

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

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05 C 0408C
)	
ABBOTT LABORATORIES, ET AL.,)	
)	
Defendants.)	

**TAP PHARMACEUTICAL PRODUCTS INC.'S RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant TAP Pharmaceutical Products Inc. ("TAP") responds to Plaintiff's First Set of Interrogatories ("Interrogatories") as follows:

PRELIMINARY STATEMENT

A. TAP serves these responses while defendants' motion to dismiss Plaintiff's Amended Complaint is pending. After Plaintiff served its first set of written discovery to defendants, defendants moved to stay discovery while defendants' motion to dismiss is pending. At the hearing on defendants' stay motion, the Wisconsin state court advised Plaintiff to narrow its requests and to seek only limited discovery from defendants while defendants' motion to dismiss is pending. TAP has prepared these responses consistent with the Wisconsin state court's directive.

B. TAP's investigation for information responsive to the Interrogatories continues. TAP's responses to the Interrogatories are based on information available at this time. TAP reserves the right to supplement and/or amend these responses at any time before trial.

C. Where TAP states herein that it will produce or has produced documents in accordance with the Federal Rules of Civil Procedure, it will produce such documents to the extent that they exist and can be reasonably obtained.

D. TAP's specific objections to each interrogatory are in addition to the general limitations and objections set forth in this and the next sections. These limitations and objections form a part of the response to each and every Interrogatory and are set forth here to avoid repetition. Thus, the absence of a reference to a general objection should not be construed as a waiver of the general objection as to a specific request.

E. By stating that TAP will produce any documents or things responsive to a particular interrogatory, TAP does not represent that any such documents or things exist or are within its custody, care, or control.

F. Any information and/or documents supplied in response to the Interrogatories is for use in this litigation and for no other purpose.

G. All documents and information that TAP agrees to make available to Plaintiff in response to the Interrogatories will be made available pursuant to either: (a) the Temporary Qualified Protective Order that was entered in the State court action on or about May 11, 2005; or (b) the Protective Order entered in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, No. 01 CV 12257 (PBS) (D. Mass.), on or about December 13, 2002.

H. To the extent that the Interrogatories seek information relating to Lupron[®], a TAP product, TAP objects to producing this information because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The State has agreed to settle and release any of its claims in this case relating to Lupron[®]. Released claims include any claims against any person or entity relating to Lupron[®] transactions where the cost, reimbursement

amount or price of the Lupron[®] was based in any part on AWP or any other price for Lupron[®]. TAP and the State have submitted their settlement agreement to the Honorable Richard G. Stearns, a federal judge in Boston who is overseeing a nationwide class action settlement with respect to Lupron[®], for final approval. *In re Lupron Marketing and Sales Practices Litigation*, Case No. 01-CV-10861, MDL No. 1430 (RGS) (D. Mass). If and when Judge Stearns approves the settlement agreement between TAP and the State, the State has agreed to dismiss with prejudice any of its Lupron[®]-related claims in this case. Furthermore, a releasor, such as the State, agrees that it will not seek to establish liability based, in whole or in part, on any released claims. Thus, the State should not be entitled to any Lupron[®]-related discovery in this case. TAP and the State originally agreed to defer any dispute over the discoverability of any Lupron[®]-related information in this matter until after Judge Stearns approves (or disapproves) the settlement agreement and, if it is approved, the State dismisses any of its Lupron[®]-related claims in this case with prejudice. The State now contends that it did not so agree. Regardless of the parties' dispute over the agreement to defer, TAP submits that it would be premature to address Lupron[®]-related discovery before the Lupron[®] claims in this matter are dismissed with prejudice.

GENERAL OBJECTIONS

I. TAP generally objects to the Interrogatories to the extent they seek information that is protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, the consulting expert privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule or doctrine.

J. TAP generally objects to the Interrogatories to the extent they seek confidential and/or proprietary information.

K. TAP generally objects to the Interrogatories to the extent they exceed the scope of discovery permitted under the Federal Rules of Civil Procedure, Wisconsin law, or other applicable law.

L. TAP generally objects to the Interrogatories to the extent they are duplicative of Plaintiff's other discovery requests.

M. TAP generally objects to the Interrogatories to the extent that: (a) the discovery sought by any interrogatory is unreasonably cumulative or duplicative, or is obtainable from some other source (including, but not limited to, a public source) that is more convenient, less burdensome, or less expensive; and (b) compliance with any interrogatory would be unduly burdensome, unduly expensive, harassing, annoying, or oppressive.

N. TAP generally objects to the Interrogatories to the extent they seek information about products not named in the Amended Complaint.

O. TAP's responses to the Interrogatories are made without in any way waiving: (a) the right to object on the grounds of competency, relevancy, materiality, privilege, or other grounds of admissibility as evidence for any purpose in any subsequent proceeding in this action or any other action; and (b) the right to object on any ground to other discovery requests involving or relating to the subject matter of these Interrogatories. Furthermore, TAP is providing responses in an effort to expedite discovery in this action and not as an indication or admission by TAP of the relevancy, materiality or admissibility of the responses. TAP preserves all objections to Plaintiff's use of such responses at trial.

P. To the extent applicable, TAP adopts and incorporates by reference any objections to the Interrogatories made by any other defendant in this matter.

OBJECTIONS TO DEFINITIONS

Q. TAP objects to the definition of the terms "Average Manufacturer Price" and "AMP" as vague and ambiguous. TAP incorporates by reference its objection to the definition of the term "Pharmaceutical." TAP further objects to the definition to the extent it purports to set an accurate or legally significant definition of AMP.

R. TAP objects to the definition of the term "Chargeback" as vague and ambiguous, particularly with respect to the phrase "payment, credit, or other adjustment you have provided to a purchaser of a Pharmaceutical to compensate for any difference between the purchaser's acquisition cost and the price at which the purchaser sold the Pharmaceutical to another purchaser." TAP incorporates by reference its objection to the definition of the term "Pharmaceutical."

S. TAP objects to the definition of the term "Defined Period of Time" as overly broad, unduly burdensome, and vague and ambiguous with respect to the phrase "Documents relating to such period." TAP incorporates by reference its objection to the term "Document." TAP further objects to the definition to the extent 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.

T. TAP objects to the definition of the term "Document" as vague and ambiguous. TAP further objects to this definition to the extent it seeks to impose discovery obligations that exceed or are inconsistent with the requirements of the Federal Rules of Civil Procedure. TAP further objects to this definition to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, the consulting expert privilege, or any other privilege or exemption recognized under federal, Wisconsin, or other applicable law. TAP further objects to this definition to the extent it seeks to: (i) require TAP to produce documents or data in a

particular form or format; (ii) convert information into a particular 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, or other information; or (vii) violate any licensing agreement or copyright laws.

U. TAP objects to the definition of "Incentive" as overly broad, unduly burdensome, vague and ambiguous. TAP incorporates by reference its objection to the definition of the term "Chargeback." TAP further objects to this definition to the extent it seeks information outside of the time period relevant to this litigation.

V. TAP objects to the definition of "National Sales Data" as overly broad, unduly burdensome, vague and ambiguous. TAP incorporates by reference its objections to the definitions of the terms "Targeted Drugs" and "Incentives." TAP further objects to this definition to the extent it refers to information not relevant to the State's claims, which are limited to Wisconsin. TAP further objects to this definition to the extent it seeks information beyond the time period relevant to 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 discovery of admissible evidence.

W. TAP objects to the definition of "Pharmaceutical" as overly broad, unduly burdensome, vague and ambiguous. TAP further objects to the extent it refers to information not relevant to the State's claims, which are limited to Wisconsin. TAP further objects to this definition to the extent that it seeks information beyond the time period relevant to 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 discovery of admissible evidence.

X. TAP objects to the definition of "Spread" as overly broad, unduly burdensome, vague and ambiguous. TAP incorporates by reference its objections to the definition of the term "Pharmaceutical."

Y. TAP objects to the definition of the term "Targeted Drug" in the Interrogatories and in the State's letter from Michael Winget-Hernandez dated June 3, 2005 on the grounds that it is overly broad and unduly burdensome. TAP further objects to this definition as vague and ambiguous, particularly with respect to the terms "you" and "total utilization." TAP further objects to this definition to the extent it includes drugs not sold by TAP. TAP incorporates by reference its objection to the term "Defined Period of Time." TAP further objects to this definition to the extent it refers to information not relevant to the State's claims, which are limited to Wisconsin. TAP further objects to this definition to the extent it seeks information beyond the time period relevant to 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 discovery of admissible evidence.

Z. TAP objects to the inclusion of defined terms in the definition section that are not used in the Interrogatories.

SPECIFIC OBJECTION AND RESPONSES TO 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.

ANSWER: In addition to its General Objections, TAP objects to this Interrogatory because it:

(i) is overly broad and unduly burdensome to the extent it is not limited to the drugs listed in the Complaint and seeks information over a twelve year period of time; (ii) is vague and ambiguous, particularly with respect to the terms "average sales price," "other composite price," "determination," "trade," "methodology" and "purpose;" and (iii) seeks confidential and/or proprietary information. In addition, TAP incorporates by reference the objections set forth in paragraph H above. Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron®.

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 custodian(s) of such data entity.

ANSWER: In addition to its General Objections, TAP objects to this Interrogatory because it: (i) is overly broad and unduly burdensome to the extent it seeks each electronic database, data table or data file currently or formerly maintained and seeks information over a twelve year period of time; (ii) is vague and ambiguous, particularly with respect to the terms "electronic database," "data table," "data file" and "ordinary course of business;" and (iii) seeks confidential and/or proprietary information. In addition, TAP incorporates by reference the objections set forth in paragraph H above. Subject to and without waiving its objections, TAP states that it will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron®.

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.

ANSWER: In addition to its General Objections, TAP objects to this Interrogatory because it: (i) is overly broad and unduly burdensome to the extent it is not limited to the drugs listed in the Complaint and seeks information over a twelve year period of time; (ii) is vague and ambiguous, particularly with respect to the terms "incentive," "offered," "type(s)," "class(es)," "trade eligible" and "general terms;" (iii) seeks confidential and/or proprietary information; and (iv) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, TAP incorporates by reference the objections set forth in paragraph H above. Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists,

responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron®.

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.

ANSWER: In addition to its General Objections, TAP objects to this Interrogatory because it:

(i) is overly broad and unduly burdensome to the extent it is not limited to the drugs listed in the Complaint and seeks information over a twelve year period of time and; (ii) is vague and ambiguous, particularly with respect to the terms "determinations" and "ordinary course of business." In addition, TAP incorporates by reference the objections set forth in paragraph H above. Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron®.

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).

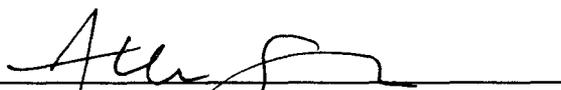
ANSWER: In addition to its General Objections, TAP objects to this Interrogatory because it:

(i) is overly broad and unduly burdensome to the extent it is not limited to the drugs listed in the Complaint and seeks information over a twelve year period of time; (ii) is vague and ambiguous,

particularly with respect to the terms "spread," "marketing," "reference," and "difference;" and (iii) seeks confidential and/or proprietary information. In addition, TAP incorporates by reference the objections set forth in paragraph H above. Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron[®].

Dated: July 22, 2005

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