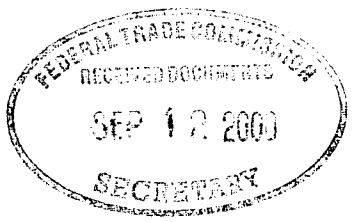
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
HOECHST MARION ROUSSEL, INC., a corporation,	)	Docket No. 9293
	)	
CARDERM CAPITAL L.P., a limited partnership,	)	
	)	
and	)	
	)	
ANDRX CORPORATION, a corporation.	)	
	)	



JOINT MOTION TO AMEND, MODIFY AND REISSUE THE PROTECTIVE ORDER GOVERNING DISCOVERY MATERIALS TO BE PRODUCED BY NON-PARTIES KAISER FOUNDATION HEALTH PLAN, INC., BLUECROSS BLUESHIELD OF MICHIGAN, AND UNITED HEALTHCARE AND MEMORANDUM IN SUPPORT THEREOF

Nonparties Kaiser Foundation Health Plan, Inc., BlueCross BlueShield Of Michigan, and United HealthCare (collectively referred to herein as "Third-Party Payers") have each been served with subpoenas *duces tecum* from one or more of the Respondents in the above-captioned matter. The materials sought by the subpoenas include highly sensitive commercial and proprietary information. This information is not adequately protected by the Protective Order Governing Discovery Material ("Protective Order") entered in the above-captioned matter.

The Third-Party Payers therefore respectfully move for the amendment and modification of the Protective Order consistent with that proposed by the Third-Party Payers which is attached as Exhibit A to the Third-Party Payers' Memorandum of Points and Authorities in support of this Motion (hereinafter referred to as the "Third-Party Payers' Proposed Order"). In particular, the Third-Party Payers request the amendment and/or modification of paragraphs 2(b), 2(c), 4, 4(c), 5, 6(b), 6(c), 6(e), 7(a), 8, 11 and 13(c) of the Terms and Conditions of the Protective Order most recently amended and reissued on August 7, 2000. The Third-Party Payers also request that their

proposed paragraph 20 be included in the Terms and Conditions of the Protective Order. Although this is a fairly narrow issue, it is of extreme importance to the Third-Party Payers since disclosure of their highly-sensitive, commercially valuable and proprietary information is at stake. The present Protective Order does not adequately address the Third-Party Payers' real and legitimate concerns. The modified and amended Terms and Conditions set forth in the Third-Party Payers' Proposed Order will ensure that information provided in the course of this litigation will be adequately protected from misuse or improper use outside of this litigation.

This Motion is based on the accompanying Memorandum of Points and Authorities, the Declarations of Dale Kramer and Shawn Lisle attached thereto, all papers and documents on file with the Commission, and upon such other evidence and further arguments that may be presented at the hearing on this matter.

WHEREFORE, the Third-Party Payers respectfully request that the Protective Order be amended and modified consistent with the Third-Party Payers' Proposed Order, or in a form substantially similar thereto.

Respectfully submitted,

Porter, Wright, Morris & Arthur LLP

By: 

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Attorneys for Third-Party Payers

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a corporation,	)	
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ANDRX CORPORATION,	)	
a corporation.	)	

THIRD-PARTY PAYERS' MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Nonparties Kaiser Foundation Health Plan, Inc. (hereinafter "Kaiser"), BlueCross BlueShield of Michigan, and United HealthCare (collectively referred to herein as "Third-Party Payers," unless otherwise indicated) have each been served with subpoenas *duces tecum* from one or more of the Respondents in the above-captioned matter. The materials sought by the subpoenas include highly sensitive commercial and proprietary information. As explained herein, this information is not adequately protected from compromise by the Protective Order Governing Discovery Material ("Protective Order") entered in the above-captioned matter.

As a result, the Third-Party Payers respectfully request that the amendment and modification of the Protective Order consistent with the Third-Party Payers' proposed protective order attached hereto as Exhibit A (hereinafter "Proposed Order"). In particular, the Third-Party Payers request that the amend and/or modification of paragraphs 2(b), 2(c), 4, 4(c), 5, 6(b), 6(c), 6(e), 7(a), 8, 11, and 13(c) of the Protective Order most recently amended and reissued on

August 7, 2000 by the Order of The Honorable D. Michael Chappell. Additionally, the Third-Party Payers request that their proposed paragraph 20 be included in the Protective Order. The terms and conditions contained in the Third-Party Payers' Proposed Order will ensure that any highly sensitive commercial and proprietary information that is provided by the Third-Party Payers will be adequately protected from misuse by and disclosure to persons and entities that could use such information in ways detrimental to the Third-Party Payers' business interests.

II. Factual Background

1. On or about June 12, 2000, Respondent Hoechst Marion Roussel, Inc. ("HMRI") served or caused to be served on nonparty Kaiser, a subpoena *duces tecum* containing separate requests for the production of documents. (See Declaration of Dale Kramer, ¶3, attached hereto as Exhibit B).

2. On or about June 8, 2000, Respondent HMRI served or caused to be served on nonparty BlueCross BlueShield of Michigan, a subpoena *duces tecum* containing requests for the production of documents. (See Declaration of Shawn Lisle, ¶3, attached hereto as Exhibit C).

3. On or about June 7, 2000, Respondent HMRI served or caused to be served on nonparty United HealthCare, a subpoena *duces tecum* containing separate requests for the production of documents. (See Lisle Declaration, ¶4).

4. The return date of each of the above subpoenas was originally extended until June 29, 2000, by HMRI's outside counsel in this litigation, D. Edward Wilson, Esq. of the law firm Shook, Hardy & Bacon. Pursuant to further discussions between Mr. Wilson and counsel for Third Party Payers, the return date was extended until July 13, 2000. If an agreement was not reached by that date, then the Third-Party Payers had an additional five business days to seek relief from the Administrative Law Judge. (See Lisle Declaration, ¶5).

5. Several telephonic conferences ensued between counsel for Third-Party Payers and HMRI's outside counsel. On July 18, 2000, an agreement was reached whereby the Third-Party Payers agreed to produce, on a rolling basis, high-level core documents relating to the following: (1) the Third-Party Payers' drug formularies and formulary manuals (if any) for "cardiovascular pharmaceutical products"; (2) the Third-Party Payers' studies relating to "substitutability therapeutics" for Cardizem CD; (3) the names of the pharmacy benefits managers ("PBM's") utilized by United HealthCare and BlueCross BlueShield of Michigan; (4) the contracts held by Kaiser for Diltiazem; (5) the names of the persons at United HealthCare and BlueCross BlueShield of Michigan who are chiefly responsible for the PBM contracts; and (6) the names of the persons at Kaiser chiefly responsible for pharmaceutical manufacturer contracts. If after reviewing these core documents, HMRI's outside counsel requires additional documents, then it was agreed that counsel would so inform the Third Party Payers' counsel. (See Lisle Declaration, ¶6).

6. The Protective Order in this matter was first entered on April 28, 2000. It was subsequently amended by The Honorable D. Michael Chappell, first on May 8, 2000 and then again on August 7, 2000, to include additional Terms and Conditions. When the initial Protective Order and the first amendment thereto was entered, the Third Party Payers had not been subpoenaed. As a result, the Third-Party Payers had no input in drafting the Protective Order and did not have the opportunity to negotiate its terms with the parties to the underlying action. (See Lisle Declaration, ¶7).

7. On or about June 22, 2000, HMRI's outside counsel faxed to counsel for the Third Party Payers, a copy of the Protective Order dated April 28, 2000, the May 8, 2000 amendment thereto, and proposed additional language to be added to paragraph 2 of the Terms

and Conditions section of the April 28, 2000 Protective Order as amended. (See Lisle Declaration, ¶8).

8. During a July 11, 2000 telephonic conversation, HMRI's outside counsel, Mr. Wilson, informed counsel for the Third Party Payers that HMRI and the other litigants were negotiating yet additional modifications to paragraph 2 of Protective Order. Mr. Wilson faxed a copy of the newly proposed modifications to the Third-Party Payers' counsel. These proposed modifications purported to place limitations on the disclosure of certain documents designated "Restricted Confidential, Attorneys Eyes Only." Mr. Wilson indicated that if the Third Party Payers had any comments on the newly proposed modifications to paragraph 2 of the Protective Order, that they would have to be provided to him no later than noon the following day. Counsel for the Third-Party Payers advised Mr. Wilson that this would be extremely difficult to accomplish given such short notice and because of the inability to reach each respective client to discuss the matter due to the clients' unavailability that day. (See Lisle Declaration, ¶9).

9. On July 18, 2000, after conferring with each respective client, counsel for the Third Party Payers faxed Mr. Wilson their proposed modifications to the Protective Order. To date, no response thereto has been received, except for a faxed copy of the Order dated August 7, 2000 Granting Consent Motion to Amend and Reissue Protective Order with the attached Second Amended Protective Order Governing Discovery Material from HMRI's counsel. (See Lisle Declaration, ¶10).

10. Sometime in July, 2000, Respondent Andrx Corporation ("Andrx") served or caused to be served on nonparty United HealthCare, subpoenas *duces tecum* and subpoenas *ad testificandum*, directed to Dean Goldberg and Eric Bergen, employees of United HealthCare. The subpoenas *duces tecum* are identical except for the name of the person to whom directed.

Both subpoenas *duces tecum* contain twenty-five separate requests for production of documents. (See Lisle Declaration, ¶11).

11. On August 8, 2000, counsel for United HealthCare conferred with Andrx's outside counsel, Sharon Sash, Esq., of the law firm Solomon, Zauderer, Ellenhorn, Frischer & Sharp, about the subpoena served on United HealthCare. During that conference, Ms. Sash and counsel for United HealthCare agreed to substantially the same document production terms and conditions which the Third-Party Payers and HMRI previously agreed. (See paragraph 5, supra.) (See Lisle Declaration, ¶12).

12. During August, 2000, Andrx also served or caused to be served on Tony Baruetta and Dale Kramer, both employees of nonparty Kaiser, identical subpoenas *duces tecum* each containing twenty-five separate requests for the production of documents. Messrs. Baruetta and Kramer were also each served by Andrx with a subpoena *ad testificandum.* (See Kramer Declaration, ¶4.)

III. Argument

In a proceeding such as this, the Administrative Law Judge ("ALJ") may enter an order to protect a party or other person from annoyance, oppression, or undue burden or expense. 16 C.F.R. §3.31(d). Similarly, Federal Rule of Civil Procedure 26(c)(7) explicitly provides for issuance of a protective order "that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way[.]" This criteria applies equally to administrative proceedings, such as this, where the statute governing such proceedings does not contain its own provisions governing enforcement of subpoenas. See United States v. Allen, F. Supp 468, 475 (W.D. Wisc. 1983) (holding that the federal rules of procedure "apply to subpoena enforcement proceedings, except to the extent that the rule would

conflict with a statute"); New Orleans Public Service, Inc. v. Brown, 507 F.2d 160, 165 (5th Cir. 1975) ("No different standard should be applied to the handling of this [administrative] subpoena than is ordinarily the rule under [Rule 45]."); see also Federal Trade Commission v. Dresser Industries, No. 77-44, 1977 WL 1394 (D.D.C) (April 26, 1977) (applying an undue burden standard in enforcing an FTC subpoena).

In this case, HMRI and Andrx seek from the Third-Party Payers confidential commercial information. This information includes that which the Third-Party Payers have specifically agreed to produce to HMRI and Andrx, which includes drug formularies and formulary manuals, studies relating to "substitutability therapeutics" for Cardizem CD, and contracts and related information that the Third-Party Payers have with PBM's and pharmaceutical manufacturers or suppliers. Additionally, the subpoenas *duces tecum* served by HMRI ask the Third-Party Payers to produce training manuals, pharmacy benefit plans, contract negotiations and contracts for drugs other than Cardizem CD, confidential drug pricing information, confidential sales information and analysis, formularies, and substitutability studies on all cardiovascular pharmaceutical products.[1] Similarly, the subpoenas *duces tecum* served by Andrx on Kaiser and United HealthCare ask for information relating to sales volume, confidential drug pricing information, market share and other financial data for the bioequivalent or generic versions of certain pharmaceutical products, documents relating to the standards of care for the treatment of hypertension and/or angina with certain pharmaceutical products, substitutability studies for certain cardiovascular pharmaceuticals, and contracts and contract negotiations with Respondents

[1] See Kramer Declaration at ¶3 and exhibits referenced therein (HMRI Doc. Request Nos. 1-6, 8-9, 11-12); Lisle Declaration at ¶¶2-3 and exhibits referenced therein (HMRI Doc. Request Nos. 1-6, 8-9, 11-12).

HMRI and Andrx as well as other pharmaceutical manufacturers and suppliers.[2]

The foregoing information is highly sensitive commercial information, not currently available to the public, the competitors of Third-Party Payers, or pharmaceutical manufacturers and suppliers who are the subject of the pricing and contractual information sought. (See e.g., Kramer Decl., ¶7). If disclosed without adequate protection, such information would enable the competitors, pharmaceutical manufacturers and suppliers, and others to capitalize on and unfairly exploit Third-Party Payers' research, development, and other trade secrets, thereby placing Third-Party Payers at a severe competitive disadvantage and causing them irreparable harm. (See e.g., id.) Moreover, disclosure of drug pricing and related information could have severe deleterious effects on market competition generally for the relevant drug products and classes.

For example, as explained in the declaration submitted by Mr. Kramer, Kaiser enjoys a significant advantage over its competitors based upon its ability to control its pharmaceutical costs by employing specific strategies in negotiating unique contract structures with pharmaceutical manufacturers and direct suppliers. (See Kramer Decl., ¶¶8-9.) Accordingly, Kaiser closely guards its pricing and negotiating strategies to preserve the competitive advantage. (See id. at ¶8.) Dissemination of this confidential information and these strategies would be detrimental because it would seriously impair Kaiser's ability to negotiate successful future pharmaceutical pricing with manufacturers and suppliers, including HMRI and Andrx who are significant suppliers to Kaiser. (See id. at ¶9.)

Indeed, the dissemination of confidential pricing information would reduce competition among drug manufacturers and suppliers that compete for Kaiser's business because price levels,

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[2] See Kramer Declaration at ¶4 and exhibits referenced therein (Andrx Doc. Request Nos. 1-16); Lisle Declaration at ¶¶11 & 13 and exhibits referenced therein (Andrx Doc. Request No. 1-16).

structures and strategies would quickly become known in the manufacturing and supply industry. (See id. at ¶10). Additionally, Kaiser has expended significant resources and many millions of dollars developing its clinical protocols, including proprietary models used to select, classify and price pharmaceuticals. (See id. at ¶11.) If Kaiser's competitors or outside consultants were to obtain this information, then the competitive advantage would erode very quickly. Competitors could utilize this proprietary information to their advantage in their own contract negotiations with drug manufacturers and suppliers, and could also use this information in constructing their own cost control models. (See id.) Additionally, consultants armed with this highly valuable information would be in a position to impart this "new-found expertise" to Kaiser's competitors. (See id.) United HealthCare, BlueCross Blue Shield of Michigan, and other similarly situated third-party payers share similar concerns about their proprietary information.

Courts have addressed similar predicaments of subpoenaed businesses by crafting appropriate protective orders aimed at protecting sensitive information such as contracts, research and development, and pricing information that if revealed, would put a party at a competitive disadvantage. See Davis v. AT&T Corp., Civ. No. 98-0189S, 98 U.S. Dist Lexis 20417 (December 23, 1998) (protective order issued for research and development information on speech recognition technology); Chesa Int'l, Ltd. V. Fashion Assocs., Inc., 425 F.Supp 234 (S.D.N.Y.), aff'd mem., 573 F.2d 1288 (2d Cir. 1977) (protective order issued for customer lists); Maritime Cinema Serv. Corp v. Movies En Route, Inc., 60 F.R.D. 587 (S.D.N.Y. 1973) (protective order for license fees and oral contracts with customers). Protection of such information is warranted where disclosure of the information would cause a cognizable harm. Zenith Radio Corp. v. Matsushita Electric Industrial Co., 529 F.Supp. 866, 889-90 (E.D.P.A. 1981). Whether commercial information warrants protection in a particular case depends on "1)

the extent to which the information is known outside the business; 2) the extent to which the information is known to those inside the business; 3) the measures taken to guard the secrecy of the information; and 4) the value of the information to the business and its competitors." Sullivan Marketing, Inc., v. Valassis Communications, Inc., 1994 U.S. Dist. LEXIS 5824, *4 (S.D.N.Y. 1994).

As previously explained, release of the information sought by the subpoenas would result in irreparable harm on Third Party Payers because such information could be unfairly used by the Respondents, their experts and consultants. As it currently stands, the Protective Order does not adequately prevent the use of Third-Party Payers' information by (1) competitors, (2) pharmaceutical manufacturers and suppliers with whom the Third-Party Payers' contract, and (3) experts, consultants, and others who may later use, share, or sell this sensitive commercial information in a manner detrimental to the Third-Party Payers.

The Third-Party Payers' Proposed Order (see Exhibit A hereto) enhances the protection of this sensitive commercial information. First, the Proposed Order will modify the provision relating to highly sensitive documents designated "RESTRICTED CONFIDENTIAL, ATTORNEYS EYES ONLY, FTC Docket No. 9293." In this regard, the Third-Party Payers seek to limit disclosures of this type of material to:

> * * * (a) Commission counsel, their associated attorneys, FTC Commissioners, and other employees of the FTC; (b) outside counsel of record for the Respondents ("outside counsel"), their associated attorneys and other employees of their law firm(s), provided they are not employees of a Respondent; and (c) independent consultants or experts retained by the Commission or outside counsel for Respondents for purposes of assisting them in these actions, provided, however, that such person(s) are not presently employed by, nor have any present intention to be employed by any Respondent, competitor of any

> Respondent, any pharmaceutical company, any pharmacy benefits management company, or any competitor of the Third Party which provided the documents. * * *

(See Exhibit A (Terms and Conditions, ¶2(b); see also (Terms and Conditions ¶¶4, 4(c), 7(a), 6(b), 6(c), 6(e), 7(a) and paragraph 4(b) of the "Declaration Concerning Protective Order Governing Discovery Material")). Under the Proposed Order, documents so designated may not be disclosed to any other person, including persons employed by any entity that sells services or information to third party payers/insurers. (See Exhibit A (Terms and Conditions, ¶2(b).) Similarly, documents designated as "Confidential Discovery Material" also deserve similar protections for the reasons already set forth above. (See Exhibit A (Terms and Conditions, ¶¶5, 8, 11, and 13(c).) The foregoing proposed restrictions will safeguard the information which these nonparty Third-Party Payers have been asked to produce. These proposals are more than reasonable given the nature and inherent sensitivity of the documents requested. Moreover, parties unduly burdened by these restrictions may seek appropriate relief from the Administrative Law Judge if necessary. (See Exhibit A (Terms and Conditions, ¶2(c)).

These modifications will ensure that use of commercially sensitive documents is confined to this litigation and is not misused by the Respondents, their experts or consultants in a manner that would be detrimental to Third-Party Payers. At the same time, the changes accommodate HMRI's and Andrx's right to discovery in this litigation. See Chesa, 425 F.Supp. at 237 (upholding a protective order provision that data produced would be used by plaintiff's attorneys only and could not be divulged to their client or anyone not in the employ of the law firm); Maritime Cinema, 60 F.R.D. at 590 (providing for limited disclosure of sensitive contract information to plaintiff's counsel only, for use in litigation after which the information would be deposited to the court under seal).

Finally, the Proposed Order also includes a new provision that excepts from the production of documents all information and references that could reveal personal information about patients and insureds, which may be in violation of applicable federal and state statutes and regulations. (See Exhibit A, (Terms and Conditions, ¶20.)) This ensures that conflicts will not arise between Third Party Payers' obligation to produce documents pursuant to subpoenas and the legal restrictions placed on the disclosure of patients' and insureds' information.

IV. Conclusion

Based on the foregoing, the Third Party Payers respectfully request that the amendments and/or modifications to the Protective Order sought by the Third-Party Payers be granted, and that a new protective order be issued consistent with the Proposed Order attached hereto as Exhibit A, or in a form substantially similar thereto.

Respectfully submitted,

Porter, Wright, Morris & Arthur LLP

By: 

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Attorneys for Third-Party Payers

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CERTIFICATE OF SERVICE

I, Shawn Lisle, hereby certify that on September 12, 2000, I caused a copy of the Joint Motion to Amend, Modify and Reissue the Protective Order Governing Discovery Materials to be Produced by Non-Parties Kaiser Foundation Health Plan, Inc., BlueCross BlueShield of Michigan, and United HealthCare and Memorandum of Points and Authorities Thereof , to be served upon the following persons by First-Class U.S. Mail:

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Donald S. Clark, Secretary
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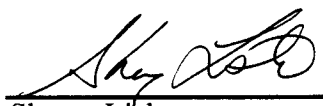

Shawn Lisle

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FEDERAL TRADE COMMISSION

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and	)	
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ANDRX CORPORATION,	)	
a corporation.	)	
	)	

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

For the purpose of protecting the interest of the parties and third parties in the above-captioned matter (the "Matter") against improper use and disclosure of confidential information submitted or produced in connection with this Matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

DEFINITIONS

1. "Matter" means the matter captioned *In the Matter of Hoechst Marion Roussel, Inc., Carderm Capital L.P., and Andrx Corporation*, Docket Number 9293, pending before the Federal Trade Commission, and all subsequent appellate or other review proceedings related

thereto.

2. "Commission" or "FTC" means the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting or purporting to act on its behalf, excluding persons retained as consultants or experts for purposes of this Matter.

3. "HMR" means Aventis Pharmaceuticals Inc., formerly known as Hoechst Marion Roussel, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Parsippany, New Jersey.

4. "Carderm" means Carderm Capital L.P., a limited partnership organized, existing, and doing business under and by virtue of the laws of the Delaware, with its office and principal place of business located at Hamilton, Bermuda.

5. "Andrx" means Andrx Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Fort Lauderdale, Florida.

6. "Party" means either the FTC, HMR., Carderm or Andrx.

7. "Respondents" means HMR, Carderm and Andrx.

8. Outside Counsel" means the law firm(s) that is/are counsel of record for Respondents in this Matter and its/their associated attorneys, persons regularly employed by such law firm(s) (including legal assistants, clerical staff and information management personnel) and temporary personnel retained by such law firm(s) to perform legal or clerical duties, or to provide logistical litigation support with regard to this Matter, provided that any attorney associated with Outside Counsel shall not be a director, officer or employee of Respondents. The term Outside

Counsel does not include persons retained as consultants or experts for the purposes of this Matter.

9. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Discovery Material to any of the Parties. For purposes of Confidential Discovery Material of a Third Party that either is in the possession, custody or control of the FTC or has been produced by the FTC in this Matter, the Producing Party shall mean the Third Party that originally provided the Confidential Discovery Material to the FTC. The Producing Party shall also mean the FTC for purposes of any document or material prepared by, or on behalf of the FTC.

10. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a party to this Matter -- including without limitation Biovail Corporation ("Biovail") and Faulding Inc. ("Faulding") -- and their employees, directors, officers, attorneys and agents.

11. "Expert/Consultant" means experts or other persons who are retained to assist complaint counsel or Respondents' counsel in preparation for trial or to give testimony at trial.

12. "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, envelope, telegraph meeting minute, memorandum statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip,

note of interview or communication or any other data compilation, including all drafts of all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono record, tape and other data compilations from which information can be obtained, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.

13. "Discovery Material" includes without limitation deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, documents produced pursuant to compulsory process or voluntarily in lieu thereof, and any other documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter.

14. "Confidential Discovery Material" means all Discovery Material that is designated by a Producing Party as confidential and that is covered by Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), and Commission Rule of Practice § 4. 10(a)(2), 16 C.F. R. § 4.10(a)(2); submitted to the FTC pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, or formal interpretations or rules promulgated thereunder, 16 C.F.R. Part 800; or Section 26(c)(7) of the Federal Rules of Civil Procedure and precedents thereunder. Confidential Discovery Material shall include non-public commercial information, the disclosure of which to Respondents or Third Parties would cause substantial commercial harm or personal embarrassment to the disclosing party. The following is a non-exhaustive list of examples of information that likely will qualify for treatment as Confidential Discovery Material: strategic plans (involving pricing, marketing, research and development, product roadmaps, corporate alliances, or mergers and acquisitions) that have not been fully

implemented or revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices. volumes, or revenues); personnel files and evaluations, information subject to confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Discovery Material.

TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose. The Parties, in conducting discovery from Third Parties, shall attach to such discovery requests a copy of this Protective Order and a cover letter that will apprise such Third Parties of their rights hereunder.

2. This paragraph concerns the designation of material as "Confidential" and "Restricted Confidential, Attorney Eyes Only."

(a). Designation of Documents as "CONFIDENTIAL – FTC Docket No. 9293."

Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9293" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen (14) days from the initial production or deposition

and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

(b) Designation of Documents as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293."

In order to permit Third Parties to provide additional protection to documents that contain commercially sensitive information, Third Parties may designate documents as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293" by placing on or affixing such legend on each page of the document. Documents designated "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY FTC Docket No. 9293" shall be disclosed only to: (a) Commission counsel, their associated attorneys, FTC Commissioners, and other employees of the FTC; (b) outside counsel of record for the Respondents ("outside counsel"), their associated attorneys and other employees of their law firm(s), provided they are not employees of a Respondent; and (c) independent consultants or experts retained by the Commission or outside counsel for Respondents for purposes of assisting them in these actions, provided, however, that such person(s) are not presently employed by, nor have any present intention to be employed by any Respondent, competitor of any Respondent, any pharmaceutical company, any pharmacy benefits management company, or any competitor of the Third Party which provided the documents. Documents designated "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY FTC Docket No. 9293" shall not be disclosed to any other person, including but not limited to persons employed by any entity that sells services or information to third party payers/insurers.

(c) Parties that are unduly burdened by the restrictions contained in Subparagraph (b)

above, may seek appropriate relief from the Court as it is deemed necessary.

3. To the extent any such material is made part of this proceeding, all documents heretofore obtained by compulsory process or voluntarily from any Party or Third Party, regardless of whether designated confidential by the Party or Third Party, and transcripts of any investigational hearings, interviews and depositions, which were obtained during the pre-complaint stage of this Matter shall be treated as Confidential Discovery Material. Material previously produced by Respondents or a Third Party, and designated as "Confidential," regardless of whether such materials have been marked in accordance with paragraph 2 above, shall be treated as Confidential Discovery Material as provided herein. The material referred to in this paragraph shall only be available for use in this proceeding once an independent basis has been demonstrated for such use.

4. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to anyone except, in accordance with paragraphs 2, 5, 6, and 7 to:

(a) complaint counsel and the Commission, as permitted by the Commission's Rules of Practice;

(b) Outside Counsel;

(c) Experts/Consultants retained by complaint counsel or the Commission or by outside counsel for Respondents for purposes of assisting them in these actions, provided, however, that such person(s) are not presently employed by, nor have any present intention to be employed by any Respondent, competitor of any Respondent, any pharmaceutical company, any pharmacy benefits management company, any competitor of the Third Party which provided the Confidential Discovery Material, or any entity that sells services or information to third party

payers/insuers;

(d) witnesses or deponents at trial or deposition;

(e) the Administrative Law Judge and personnel assisting him;

(f) court reporters and deposition transcript reporters;

(g) judges and other court personnel of any court having jurisdiction over any appeal proceedings involving this Matter; and

(h) any author or recipient of Confidential Discovery Material (as indicated on the face of the document, record or material), and any individual who was in the direct chain of supervision of the author at the time the Confidential Discovery Material was created or received.

5. Notwithstanding Paragraph 2, Respondents may disclose to their designated in-house counsel, not to exceed two attorneys per corporate party who do not have day to day business responsibilities, Confidential Discovery Material (but not documents designated "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY FTC Docket No. 9293") submitted by a Party or Third Party upon receiving the consent of the submitter. Disclosure to an in-house attorney under this Paragraph can be made only if that attorney agrees to maintain all such Confidential Discovery Material disclosed to him/her in a manner distinct from the ordinary operations of his/her company so as to eliminate access to this material by others within (or outside) the company, and further agrees to maintain a log of Confidential Discovery Material actually reviewed and to use such Confidential Discovery Material only for purposes of these proceedings and for no other purpose whatsoever. Disclosure to an in-house attorney under this Paragraph shall be conditioned upon that attorney first signing a declaration in the form attached hereto as Exhibit "A," which is incorporated herein by reference. In the absence of consent to

such disclosure by the submitter, any Respondent, after notifying the submitter and all parties, may seek the Court's permission to make such disclosures, subject to any limitations or conditions that the Court deems to be appropriate.

6. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to an Expert/Consultant unless such Expert/Consultant agrees in writing.

(a) to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

(b) to return to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of the Expert/Consultant's assignment or retention, all originals and copies of documents, notes, memoranda, or other papers containing or referencing Confidential Discovery Material;

(c) to not disclose such Confidential Discovery Material to anyone during or after the conclusion of the Expert/Consultant's assignment or retention, except as permitted by the Protective Order;

(d) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter; and

(e) to not use, divulge or otherwise share for any purpose any Confidential Discovery Material or matters learned therefrom to competitors of the Respondents, any other pharmaceutical company, any pharmacy benefits management company, any competitors of a Third Party which produced such Confidential Discovery Material, or any entity that sells services or information to third party payers/insurers.

7. This paragraph governs the procedures for the following specified disclosures and challenges to designations of confidentiality.

(a) Disclosure to Experts

Except as otherwise provided for in this Protective Order, no party may disclose Confidential Discovery Material or any documents which have been designated as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293." If any Party desires to disclose Confidential Discovery Material (not otherwise designated as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293") to any expert who may testify, who is not an FTC employee, and who may have interests in the pharmaceutical or insurance industries beyond their employment as an expert in this Matter, the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the proposed expert who may testify, and a current curriculum vitae of such expert identifying all other present and prior employers and/or firms in the pharmaceutical or insurance industries for which or on behalf of which the identified expert has been employed or done consulting work in the preceding four (4) years. The Producing Party may object to the disclosure of the Confidential Discovery Material within five (5) business days of receiving notice of an intent to disclose the Confidential Discovery Material to the identified expert by providing the disclosing Party with a written statement of the reasons for the objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Confidential Discovery Material to the identified expert, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party lodging an objection and the disclosing

Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified expert. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not object to the disclosure of Confidential Discovery Material to the identified expert within five (5) business days, the disclosing Party may disclose the Confidential Discovery Material to the identified expert.

(b) Challenges to Confidentiality Designations

If any Party seeks to challenge a Producing Party's designation of material as Confidential Discovery Material or any other restriction contained within this Protective Order, the challenging Party shall notify the Producing Party and all Parties of the challenge to such designation. Such notice shall identify with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation within five (5) business days of receiving notice of the confidentiality challenge by providing the challenging Party and all Parties with a written statement of the reasons for the designation. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Discovery Material, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party preserving its rights and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five (5) business days of negotiating the parties have

not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not preserve its rights within five (5) business days, the challenging Party may alter the designation as contained in the notice. The challenging Party shall notify the Producing Party and the other Party of any changes in confidentiality designations.

Regardless of confidential designation, copies of published magazine or newspaper articles, and excerpts from published books and public documents filed with the Securities and Exchange Commission may be used by any Party without reference to the procedures of this subparagraph.

(c) Resolution of Disclosure or Confidentiality Disputes

If negotiations under subparagraphs 7(a)-(b) of this Protective Order have failed to resolve the issues, a Party seeking to disclose Confidential Discovery Material or challenging a confidentiality designation or any other restriction contained within this Protective Order may make written application to the Administrative Law Judge for relief. Such application shall be served on the Producing Party and the other Party, and be accompanied by a certification that the meet and confer obligations of this paragraph have been met, but that good faith negotiations have failed to resolve outstanding issues. The Producing Party and any other Party shall have five (5) business days to respond to the application, which time may be extended by the Administrative Law Judge. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Discovery Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the Administrative Law Judge of the

propriety of a requested disclosure or change in designation.

8. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 2(b), 4(b), 4(c) and 4(d) and paragraph 5 of this Protective Order until such person has executed and transmitted to Respondent's counsel or complaint counsel, as the case may be, a declaration or declarations, as applicable, in the form attached hereto as Exhibit "A," which is incorporated herein by reference. Respondents' counsel and complaint counsel shall maintain a file of all such declarations for the duration of the litigation. Confidential Discovery Material shall not be copied or reproduced for use in this Matter except to the extent such copying or reproduction is reasonably necessary to the conduct of this Matter, and all such copies or reproductions shall be subject to the terms of this Protective Order. If the duplication process by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be stamped "CONFIDENTIAL - FTC Docket No, 9293."

9. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to persons not referred to in paragraphs 4 and 5 above. If Confidential Discovery Material is produced without the legend attached, such document shall be treated as Confidential from the time the Producing Party advises complaint counsel and Respondents' counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties shall return promptly or destroy the unmarked documents.

10. If the FTC: (a) receives a discovery request that may require the disclosure by it of a Third Party's Confidential Discovery Material; or (b) intends to or is required to disclose, voluntarily or involuntarily, a Third Party's Confidential Discovery Material (whether or not such disclosure is in response to a discovery request), the FTC promptly shall notify the Third Party of either receipt of such request or its intention to disclose such material. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Third Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Third Party of its rights hereunder.

11. If any party has obtained a Producing Party's Confidential Discovery Material pursuant to this Protective Order and, in the context of another court proceeding or investigation, receives a subpoena or other compulsory process commanding the production of such confidential material, that party shall promptly notify the Producing Party and shall object to the production of the material pursuant to this Order. Such notification to the Producing Party shall be in writing and, if not otherwise done, sent for receipt by the Producing Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Producing Party of its rights hereunder. If any party receives a motion to compel production of confidential material of any other person or entity, such party shall advise the person or entity which submitted such confidential material and shall advise the court before which such motion is made of the existence of this Order. If a court nonetheless orders the production of information that is subject to this Protective Order, then production of such information pursuant to that court order shall not be deemed a violation of this Order. Nothing contained in this Paragraph is intended to indicate that any other court order would have priority

over this Protective Order. Moreover, nothing contained herein shall waive any party's objection to the jurisdiction of the other court.

12. This Order governs the disclosure of information during the course of discovery and does not Constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice ("Rule"), 16 C.F.R. § 3.45.

13. *In camera* provisions

(a) The Commission's Rules of Practice require that material may not be withheld from the public record unless it falls within the scope of an order by the Administrative Law Judge that such material, or portions thereof, be placed *in camera*, 16 C.F.R. § 3.45(b) and (d). To comply with this rule, the Party seeking to introduce into evidence by filing a pleading, an exhibit thereto, or otherwise placing on the record Confidential Discovery Material ("filing Party") must first obtain an order by the Administrative Law Judge that such information has been granted *in camera status*.

An application for *in camera* treatment must: (1) specifically identify or describe the materials for which *in camera* treatment is sought; (2) provide reasons for granting such materials *in camera* status; (3) specify the time period for which *in camera* treatment is sought for each document; and (4) attach as exhibits to the application the documents containing the specific information for which *in camera* treatment is sought.

A blanket *in camera* order for an entire pleading is contrary to public policy and will not be granted. The parties must specifically identify the portions of a pleading, document, deposition transcript, or exhibit for which *in camera* treatment is sought. Entire documents or exhibits will rarely, if ever, be eligible for *in camera* treatment. The parties are reminded that

Rule 3.45 places the burden of showing that public disclosure will likely result in a clearly defined, serious injury upon the person requesting *in camera* treatment. In addition, to sustain the burden of proof, an application must be supported by proper evidence, such as affidavits, to support all factual issues. See 16 C.F.R. §3.43

(b) The Scheduling Order requires the parties to file motions to request *in camera* treatment of materials marked confidential pursuant to a protective order no later than September 1, 2000.

A Party that has produced materials or information that it reasonably expects to include in a pleading, motion, exhibit or other paper to be filed with the Secretary ("pleading") and that it believes meets the standards for *in camera* treatment must file a motion with the Administrative Law Judge to request *in camera* treatment of such materials no later than September 1, 2000.

A Party that has received materials or information from another Party or a Third Party that it reasonably expects to include in a pleading must provide the opposing Party or Third Party with a list of such materials no later than August 18, 2000. A Third Party shall be provided with a copy of this Order along with such list. This list will not be filed with the Secretary's Office, but must be served on the Administrative Law Judge.

(c) If any Party seeks to file a pleading or attachment thereto which includes its own Confidential Discovery Material which has not previously been granted *in camera* status, and the Party seeks to prevent its own materials or information from being placed on the public record, at least 10 days prior to filing such pleading, -- unless it is impracticable (e.g., when filing a response or reply brief) in which case at least 5 days prior to filing such pleading -- the Party

shall make an application to the Administrative Law Judge to request that such materials or information be treated as *in camera* information.

If any Party seeks to file a pleading or attachment thereto which includes another Party's Confidential Discovery Material which has not previously been granted *in camera* status, the filing Party must notify the other Party's counsel at least 14 days prior to such proposed filing -- unless it is impracticable (e.g., when filing a response or reply brief). If 14 days advance notice cannot be provided, the Producing Party must be notified as soon as possible and prior to the time of introduction of such documents or information. The Producing Party's counsel shall have 7 days from the date of notice to make an application to the Administrative Law Judge to request that such materials be treated as *in camera* information. The parties shall not file pleadings or attachments thereto that contain another Party's Confidential Discovery Material unless the Party seeking to introduce such material has first obtained an *in camera* order or certifies that the other Party has been given notice prior to the introduction of such material.

The Parties shall not file pleadings or attachments thereto that contain a Third Party's Confidential Discovery Material unless the Party seeking to introduce such material has first obtained an *in camera* order or certifies that the Third Party has been given 14 days notice prior to the introduction of such material and a copy of this Order.

(d) The parties are cautioned that compliance with this Order will require them to submit applications for *in camera* treatment in advance of filing motions which include confidential materials and that deadlines for filing motions attaching confidential materials will not be extended for failure to file applications for *in camera* treatment in a timely manner. The parties are further cautioned that it is rarely necessary to attach confidential information in

support of pleadings. Absent strict adherence to these procedures, pleadings should be composed in a manner which sufficiently apprises the Court of the matter at issue and which does not identify or disclose any confidential information. Failure to comply with these procedures may result in pleadings or portions thereof being stricken from the record.

(e) Should any party seek to introduce into evidence at the trial of this case or any pretrial hearing Confidential Discovery Material which has not previously been granted *in camera* status, the evidence will not be disclosed or admitted into evidence until the Producing Party has had the opportunity to seek *in camera* treatment. The party seeking to introduce such evidence must demonstrate good cause for not previously obtaining an *in camera* order. If the Producing Party is a Third Party, the Party seeking to introduce or disclose such evidence must provide notice to the Third Party within 3 days of the date on which the evidence was sought to be introduced or disclosed. The Producing Third Party shall have 7 days from the date of notice to make an application to the Administrative Law Judge to request that such materials be treated as *in camera* information.

14. Nothing in this Protective Order shall be construed to conflict with the provisions of Sections 6, 10, and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 50, 57b-2, or with Rules 3.22, 3.45 or 411(b)-(e), 16 C.F.R. §§ 3.22, 3.45 and 4.1 1(b)-(e).[1] Any Party or Producing Party may move at any time for, treatment *in camera* of any Confidential Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper

[1] The right of the Administrative Law Judge, the Commission, and reviewing courts to disclose information afforded *in camera* treatment or Confidential Discovery Material, to the extent necessary for proper disposition of the proceeding, is specifically reserved pursuant to Rule 3.45, 16 C.F.R. § 3.45.

disposition of the Matter.

15. At the conclusion of this Matter, Respondent's counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other papers containing Confidential Discovery Material which have not been made part of the record in this Matter. Complaint counsel shall dispose of all documents in accordance with Rule 4.12, 16 C.F.R. § 4.12.

16. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without written permission of the Producing Party or further order of the Administrative Law Judge hearing this Matter, continue to be binding after the conclusion of this Matter.

17. This Protective Order shall not apply to the disclosure by a Producing Party or its Counsel of such Producing Party's Confidential Discovery Material to such Producing Party's employees, agents, former employees, board members, directors, and officers.

18. The production or disclosure of any Discovery Material made after entry of this Protective Order which a Producing Party claims was inadvertent and should not have been produced or disclosed because of a privilege will not automatically be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed. In the event of such claimed inadvertent production or disclosure, the following procedures shall be followed:

(a) The Producing Party may request the return of any such Discovery Material within twenty (20) days of discovering that it was inadvertently produced or disclosed (or inadvertently produced or disclosed without redacting the privileged content). A request for

the return of any Discovery Material shall identify the specific Discovery Material and the basis for asserting that the specific Discovery Material (or portions thereof) is subject to the attorney-client privilege or the work product doctrine and the date of discovery that there had been an inadvertent production or disclosure.

(b) If a Producing Party requests the return, pursuant to this paragraph, of any such Discovery Material from another Party, the Party to whom the request is made shall return immediately to the Producing Party all copies of the Discovery Material within its possession, custody, or control -- including all copies in the possession of experts, consultants, or others to whom the Discovery Material was provided -- unless the Party asked to return the Discovery Material in good faith reasonably believes that the Discovery Material is not privileged. Such good faith belief shall be based on either (i) a facial review of the Discovery Material, or (ii) the inadequacy of any explanations provided by the Producing Party, and shall not be based on an argument that production or disclosure of the Discovery Material waived any privilege. In the event that only portions of the Discovery Material contain privileged subject matter, the Producing Party shall substitute a redacted version of the Discovery Material at the time of making the request for the return of the requested Discovery Material.

(c) Should the Party contesting the request to return the Discovery Material pursuant to this paragraph decline to return the Discovery Material, the Producing Party seeking return of the Discovery Material may thereafter move for an order compelling the return of the Discovery Material. In any such motion, the Producing Party shall have the burden of showing that the Discovery Material is privileged and that the production was inadvertent.

19. Entry of the foregoing Protective Order is without prejudice to the right of the

Parties or Third Parties to apply for further protective orders or for modification of any provision of this Protective Order.

20. In no event shall any Producing Party be required to produce or otherwise divulge information, including but not limited to patient-identification or insured-identification information, that would be prohibited by any federal, state or local laws, statutes, regulations or ordinances.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Dated:

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

EXHIBIT A

In the Matter of	)	
	)	
HOECHST MARION ROUSSEL, WC.,	)	Docket No. 9293
a corporation,	)	
	)	
CARDERM CAPITAL L.P.,	)	
a limited partnership,	)	
	)	
and	)	
	)	
ANDRX CORPORATION,	)	
a corporation.	)	
	)	

DECLARATION CONCERNING PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

I, [_____], hereby declare and certify the following to be true:

1. [Statement of Employment]

2. I have read the "Protective Order Governing Discovery Material" ("Protective Order") issued by Administrative Law Judge D. Michael Chappell on [Date Re-Issued], in connection with the above captioned matter. I understand the restrictions on my use of any Confidential Discovery Material (as this term is used in the Protective Order) in this action and I agree to abide by the Protective Order.

3. I understand that the restrictions on my use of such confidential Discovery Material include:

   a. that I will use such Confidential Discovery Material only for the purposes of preparing for this proceeding, and hearing(s) and any appeal of this proceeding and for no other purpose;

   b. that I will not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

c. that upon the termination of my participation in this proceeding I will promptly return all Confidential Discovery Material, and all notes, memoranda, or other papers containing Confidential Discovery Material, to complaint counsel or respondent's counsel, as appropriate.

[4. I understand that if I am receiving Confidential Discovery Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential Discovery material also include the duty and obligation:

a. to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

b. to return to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention, all originals and copies of documents, notes, memoranda, or other papers containing or referencing Confidential Discovery Material; and

c. to use such Confidential Discovery material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, and only for the purposes of this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.]

5. I am fully aware that, pursuant to Section 3.42(h) of the Commission's Rules of Practice, 16 C.F.R. § 3.42(h), my failure to comply with the terms of the Protective Order may constitute contempt of the Commission and may subject me to sanctions imposed by the Commission.

_____ Date: _____

Full Name [Typed or Printed]

_____

Signature

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
HOECHST MARION ROUSSEL, INC.,	)	Docket No. 9293
a corporation,	)	
	)	
CARDERM CAPITAL L.P.,	)	
a limited partnership,	)	
	)	
and	)	
	)	
ANDRX CORPORATION,	)	
a corporation.	)	
	)	

DECLARATION OF DALE KRAMER

I, Dale Kramer, under penalty of perjury, hereby declare as follows:

1. I am the Director of Material Services for Pharmacy Operations at Kaiser Foundation Health Plan, Inc. (hereinafter "Kaiser" unless otherwise referenced), 300 Pullman Street, Livermore, California 94550, and have held this position for the past 12 years. My primary job responsibilities include national pharmacy contracting, supply chain management, financial forecasting for the cost of pharmaceuticals, and advise on pharmacy benefit management as it relates to the cost of pharmaceuticals. I am responsible for and have direct reporting authority for two major warehousing units within Kaiser. I am a licensed pharmacist and hold a degree in pharmacology from Columbia University in New York, New York. I have personal knowledge of the matters stated in this declaration and, if called upon to do so, could competently testify thereto.

2. This Declaration in submitted in support of the Joint Motion To Amend, Modify And Reissue The Protective Order Governing Discovery Materials To Be Produced By Non-

Parties Kaiser Foundation Health Plan, Inc., Bluecross Blueshield Of Michigan, and United HealthCare.

3. I have reviewed the subpoena *duces tecum* served in this matter by Respondent Hoechst Marion Roussel, Inc. (hereinafter "HMRI") upon the Custodian of Records for nonparty Kaiser Permanente Insurance Company on or about June 12, 2000. A true and correct copy of the subpoena duces tecum served by HMRI in this matter is attached hereto as Exhibit 1.

4. I have also reviewed the subpoenas *duces tecum* served in this matter by Respondent Andrx Corporation (hereinafter "Andrx") upon both Tony Barrueta and myself, nonparties to this action and employees of nonparty Kaiser Permanente. These two subpoenas *duces tecum* are identical except for the name of the person to whom directed. True and correct copies of the subpoenas duces tecum served by Andrx on Mr. Barrueta and myself are attached hereto as Exhibit 2.

5. The subpoenas served by HMRI and Andrx seek documents that contain confidential commercial information. At the present time, Kaiser has agreed to produce to HMRI pursuant to the subpoena, certain confidential documents including Kaiser's drug formulary, studies relating to "substitutability therapeutics" for Cardizem CD, and contracts for Diltiazem. The subpoena served by HMRI also asks Kaiser to produce additional documents including training manuals, pharmacy benefit plans, contract negotiations and contracts for drugs other than Cardizem CD, confidential drug pricing information, confidential sales information and analysis, and substitutability studies for all cardiovascular pharmaceutical products. (See Exhibit 1).

6. Similarly, the subpoenas *duces tecum* served by Andrx ask for information relating to sales volume, confidential drug pricing information, market share and other financial

data for the bioequivalent or generic versions of certain pharmaceutical products, documents relating to the standards of care for the treatment of hypertension and/or angina with certain pharmaceutical products, substitutability studies for certain cardiovascular pharmaceuticals, contracts and contract negotiations with Respondents HMRI and Andrx as well as other pharmaceutical manufacturers and suppliers. (See Exhibit 2).

7. All of the information referred to in paragraphs 5 and 6 above is highly sensitive commercial information, not currently available to the public, Kaiser's competitors, or competitors of the pharmaceutical manufacturers and suppliers who are the subject of the pricing and contractual information sought. If disclosed without adequate protection, such information would enable these and other entities to capitalize on and unfairly exploit Kaiser's research, development, and other trade secrets, thereby placing Kaiser at a severe competitive disadvantage and causing it irreparable harm. The disclosure of Kaiser's contract pricing for drugs and related information among competing drug manufacturers would have a severely deleterious effect on market competition generally for the relevant drug products and classes.

8. Kaiser enjoys a significant advantage over its competitors based upon its ability to control its pharmaceutical costs by employing specific strategies in negotiating unique contract structures with pharmaceutical manufacturers and direct suppliers. The pricing and negotiating strategies used by Kaiser are closely guarded in order to preserve the competitive advantage they provide.

9. In this regard, Kaiser has developed significant leverage with pharmaceuticals manufacturers and suppliers which has translated into lower pharmaceutical costs for Kaiser, and in turn, lower drug costs for Kaiser's customers. Dissemination of this confidential information and these strategies would be detrimental because it would seriously impair Kaiser's ability to

negotiate successful future pharmaceutical pricing with manufacturers and suppliers, including HMRI and Andrx who are significant suppliers to Kaiser.

10. Dissemination of Kaiser's confidential pricing information would reduce competition among drug manufacturers and suppliers that compete for Kaiser's business because price levels, structures and strategies would quickly become known in the manufacturing and supply industry.

11. Kaiser expends significant resources and many millions of dollars on its clinical protocols that are utilized by physicians employed by Kaiser. This enables Kaiser's physicians to provide the highest-quality medical care to its customers while containing and controlling medical costs. Proprietary models have been developed by Kaiser as a result of the methodology and systems used by its physicians, pharmacists, and others working in a collaborative effort to select, classify and price pharmaceuticals. If Kaiser's competitors or outside consultants were to obtain this information, then the competitive advantage would erode very quickly. Competitors could utilize this proprietary information to their advantage in their own contract negotiations with drug manufacturers and suppliers, and could also use this information in constructing their own cost control models. Additionally, consultants armed with Kaiser's competitive and highly valuable information would be in a position to impart this "new-found expertise" to Kaiser's competitors.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 12, 2000

Dale Kramer

SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO
Custodian of Records for:
Kaiser Permanente Insurance Company
One Kaiser Place 25th Floor
Oakland, CA 94612
c/o The Prentice-Hall Corporation System, Inc.
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

2. FROM
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION
Shook, Hardy & Bacon L.L.P.
600 14th Street, N.W., Suite 800
Washington, DC 20005-2004

4. MATERIAL WILL BE PRODUCED TO
Shook, Hardy & Bacon L.L.P.
Attn: D. Edward Wilson, Counsel for Hoechst Marion Roussel, Inc.

5. DATE AND TIME OF PRODUCTION OR INSPECTION
June 26, 2000 at 10:00 a.m.

6. SUBJECT OF PROCEEDING
In the matter of Hoechst Marion Roussel, Inc., et al.

7. MATERIAL TO BE PRODUCED
See Exhibit "A" attached hereto

8. ADMINISTRATIVE LAW JUDGE
The Honorable D. Michael Chappell
Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA
Shook, Hardy & Bacon L.L.P
James M. Spears
D. Edward Wilson
Peter D. Bernstein
Counsel for Hoechst Marion Roussel

DATE ISSUED
MAY 17 2000

SECRETARY'S SIGNATURE
Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Exhibit A to Subpoena Duces Tecum

In the Matter of Hoechst Marion Roussel, Inc., et al., Respondents	)	Docket No. 9293

HMRI'S FIRST DOCUMENT PRODUCTION REQUEST TO KAISER PERMENENTE INSURANCE COMPANY

Respondent Hoechst Marion Roussel, Inc. ("HMRI"), pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.34(b), requests that Kaiser Permenente Insurance Company (hereinafter referred to as "the company") produce documents and other things for inspection and copying, within 20 days, in response to the Document Requests set forth below, and in accordance with the Definitions and Instructions following thereafter, at the offices of Shook, Hardy & Bacon, L.L.P., 600 14th Street, N.W., Washington, D.C. 20005, or such location as may be mutually agreed upon.

DOCUMENT REQUESTS

Request No. 1.: All documents that reflect or relate to determining pharmaceutical products for inclusion in, or exclusion from, formularies, including but not limited to contract manuals, contract training manuals, account training manuals, standard form contracts, discount grids, market share tiers, and market segment listings.

Request No. 2.: All documents comprising pharmaceutical product formularies used in connection with any health benefit plan or prescription benefit plan through which you reimburse pharmacies and/or individuals for pharmaceutical products dispensed pursuant to doctors' prescriptions.

Request No. 3.: All documents that reflect or relate in any manner to the classification of prescription pharmaceutical products in formularies, including the classification of pharmaceutical products for treatment purposes and for determining co-payments or reimbursement amounts for individual participants and/or payments to pharmacies.

Request No. 4.: All documents that reflect or relate to any process or criteria, whether clinical or economic, including those documents relating to any internal organization such as a Pharmacy Quality Advisory Committee ("PQAC" or "QC") or Pharmacy and Therapeutics Committee ("P & T"), used to determine the cardiovascular pharmaceutical products to be included in, or excluded from, any formulary.

Request No. 5.: All documents that reflect or relate to the policies or criteria for making any initial classification in formularies as well as any reclassification of any previously classified pharmaceutical product in subsequent formulary listings.

Request No. 6.: All documents that reflect or relate to the formularies in which Cardizem® CD has been listed, including but not limited to documents identifying all classifications or categories in which Cardizem® CD has been listed in each formulary, as well as the other pharmaceutical products included in each category so described.

Request No. 7.: All documents that reflect or relate to standards of care for the treatment of hypertension and/or angina through the use of cardiovascular pharmaceutical products.

Request No. 8.: All documents that reflect or relate, in any way, the substitutability of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

Request No. 9.: All documents that reflect or relate in any way to programs, campaigns or activities undertaken by you which are designed to encourage the use or substitution of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

Request No. 10.: All documents that reflect or relate to agreements or contracts between you and any of the entities listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

Request No. 11.: All documents that reflect or relate in any way to the negotiation of contracts or other agreements regarding discounts, rebates, credits, allowances, charge backs and other price adjustments between you and any of the entities listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

Request No. 12.: All data and reports, including but not limited to data and reports provided by third-party vendors such as IMS, that reflect or relate to the sales of any cardiovascular pharmaceutical product and any analysis that might consider: (1) the extent to which these products compete against each other and compete against Cardizem® CD and other sustained release diltiazem products; (2) the extent to which sales of the products respond to/or are affected by variations in price or manufacturer discounts, rebates, credits or other price adjustments; and (3) the extent to which sales of the products respond to changes in the formulary classifications maintained by third-party payors, insurers and other health care providers.

Request No. 13.: All documents sufficient to identify the individual(s) (by name, address, position and date) who supervise the negotiation of contracts and/or agreements between you and any entity listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

DEFINITIONS AND INSTRUCTIONS

1. Unless otherwise stated, the requests herein refer to the time period of January 1, 1992 through present and to information relating to the

2. As used herein, the words "you" or "your" shall mean Kaiser Permenente Insurance Company, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

3. As used herein, "HMRI" shall mean the Respondent Hoechst Marion Roussel, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

4. As used herein, the term "formulary" means a list of prescription pharmaceutical products generally covered under a health or prescription benefit plan subject to applicable limits and conditions. For the purposes of this document request, the term "formulary" excludes pharmaceutical products in classifications other than "cardiovascular pharmaceutical products" but includes all descriptive material, including but not limited to operating guidelines, definitions and lists of abbreviations.

5. As used herein, "cardiovascular pharmaceutical products" means the products within code 31000 of the IMS Uniform System of Classification.

6. As used herein, "Cardizem® CD" means the diltiazem formulation sold under this name.

7. As used herein, "person" means all employees, individuals, and entities, including but not limited to corporations, associations, companies, partnerships, joint ventures, trusts and estates.

8. As used herein, the terms "document" or "documents" or "documentation" include these terms as defined by 16 C.F.R. § 3.34(b) and, in addition, the original or drafts or any kind of written, printed, recorded or graphic matter or sound reproduction, however produced or reproduced, whether sent or received or neither, and all copies thereof which are different in any way from the original (whether by notation, indication of copies sent or received or otherwise) regardless of whether designated "Confidential," "Privileged" or otherwise and including, but not limited to, any correspondence, paper, book, account, drawing, agreement, contract, e-mail, handwritten notes, invoice, memorandum, telegram, object, opinion, purchase order, report, records, transcript, summary, study, survey recording of any telephone or other conversation, interviews or notes of any conference. The terms "document" or "documents" shall also include data stored, maintained or organized electronically or magnetically or through computer equipment, translated, if necessary, by you into reasonably usable form, and film impressions, magnetic tape and sound or mechanical productions of any kind or nature whatsoever.

9. Except for privileged materials, produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, do not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

10. As used herein, the words "describe", "relates to", "relating to", "reflects", "regarding", or equivalent language shall mean constituting, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, containing, monitoring, studying, analyzing, discussing, evaluating or relevant to.

11. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

12. As used herein, the term "communication" means every manner of transmitting or receiving information, opinions, and thoughts whether orally, in writing, or electronically.

13. As used herein, the term "health benefit plan" refers to any plan which you operate or administer which provides for the payment or reimbursement of health care related expenses.

14. As used herein, the term "prescription benefit plan" refers to any plan which you operate or administer, either solely or in conjunction with another entity, which provides for the payment of or reimbursement for pharmaceutical products dispensed pursuant to doctors' prescriptions.

15. As used herein, the term "plan" or "plans" refers jointly to the health benefit plan and prescription benefit plan.

16. As used herein, the term "substitutability" refers to the degree to which doctors, patients, pharmacies, wholesalers, pharmacy benefit managers ("PBMs"), and/or health benefit plans shift purchases between or among pharmaceutical products based on considerations including, but not limited to, cost, efficacy, and side effects.

17. The response to each document production request is to be numbered in a manner consistent with these requests and is to be preceded by the specific request.

18. If any form of privilege or immunity is claimed as ground for withholding a response, submit a written statement that describes the factual basis of the purported privilege or claim of immunity in sufficient detail to permit the court to adjudicate the validity of the claim.

19. If a request is deemed objectionable, state the reasons for the objection. If a portion of a request is deemed objectionable, state the objection, and answer the remaining unobjectionable portion of the request.

SHOOK, HARDY & BACON L.L.P.

By: D. E. Wilson

James M. Spears
Paul S. Schleifman
D. E. Wilson, Jr.
Peter D. Bernstein
600 14th Street, N.W.
Washington, D.C. 20005-2004
202-783-8400

Attorneys for Respondent Hoechst Marion Roussel, Inc.

Dated: June 5, 2000

Attachment 1, attached

Attachment 1 to Subpoena Duces Tecum
Issued on Behalf of HMRI

Pfizer, Inc.
Merck & Co., Inc.
Astra Zeneca Pharmaceuticals LP
Novartis Pharmaceuticals Corporation
Abbott Laboratories Inc.
Mylan Pharmaceuticals Inc.
Parke-Davis
Key Pharmaceutical, Inc.
Bayer Corporation
G. D. Searle & Co.
Watson Laboratories, Inc.
Zenith Goldline Pharmaceuticals Inc.
Forest Pharmaceuticals, Inc.
Biovail Corporation
Teva Pharmaceuticals USA, Inc.

Attachment 1 to Subpoena Duces Tecum Issued on Behalf of HMRI

Pfizer, Inc.
Merck & Co., Inc.
Astra Zeneca Pharmaceuticals LP
Novartis Pharmaceuticals Corporation
Abbott Laboratories Inc.
Mylan Pharmaceuticals Inc.
Parke-Davis
Key Pharmaceutical, Inc.
Bayer Corporation
G. D. Searle & Co.
Watson Laboratories, Inc.
Zenith Goldline Pharmaceuticals Inc.
Forest Pharmaceuticals, Inc.
Biovail Corporation
Teva Pharmaceuticals USA, Inc.

KAISER PERMANENTE

KAISER FOUNDATION HEALTH PLAN, INC.
LEGAL DEPARTMENT

One Kaiser Plaza
Oakland, CA 94612

Fax No. (510) 271-6617

FACSIMILE TRANSMITTAL SHEET

DATE: June 13, 2000 Number of Page(s) to follow: 10

TO: Scott Simmer

AT: 202/778-3063

FROM: Mitchell Cohen

Program Offices: (510) 271-6658

SPECIAL INSTRUCTIONS:

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(c)(1), 16 C.F.R. § 3.34(c)(1) (1997)

1. TO

Dale Kramer
Kaiser Permanente
Corporate Headquarters
One Kaiser Plaza
Oakland, CA 94612

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP
45 Rockefeller Plaza
New York, NY 10111
or at such other location as is mutually agreed upon.

4. YOUR APPEARANCE WILL BE BEFORE

Notary Public
(at the request of Respondent Andrx Corporation)

5. DATE AND TIME OF HEARING OR DEPOSITION

Sept. 1, 2000 at 10:30 a.m.

6. SUBJECT OF PROCEEDING

In the matter of Hoechst Marion Roussel, Inc., et al.

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP
45 Rockefeller Plaza, 7th Floor
New York, NY 10111

Attorneys for Respondent Andrx Corporation

DATE ISSUED

2[illegible] 2000

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

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This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served (check the method used)

- ○ in person.
- ○ by registered mail.
- ○ by leaving copy at principal office or place of business, to wit:

_____

_____

_____

_____

on the person named herein on:

_____
(Month, day, and year)

_____
(Name of person making service)

_____
(Official title)

SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

Dale Kramer
Kaiser Permanente
Corporate Headquarters
One Kaiser Plaza
Oakland, CA 94612

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP
45 Rockefeller Plaza
New York, NY 10111
or at such other location as is mutually agreed upon.

4. MATERIAL WILL BE PRODUCED TO

Notary Public
(at the request of Respondent Andrx Corporation)

5. DATE AND TIME OF PRODUCTION OR INSPECTION

Sept. 1, 2000 at 10:30 a.m.

6. SUBJECT OF PROCEEDING

In the matter of **Hoechst Marion Roussel, Inc., et al.**

7. MATERIAL TO BE PRODUCED

See Exhibit A

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP
45 Rockefeller Plaza, 7th Floor
New York, NY 10111

Attorneys for Respondent Andrx Corporation

DATE ISSUED

[illegible] 2000

SECRETARY'S SIGNATURE

Donald S. Clark

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- ○ in person.
- ○ by registered mail.
- ○ by leaving copy at principal office or place of business, to wit:

_____

_____

_____

_____

on the person named herein on:

_____

(Month, day, and year)

_____

(Name of person making service)

_____

(Official title)

EXHIBIT A

1. All documents which relate to the effect of bioequivalent or generic versions of pioneer pharmaceutical products on the market for those pioneer pharmaceutical products.

2. All documents which relate to the actual or potential effect on competition with, or on sales, prices or market share for the Company's cardiovascular pharmaceutical products by any actual or potential prescription or non-prescription drugs for the treatment of hypertension and angina.

3. All documents which relate to the actual or potential effect on competition with, or on sales, prices or market share for the Company's cardiovascular pharmaceutical products by Cardizem® CD or a bioequivalent or generic version of Cardizem® CD.

4. All documents relating to the introduction or sale of bioequivalent or generic versions of Cardizem® CD by any person, including, but not limited to:

(a) attempts to introduce a bioequivalent or generic version of Cardizem® CD to the commercial market;

(b) the historical projections or anticipated dates of entry into the commercial market of each bioequivalent or generic version of Cardizem® CD;

(c) any analysis, study, projection, forecast, budget or plan on the effect of the introduction of a bioequivalent or generic version of Cardizem® CD on the Company's sales, revenues or profits;

(d) for each of the first three years following the projected or anticipated introduction or sale of bioequivalent or generic version of Cardizem® CD:

(i) the projected or anticipated market share (measured in terms of unit sales and revenues) of the bioequivalent or generic version of Cardizem® CD;

(ii) projected or anticipated price of the bioequivalent or generic version of Cardizem® CD;

(iii) projected or anticipated price of Cardizem® CD;

(iv) the Company's projected or anticipated lost annual revenues and profits.

5. All documents reflecting the sales of any cardiovascular pharmaceutical product and all documents reflecting any measure of the sale, price, revenues and profits of each cardiovascular pharmaceutical product, including but not limited to:

(a) gross and net sales to all customers in units and dollars;

(b) gross number and dollar value of promotional sample units distributed;

(c) sales returns in units and dollars;

(d) cost of goods sold in dollars;

(e) gross and net profit in dollars;

(f) sales, promotion, or marketing expenses;

(g) the list price and wholesale acquisition cost;

(h) product returns in units and dollars; and

(i) rebates, credits, allowances, charge backs, and any other adjustment to price.

6. All data and reports, including but not limited to data and reports provided by third-party vendors such as IMS, that reflect the sales of any cardiovascular pharmaceutical product and any analysis that might consider: (1) the extent to which these products compete against each other and compete against Cardizem® CD, Cartia XT™, and other sustained release diltiazem products; (2) the extent to which sales of the products respond to/or are affected by variations in price or manufacturer discounts, rebates, credits or other price adjustments; and (3) the extent to which sales of the products respond to changes in the manner in which they are listed in formularies maintained by third-party payors, insurers and other health care providers.

7. All documents which reflect in any way standards of care for the treatment of hypertension and/or angina through the use of cardiovascular pharmaceutical products.

8. All documents sufficient to show the name and chemical entity of all products which the Company believes competes with Cardizem® CD or Cartia XT™. For each product, produce documents sufficient to explain why the Company believes that product competes with Cardizem® CD or Cartia XT™.

9. All documents which reflect, in any way, the substitutability or exchangeability of any actual or potential cardiovascular pharmaceutical product for Cardizem® CD.

18. All documents produced to the FTC by the Company in connection with the Section 5 investigation of the Stipulation and Agreement, FTC File No. 981-0368.

19. All communications and documents which relate to communications between the Company and the FTC (including without limitation documents provided by the Company to the FTC and transcripts of testimony before the FTC), concerning FTC File No. 981-0368.

20. All communications with the FTC regarding request for information, including but not limited to subpoenas and civil investigative demands received from the FTC and all documents and all communications transmitting responses or modifying the requests.

21. All other documents produced to the FTC or FDA by the Company relating to HMRI, Andrx, Biovail, Faulding, Cardizem® CD, Cartia XT™ or diltiazem products.

22. All other communications and documents which relate to communications between the Company and the FTC or FDA (including without limitation documents provided by the Company to the FTC or FDA and transcripts of testimony before the FTC or FDA) relating to HMR, Andrx, Biovail, Faulding, Cardizem® CD, Cartia XT™, or diltiazem products.

23. All documents maintained by the Company with respect to FTC File No. 981-0368.

5. As used herein, the term "HMRI" shall mean Hoeschst Marion Roussel and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

6. As used herein, the term "other entities" shall mean Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical and each of their predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

7. As used herein, the term "payor" means any entity with which you have a contractual or other relationship setting the terms by which prescription pharmaceutical products are provided to members pursuant to plans, including, without limitation, insurance companies, pharmaceutical benefit companies, and managed care organizations.

8. As used herein, the term "formulary" means a list of prescription pharmaceutical products generally covered under a health or prescription benefit plan subject to applicable limits and conditions. For the purposes of this document request, the term "formulary" excludes pharmaceutical products in classifications other than "cardiovascular pharmaceutical products" but includes all descriptive material, including

but not limited to operating guidelines, definitions and lists of abbreviations.

9. As used herein, "cardiovascular pharmaceutical products" means the products within code 31000 of the IMS Uniform System of Classification.

10. As used herein, "Cardizem® CD" means the diltiazem formulation sold under this name.

11. As used herein, "Cartia XT™" means the diltiazem formulation sold under this name.

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13. As used herein, the terms "document" or "documents" or "documentation" include these terms as defined by 16 C.F.R. § 3.34(b) and, in addition, the original or drafts or any kind of written, printed, recorded or graphic matter or sound reproduction, however produced or reproduced, whether sent or received or neither, and all copies thereof which are different in any way from the original (whether by notation, indication of copies sent or received or otherwise) regardless of whether designated "Confidential," "Privileged" or otherwise and including, but not limited to, any correspondence, paper, book, account, drawing, agreement, contract, e-mail, handwritten notes, invoice, memorandum, telegram, object, opinion, purchase order, report, records, transcript, summary, study, survey recording of any telephone or other conversation, interviews or notes of any conference. The terms "document" or "documents" shall also include data stored, maintained or organized electronically or magnetically or through computer equipment, translated, if necessary, by you into reasonably usable form, and

plan which you operate or administer, either solely or in conjunction with another entity, which provides for the payment of or reimbursement for pharmaceutical products dispensed pursuant to doctors' prescriptions.

20. As used herein, the term "plan" or "plans" refers jointly to the health benefit plan and prescription benefit plan.

21. As used herein, the term "group" refers to an employer or other entity that purchases insurance or benefits under a health benefit plan and/or prescription benefit plan.

22. As used herein, the term "members" refers to individuals who are enrolled in and eligible to receive benefits through a health benefit plan and/or prescription benefit plan.

23. As used herein, the term "pharmacy" refers to any entity, including mail order vendors and other retailers, which dispenses pharmaceutical products pursuant to doctors' prescriptions. When a pharmacy has more than one retail location or outlet, please answer the document request for each location separately.

24. As used herein, the term "substitutability" refers to the degree to which doctors, patients, pharmacies, wholesalers, PBMs, and/or health benefit plans shift purchases between or among pharmaceutical products based on considerations including, but not limited to, cost, efficacy, and side effects.

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Tony Berenta
Kaiser Permanente
Corporate Headquarters
One Kaiser Plaza
Oakland, CA 94612

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Sept. 1, 2000 at 10:30 a.m.

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the matter of Hoechst Marion Roussel, Inc., et al.

RECEIVED

AUG 0 8 2000

ANTHONY BARRUETA

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP
45 Rockefeller Plaza, 7th Floor
New York, NY 10111

Attorneys for Respondent Andrx Corporation

DATE ISSUED

8 AUG 2000

SECRETARY'S SIGNATURE

Donald S. Clark

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SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

Tony Beretta
Kaiser Permanente
Corporate Headquarters
One Kaiser Plaza
Oakland, CA 94612

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

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SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP
45 Rockefeller Plaza
New York, NY 10111
or at such other location as is mutually agreed upon.

4. MATERIAL WILL BE PRODUCED TO Notary Public (at the request of Respondent Andrx Corporation)

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RECEIVED

AUG 0 8 2000

ANTHONY BARRUETA

7. MATERIAL TO BE PRODUCED

See Exhibit A

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP
45 Rockefeller Plaza, 7th Floor
New York, NY 10111

Attorneys for Respondent Andrx Corporation

DATE ISSUED

SECRETARY'S SIGNATURE

Donald S. Clark

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APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

EXHIBIT A

1. All documents which relate to the effect of bioequivalent or generic versions of pioneer pharmaceutical products on the market for those pioneer pharmaceutical products.

2. All documents which relate to the actual or potential effect on competition with, or on sales, prices or market share for the Company's cardiovascular pharmaceutical products by any actual or potential prescription or non-prescription drugs for the treatment of hypertension and angina.

3. All documents which relate to the actual or potential effect on competition with, or on sales, prices or market share for the Company's cardiovascular pharmaceutical products by Cardizem® CD or a bioequivalent or generic version of Cardizem® CD.

4. All documents relating to the introduction or sale of bioequivalent or generic versions of Cardizem® CD by any person, including, but not limited to:

(a) attempts to introduce a bioequivalent or generic version of Cardizem® CD to the commercial market;

(b) the historical projections or anticipated dates of entry into the commercial market of each bioequivalent or generic version of Cardizem® CD;

(c) any analysis, study, projection, forecast, budget or plan on the effect of the introduction of a bioequivalent or generic version of Cardizem® CD on the Company's sales, revenues or profits;

(d) for each of the first three years following the projected or anticipated introduction or sale of bioequivalent or generic version of Cardizem® CD:

(i) the projected or anticipated market share (measured in terms of unit sales and revenues) of the bioequivalent or generic version of Cardizem® CD,

(ii) projected or anticipated price of the bioequivalent or generic version of Cardizem® CD;

(iii) projected or anticipated price of Cardizem® CD;

(iv) the Company's projected or anticipated lost annual revenues and profits.

5. All documents reflecting the sales of any cardiovascular pharmaceutical product and all documents reflecting any measure of the sale, price, revenues and profits of each cardiovascular pharmaceutical product, including but not limited to:

(a) gross and net sales to all customers in units and dollars;

(b) gross number and dollar value of promotional sample units distributed;

(c) sales returns in units and dollars;

(d) cost of goods sold in dollars;

(e) gross and net profit in dollars;

(f) sales, promotion, or marketing expenses;

(g) the list price and wholesale acquisition cost;

(h) product returns in units and dollars; and

(i) rebates, credits, allowances, charge backs, and any other adjustment to price.

6. All data and reports, including but not limited to data and reports provided by third-party vendors such as IMS, that reflect the sales of any cardiovascular pharmaceutical product and any analysis that might consider: (1) the extent to which these products compete against each other and compete against Cardizem® CD, Cartia XT™, and other sustained release diltiazem products; (2) the extent to which sales of the products respond to/or are affected by variations in price or manufacturer discounts, rebates, credits or other price adjustments; and (3) the extent to which sales of the products respond to changes in the manner in which they are listed in formularies maintained by third-party payors, insurers and other health care providers.

7. All documents which reflect in any way standards of care for the treatment of hypertension and/or angina through the use of cardiovascular pharmaceutical products.

8. All documents sufficient to show the name and chemical entity of all products which the Company believes competes with Cardizem® CD or Cartia XT™. For each product, produce documents sufficient to explain why the Company believes that product competes with Cardizem® CD or Cartia XT™.

9. All documents which reflect, in any way, the substitutability or exchangeability of any actual or potential cardiovascular pharmaceutical product for Cardizem® CD.

10. All documents which reflect, in any way, the substitutability of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product, including but not limited to, Cartia XT™.

11. All documents which relate in any way to programs, campaigns or activities undertaken by you which are designed to encourage the use or substitution of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

12. All documents relating to agreements or contracts between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, concerning or relating to cardiovascular pharmaceutical products.

13. All documents that relate in any way to the negotiation of contracts or other agreements regarding discounts, rebates, credits, allowances, charge backs and other price adjustments between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, with regard to cardiovascular pharmaceutical products.

14. All documents relating to agreements or contracts between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra

Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, with regard to cardiovascular pharmaceutical products.

15. All documents that relate in any way to the negotiation of contracts or other agreements regarding discounts, rebates, credits, allowances, charge backs and other price adjustments between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, with regard to cardiovascular pharmaceutical products.

16. All documents sufficient to identify the individual(s) (by name, address, position and date) who supervise the negotiation of contracts and/or agreements between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, with regard to cardiovascular pharmaceutical products.

17. All documents concerning your Company and Andrx, HMRI, Faulding, Biovail, Cardizem® CD or Cartia XT™, any diltiazem product or FTC File No. 981-0368.

18. All documents produced to the FTC by the Company in connection with the Section 5 investigation of the Stipulation and Agreement, FTC File No. 981-0368.

19. All communications and documents which relate to communications between the Company and the FTC (including without limitation documents provided by the Company to the FTC and transcripts of testimony before the FTC), concerning FTC File No. 981-0368.

20. All communications with the FTC regarding request for information, including but not limited to subpoenas and civil investigative demands received from the FTC and all documents and all communications transmitting responses or modifying the requests.

21. All other documents produced to the FTC or FDA by the Company relating to HMRI, Andrx, Biovail, Faulding, Cardizem® CD, Cartia XT™ or diltiazem products.

22. All other communications and documents which relate to communications between the Company and the FTC or FDA (including without limitation documents provided by the Company to the FTC or FDA and transcripts of testimony before the FTC or FDA) relating to HMR, Andrx, Biovail, Faulding, Cardizem® CD, Cartia XT™, or diltiazem products.

23. All documents maintained by the Company with respect to FTC File No. 981-0368.

24. All documents maintained by the Company with respect to FTC Docket No. 9293, "Hoechst-Andrx Generic Cardizem," Complaint issued March 16, 2000.

25. All communications between the company and FTC with respect to FTC Docket No. 9293, "Hoechst-Andrx Generic Cardizem,"Complaint issued March 16, 2000.

DEFINITIONS AND INSTRUCTIONS

1. To the extent any of the foregoing requests are duplicative in whole, or in part, with requests previously served by another Respondent on your company, Andrx is not seeking materials already made available in this proceeding.

2. Unless otherwise stated, the requests herein refer to the time period of January 1, 1992 through present.

3. As used herein, the words "you" or "your," "your Company," or "the Company" shall mean the individual and/or entity to whom this subpoena was directed, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of your present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

4. As used herein, "Andrx" shall mean the Respondent Andrx Corporation, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

5. As used herein, the term "HMRI" shall mean Hoeschst Marion Roussel and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

6. As used herein, the term "other entities" shall mean Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical and each of their predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

7. As used herein, the term "payor" means any entity with which you have a contractual or other relationship setting the terms by which prescription pharmaceutical products are provided to members pursuant to plans, including, without limitation, insurance companies, pharmaceutical benefit companies, and managed care organizations.

8. As used herein, the term "formulary" means a list of prescription pharmaceutical products generally covered under a health or prescription benefit plan subject to applicable limits and conditions. For the purposes of this document request, the term "formulary" excludes pharmaceutical products in classifications other than "cardiovascular pharmaceutical products" but includes all descriptive material, including

but not limited to operating guidelines, definitions and lists of abbreviations.

9. As used herein, "cardiovascular pharmaceutical products" means the products within code 31000 of the IMS Uniform System of Classification.

10. As used herein, "Cardizem® CD" means the diltiazem formulation sold under this name.

11. As used herein, "Cartia XT™" means the diltiazem formulation sold under this name.

12. As used herein, "person" means all employees, individuals, and entities, including but not limited to corporations, associations, companies, partnerships, joint ventures, trusts and estates.

13. As used herein, the terms "document" or "documents" or "documentation" include these terms as defined by 16 C.F.R. § 3.34(b) and, in addition, the original or drafts or any kind of written, printed, recorded or graphic matter or sound reproduction, however produced or reproduced, whether sent or received or neither, and all copies thereof which are different in any way from the original (whether by notation, indication of copies sent or received or otherwise) regardless of whether designated "Confidential," "Privileged" or otherwise and including, but not limited to, any correspondence, paper, book, account, drawing, agreement, contract, e-mail, handwritten notes, invoice, memorandum, telegram, object, opinion, purchase order, report, records, transcript, summary, study, survey recording of any telephone or other conversation, interviews or notes of any conference. The terms "document" or "documents" shall also include data stored, maintained or organized electronically or magnetically or through computer equipment, translated, if necessary, by you into reasonably usable form, and

film impressions, magnetic tape and sound or mechanical productions of any kind or nature whatsoever.

14. Except for privileged materials, produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, do not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

15. As used herein, the words "describe" or "relates to" or "relating to" or "regarding" or equivalent language shall mean constituting, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, containing, monitoring, studying, analyzing, discussing, evaluating or relevant to.

16. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

17. As used herein, the term "communication" means every manner of transmitting or receiving information, opinions, and thoughts whether orally or in writing.

18. As used herein, the term "health benefit plan" refers to any plan which you operate or administer which provides for the payment or reimbursement of health care related expenses.

19. As used herein, the term "prescription benefit plan" refers to any

plan which you operate or administer, either solely or in conjunction with another entity, which provides for the payment of or reimbursement for pharmaceutical products dispensed pursuant to doctors' prescriptions.

20. As used herein, the term "plan" or "plans" refers jointly to the health benefit plan and prescription benefit plan.

21. As used herein, the term "group" refers to an employer or other entity that purchases insurance or benefits under a health benefit plan and/or prescription benefit plan.

22. As used herein, the term "members" refers to individuals who are enrolled in and eligible to receive benefits through a health benefit plan and/or prescription benefit plan.

23. As used herein, the term "pharmacy" refers to any entity, including mail order vendors and other retailers, which dispenses pharmaceutical products pursuant to doctors' prescriptions. When a pharmacy has more than one retail location or outlet, please answer the document request for each location separately.

24. As used herein, the term "substitutability" refers to the degree to which doctors, patients, pharmacies, wholesalers, PBMs, and/or health benefit plans shift purchases between or among pharmaceutical products based on considerations including, but not limited to, cost, efficacy, and side effects.

25. The response to each document production request is to be numbered in a manner consistent with these requests and is to be preceded by the specific request.

26. If any form of privilege or immunity is claimed as a ground for

withholding a response, submit a written statement that describes the factual basis of the purported privilege or claim of immunity in sufficient detail to permit the court to adjudicate the validity of the claim.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
Hoechst Marion Roussel, Inc., et al., a corporation,	)	Docket No. 9293
	)	
CARDERM CAPITAL L.P., a limited partnership,	)	
	)	
and	)	
	)	
ANDRX CORPORATION, a corporation.	)	
	)	

DECLARATION OF SHAWN G. LISLE, ESQ.

SHAWN G. LISLE, under penalty of perjury, hereby declares and based on his personal knowledge:

1. I am an associate with the law firm of Porter, Wright, Morris & Arthur, LLP, 1919 Pennsylvania Avenue, Suite 500, Washington, D.C. 20006, counsel to the subpoenaed nonparties Kaiser Foundation Health Plan, Inc. (hereinafter "Kaiser"), BlueCross BlueShield of Michigan, and United HealthCare (collectively referred to herein as the "Third-Party Payers" unless otherwise noted) in the above-captioned case. This Declaration is submitted in support of the Joint Motion To Amend, Modify And Reissue The Protective Order Governing Discovery Materials To Be Produced By Non-Parties Kaiser Foundation Health Plan, Inc BlueCross BlueShield of Michigan, and United HealthCare.

2. Upon information and belief, on or about June 12, 2000, respondent Hoechst Marion Roussel, Inc. ("HMRI") served or caused to be served on nonparty Kaiser Permanente, a subpoena *duces tecum* containing thirteen separate requests for the production of documents.

3. Upon information and belief, on or about June 8, 2000, respondent HMRI served or caused to be served on nonparty BlueCross BlueShield of Michigan, a subpoena *duces tecum* that contained thirteen separate requests for the production of documents. Attached hereto and incorporated herein by reference as Exhibit "1" is a true and correct copy of the subpoena served on BlueCross BlueShield of Michigan by HMRI.

4. Upon information and belief, on or about June 7, 2000, respondent HMRI served or caused to be served on nonparty United HealthCare, a subpoena *duces tecum* that contained thirteen separate requests for the production of documents. Attached hereto and incorporated herein by reference as Exhibit "2" is a true and correct copy of the subpoena served on United HealthCare by HMRI.

5. The return date for each of the aforementioned nonparty subpoenas was originally extended until June 29, 2000, by HMRI's outside counsel in this litigation, D. Edward Wilson, Esq. of the law firm Shook, Hardy & Bacon. Pursuant to discussions between Mr. Wilson and myself on behalf of the Third-Party Payers, the return date was extended until July 13, 2000. If an agreement was not reached by that date then the Third-Party Payers were permitted an additional five additional business days to seek relief from the Commission.

6. Several telephonic conferences ensued in early to mid-July 2000, between Mr. Wilson and me. On July 18, 2000, Mr. Wilson and I reached an agreemcnt whereby the Third-Party Payers would produce, on a rolling basis, high-level core documents relating to the following: (1) the Third-Party Payers' drug formularies and formulary manuals (if any) for "cardiovascular pharmaceutical products;" (2) the Third-Party Payers' studies relating to "substitutability therapeutics" for Cardizem CD; (3) the names of the Pharmacy Benefits Managers ("PBM's") utilized by United HealthCare and BlueCross BlueShield of Michigan; (4)

the contracts held by Kaiser for Diltiazem; and (5) the names of the persons at United HealthCare and BlueCross BlueShield of Michigan who are chiefly responsible for the PBM contracts; and (6) the names of the persons at Kaiser chiefly responsible for pharmaceutical manufacturer contracts. If after reviewing these core documents, HMRI's outside counsel requires additional documents, then it was agreed that counsel would so inform the Third-Party Payers' counsel. Attached hereto and incorporated herein by reference as Exhibit "3" is a true and correct copy of the confirmation letter of the agreement that I prepared and sent to HMRI's counsel.

7. Upon information and belief, the Protective Order in this matter was first entered on April 28, 2000. It was subsequently amended by the Commission on May 8, 2000 and August 7, 2000, to include additional Terms and Conditions. When the initial Protective Order and the first amendment thereto was entered, the Third-Party Payers had not then been subpoenaed. As a result, they had no input in drafting the Protective Order and did not have the opportunity to negotiate its terms with the parties to the underlying action.

8. On or about June 22, 2000, I received via facsimile from HMRI's counsel, a copy of the Protective Order dated April 28, 2000, the May 8, 2000 amendment thereto, and "proposed additional language" to be added to paragraph 2 of the Terms and Conditions section of the April 28, 200 Protective Order as amended. Attached hereto and incorporated herein by reference as Exhibit "4" is a copy of the "proposed additional language" referenced in this paragraph.

9. During a July 11, 2000 telephonic conversation, Mr. Wilson informed me that HMRI and the other litigants were negotiating "additional proposed modifications" to paragraph 2 of the Terms and Conditions of the Protective Order dated April 28, 2000. Mr. Wilson sent a copy of the "additional proposed modifications" to me via e-mail. Until that time, neither I not the Third-Party Payers had been notified that this additional language was being negotiated. The

"proposed additional modifications" purported to place limitations on the disclosure of certain documents designated "Restricted Confidential, Attorneys Eyes Only." Mr. Wilson indicated that if the Third Party Payers had any comments about the newly proposed additions to paragraph 2 of terms and Conditions of the Protective Order, that they would have to be provided to him no later than noon the following day. I advised Mr. Wilson that this would be extremely difficult to accomplish given my inability to reach each of my respective client on such short notice to discuss the matter due to their unavailability that day. Attached hereto and incorporated herein by reference as Exhibit "5" is a true and correct copy of the "proposed additional modifications" referenced in this paragraph which were provided to me by Mr. Wilson.

10. After consulting with my clients, I sent to HMRI's outside counsel on July 18, 2000, the Third-Party Payers' proposed modifications to the Protective Order. To date, no response thereto has been received, except for a faxed copy of the Order dated August 7, 2000 Granting Consent Motion to Amend and Reissue Protective Order with the attached Second Amended Protective Order Governing Discovery Material from HMRI's counsel.

11. Upon information and belief, sometime in July, 2000, respondent Andrx Corporation ("Andrx") served or caused to be served on nonparty United HealthCare, subpoenas *duces tecum* and subpoenas *ad testificandum*, directed to Dean Goldberg and Eric Bergen, employees of United HealthCare. The subpoenas *duces tecum* are identical except for the name of the person to whom directed. Both subpoenas *duces tecum* contain twenty-five separate requests for production of documents. Attached hereto and incorporated herein by reference as Exhibit "6" are true and correct copies of the subpoenas served on United Health Care by Andrx.

12. On August 8, 2000, on behalf of United HealthCare, I conferred with Andrx's

outside counsel, Sharon Sash, Esq., of the law firm of Solomon, Zauderer, Ellenhorn, Frischer & Sharp, about the subpoenas served on United HealthCare. During that conference, Ms. Sash and I agreed on behalf of our respective clients to substantially the same document production terms and conditions which United HealthCare and HMRI had previously agreed to on July 18, 2000. (See Exhibit "7" hereto which is a true and correct copy of my correspondence to Ms. Sash concerning the matters referenced in this paragraph.)

Executed on September 8, 2000

Shawn G. Lisle, Esq.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Exhibit A to Subpoena Duces Tecum

In the Matter of Hoechst Marion Roussel, Inc., et al., Respondents	Docket No. 9293

HMRI'S FIRST DOCUMENT PRODUCTION REQUEST TO BLUE CROSS AND BLUE SHIELD OF MICHIGAN

Respondent Hoechst Marion Roussel, Inc. ("HMRI"), pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.34(b), requests that Blue Cross and Blue Shield of Michigan (hereinafter referred to as "the company") produce documents and other things for inspection and copying, within 20 days, in response to the Document Requests set forth below, and in accordance with the Definitions and Instructions following thereafter, at the offices of Shook, Hardy & Bacon, L.L.P., 600 14th Street, N.W., Washington, D.C. 20005, or such location as may be mutually agreed upon.

DOCUMENT REQUESTS

Request No. 1.: All documents that reflect or relate to determining pharmaceutical products for inclusion in, or exclusion from, formularies, including but not limited to contract manuals, contract training manuals, account training manuals, standard form contracts, discount grids, market share tiers, and market segment listings.

Request No. 2.: All documents comprising pharmaceutical product formularies used in connection with any health benefit plan or prescription benefit plan through which you reimburse pharmacies and/or individuals for pharmaceutical products dispensed pursuant to doctors' prescriptions.

Request No. 3.: All documents that reflect or relate in any manner to the classification of prescription pharmaceutical products in formularies, including the classification of pharmaceutical products for treatment purposes and for determining co-payments or reimbursement amounts for individual participants and/or payments to pharmacies.

Request No. 4.: All documents that reflect or relate to any process or criteria, whether clinical or economic, including those documents relating to any internal organization such as a Pharmacy Quality Advisory Committee ("PQAC" or "QC") or Pharmacy and Therapeutics Committee ("P & T"), used to determine the cardiovascular pharmaceutical products to be included in, or excluded from, any formulary.

Request No. 5.: All documents that reflect or relate to the policies or criteria for making any initial classification in formularies as well as any reclassification of any previously classified pharmaceutical product in subsequent formulary listings.

Request No. 6.: All documents that reflect or relate to the formularies in which Cardizem® CD has been listed, including but not limited to documents identifying all classifications or categories in which Cardizem® CD has been listed in each formulary, as well as the other pharmaceutical products included in each category so described.

Request No. 7.: All documents that reflect or relate to standards of care for the treatment of hypertension and/or angina through the use of cardiovascular pharmaceutical products.

Request No. 8.: All documents that reflect or relate, in any way, the substitutability of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

Request No. 9.: All documents that reflect or relate in any way to programs, campaigns or activities undertaken by you which are designed to encourage the use or substitution of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

Request No. 10.: All documents that reflect or relate to agreements or contracts between you and any of the entities listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

Request No. 11.: All documents that reflect or relate in any way to the negotiation of contracts or other agreements regarding discounts, rebates, credits, allowances, charge backs and other price adjustments between you and any of the entities listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

Request No. 12.: All data and reports, including but not limited to data and reports provided by third-party vendors such as IMS, that reflect or relate to the sales of any cardiovascular pharmaceutical product and any analysis that might consider: (1) the extent to which these products compete against each other and compete against Cardizem® CD and other sustained release diltiazem products; (2) the extent to which sales of the products respond to/or are affected by variations in price or manufacturer discounts, rebates, credits or other price adjustments; and (3) the extent to which sales of the products respond to changes in the formulary classifications maintained by third-party payors, insurers and other health care providers.

Request No. 13.: All documents sufficient to identify the individual(s) (by name, address, position and date) who supervise the negotiation of contracts and/or agreements between you and any entity listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

DEFINITIONS AND INSTRUCTIONS

1. Unless otherwise stated, the requests herein refer to the time period of January 1, 1992 through present and to information relating to the

2. As used herein, the words "you" or "your" shall mean Blue Cross and Blue Shield of Michigan, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

3. As used herein, "HMRI" shall mean the Respondent Hoechst Marion Roussel, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

4. As used herein, the term "formulary" means a list of prescription pharmaceutical products generally covered under a health or prescription benefit plan subject to applicable limits and conditions. For the purposes of this document request, the term "formulary" excludes pharmaceutical products in classifications other than "cardiovascular pharmaceutical products" but includes all descriptive material, including but not limited to operating guidelines, definitions and lists of abbreviations.

5. As used herein, "cardiovascular pharmaceutical products" means the products within code 31000 of the IMS Uniform System of Classification.

6. As used herein, "Cardizem® CD" means the diltiazem formulation sold under this name.

7. As used herein, "person" means all employees, individuals, and entities, including but not limited to corporations, associations, companies, partnerships, joint ventures, trusts and estates.

8. As used herein, the terms "document" or "documents" or "documentation" include these terms as defined by 16 C.F.R. § 3.34(b) and, in addition, the original or drafts or any kind of written, printed, recorded or graphic matter or sound reproduction, however produced or reproduced, whether sent or received or neither, and all copies thereof which are different in any way from the original (whether by notation, indication of copies sent or received or otherwise) regardless of whether designated "Confidential," "Privileged" or otherwise and including, but not limited to, any correspondence, paper, book, account, drawing, agreement, contract, e-mail, handwritten notes, invoice, memorandum, telegram, object, opinion, purchase order, report, records, transcript, summary, study, survey recording of any telephone or other conversation, interviews or notes of any conference. The terms "document" or "documents" shall also include data stored, maintained or organized electronically or magnetically or through computer equipment, translated, if necessary, by you into reasonably usable form, and film impressions, magnetic tape and sound or mechanical productions of any kind or nature whatsoever.

9. Except for privileged materials, produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, do not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

10. As used herein, the words "describe", "relates to", "relating to", "reflects", "regarding", or equivalent language shall mean constituting, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, containing, monitoring, studying, analyzing, discussing, evaluating or relevant to.

11. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

12. As used herein, the term "communication" means every manner of transmitting or receiving information, opinions, and thoughts whether orally, in writing, or electronically.

13. As used herein, the term "health benefit plan" refers to any plan which you operate or administer which provides for the payment or reimbursement of health care related expenses.

14. As used herein, the term "prescription benefit plan" refers to any plan which you operate or administer, either solely or in conjunction with another entity, which provides for the payment of or reimbursement for pharmaceutical products dispensed pursuant to doctors' prescriptions.

15. As used herein, the term "plan" or "plans" refers jointly to the health benefit plan and prescription benefit plan.

16. As used herein, the term "substitutability" refers to the degree to which doctors, patients, pharmacies, wholesalers, pharmacy benefit managers ("PBMs"), and/or health benefit plans shift purchases between or among pharmaceutical products based on considerations including, but not limited to, cost, efficacy, and side effects.

LAW OFFICES

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LONDON
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D. E. Wilson, Jr.
202-662-4861
dwilson@shb.com

June 16, 2000

MEMORANDUM FOR COUNSEL TO: Blue Cross and Blue Shield of Michigan

Re: Subpoena in FTC Docket No. 9293

This memorandum confirms that your client has an extension of time up to and including Thursday, June 29, 2000, in which to begin producing documents or to file a motion to limit or quash the subpoena issued in connection with the above-referenced matter. During these next two weeks, we hope to reach agreement on the scope of the subpoena, any necessary amendments to the outstanding protective order that will facilitate production, and the timing of production. The granting of this extension is without prejudice to any defenses available to your client with regard to responding to the subpoena.

If we are not able to reach agreement by June 29 either to extend the time in which to file a motion to limit or quash, or to produce responsive documents (or both these issues), we will afford you an additional five business days (with neither July 3 nor 4 being a business day) in which to file a motion with the Administrative Law Judge.

Thank you for your cooperation. We look forward to working with you. Please contact me if you have any questions.

D. E. Wilson, Jr.
Attorney for Aventis Pharmaceuticals, Inc.

cc: James M. Spears, Esquire

SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO Custodian of Records for:
Blue Cross and Blue Shield of Michigan
600 Lafayette E. Blvd.
Detroit, MI 48226
c/o Mr. Steven C. Hess
600 Lafayette East
Detroit, MI 48226

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

Shook, Hardy & Bacon L.L.P.
600 14th Street, N.W., Suite 800
Washington, DC 20005-2004

4. MATERIAL WILL BE PRODUCED TO

Shook, Hardy & Bacon L.L.P.
Attn: D. Edward Wilson, Counsel for Hoechst Marion Roussel, Inc.

5. DATE AND TIME OF PRODUCTION OR INSPECTION

June 26, 2000 at 10:00 a.m.

6. SUBJECT OF PROCEEDING

In the matter of Hoechst Marion Roussel, Inc., et al.

OFFICE OF THE
GENERAL COUNSEL
JUN 08 2000
ADMINISTRATIVE SERVICES

7. MATERIAL TO BE PRODUCED

See Exhibit "A" attached hereto

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Shook, Hardy & Bacon L.L.P
James M. Spears
D. Edward Wilson
Peter D. Bernstein
Counsel for Hoechst Marion Roussel

DATE ISSUED

MAY 17 2000

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Dean Goldberg
United Healthcare
6300 Highway 55
Minneapolis, MN 55427

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Pat Carl & Associates
10911 Highway 55, Suite 205
Minneapolis, MN 55441

4. YOUR APPEARANCE WILL BE BEFORE

Notary Public
(At the request of
Respondent Andrx Corporation)

5. DATE AND TIME OF HEARING OR DEPOSITION

July 26, 2000 at 10:30 a.m.

6. SUBJECT OF PROCEEDING

Andrx vs

n the matter of Hoechst Marion Roussel, Inc., et al.

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Mary 212 956 3700

Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza, 7th Floor
New York, New York 10111

Attorneys for Respondent Andrx

DATE ISSUED

MAY 12 2000

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

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See Exhibit A

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Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza, 7th Floor
New York, New York 10111

Attorneys for Respondent Andrx

DATE ISSUED

MAY 12 2000

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Donald S. Clark

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Exhibit A to Subpoena Duces Tecum

In the Matter of	)	
	)	
Hoechst Marion Roussel, Inc., et al.,	)	Docket No. 9293
	)	
Respondents	)	
	)	

HMRI'S FIRST DOCUMENT PRODUCTION REQUEST TO UNITED HEALTHCARE SERVICES, INC.

Respondent Hoechst Marion Roussel, Inc. ("HMRI"), pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.34(b), requests that United HealthCare Services, Inc. (hereinafter referred to as "the company") produce documents and other things for inspection and copying, within 20 days, in response to the Document Requests set forth below, and in accordance with the Definitions and Instructions following thereafter, at the offices of Shook, Hardy & Bacon, L.L.P., 600 14th Street, N.W., Washington, D.C. 20005, or such location as may be mutually agreed upon.

DOCUMENT REQUESTS

Request No. 1.: All documents that reflect or relate to determining pharmaceutical products for inclusion in, or exclusion from, formularies, including but not limited to contract manuals, contract training manuals, account training manuals, standard form contracts, discount grids, market share tiers, and market segment listings.

Request No. 2.: All documents comprising pharmaceutical product formularies used in connection with any health benefit plan or prescription benefit plan through which you reimburse pharmacies and/or individuals for pharmaceutical products dispensed pursuant to doctors' prescriptions.

Request No. 3.: All documents that reflect or relate in any manner to the classification of prescription pharmaceutical products in formularies, including the classification of pharmaceutical products for treatment purposes and for determining co-payments or reimbursement amounts for individual participants and/or payments to pharmacies.

Request No. 4.: All documents that reflect or relate to any process or criteria, whether clinical or economic, including those documents relating to any internal organization such as a Pharmacy Quality Advisory Committee ("PQAC" or "QC") or Pharmacy and Therapeutics Committee ("P & T"), used to determine the cardiovascular pharmaceutical products to be included in, or excluded from, any formulary.

Request No. 5.: All documents that reflect or relate to the policies or criteria for making any initial classification in formularies as well as any reclassification of any previously classified pharmaceutical product in subsequent formulary listings.

Request No. 6.: All documents that reflect or relate to the formularies in which Cardizem® CD has been listed, including but not limited to documents identifying all classifications or categories in which Cardizem® CD has been listed in each formulary, as well as the other pharmaceutical products included in each category so described.

Request No. 7.: All documents that reflect or relate to standards of care for the treatment of hypertension and/or angina through the use of cardiovascular pharmaceutical products.

40125.1

Request No. 8.: All documents that reflect or relate, in any way, the substitutability of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

Request No. 9.: All documents that reflect or relate in any way to programs, campaigns or activities undertaken by you which are designed to encourage the use or substitution of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

Request No. 10.: All documents that reflect or relate to agreements or contracts between you and any of the entities listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

Request No. 11.: All documents that reflect or relate in any way to the negotiation of contracts or other agreements regarding discounts, rebates, credits, allowances, charge backs and other price adjustments between you and any of the entities listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

Request No. 12.: All data and reports, including but not limited to data and reports provided by third-party vendors such as IMS, that reflect or relate to the sales of any cardiovascular pharmaceutical product and any analysis that might consider: (1) the extent to which these products compete against each other and compete against Cardizem® CD and other sustained release diltiazem products; (2) the extent to which sales of the products respond to/or are affected by variations in price or manufacturer discounts, rebates, credits or other price adjustments; and (3) the extent to which sales of the products respond to changes in the formulary classifications maintained by third-party payors, insurers and other health care providers.

Request No. 13.: All documents sufficiont to identify the individual(s) (by name, address, position and date) who supervise the negotiation of contracts and/or agreements between you and any entity listed on Attachment 1 with regard to cardiovascular pharmaceutical products.

DEFINITIONS AND INSTRUCTIONS

1. Unless otherwise stated, the requests herein refer to the time period of January 1, 1992 through present and to information relating to the

2. As used herein, the words "you" or "your" shall mean United HealthCare Services, Inc., and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

3. As used herein, "HMRI" shall mean the Respondent Hoechst Marion Roussel, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

4. As used herein, the term "formulary" means a list of prescription pharmaceutical products generally covered under a health or prescription benefit plan subject to applicable limits and conditions. For the purposes of this document request, the term "formulary" excludes pharmaceutical products in classifications other than "cardiovascular pharmaceutical products" but includes all descriptive material, including but not limited to operating guidelines, definitions and lists of abbreviations.

5. As used herein, "cardiovascular pharmaceutical products" means the products within code 31000 of the IMS Uniform System of Classification.

6. As used herein, "Cardizem® CD" means the diltiazem formulation sold under this name.

7. As used herein, "person" means all employees, individuals, and entities, including but not limited to corporations, associations, companies, partnerships, joint ventures, trusts and estates.

8. As used herein, the terms "document" or "documents" or "documentation" include those terms as defined by 16 C.F.R. § 3.34(b) and, in addition, the original or drafts or any kind of written, printed, recorded or graphic matter or sound reproduction, however produced or reproduced, whether sent or received or neither, and all copies thereof which are different in any way from the original (whether by notation, indication of copies sent or received or otherwise) regardless of whether designated "Confidential," "Privileged" or otherwise and including, but not limited to, any correspondence, paper, book, account, drawing, agreement, contract, e-mail, handwritten notes, invoice, memorandum, telegram, object, opinion, purchase order, report, records, transcript, summary, study, survey recording of any telephone or other conversation, interviews or notes of any conference. The terms "document" or "documents" shall also include data stored, maintained or organized electronically or magnetically or through computer equipment, translated, if necessary, by you into reasonably usable form, and film impressions, magnetic tape and sound or mechanical productions of any kind or nature whatsoever.

9. Except for privileged materials, produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, do not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

10. As used herein, the words "describe", "relates to", "relating to", "reflects", "regarding", or equivalent language shall mean constituting, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, containing, monitoring, studying, analyzing, discussing, evaluating or relevant to.

11. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

12. As used herein, the term "communication" means every manner of transmitting or receiving information, opinions, and thoughts whether orally, in writing, or electronically.

13. As used herein, the term "health benefit plan" refers to any plan which you operate or administer which provides for the payment or reimbursement of health care related expenses.

14. As used herein, the term "prescription benefit plan" refers to any plan which you operate or administer, either solely or in conjunction with another entity, which provides for the payment of or reimbursement for pharmaceutical products dispensed pursuant to doctors' prescriptions.

15. As used herein, the term "plan" or "plans" refers jointly to the health benefit plan and prescription benefit plan.

16. As used herein, the term "substitutability" refers to the degree to which doctors, patients, pharmacies, wholesalers, pharmacy benefit managers ("PBMs"), and/or health benefit plans shift purchases between or among pharmaceutical products based on considerations including, but not limited to, cost, efficacy, and side effects.

17. The response to each document production request is to be numbered in a manner consistent with these requests and is to be preceded by the specific request.

18. If any form of privilege or immunity is claimed as ground for withholding a response, submit a written statement that describes the factual basis of the purported privilege or claim of immunity in sufficient detail to permit the court to adjudicate the validity of the claim.

19. If a request is deemed objectionable, state the reasons for the objection. If a portion of a request is deemed objectionable, state the objection, and answer the remaining unobjectionable portion of the request.

SHOOK, HARDY & BACON L.L.P.

By: D. E. Wilson

James M. Spears
Paul S. Schleifman
D. E. Wilson, Jr.
Peter D. Bernstein
600 14th Street, N.W.
Washington, D.C. 20005-2004
202-783-8400

Attorneys for Respondent Hoechst Marion Roussel, Inc.

Dated: June 5, 2000

Attachment 1, attached

Attachment 1 to Subpoena Duces Tecum
Issued on Behalf of HMRI

Pfizer, Inc.
Merck & Co., Inc.
Astra Zeneca Pharmaceuticals LP
Novartis Pharmaceuticals Corporation
Abbott Laboratories Inc.
Mylan Pharmaceuticals Inc.
Parke-Davis
Key Pharmaceutical, Inc.
Bayer Corporation
G. D. Searle & Co.
Watson Laboratories, Inc.
Zenith Goldline Pharmaceuticals Inc.
Forest Pharmaceuticals, Inc.
Biovail Corporation
Teva Pharmaceuticals USA, Inc.

40179.1

June 2. 2000

PORTER WRIGHT MORRIS & ARTHUR LLP
Attorneys & Counselors at Law

Shawn G. Lisle
202-778-3081
slisle@porterwright.com

* Admitted in Pennsylvania Only

1667 K Street, N.W., Suite 1100
Washington, D.C. 20006-1605

Facsimile: 202-778-3063
Toll Free: 800-456-7962

July 19, 2000

By Facsimile (202) 783-4211
Original By Regular Mail

D. E. Wilson, Esquire
Shook Hardy & Bacon
Hamilton Square
600 14th Street, NW, Suite 800
Washington, DC 20005-2004

Re: *In the Matter of Hoechst Marion Roussel, Inc. et al.*
Docket No. 9293 (U.S. Fed. Trade Comm.)

Dear Ed:

This correspondence is to memorialize the items we discussed during our telephone conference yesterday afternoon. Despite our unfortunate inability to agree on a more focussed list of relevant cardiovascular drugs, I nevertheless called you today to discuss a middle-ground that we believe will fairly and reasonably accommodate your client.

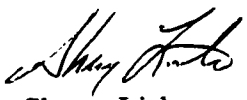
We agree to begin, on a rolling basis, the production of high-level core documents that are responsive to HMRI's requests for: (1) formularies and formulary manuals (if any) for "cardiovascular pharmaceutical products;" (2) studies relating to "substitutability therapeutics" for Cardizem CD; (3) the names of the Pharmacy Benefits Managers ("PBM's") utilized by United Health Care and BlueCross BlueShield of Michigan; (4) the contracts held by Kaiser for Diltiazem; and (5) the names of the personnel at United Health Care and BlueCross BlueShield of Michigan who are chiefly responsible for the PBM contracts, as well as the name(s) of the person(s) at Kaiser chiefly responsible for pharmaceutical manufacturer contracts.

If, after reviewing our production of the core documents, you determine that you need supplemental documents, then please inform us. In this regard, we will work with you in an attempt to accommodate your requests so long as they do not become unduly burdensome. Although we do not anticipate any disagreements arising in the future, if one should occur, we will work with you in a good faith attempt to resolve any problems. If this cannot be accomplished, only then would we seek limitations from the court.

I have sent to you the proposed modifications to the Protective Order that we believe are necessary in order to safeguard and preserve the confidential nature of the documents we are willing to provide. To this end, we intend to request that the court modify the Protective Order so as to provide the assurances that we believe are essential. Once a suitable protective order is in place, we will be in a position to begin our documents production. As you know, the Protective Order currently in place was entered months before we were served with the subpoenas. As a result, we did not have the benefit of participating in the negotiations of its terms, and now have no option other than to ask the court for the appropriate modifications.

Please let us know immediately if you have any concerns about the production format that we have proposed. We appreciate your cooperation so far in this matter, and we look forward to continued amicable communications with you.

Sincerely,



Shawn Lisle

WASHINGTON/114096 v.02

Proposal to add language to the end of existing paragraph 2 of the FTC Protective Order:

Existing Paragraph 2:

2. Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9293" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen (14) days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

Proposed addition to as new paragraph under current paragraph 2:

In addition, in order to permit the Third Parties to provide additional protection for a limited number of documents which contain sensitive information, parties may designate documents as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY" by placing on or affixing such legend on each page of the document. It is anticipated that documents to be designated "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY" would include marketing plans, sales forecasts, business plans, operating plans, pricing and cost data, price terms, analyses of pricing or competition information, personnel information and that this particularly restrictive designation is to be utilized for a limited number of documents. Documents designated "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY" **shall not be disclosed to the individuals designated under paragraph 5, hereof,** but, in all other respects shall be treated as Confidential Discovery Material and all references in this Protective Order and in the exhibit hereto to Confidential Discovery Material shall include documents designated "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY."

Proposal to add language to the end of existing paragraph 2 of the FTC Protective Order:

July 10, 2000 DRAFT

Existing Paragraph 2:

2. **[(a)]** Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9293" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen (14) days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

Proposed addition to as new paragraph under current paragraph 2:

(b) In order to permit Producing Parties to provide additional protection for a limited number of documents which contain commercially sensitive information, Producing Parties may designate documents as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293" by placing on or affixing such legend on each page of the document. It is anticipated that documents to be designated "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293" would include marketing plans, sales forecasts, business plans, contracts, operating plans, pricing and cost data, price terms, analyses of pricing or competition information, personnel information and that this particularly restrictive designation is to be utilized for a limited number of documents. Documents designated "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293" **shall not be disclosed to the individuals designated under paragraph 5, hereof, and shall not be disclosed to Experts/Consultants (paragraph 4(c), hereof) and to witnesses or deponents at trial or deposition (paragraph 4(d) hereof) who are officers, directors, or employees of pharmaceutical companies except in accordance with subsection (c) of this paragraph 2.** In all other respects RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material shall be treated as Confidential Discovery Material and all references in this Protective Order and in the exhibit hereto to Confidential Discovery Material shall include documents designated RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293.

(c) Disclosure to Experts/consultants, Deponents or Witnesses **Who Are Officers, Directors, or Employees of Pharmaceutical Companies**

If any Party desires to disclose RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material to any Expert/Consultant, deponent or witness **who is an officer, director, or employee of a pharmaceutical company** ("the individual"), the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific individual to whom the RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the proposed individual. The Producing Party may object to the disclosure of the RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material within five (5) business days of receiving notice of an intent to disclose the RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material to an individual by providing the disclosing Party with a written statement of the reasons for the objection. If the Producing Party timely objects, the disclosing Party shall not disclose the RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material to the identified individual, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified individual. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not object to the disclosure of RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material to the Expert/Consultant within five (5) business days, the disclosing Party may disclose the RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material to the identified individual. Disputes concerning the designation or disclosure of RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY, FTC Docket No. 9293 material shall be resolved in accordance with the provisions of paragraph 7.

sle, Shawn G.

om: Edward Wilson [DWILSON@shb.com]
nt: Monday, July 10, 2000 12:14 PM
: SLisle@porterwright.com
ubject: Proposed Amend to FTC protective Order (Eyes Only).WPD

WordPerfect 6.1

Here is the draft. As we discussed, we are looking for whatever language you may want to define the unterpart to pharmaceutical company.

anks you.

Wilson

E. Wilson, Jr.
look, Hardy & Bacon, L.L.P.
ite 800
0 14th Street, N.W.
ashington, D.C. 20005-2004
2-783-8400
)2-783-4211 (fax)
vilson@shb.com

SUBPOENA AD TESTIFICANDUM

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The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Mary 212 956 3700

Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza, 7th Floor
New York, New York 10111

Attorneys for Respondent Andrx

DATE ISSUED

MAY 12 2000

SECRETARY'S SIGNATURE

Donald S. Clark

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Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza, 7th Floor
New York, New York 10111

Attorneys for Respondent Andrx

DATE ISSUED

MAY 12 2000

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

Eric Bergen
United Healthcare
6300 Highway 55
Minneapolis, MN 55427

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

Pat Carl & Associates
10911 Highway 55, Suite 205
Minneapolis, MN 55441

4. MATERIAL WILL BE PRODUCED TO

Respondent – Andrx Corporation

5. DATE AND TIME OF PRODUCTION OR INSPECTION

July 26, 2000 at 10:30 a.m.

6. SUBJECT OF PROCEEDING

In the matter of Hoechst Marion Roussel, Inc., et al.

7. MATERIAL TO BE PRODUCED

See Exhibit A

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza, 7th Floor
New York, New York 10111

Attorneys for Respondent Andrx

DATE ISSUED

MAY 12 2000

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Eric Bergen
United Healthcare
6300 Highway 55
Minneapolis, MN 55427

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Pat Carl & Associates
10911 Highway 55, Suite 205
Minneapolis, MN 55441

4. YOUR APPEARANCE WILL BE BEFORE

Notary Public
(At the request of
Respondent Andrx Corporation)

5. DATE AND TIME OF HEARING OR DEPOSITION

July 26, 2000 at 10:30 a.m.

6. SUBJECT OF PROCEEDING

In the matter of Hoechst Marion Roussel, Inc., et al.

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza, 7th Floor
New York, New York 10111

Attorneys for Respondent Andrx

DATE ISSUED

MAY 12 2000

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

EXHIBIT A

1. All documents which relate to the effect of bioequivalent or generic versions of pioneer pharmaceutical products on the market for those pioneer pharmaceutical products.

2. All documents which relate to the actual or potential effect on competition with, or on sales, prices or market share for the Company's cardiovascular pharmaceutical products by any actual or potential prescription or non-prescription drugs for the treatment of hypertension and angina.

3. All documents which relate to the actual or potential effect on competition with, or on sales, prices or market share for the Company's cardiovascular pharmaceutical products by Cardizem® CD or a bioequivalent or generic version of Cardizem® CD.

4. All documents relating to the introduction or sale of bioequivalent or generic versions of Cardizem® CD by any person, including, but not limited to:

(a) attempts to introduce a bioequivalent or generic version of Cardizem® CD to the commercial market;

(b) the historical projections or anticipated dates of entry into the commercial market of each bioequivalent or generic version of Cardizem® CD;

(c) any analysis, study, projection, forecast, budget or plan on the effect of the introduction of a bioequivalent or generic version of Cardizem® CD on the Company's sales, revenues or profits;

(d) for each of the first three years following the projected or anticipated introduction or sale of bioequivalent or generic version of Cardizem® CD:

(i) the projected or anticipated market share (measured in terms of unit sales and revenues) of the bioequivalent or generic version of Cardizem® CD;

(ii) projected or anticipated price of the bioequivalent or generic version of Cardizem® CD;

(iii) projected or anticipated price of Cardizem® CD;

(iv) the Company's projected or anticipated lost annual revenues and profits.

5. All documents reflecting the sales of any cardiovascular pharmaceutical product and all documents reflecting any measure of the sale, price, revenues and profits of each cardiovascular pharmaceutical product, including but not limited to:

(a) gross and net sales to all customers in units and dollars;

(b) gross number and dollar value of promotional sample units distributed;

(c) sales returns in units and dollars;

(d) cost of goods sold in dollars;

(e) gross and net profit in dollars;

(f) sales, promotion, or marketing expenses;

(g) the list price and wholesale acquisition cost;

(h) product returns in units and dollars; and

(i) rebates, credits, allowances, charge backs, and any other adjustment to price.

6. All data and reports, including but not limited to data and reports provided by third-party vendors such as IMS, that reflect the sales of any cardiovascular pharmaceutical product and any analysis that might consider: (1) the extent to which these products compete against each other and compete against Cardizem® CD, Cartia XT™, and other sustained release diltiazem products; (2) the extent to which sales of the products respond to/or are affected by variations in price or manufacturer discounts, rebates, credits or other price adjustments; and (3) the extent to which sales of the products respond to changes in the manner in which they are listed in formularies maintained by third-party payors, insurers and other health care providers.

7. All documents which reflect in any way standards of care for the treatment of hypertension and/or angina through the use of cardiovascular pharmaceutical products.

8. All documents sufficient to show the name and chemical entity of all products which the Company believes competes with Cardizem® CD or Cartia XT™. For each product, produce documents sufficient to explain why the Company believes that product competes with Cardizem® CD or Cartia XT™.

9. All documents which reflect, in any way, the substitutability or exchangeability of any actual or potential cardiovascular pharmaceutical product for Cardizem® CD.

10. All documents which reflect, in any way, the substitutability of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product, including but not limited to, Cartia XT™.

11. All documents which relate in any way to programs, campaigns or activities undertaken by you which are designed to encourage the use or substitution of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

12. All documents relating to agreements or contracts between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, concerning or relating to cardiovascular pharmaceutical products.

13. All documents that relate in any way to the negotiation of contracts or other agreements regarding discounts, rebates, credits, allowances, charge backs and other price adjustments between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, with regard to cardiovascular pharmaceutical products.

14. All documents relating to agreements or contracts between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra

Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, with regard to cardiovascular pharmaceutical products.

15. All documents that relate in any way to the negotiation of contracts or other agreements regarding discounts, rebates, credits, allowances, charge backs and other price adjustments between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, with regard to cardiovascular pharmaceutical products.

16. All documents sufficient to identify the individual(s) (by name, address, position and date) who supervise the negotiation of contracts and/or agreements between you and any of the following other entities: Pfizer, Merck & Company, Zeneca Pharm (now Astra Zeneca), Andrx, HMRI, Novartis RX, Abbott Pharm Prods, Mylan, Parke-Davis, Key Pharmaceutical, Astra Pharm L.P., Bayer Pharm, Searle, Watson Lab, Zenith Goldline, and Forest Pharmaceutical, with regard to cardiovascular pharmaceutical products.

17. All documents concerning your Company and Andrx, HMRI, Faulding, Biovail, Cardizem® CD or Cartia XT™, any diltiazem product or FTC File No. 981-0368.

18. All documents produced to the FTC by the Company in connection with the Section 5 investigation of the Stipulation and Agreement, FTC File No. 981-0368.

19. All communications and documents which relate to communications between the Company and the FTC (including without limitation documents provided by the Company to the FTC and transcripts of testimony before the FTC), concerning FTC File No. 981-0368.

20. All communications with the FTC regarding request for information, including but not limited to subpoenas and civil investigative demands received from the FTC and all documents and all communications transmitting responses or modifying the requests.

21. All other documents produced to the FTC or FDA by the Company relating to HMRI, Andrx, Biovail, Faulding, Cardizem® CD, Cartia XT™ or diltiazem products.

22. All other communications and documents which relate to communications between the Company and the FTC or FDA (including without limitation documents provided by the Company to the FTC or FDA and transcripts of testimony before the FTC or FDA) relating to HMR, Andrx, Biovail, Faulding, Cardizem® CD, Cartia XT™, or diltiazem products.

23. All documents maintained by the Company with respect to FTC File No. 981-0368.

24. All documents maintained by the Company with respect to FTC Docket No. 9293, "Hoechst-Andrx Generic Cardizem," Complaint issued March 16, 2000.

25. All communications between the company and FTC with respect to FTC Docket No. 9293, "Hoechst-Andrx Generic Cardizem,"Complaint issued March 16, 2000.

DEFINITIONS AND INSTRUCTIONS

1. To the extent any of the foregoing requests are duplicative in whole, or in part, with requests previously served by another Respondent on your company, Andrx is not seeking materials already made available in this proceeding.

2. Unless otherwise stated, the requests herein refer to the time period of January 1, 1992 through present.

3. As used herein, the words "you" or "your," "your Company," or "the Company" shall mean the individual and/or entity to whom this subpoena was directed, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of your present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

4. As used herein, "Andrx" shall mean the Respondent Andrx Corporation, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

but not limited to operating guidelines, definitions and lists of abbreviations.

9. As used herein, "cardiovascular pharmaceutical products" means the products within code 31000 of the IMS Uniform System of Classification.

10. As used herein, "Cardizem® CD" means the diltiazem formulation sold under this name.

11. As used herein, "Cartia XT™" means the diltiazem formulation sold under this name.

12. As used herein, "person" means all employees, individuals, and entities, including but not limited to corporations, associations, companies, partnerships, joint ventures, trusts and estates.

13. As used herein, the terms "document" or "documents" or "documentation" include these terms as defined by 16 C.F.R. § 3.34(b) and, in addition, the original or drafts or any kind of written, printed, recorded or graphic matter or sound reproduction, however produced or reproduced, whether sent or received or neither, and all copies thereof which are different in any way from the original (whether by notation, indication of copies sent or received or otherwise) regardless of whether designated "Confidential," "Privileged" or otherwise and including, but not limited to, any correspondence, paper, book, account, drawing, agreement, contract, e-mail, handwritten notes, invoice, memorandum, telegram, object, opinion, purchase order, report, records, transcript, summary, study, survey recording of any telephone or other conversation, interviews or notes of any conference. The terms "document" or "documents" shall also include data stored, maintained or organized electronically or magnetically or through computer equipment, translated, if necessary, by you into reasonably usable form, and

film impressions, magnetic tape and sound or mechanical productions of any kind or nature whatsoever.

14. Except for privileged materials, produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, do not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

15. As used herein, the words "describe" or "relates to" or "relating to" or "regarding" or equivalent language shall mean constituting, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, containing, monitoring, studying, analyzing, discussing, evaluating or relevant to.

16. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

17. As used herein, the term "communication" means every manner of transmitting or receiving information, opinions, and thoughts whether orally or in writing.

18. As used herein, the term "health benefit plan" refers to any plan which you operate or administer which provides for the payment or reimbursement of health care related expenses.

19. As used herein, the term "prescription benefit plan" refers to any

plan which you operate or administer, either solely or in conjunction with another entity, which provides for the payment of or reimbursement for pharmaceutical products dispensed pursuant to doctors' prescriptions.

20. As used herein, the term "plan" or "plans" refers jointly to the health benefit plan and prescription benefit plan.

21. As used herein, the term "group" refers to an employer or other entity that purchases insurance or benefits under a health benefit plan and/or prescription benefit plan.

22. As used herein, the term "members" refers to individuals who are enrolled in and eligible to receive benefits through a health benefit plan and/or prescription benefit plan.

23. As used herein, the term "pharmacy" refers to any entity, including mail order vendors and other retailers, which dispenses pharmaceutical products pursuant to doctors' prescriptions. When a pharmacy has more than one retail location or outlet, please answer the document request for each location separately.

24. As used herein, the term "substitutability" refers to the degree to which doctors, patients, pharmacies, wholesalers, PBMs, and/or health benefit plans shift purchases between or among pharmaceutical products based on considerations including, but not limited to, cost, efficacy, and side effects.

25. The response to each document production request is to be numbered in a manner consistent with these requests and is to be preceded by the specific request.

26. If any form of privilege or immunity is claimed as a ground for

withholding a response, submit a written statement that describes the factual basis of the purported privilege or claim of immunity in sufficient detail to permit the court to adjudicate the validity of the claim.

PORTER WRIGHT MORRIS & ARTHUR LLP
Attorneys & Counselors at Law

Shawn G. Lisle
202-778-3081
slisle@porterwright.com

* Admitted in Pennsylvania Only

1667 K Street, N.W., Suite 1100
Washington, D.C. 20006-1605

Facsimile: 202-778-3063
Toll Free: 800-456-7962

August 23, 2000

By Facsimile (212) 956-3700
Original By Regular Mail

Sharon M. Sash, Esquire
Solomon, Zauderer, Ellenhorn,
Frischer & Sharp
45 Rockefeller Plaza
New York, New York 10111

Re: *In the Matter of Hoechst Marion Roussel, Inc. et al.*
Docket No. 9293 (U.S. Fed. Trade Comm.)

Dear Ms. Sash:

On August 9, 2000, you faxed to me a letter to memorialize our agreement with respect to the subpoenas served by Andrx Corporation ("Andrx") upon United HealthCare ("United") and Dean Goldberg. We had agreed that United would produce to Andrx the same documents that it had earlier agreed to provide to Hoechst Marion Roussel, Inc. ("HMRI") in response to its subpoena. Additionally, you requested that United produce any communications that Dean Goldberg may have had with the Federal Trade Commission concerning Andrx or the investigation in this proceeding. I informed you that United would produce such communications if they exist. We also agreed that the noticed deposition of Mr. Goldberg will be deferred until a mutually agreeable date. Presently, no date has been agreed upon.

After reviewing the terms in your letter dated August 9, 2000, I contacted you and advised that several of the terms in the letter did not comport with my understanding of our agreement. We then discussed the specific terms of the agreement reached between United and HMRI. You indicated that Andrx would agree to those same terms with the additional condition that United produce any communications that Dean Goldberg may have had with the Federal Trade Commission. Using the same terms as the HMRI agreement, United agrees to begin producing to Andrx, on a rolling basis, the following high-level core documents: (1) formularies and formulary manuals (if any) for "cardiovascular pharmaceutical products;" (2) studies relating to "substitutability therapeutics" for Cardizem CD; (3) the names of the Pharmacy Benefits Managers ("PBM's") utilized by United; (4) the names of the personnel at United who are

chiefly responsible for the PBM contracts. If, after reviewing United's production of the core documents, you determine that you need supplemental documents, then please inform me. In this regard, we will work with you in an attempt to accommodate your requests so long as they do not become unduly burdensome. Although we do not anticipate any disagreements arising in the future, if one should occur, we will work with you in a good faith attempt to resolve any problems. If this cannot be accomplished, only then would we seek limitations from the court. Please let us know as soon as possible if you have any concerns about the production format previously described, or if any of the terms listed are not agreeable.

Additionally, we received the most recent amended protective order in this matter from HMRI's outside counsel. As you know, the protective order was entered months before United was served with the subpoena. As a result, United did not have the benefit of participating in the negotiations of those terms and conditions. After reviewing the most recent protective order, we believe that additional protections are necessary to safeguard and preserve the confidential nature of the documents our client is willing to provide. To this end, we intend to request that the court modify the current protective order. Once a suitable protective order is in place, we will be in a position to begin our documents production.

During our last discussion, you also stated that Andrx may have also served Eric Bergen of United with a subpoena. Your letter of August 21, 2000, states that a subpoena was served. We have inquired as to whether Mr. Bergen did in fact receive service of the subpoena, but do not yet know this to be the case. At your earliest convenience, please provide me with the date on which the subpoena was served on Mr. Bergen as well as a copy of the subpoena.

We appreciate your cooperation so far in this matter, and we look forward to continued amicable communications with you.

Sincerely,

Shawn Lisle