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OF COUNSEL:

BRADLEY SCOTT WEISS

April 5, 2005

Judith A. Coleman
Clerk of Circuit Court
City County Building, Room GR10
210 Martin Luther King Jr. Blvd.
Madison WI 53703

Via Hand Delivery

Re: *State of Wisconsin v. Amgen Inc., et al.*
Case Number 04-C-1709-C

Dear Ms. Coleman:

Enclosed please find an original and one copy of The State of Wisconsin's Opposition To Defendants' Motion For A Protective Order, along with a certificate of service.

Please file the original of these documents and return a file stamped copy to my office.

By copy of this letter these documents are being served on local counsel.

Thank you in advance for your assistance.

Sincerely,


Charles Barnhill

CB:jlh
Enclosures
Cc: All Local Counsel

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BRADLEY SCOTT WEISS

April 5, 2005

Hon. Moria Krueger
Circuit Court Judge, Branch 7
Dane County Circuit Court
City County Building
210 Martin Luther King Jr. Blvd.
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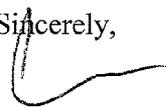
Via Hand Delivery

Re: *State of Wisconsin v. Amgen Inc., et al.*
Case Number 04-C-1709-C

Dear Judge Krueger:

For your convenience, enclosed is a copy Wisconsin's response to defendants' Motion For Protective Order which is now set for a hearing Friday, April 8, 2005. At Mr. Hildebrand's request we are hand delivering a copy to him today. By copy of this letter, this document is being served on local counsel.

Sincerely,


Charles Barnhill

CB:jlh

Enclosure

Cc: All Local Counsel

The Complaint in this case accuses the Defendants of engaging in a scheme to keep state Medicaid programs from learning of the true cost of their drugs by, among other things, publishing phony and inflated average wholesale prices for their drugs which were then used by the states as a basis for their Medicaid reimbursements. Defendants cannot in good faith deny that they have done just this. Indeed, the principal thrust of Defendants' motion to dismiss is that even though they were attempting to hide their true drug prices by publishing misleading pricing information, Wisconsin should have known from other sources exactly what they were up to.

This claim is simply untrue. As paragraph 55 of the First Amended Complaint states:

Although from time to time reports have emerged which indicate one drug or another, at one time or another, could be purchased for less than the AWP, Wisconsin has been powerless to either discover the nature of defendants' fraud or arrest it for many reasons. First, defendants have fraudulently concealed their scheme by publishing AWP's and WAC's as if they were true prices and by hiding their true prices through elaborate cover-ups. To this day Wisconsin has no idea what the true wholesale prices of defendants' drugs are. Second, only recently has the outline of defendants' scheme become known. Indeed, as late as 2000 the United States Congress was sufficiently confused by what defendants were doing that it directed the General Accounting Office to launch a full scale investigation of the market. And it was not until 2003 that the U.S. Department of Health and Human Services was able to modify the Medicare reimbursement system for drugs. Third, the motive for defendants engaging in this scheme—the belief that a larger spread enhances sales prospects—has only recently been discovered, making it clear, for the first time, that the disparities in reported AWP/actual prices were not simply a result of transient market forces but were, instead, the result of a purposefully deceptive scheme by the defendants. Fourth, as a public policy matter it is impracticable to respond effectively to evidence that some drugs, at some time, for some reason, have AWP's higher than their actual purchase price. Wisconsin does not have the resources to investigate each drug company to validate the reported prices of over 65,000 NDC's on an ongoing basis. And Wisconsin is not at liberty simply to slash its drug reimbursement levels in the dark. If it unknowingly reduced its levels of reimbursement to below that which the providers actually pay for drugs, the providers would simply stop supplying the drugs, to the detriment of Wisconsin citizens. Thus, although Wisconsin has now uncovered the outline of defendants' unlawful scheme, the damage resulting to the State and its citizens from defendants continues unabated and will continue until Wisconsin learns the true wholesale prices of defendants' drugs.

Defendants have filed this motion, or one just like it, in some 13 or more different courts and have yet to have a single court permanently dismiss the case. The list of adverse decisions includes the following cases among others: *See In re Lupron Marketing and Sales Practices Litigation*, 295 F.Supp.2d 148, 168 n.19 (D. Mass. 2003); *In re Pharmaceutical Industry Average Wholesale Price Litigation*, 307 F.Supp.2d 196 (D.Mass. 2004); *Swanston v. Tap Pharm. Prods. Inc.*, No. CV 02-4988 (Super. Ct. Maricopa Cty., AZ Nov. 25, 2002); *Arkansas v. Dey, Inc.*, No. CV-04-634 (Cir. Ct. Pulaski Cty. Ark., June 24, 2004); *Connecticut v. Dey, Inc.*, No. X07 CV03-0083296 S (CLD) (Super. Ct. Complex Litig. Docket at Tolland (Conn. Super. Ct., July 26, 2004)) (and three companion cases in which similar motions to strike were denied the same day); *Florida ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp.*, No. 03-CA-3032A (Cir. Ct. Leon Cty. Fla., April 22, 2004); *Massachusetts v. Mylan Labs.*, No. 03-11865, 2005 WL 352556 (D. Mass., Feb. 4, 2005); *Nevada v. Abbott Labs., Inc.*, No. CV02-00260 (Dist. Ct. Washoe Cty. Nev., July 16, 2004); *Walker v. TAP Pharm. Prods., Inc.*, No. CPM L 682-01 (Super. Ct. Cape May Cty. N.J., March 7, 2002); *New York v. Pharmacia Corp.*, No. 905-04 (Supr. Ct. Albany Cty N.Y., June 1, 2004); *Stetser v. TAP Pharm. Prods. Inc.*, No. 01 CVS 5268 (Gen. Ct. Just. New Hanover Cty. N.C., May 6, 2002); *Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc.*, No. GV0-02327 (Dist. Ct. Travis Cty. Tex., Aug. 15, 2003); *West Virginia ex rel. McGraw v. Warrick Pharms. Corp.*, NO. 01-C-3011 (Cir. Ct. Kanawha Cty., W.V., Oct. 31, 2003).¹ These decisions are attached to Wisconsin's response to Defendants' motion to dismiss.

Moreover, Wisconsin is an even more difficult environment for Defendants' motion than many of these states for at least two reasons. First, unlike some states, Wisconsin's consumer

¹ A few courts in fact pleading states have required the plaintiffs to plead more specifically, but so far all have done so successfully.

protection act does not require proof of reliance. *Tim Torres Enterprises, Inc. v. Linscott*, 142 Wis.2d 56, 70, 416 N.W.2d 670 (Ct. App. 1987). All that Wisconsin is required to prove at trial is causation—that is, proof that Defendants’ conduct was a substantial factor in causing Wisconsin’s injuries. *Steinberg v. Jensen*, 204 Wis.2d 115, 124, 553 N.W.2d 820 (Ct. App. 1996). And since it is indisputable that Wisconsin utilized Defendants’ inflated prices as a base point for their drug reimbursements this is not a difficult burden for Wisconsin to shoulder.

Second, Defendants’ motion is dependent upon, *first*, the Court reading and taking judicial notice of hundreds of pages of government and other reports and, *second*, inferring from these references that Wisconsin knew each element of Defendants’ scheme. (The statute of limitations does not even begin to run until a plaintiff knows “all the elements of an enforceable claim.” *Jacobs v. Nor-Lake, Inc.*, 217 Wis.2d 625, 634, 579 N.W.2d 254 (Ct. App. 1998). But the Court can do neither of these things for several reasons. First, contrary to Defendants’ theory, the Complaint—which controls at this stage—alleges that Defendants successfully disguised their overall scheme, including the fact that Defendants were purposely inflating their drug prices so that they could compete on the basis of the spread between the published inflated price and the real price paid by the providers. *See* paragraphs 55 and 56 of the First Amended Complaint. •

Second, the documents Defendants have submitted are not the type of indisputable facts which Wis. Stat. § 902.01 authorizes the Court to take judicial notice of. Indeed, they are chock full of controversial statements that even the Defendants will deny. For example, one of the reports Defendants’ submitted, Ex. 6, describes how Defendant drug manufacturers “have ‘gamed’ the pricing policies of both Medicare Part B and the Medicaid drug rebate program in a

manner that creates economic incentives that lead to increased rather than decreased drug expenditures.” (p. 2, *see also* p. 26)

Third, even if the Court could take judicial notice of Defendants’ reports it would nevertheless be improper for the Court to infer from these reports that Wisconsin was fully acquainted with Defendants’ deceptive scheme and approved it. Such inferences “are not appropriate for judicial notice. They are for the trier of fact.” *In Interest of J.A.B.*, 153 Wis.2d 761, 768, 451 N.W.2d 799 (Ct. App. 1989). In sum, there is no reason to expect Defendants’ theory that Wisconsin knew and approved of its unlawful scheme to prevail on a motion to dismiss.

As a fall back to their position that the Court should stay all discovery because Defendants expect to win their motion to dismiss, Defendants assert that the Court is likely to require Wisconsin to replead because Wisconsin has failed to plead Defendants’ deceptive scheme with the particularity required of a common law fraud claim. But this argument is no more likely to prevail than Defendants’ argument that they are likely to win their motion to dismiss.

As Wisconsin’s response to Defendants’ motion to dismiss shows (page 38 *et seq.*) no Wisconsin case has ever held that the pleading requirements for common law fraud are binding on Wisconsin’s consumer protection statutes or its Medicaid based causes of action. The one Circuit Court case to address the issue rejected this position, *Wisconsin v. Publishers Clearing House*, Case No. 99 CV 27 (Columbia Cty. Cir. Ct. June 30, 2000). (Attached as 28 to Wisconsin’s Appendix Of Authorities, Opposition Memorandum To Motion To Dismiss.) This holding is entirely consistent with the history of Wis. Stat. § 809.02(1)(a), the traditional treatment by Wisconsin courts of the consumer protection act as a cause of action separate and

distinct from a common law fraud claim, *Kailin v. Armstrong*, 252 Wis.2d 676, 643 N.W.2d 132 (Ct. App. 2002), and the most thoughtful analogous federal and state decisions in other jurisdictions. Since Defendants' pleading argument is based on the theory that Wisconsin had to meet the requirements for pleading common law fraud, and since that argument is wrong,² Defendants have failed to meet their obligation to show that they are likely to prevail on their motion to require Wisconsin to replead.

Defendants have cited no Wisconsin authority which supports staying discovery simply because a motion to dismiss has been filed. Indeed, the Wisconsin rule is the opposite: "The presumption is that no order is necessary; the movant must show a positive reason (*i.e.*, "good cause") for the entry of an order. It is insufficient merely to argue that no reason exists not to enter an order." *Earl v. Gulf & Western Mfg. Co.*, 123 Wis.2d 200, 209, 366 N.W.2d 160 (1985). The federal rule is the same, as the decision in *Kron Medical Corporation v. Groth*, 119 F.R.D. 636 (M.D.N.C. 1988) makes clear:

A motion to stay discovery is tantamount to a request for a protective order prohibiting or limiting discovery pursuant to Rule 26(c), Fed.R.Civ.P. The moving party bears the burden of showing good cause and reasonableness for such an order. See *Medlin v. Andrew*, 113 F.R.D. 650, 652-53 (M.D.N.C. 1987)- (depositions). Motions for a protective order which seek to prohibit or delay discovery are not favored. *Id.* In considering such motions, the Court needs to remain mindful of its responsibility to expedite discovery and minimize delay. *Parkway Gallery Furn. V. Kittinger/Pennsylvania*, 116 F.R.D. 363, 365 (M.D.N.C. 1987). Disruption or prolongation of the discovery schedule is normally in no one's interest. A stay of discovery duplicates costs because counsel must reacquaint themselves with the case once the stay is lifted. Matters of importance may be mislaid or avenues unexplored. A case becomes more of a management problem to the Court when it leaves the normal trial track. While time may heal some disputes, in others it merely permits more opportunity for festering.

Id. at 637-38.

² As Wisconsin points out in its response to Defendants' Motion To Dismiss, the Complaint does, in any event, plead its claims in detail sufficient to satisfy the common law fraud requirements.

Defendants cannot meet their burden of showing good cause. Their track record on motions to dismiss is abysmal, and Wisconsin statutes and case law are particularly antithetical to Defendants' arguments. Moreover, to prevail on their argument that Wisconsin must replead, Defendants must first convince the Court to attach the common law pleading requirements to Wisconsin's consumer protection statute, something no Wisconsin court has ever done.³

B. There Is a Perfectly Sensible Way of Proceeding on Discovery That Will Hardly Burden the Defendants.

Defendants' memorandum tries to make it appear that Wisconsin has saddled them with an enormous number of discovery requests. That is not so. Wisconsin has made six document requests and propounded five interrogatories. Further, a significant amount of the material requested by Wisconsin is retained by Defendants in electronic form making it relatively simple and inexpensive to produce, however voluminous. If there are specific problems with any of these requests Wisconsin is certainly willing to meet and discuss them with the Defendants.

This highlights one of the problems with Defendants' position. Defendants have made no effort to resolve any discovery issues with Wisconsin. Instead, Defendants requested and obtained more time to reply to Wisconsin's discovery request and then simply filed a motion to halt all discovery. Bypassing discussions with counsel for Wisconsin was a mistake for there is a sensible way to accommodate the discovery interests of all parties.

There are several things the parties can do in connection with discovery while the motion to dismiss is taken under advisement that would keep the case moving along at little cost or burden to the Defendants. First, the parties could and should meet and try to agree on a confidentiality order. This could be done in the next 30 days. In other states the content of the

³ Even if Defendants were correct they would then have to show that the Complaint, which clearly meets the standards this Court set forth in *K-S Pharmacies*, fails to plead with enough specificity to inform Defendants of what they are accused.

confidentiality order was the subject of dispute. If that is to be the case here the parties should get on with it.

Second, various of the Defendants have produced documents, predominantly in electronic form, to other states or private litigants who are suing them in other courts on theories similar to, or the same as, those relied on by Wisconsin. Indeed, in Kentucky a number of the Defendants here, Schering, Warrick, and Dey, have agreed to continue with full-scale discovery while their motion to dismiss is pending. The Defendants should produce to Wisconsin those documents they have already produced to other states and litigants to the extent that Wisconsin has requested them. Doing so is hardly burdensome.

Third, Defendants should be ordered to respond to Wisconsin's discovery requests so that if there are objections to certain requests (such as disputes over definitions contained in the requests) the parties can meet and begin trying to resolve them informally. There are obviously going to be some problems. Attached hereto as Appendix A is the response of Pharmacia, one of only two Defendants to file a written discovery response to date. This response is nothing more than a fusillade of objections—Pharmacia did not agree to produce a single document. The parties should begin to try to work these issues out so that future months are not wasted doing so.

In short, while Wisconsin believes that the Defendants have not begun to carry their burden of showing good cause for delaying all discovery, Wisconsin is amenable to a discovery schedule that eases the burden on Defendants over the next couple of months. Once the parties have completed the discovery outlined above they can revisit the issue of what additional discovery should be forthcoming.

C. Wisconsin and the Court Will Be Prejudiced By the Open Ended Delay Defendants Are Seeking.

Defendants claim they will be prejudiced by having to respond to Wisconsin's discovery; but the reverse is true. If Defendants' open ended motion is granted, Wisconsin and the Court will be prejudiced.

Wisconsin will be prejudiced in two ways. First, as the Complaint makes clear, Defendants are continuing to disguise the true prices of their drugs to providers, and continuing to publish phony, inflated prices for these drugs. This makes it next to impossible for Wisconsin to estimate the true acquisition cost of the drugs. As a result, Wisconsin, which must err on the side of caution in connection with its reimbursements lest it pay providers so little that they refuse to treat Wisconsin residents, continues to pay millions of dollars more for drugs than it should, significantly increasing the deficit of its Medicaid and Senior Care programs, and the cost to the taxpayers who support them. The sooner this case is resolved, the sooner those overpayments will cease.

Second, some Defendants have approached Wisconsin about a possible settlement. To evaluate Wisconsin's claims significant discovery from third party witnesses (who possess pricing information not available to Wisconsin) will be required. Granting Defendants' motion will halt such settlement possibilities in their tracks.

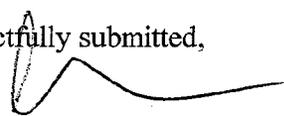
Finally, the Court and its calendar will be prejudiced if Defendants' motion is granted. As the attached discovery response by Pharmacia presages, Defendants can be expected to take a hard line on discovery (and have done so in connection with litigation in other states). If that is the case then the parties ought to be about their business of confronting these issues as soon as possible so that this case does not drag on unnecessarily.

CONCLUSION

Defendants have not cited a single Wisconsin case endorsing the notion that all discovery should be stayed once a motion to dismiss is filed. Such a procedure, generally applied, would add months to the trial preparation process. Moreover, there is nothing about this case warranting special treatment. As Wisconsin has clearly shown, Defendants do not come close to meeting the burden they assumed of showing good cause for their motion. The Defendants' record of uniformly losing similar motions to dismiss hardly supports Defendants' contention that this Court will dismiss Wisconsin's case. Further, Wisconsin has outlined a discovery program which will not burden the Defendants whatever the outcome of Defendants' motion. And, finally, delaying discovery and the resolution of discovery disputes will prejudice Wisconsin, and this Court's calendar. For all these reasons Defendants' motion should be denied.

Dated this 5th day of April, 2005.

Respectfully submitted,



One of Plaintiff's Attorneys

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APPENDIX A

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN INC., ET AL.,

Defendants.

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Case No.: 04 CV 1709

**PHARMACIA CORPORATION'S RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to Wisconsin Rule of Civil Procedure 804.09, defendant Pharmacia Corporation ("Pharmacia"), by its attorneys, hereby asserts the following responses and objections to the First Set of Requests of Production 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 Requests; (ii) the right to object on any ground to the use of the documents or information produced in response to the Requests at any hearings or at trial; or (iii) the right to object on any ground at any time for further responses to the Requests; 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 these 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 Requests 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 Requests 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 Requests, 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 Requests 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 Requests 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 Requests 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 Requests 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 these Requests. 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 Requests 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. Subject to and without waiving any objection set forth herein, Pharmacia will produce non-privileged, responsive documents and make them available for review, inspection and copying at the office of Morgan, Lewis & Bockius, LLP, 1701 Market Street, Philadelphia, PA, 19103, unless other mutually-agreeable arrangements are made.

13. 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.

14. 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."

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. Pharmacia 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, 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.”

21. 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.

22. Pharmacia objects to the State’s demand, noted by an asterisk after Request Nos. 1, 2 and 4 that: “*Documents are to be produced in electronic format with all documentation required to identify files and fields by name, content, and format, and explanations for all coded data. Acceptable electronic format for documents which in their native form are organized as word processing documents, or printed documents other than tabular reports, (documents comprised principally of text, or of a combination of text and graphics) is searchable Adobe Acrobat-portable document format (.pdf). Acceptable electronic format for documents which in their native form are organized as spreadsheets is Microsoft Excel format (.xls). Acceptable electronic format for documents which in their native form are comprised principally of tabular data, or tabular reports with fixed column widths or field lengths is fixed-field ASCII text (.txt). Acceptable electronic format for documents which in their native form are comprised principally

of electronic data in one or more data tables, files, or other data entities, is delimited ASCII text (.csv).” to the extent that it imposes discovery obligations that are broader than, or inconsistent with, Pharmacia’s obligations under the Wisconsin Rules of Civil Procedure. Pharmacia incorporates by reference its objection to the definition of the term “Document.”

**SPECIFIC RESPONSES AND OBJECTIONS TO
REQUEST FOR PRODUCTION OF DOCUMENTS**

REQUEST NO. 1: All National Sales Data for each Targeted Drug during the Defined Period of Time.*

RESPONSE TO REQUEST NO. 1: In addition to the General Objections set forth above, Pharmacia objects to Request 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 Request on the grounds that it is vague and ambiguous with respect to the language “all.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “National Sales Data,” “Targeted Drug” and “Defined Period of Time.” Pharmacia objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pharmacia objects to this Request 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 Request to the extent it seeks confidential business, trade secret or proprietary information.

REQUEST NO. 2: All Documents containing AMPs as reported or calculated by you for the Targeted Drugs or a spread sheet or database showing all reported and calculated AMPs for each Targeted Drug over the Defined Period of Time which lists when such AMPs were reported or calculated, and the quarter to which each AMP applies.*

RESPONSE TO REQUEST NO. 2: In addition to the General Objections set forth above, Pharmacia objects to Request 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 request on the grounds that it is vague and ambiguous with respect to the language “all,” “reported or calculated,” “you,” “spread sheet” and “database.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “Documents,” “AMPs,” “Targeted Drug” and “Defined Period of Time.” Pharmacia objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pharmacia objects to this Request 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 Request to the extent it seeks confidential business, trade secret or proprietary information.

REQUEST NO. 3: All Documents created by you, or in your possession, that discuss or comment on the difference (or Spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price (to any purchaser) of any of defendants' Pharmaceuticals or any Pharmaceuticals sold by other manufacturers. Documents which merely list the AWP or WAC price and the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this request.

RESPONSE TO REQUEST NO. 3: In addition to the General Objections set forth above, Pharmacia objects to Request 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 request on the grounds that it is vague and ambiguous with respect to

the language “all,” “created,” “you,” “in your possession,” “discuss or comment,” “difference,” “Average Wholesale Price,” “Wholesale Acquisition Cost,” “list or actual sales price,” “purchaser,” “defendants’ Pharmaceuticals,” “Pharmaceuticals sold by other manufacturers,” “discussion” and “prices.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “Documents,” “Spread” and “Pharmaceuticals.” Pharmacia objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin, or to the relevant time period involving the State’s claims. Pharmacia objects to this Request 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 objects to this Request to the extent it seeks confidential business, trade secret or proprietary information. Pharmacia further objects to this Request to the extent it seeks documents that are more appropriately sought from third parties, including other defendants, to whom requests may be directed.

REQUEST NO. 4: All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of Plaintiff’s First Set of Interrogatories to All Defendants.*

RESPONSE TO REQUEST NO. 4: In addition to the General Objections set forth above, Pharmacia objects to Request 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 Request on the grounds that it is vague and ambiguous with respect to the language “all,” “average sales price,” “composite price” and “you.” Pharmacia incorporates by reference its objections to the State’s definitions of the term “documents.” Pharmacia objects to this Request to the extent it seeks information not relevant to the State’s claims, which are

limited to Wisconsin. Pharmacia objects to this Request 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 Request to the extent it seeks confidential business, trade secret or proprietary information.

Subject to and without waiver of these objections, Pharmacia Incorporates its Response to Interrogatory No. 1.

REQUEST NO. 5: All Documents sent to or received from First DataBank, Redbook and Medi-span regarding the price of any Targeted Drug.

RESPONSE TO REQUEST NO. 5: In addition to the General Objections set forth above, Pharmacia objects to Request No. 5 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 request on the grounds that it is vague and ambiguous with respect to the language “all,” “received,” “regarding” and “price.” Pharmacia incorporates by reference its objections to the State’s definitions of the terms “Documents,” and “Targeted Drug.” Pharmacia objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin, or to the time period relevant to this litigation. Pharmacia objects to this Request on the grounds that it assumes that Pharmacia communicated with “First DataBank, Redbook and Medi-span.” Pharmacia objects to this Request 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 Request to the extent it seeks confidential business, trade secret or proprietary information.

REQUEST NO. 6: All Documents in your possession prepared by IMS Health regarding a Targeted Drug or the competitor of a Targeted Drug regarding pricing, sales or market share.

RESPONSE TO REQUEST NO. 6: In addition to the General Objections set forth above, Pharmacia objects to Request No. 6 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 Request on the grounds that it is vague and ambiguous with respect to the language "all," "in your possession," "prepared," "IMS Health," "regarding," "competitor," "pricing, sales or market share." Pharmacia incorporates by reference its objections to the State's definitions of the terms "documents," and "targeted drug." Pharmacia objects to this Request to the extent it seeks information not relevant to the State's claims, which are limited to Wisconsin, or to the time period relevant to this litigation. Pharmacia objects to this Request to the extent it seeks documents that are not within Pharmacia's possession, custody, or control or are more appropriately sought from third parties, including other drug manufacturers, including other defendants, to whom requests may be directed. Pharmacia objects to this Request 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 Request to the extent it seeks confidential business, trade secret or proprietary information.

Dated: March 23, 2005

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