	:	
Defendants.	:	

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**DEFENDANT SANDOZ INC.’S SUPPLEMENTAL RESPONSES  
TO PLAINTIFF’S FIRST SET OF INTERROGATORIES**

Pursuant to Wis. Stat. § 804.01(5) of the Wisconsin Rules of Civil Procedure, defendant Sandoz Inc. (“Sandoz” or the “Company”), by its attorneys, hereby supplements its Responses (“Responses”) to Plaintiff State of Wisconsin’s (“Plaintiff” or the “State”) First Set of Interrogatories (“First Interrogatories”).

Sandoz repeats and incorporates herein by reference the General Objections, Objections to Instructions and Definitions and Specific Objections set forth in the Responses as if fully restated herein. Unless expressly stated, Sandoz’ Supplemental Responses are limited to the Sandoz products included in the Second Amended Complaint, which mirror those identified on the State’s “Targeted Drug List” attached to Robert Libman’s May 20, 2005 letter. Sandoz specifically disclaims any obligation to identify, locate, or interview former employees who

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might have knowledge relevant to the First Interrogatories, let alone determine which of its former employees are the “most” knowledgeable as to a particular matter at any point over the Defined Period of Time. Unless expressly stated otherwise, Sandoz’ Supplemental Responses are limited to the period from January 1, 1993 through January 2005. Sandoz reserves the right to supplement its Responses based on additional information as discovery progresses.

**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.**

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**Supplemental Response to Interrogatory No. 1:**

Subject to and without waiving the objections set forth above or in Sandoz' Responses, Sandoz supplements its response to Interrogatory No. 1 as follows:

Sandoz has in certain circumstances and at certain times “determined an average sales price or other composite price net of any or all Incentives for a Targeted Drug during the Defined Time period” as described by this Interrogatory.

(a-c): The determinations subject to this Interrogatory were performed on numerous occasions with respect to products on the Targeted Drug List. Except as noted below, the detail sought by these subparts can be found in the documents embodying such determinations and the burden of obtaining the requested information from such documents would be the same for Plaintiff as it would be for Sandoz. Sandoz continues to object to this Interrogatory as overly broad and unduly burdensome to the extent it seeks the requested information as to each such determination because compliance in reality would require production of the documents embodying each such determination. These determinations, however, were done by various employees across time for various reasons, and thus there does not exist a central repository or identifiable set of files containing all or even most of such determinations. Pursuant to Wis. Stat. § 804.08(3), Sandoz will produce documents from which this information can be determined from the files of the individuals with responsibility for such determinations.

Pursuant to section 1927(b)(3)(A) of the Social Security Act, on a quarterly basis, Sandoz calculates and submits to CMS the Average Manufacturer Price (“AMP”), as defined in

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1927(k)(1) of that Act, for its drugs that are subject to a Medicaid Drug Rebate Agreement. Pursuant to Wis. Stat. § 804.08(3), Sandoz refers to documents bearing bates numbers SANDOZ WISC 0022009 to 0022048 from which the AMP and relevant dates for the products on the Targeted Drug List may be ascertained.

Pursuant to section 1396r-8(b)(3)(A)(iii) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the “MMA Act”) and its implementing regulations, Sandoz calculates and submits, pursuant to the rules and Regulations set forth under Medicare Part B, to the Centers for Medicaid and Medicare Services (“CMS”) an Average Sales Price (“ASP”) for its drugs that are reimbursed under Medicare Part B, including chlorpromazine, perphenazine and promethazine, which are on the Targeted Drug List.

(d) The individuals currently working at Sandoz who would be most knowledgeable about such determinations subject to this Interrogatory during all or a portion of the time such individuals have worked at Sandoz are as follows:

- Dorothy Cruz, current Supervisor of Chargebacks and Medicaid;
- Armando Kellum, current Manager of Pricing;
- Frank Prybeck, current Director of Contract Administration;
- Katharina Russo, current Manager of Business Planning and Analysis; and
- Philip Sobel, current Director of Business Planning & Analysis.

It is Sandoz’ understanding that the following individuals who formerly worked at Sandoz were knowledgeable about such determinations during all or a portion of the time they were working at Sandoz, or held positions that make it reasonable to conclude that they would

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have knowledge of such determinations, to the extent they were undertaken. For each individual, their last position and dates during which they worked at Sandoz are listed.

- Bruce Basarab, former Senior Vice President, Sales and Marketing, January, 1997 to January 2001;
- Eric Evans, former Vice President and Chief Financial Officer, October 15, 2001 to July 29, 2005;
- Kevin Galownia, former Manager of Pricing, March 25, 2002 to September 14, 2005;
- Paula Gurz, former Head of Client Support and Service, October 24, 1990 to January 24, 2003;
- Jeffrey Kutner, former Director, Financial Reporting & Analysis, May 29, 2001 to April 1, 2006;
- Terry Ruth, former Vice President and Chief Financial Officer, October 9, 1985 to January 18, 2002;
- Richard Rogerson, former Manager of Pricing, January 20, 1994 to March 29, 2002;
- Kristy Ronco, former Manager of Pricing, March 11, 2002 to April 27, 2006;
- George Stevenson, former Director, Strategic Marketing, January 22, 2001 to May 9, 2003; and
- Christopher Worrell, former Vice President of Sales and Marketing, January 10, 2002 to August 31, 2005.

(e) Sandoz calculates AMPs and ASPs discussed above in accordance with the statutes, rules and regulations governing those calculations. Sandoz' SAP system calculates the AMP for each Medicaid included product classification by taking the quarterly weighted average of prices for all Sandoz' package sizes less credits, divided by net invoiced units. Net invoiced

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units are gross invoiced units less returns. The AMP is expressed as the product price based upon the products units per package size.

In certain instances, Sandoz has performed calculations to estimate with respect to certain of its products, including those on the Targeted Drug List, a net price paid for the product by specific customers or types of customers or all customers. Such calculations involve reducing the invoice sales price or the gross sales value for the product by one or more actual or accrued deductions, including but not limited to, cash discounts; credited returns; price protection and shelf stock adjustments; repurchase charges by customers and other similar charges; chargebacks; allowances; discounts and rebates; other payments required by law to be made under Medicaid, Medicare, or other governmental special assistance programs; and sales, excise or other similar taxes.

(f) Sandoz has used the results of determinations such as those addressed in this Interrogatory for budgeting, product rationalization, product development, negotiations with existing and potential purchasers of its products, reporting to the government, and other business reasons.

(g-h) The Sandoz pricing information addressed in this Interrogatory has been treated by Sandoz as confidential and/or commercially-sensitive. Sandoz does not provide such information to third parties, except that Sandoz may provide a customer with information regarding its net prices.

Since before the Defined Period of Time, in addition to its obligation under the Social Security Act and MMA Act to report AMP and ASP data to the Department of Health and

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Human Services, Sandoz has transmitted AMP data for products on the State's Targeted Drug List to the New York Elderly Pharmaceutical Insurance Program. Since March 2002, Sandoz has transmitted AMP data for Medicare Service products on the State's Targeted Drug List to the Missouri Senior Rx Program, Missouri Department of Social Services. Since April 2005, Sandoz has sent AMP data for products on the State's Targeted Drug List to the Texas Health and Human Services Commission, Vendor Drug Program, 11209 Metric Blvd., Austin, TX 78758. Since April 2005, Sandoz has sent AMP data for products on the State's Targeted Drug List to Bruce McClanahan, Pharmacy Unit Manager, Department of Health and Human Services, Bureau of Medical Services, 11 Statehouse Station, Augusta, Maine 04333.

Section 1927(b)(3)(D) of the Social Security Act provides that both ASP information and AMP information are confidential and shall not be disclosed publicly by the federal government.

**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.**

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**Supplemental Response to Interrogatory No. 2:**

Subject to and without waiving the objections set forth above or in Sandoz' Responses, Sandoz supplements its response to Interrogatory No. 2 as follows:

Sandoz stores information about its sales transactions, including pricing information, in two computer systems. Sales data from January 1996 through January 2000 is stored on an IBM AS400 System Type 9406, Model 430, version 4.4 computer system and integrated database ("the AS400 system"). Data from this system can be downloaded as a delimited ASCII file and transferred to AS400 formatted reel to reel tape. Sales data from January 1993 through January 1996 from the AS400 system is maintained on archive data tapes. Sandoz has not tested whether AS400 tapes containing data for the period 1993 to 1996 are in working condition. The current employee most knowledgeable regarding the operation and content of data stored on the AS400 system is Nancy Clapper, Senior Software Engineer.

Beginning in February 2000, Sandoz has stored information relating to sales transactions, including pricing information, on an SAP R/3 PRD Client 030 database, which consists of one HP8400 HPUX 11i, 64 Bit database server and four HP8400 HPUX 11i, 64 Bit application servers. Data from SAP can be downloaded as a delimited ASCII file. The current employee most knowledgeable about the content and operation of the SAP system is Nancy Clapper, Senior Software Engineer.

Sandoz further responds that pursuant to Wis. Stat. § 804.08, the answer to part (c) of this interrogatory may be derived or ascertained from SANDOZ WISC 0014192 to

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0014307 which are the “data dictionaries” for the AS400 and SAP systems requested by the State in Robert Libman’s November 9, 2005 letter. Sandoz further states that, pursuant to Plaintiff’s request in that letter, information responsive to this Interrogatory has been provided to Plaintiff through informal conferences between the State’s data consultant, Whit Soule, and Nancy Clapper.

**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.**

**Supplemental Response to Interrogatory No. 3:**

Subject to and without waiving the objections set forth above or in Sandoz’ Responses, Sandoz supplements its response to Interrogatory No. 3 as follows:

During certain periods, Sandoz has offered to some but not all customers various discounts, rebates and payments including, among others, contract rebates based on the volume of products purchased (occasionally weighted to incentivize purchases of certain products), product-specific rebates, growth incentive rebates, new product rebates, prompt pay discounts, administrative fees, returned goods allowances, shelf-stock adjustments, distribution allowances, differential pricing rebates, and initial stocking order discounts.

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The availability and use of the foregoing varied by customer and product and thus it would be impractical and unduly burdensome to attempt to identify each incentive offered by Sandoz to each of its customers on each of the products on the Targeted Drug List. Sandoz continues to object to this Interrogatory as overly broad and unduly burdensome to the extent it seeks a recitation of the requested information for each and every discount, rebate and payment offered by Sandoz during the relevant time period, which would require a review of voluminous documents maintained in Sandoz' Contract Department files, documents from the responsive files of individuals with responsibility for pricing Sandoz' products, and information that otherwise will be disclosed in the transaction data to be produced by Sandoz. Accordingly, pursuant to Wis. Stat. § 804.03, Sandoz will produce documents from which this information can be determined from the responsive files of the individuals with primary responsibility, and from the files of Sandoz' Contract Department.

The relevant files in Sandoz' Contract Department are voluminous, and production of files for each customer would be unduly burdensome and overly broad. Sandoz consequently will produce contract files that it previously has produced (or collected for production) in responding to subpoenas issued by the State of California and the State of Florida. These files relate to the following customers: Advance Rx Com LLP, Albertsons Pharmacy/American Drugs Stores Inc., American Sales Co. Inc, AmerisourceBergen Corp., Anda Generics Inc., Bindley Western Drug Co., Cardinal Health, Inc., Caremark Rx, Inc., Express Scripts, The Harvard Drug Group LLC, Longs Drug, McKesson, Merck-Medco Managed Care, LLC, Morris & Dickson Co. Ltd, NCS Healthcare Inc., Omnicare Inc., Pathmark

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Pharmacy, Rite Aid Corp., Safeway Inc., Target Distribution Center, Valmed Pharmaceutical Inc., Veterans Administration, Wal Mart Pharmacy, and Walsh Dohmen Southeast LLC.

**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.**

**Supplemental Response to Interrogatory No. 4:**

Subject to and without waiving any objections set forth above or in Sandoz' Responses, Sandoz supplements its response to Interrogatory No. 4 as follows:

For the period from January 1997 through January 2005, listed below are the individuals, along with their last position and time period during which they worked at Sandoz, with primary responsibility for pricing at some point in time during that time period:

- Ira Baeringer, Director of Product Marketing, during 2000 and first half of 2001 (and relevant for that period), currently Director, Business Development & Licensing;
- Bruce Basarab, former Senior Vice President, Sales and Marketing, January, 1997 to January 2001;
- John Denman, former Director of Customer Marketing, December 9, 2002 to July 22, 2005;
- Kevin Galownia, former Manager of Pricing, March 25, 2002 to September 14, 2005;
- Paula Gurz, former Head of Client Support and Service, October 24, 1990 to January 24, 2003;
- Joseph Renner, former Executive Vice President and Chief Operating Officer, January 1, 2001 to October 3, 2002;

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- Richard Rogerson, former Manager of Pricing, January 20, 1994 to March 29, 2002;
- George Stevenson, former Director, Strategic Marketing, January 22, 2001 to May 9, 2003; and
- Christopher Worrell, former Vice President of Sales and Marketing, January 10, 2002 to August 31, 2005.

Price determinations for drugs on the Targeted Drug List likely have been made on thousands of occasions. Any attempt to describe every one “in detail” would be impractical and unduly burdensome. The information sought by this Interrogatory can be found in documents that contain Sandoz’ pricing determinations, to the extent the process for arriving at each such determination was documented, and the burden of obtaining the requested information from such documents would be the same for Plaintiff as it would be for Sandoz. Pricing determinations, however, were done by various employees across time, and thus there does not exist a central repository or identifiable set of files containing all or even most of such determinations. Pursuant to Wis. Stat. § 804.03, Sandoz will produce documents from the files of the individuals from which the information sought in this Interrogatory may be ascertained, to the extent such documents exist.

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**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).**

**Supplemental Response to Interrogatory No. 5:**

Subject to and without waiving any objections set forth above or in Sandoz' Responses, Sandoz supplements its response to this to Interrogatory as follows: While Sandoz' customers may be aware of Sandoz AWP's and WAC's, both of which Sandoz has reported to First DataBank and Redbook, Sandoz markets its products based on the effective price to customers, as well as customer service, quality and delivery, and has established and followed a policy of not discussing actual or potential reimbursement that might be earned by a customer in connection with any aspect of negotiations over potential purchases of its products.

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