

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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**REPLY MEMORANDUM OF PFIZER INC. IN SUPPORT OF ITS  
INDIVIDUAL MOTION TO DISMISS THE AMENDED COMPLAINT**

In its Individual Memorandum In Support of Its Motion to Dismiss the Amended Complaint (the “Individual Memorandum”), defendant Pfizer, Inc. (“Pfizer”) demonstrated that the Amended Complaint fails to allege any misconduct by Pfizer with the particularity required by Wisc.Stat.Ann. § 802.03(2).<sup>1</sup> Rather, plaintiff merely lumps Pfizer in an alleged “scheme” with all of the other defendants, with no specificity as to Pfizer. This tactic does not satisfy § 802.03(2). *Friends of Kenwood v. Green*, 2000 WI App 217, ¶ 14, 239 Wis. 2d 78, 619 N.W.2d 271.

Indeed, the Amended Complaint is so utterly deficient as to Pfizer that plaintiff has not even tried to defend it, offering no response to the Individual Memorandum. This is not surprising, because the Amended Complaint is indefensible. Other than describing Pfizer’s state of incorporation and principal place of business (¶ 19), the entire Amended Complaint contains only a single mention of Pfizer. In paragraph 51, plaintiff alleges that Pfizer “has pled guilty to a federal criminal indictment” like the one against defendant TAP Pharmaceutical Products, Inc.

<sup>1</sup> Pfizer also joins in the Defendants’ Reply Memorandum in Support of Their Joint Motion to Dismiss the Amended Complaint.

("TAP"). This averment is purposefully vague, because it is flatly untrue. Pfizer has done no such thing.<sup>2</sup>

In addition, plaintiff fails to address the fact that it does not allege any specific misconduct with respect to any Pfizer drugs. Rather, plaintiff presents a chart purportedly listing "Examples of Spreads from Defendants." The only Pfizer drug listed on this chart is Azithromycin (Zithromax) for which a "spread" of 25% is listed. Plaintiff's Amended Complaint contains no allegations explaining how or why this "spread" could possibly be fraudulent.

Plaintiff's allegations (or lack thereof) fail to satisfy even Wisconsin's general notice pleading standards, let alone the requirements of § 802.03(2). Unless § 802.03(2) is read out of the law, the Amended Complaint must be dismissed as to Pfizer. See *K-S Pharmacies v. Abbott Labs.*, No. 94 CV 2384, 1996 WL 33323859 (Dane Cty. Cir. Ct. May 17, 1996) (setting forth notice pleading requirements).

Dated: April 19, 2005

Respectfully submitted,

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<sup>2</sup> Pfizer did enter into a civil settlement agreement with the federal government in a case that had nothing to do with AWP or WAC pricing, which is the central focus of the Amended Complaint. Further, the settlement did not constitute an admission of any liability or wrongful conduct and specifically stated it was not punitive in purpose or effect. Moreover, the settlement involved Lipitor, a drug for which plaintiff does not even claim to have reimbursed.

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