UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

In the Matter of

HOECHST MARION ROUSSEL, INC., a corporation,

CARDERM CAPITAL L.P., a limited partnership,

and

ANDRX CORPORATION, a corporation.

Docket No. 9293

RESPONDENT ANDRX CORPORATION'S OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO COMPEL ADMISSIONS

Pursuant to § 3.22 of the FTC's Procedures and Rules of Practice, respondent Andrx Corporation ("Andrx") submits this memorandum in opposition to Complaint Counsel's motion to compel admissions by Andrx.[1]

Preliminary Statement

Complaint Counsel served 146 separate requests for admissions (not counting compound requests) on Andrx on September 25, 2000 -- the very last day permissible for issuing such requests. On October 18, Andrx served its 42-page response, in which it specifically, carefully and -- in every instance possible -- substantively answered each individual

[1] Andrx files this reply within the time period prescribed by the Stipulation entered into between Complaint Counsel and Andrx and approved by the Court on November 15, 2000, which extended Andrx's time to respond by three business days until November 21, 2000.

request. See Andrx's Response to Complaint Counsel's First Requests for Admissions Issued to Andrx Corporation, dated October 18, 2000 (the "Response").[2] Wherever possible, Andrx either admitted or denied the facts in Complaint Counsel's requests. Regrettably, a staggering number of Complaint Counsel's requests were improper, unintelligible and/or otherwise unanswerable.

Andrx diverted enormous attention and energy away from its preparation for the imminent hearing in this matter to respond to Complaint Counsel's back-breaking requests for admissions in a meaningful, responsible manner. Andrx did so even though Complaint Counsel did not propound the requests because they genuinely sought to ascertain information or narrow any of the issues. Rather, Complaint Counsel served the taxing requests -- styled as requests for admissions to escape the numerical limitation on interrogatories -- to burden Andrx's far smaller team of lawyers at a critical point in the case and to put a spin on the record by seeking admissions as to snippets of material taken out of context.

Wholly apart from the responses to these requests for admissions, there is no doubt whatsoever that Complaint Counsel has ascertained every "fact" that they require or want to prepare their case. Andrx already has produced every scrap of paper in its possession relevant to this case, and has produced for deposition every witness that Complaint Counsel has requested -- sometimes on multiple occasions. Indeed, it is because Complaint Counsel needs no further information that they waited until the last day to serve the requests: the requests are not aimed at assisting Complaint Counsel to develop their case but at harassing Andrx when Andrx -- which does not have nearly as many attorneys working on this matter as Complaint Counsel does -- should be directing its attention to trial preparation.

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[2] A copy of the Response is annexed hereto as Appendix A.

As further discussed below, no further responses are appropriate to the 146 requests to admit. Andrx makes this argument on several independent grounds:

-- The 146 requests, taken together, are unduly burdensome (particularly at this late stage) and are an improper attempt to avoid the numerical restriction on interrogatories. In particular, at least 30 of the requests are, on their face, contention interrogatories disguised as requests to admit in an effort to avoid the 25-interrogatory limit set by this Court.

-- At least 7 seek admissions about which Andrx is unable, even after diligent efforts, to obtain sufficient information to confirm or deny.

-- At least 20 seek admissions of statements taken out of context -- ignoring the full text of the documents and interconnected sections -- which, standing alone, cannot fairly be understood, let alone admitted or denied.

-- At least 17 are overly vague and/or ambiguous, rendering them impossible to answer.

-- At least 58 improperly ask Andrx to characterize documents in a manner that takes sections out of context and/or distorts their meaning.

-- At least 34 impermissibly seek legal conclusions in violation of the applicable rules.

Despite these deficiencies, Andrx drafted careful and specific responses to each request -- Andrx actually admitted or denied 27 of the 93 requests now at issue on this motion, and also offered to stipulate to the authenticity of the documents at issue in 33 of them.

In preparing responses to the requests, and now these papers opposing Complaint Counsel's motion, Andrx was forced to waste a great deal of time -- a dear commodity with the hearing just weeks away. Now, having already burdened Andrx with an overload of inappropriate and inartfully drafted requests, plus subsequent motion practice, Complaint Counsel seek to waste even more of Andrx's time by having it supplement its responses. However, Complaint Counsel's motion is groundless and Andrx should not be required to answer any further requests. Nor are Complaint Counsel entitled to the even more draconian relief of having any of the requests deemed admitted.

I. Complaint Counsel's Requests Are Unduly Burdensome

Rule 3.31 of the Federal Trade Commission Rules of Practice and Procedure governs the discovery process, and places meaningful limits on the frequency and extent of discovery methods. Specifically, Rule 3.31(c)(1)(iii) calls for the Administrative Law Judge to limit discovery where "[t]he burden and expense of the proposed discovery outweigh its likely benefit." Taken as a whole, Complaint Counsel's 146 requests are clearly beyond the scope of Rule 3.31 and constitute, certainly at this late stage, an improper attempt to harass and unduly burden Andrx. By thrusting upon Andrx 146 separate requests for admissions on the last possible day, Complaint Counsel have abused the device -- particularly so in light of the limited time available to the parties before the hearing in this proceeding. Routinely, courts have held that requests for admissions that run into the hundreds are abusive. Leonard v. University of Delaware, 1997 WL 158280, n. 19 (D.Del. March 20, 1997); See also, Phillips Petroleum Co. v. Northern Petrochemical Co., 1986 WL 9186 (N.D.Ill. Aug. 19, 1986) (finding "oppressive" hundreds of requests even when timely served during the regular course of a proceeding and not, as here, on the last date for doing so). Moreover, the burden in justifying numerous requests is heightened in situations, such as here, where the requests are unclear, requiring even more time to address. The Commission has itself noted "the tendency of badly drawn requests for admissions to raise more questions than they resolve." In re Beatrice Foods Co., 1979 FTC Lexis 597 at *7-*8.

Not only does the sheer number of Complaint Counsel's requests constitute an undue burden, but many of the individual requests require Andrx to ferret through thousands of pages of documents to which Complaint Counsel have access in order to characterize those

Complaint Counsel have chosen to repay Andrx's good faith with a motion to have the 24 improper requests *that Andrx nonetheless denied* deemed admitted. This failure to acknowledge those answers evidences that Complaint Counsel's motion is vexatious and irresponsible and, therefore, it certainly should be denied as to all requests already answered: 3, 11, 16-21, 52-53, 55, 57, 68-69, 71, 85, 96-100, 103, and 110-111.

IV. Andrx Cannot Admit To Facts Of Which It Is Unaware

The Rules permit a responding party to state that it "has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny." Rule 3.32. In Beatrice, supra, the Commission held that "[i]f the answer on the basis of lack of knowledge is in proper form, it must be accepted." Id. (quoting order by Judge Needelman in General Motors Corp., FTC Docket No. 9077 (1977)). Consistent with the Rules, Andrx appropriately objected to various of the requests on the ground that there was not sufficient information available to admit or deny them. Indeed, Complaint Counsel provided essentially the same response to several of Aventis' requests for admissions. See, e.g., Complaint Counsel's answers to Aventis' requests nos. 7-11, 30, 42-46. Where the responding party is unable fairly to admit the facts presented in a request without qualifying or explaining that admission, it may not "recast the requested proposition in his own words and answer the recast proposition." Bristol-Myers, supra. Thus, Andrx was neither required nor permitted to rewrite any of the requests -- and it did not do so. [8]

Four of the requests Complaint Counsel are now seeking to have deemed admitted (Requests 32-35) ask for admissions about District Courts' findings with regard to the '584

[8] Complaint Counsel, for their part, did not comply with the Rules when responding to Aventis' requests for admissions, and they impermissibly "recast" many of the requests, rather than squarely answering them. See, e.g., Complaint Counsel's answers to Aventis' Requests nos. 5, 14-26, 34, 36, 38-41, 52, 55-57, 60.

patent. As Andrx stated in its Response to those requests, Andrx is unaware of any written findings made by the District Courts and filed in connection with the patent litigation regarding the referenced subjects. Beyond that, Complaint Counsel have access to the full record in the patent action. Similarly, in Request 106, Complaint Counsel ask Andrx to admit to the intentions and beliefs of Hoechst and its legal counsel, and to know of every patent Hoechst has or might acquire. Such information could not possibly be "known to or readily obtainable by" Andrx, even if it scoured every document and deposition in this case.

Furthermore, Requests 45 and 49 ask Andrx to admit that Hoechst was responsible for inserting certain language into the HMR/Andrx Stipulation. As stated by Andrx in its Response, this was a negotiated document; as such, the provision at issue was negotiated as part of a give-and-take between the parties. Andrx therefore is unable to characterize who was responsible for inserting the language in question, when the language was the subject of negotiation. Indeed, Complaint Counsel have obtained comprehensive discovery of documents and deposition testimony relevant to the subject of the drafting of the agreement.

Under these circumstances, Complaint Counsel have no basis to demand that certain requests be admitted because there is insufficient information available with which to admit or deny them. See Caruso v. Coleman Co., 1995 WL 347003 (E.D.Pa.) (denying motion challenging sufficiency of answers claiming "insufficient information to admit or deny" requests).

V. Complaint Counsel's Requests State "Half-Truths" Which Cannot Be Admitted

"Half-truths" are statements that, taken alone, are out of context and thus may convey unwarranted and unfair inferences. Johnstone v. Cronlund, 25 F.R.D. 42 (D.C.Pa. 1960). "To compel a responding party to answer questions that unfairly infer a particular or varied conclusion from the fact admitted, or to compel answers to vague and indefinite questions capable of more than one interpretation and requiring an explanation, thwarts the purpose of rule 36(a)" pertaining to requests for admissions. Caruso, supra. No fewer than 20[9] of Complaint Counsel's requests seek admissions from Andrx as to what was true under the terms of a written agreement which has been the subject of extensive discovery. Take, for example, Request 59, which asks whether "Hoechst became obligated to make payments . . . under the terms of the HMR/Andrx Stipulation." In its Response, Andrx stated that "Hoechst made payments it was obligated to make"; however, beyond that, nothing more can be stated because Hoechst's obligations were contingent on other obligations, including, among other things, Andrx abiding by certain provisions. Particularly given that the HMR/Andrx Stipulation is a written document as to which Complaint Counsel has taken extensive discovery, the requests for admissions concerning its terms are pointless. Likewise, Requests Nos. 61, 63, 64, 65 and 66, among others, are objectionable because they isolate provisions of the HMR/Andrx Stipulation out of context and thus distort the agreement, which is an agreement Complaint Counsel are fully apprised about and over whose terms they are able to argue.

Given that the HMR/Andrx Stipulation is a complex document with interconnected provisions, it is inappropriate to ask whether a particular obligation under it may exist in isolation. On its face, the agreement imposes multiple, overlapping obligations, which

[9] 55, 61-75, 82-83, 110-111.

are triggered under certain circumstances, but not others. Without far greater specificity than Complaint Counsel provide in their requests, Andrx can neither admit nor deny them without qualification and/or equivocation that would render such answers meaningless. See S.E.C. v. Micro-Moisture Controls, Inc., 21 F.R.D. 164, 166 (S.D.N.Y. 1957).

VI. Complaint Counsel's Requests Are Defective As To Form

Many of Complaint Counsel's requests are so defective in form as to render them unanswerable and unenforceable. Booth Oil Site Administrative Group v. Safety-Kleen Corp., 194 F.R.D. 76 (W.D.N.Y. 2000) ("Ambiguous and vague requests which cannot be fairly answered will not be enforced."). The requests are riddled with vagueness and ambiguity that make it impossible to admit or deny them. For example, Complaint Counsel never define the phrase "substantially identical" as used in Requests 25 and 26, which ask Andrx to admit that the specification of the '584 patent is "substantially identical" to the specifications of U.S. Patents Nos. 5,439,689 and 5,286,497. Andrx cannot admit or deny these requests without knowing how different two specifications can be (and in what ways) and still be, in Complaint Counsel's estimation, "*substantially* identical."

When Complaint Counsel do define terms, it is often done so imprecisely that the requests employing those terms are rendered incomprehensible. For instance, Complaint Counsel define "HMR/Andrx Stipulation and Order" to mean "the agreement entered into between Hoechst and Andrx on or about June 8, 1999 which resolved the Patent Infringement Litigation *and terminated the HMR/Andrx Stipulation and Agreement.*" Request at 4 (emphasis added). Then, in Request 103, Complaint Counsel ask Andrx to admit "that the HMR/Andrx Stipulation and Order *terminated the HMR/Andrx Stipulation and Agreement.*" (emphasis added). As Andrx states, this request is unanswerable because it asks Andrx to admit that

Complaint Counsel's definition says what it says. Moreover, if the request is interpreted as asking Andrx to admit to the accuracy of the *definition*, Andrx notes that, consistent with the written agreements -- which Complaint Counsel can read -- the Stipulation and Order did not terminate the Stipulation and Agreement, but rather terminated the patent litigation.

Andrx also objects to a number of the requests because of Complaint Counsel's definition of "Andrx," which includes:

> Andrx Pharmaceuticals, Inc., its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys, representatives, economic consultants, lobbyists, public relations consultants, or any person acting or purporting to act on its behalf.

Request at 2. Given that broad definition, Andrx cannot admit or deny any position or action that so-called "Andrx" -- as defined by Complaint Counsel -- may have taken, since it includes a tremendous number of parties and individuals, many only tangentially related to the actual company.

Complaint Counsel argue in their motion that they "cannot discern any vagaries in the definition of 'Andrx' as used in request 22." Motion at 6. However, Request 22 reads as follows using Complaint Counsel's definition of "Andrx:"

> Admit that in the HMR/Andrx Patent Infringement Litigation, neither Andrx Pharmaceuticals, Inc., nor any of its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys, representatives, economic consultants, lobbyists, public relations consultants or any person acting or purporting to act on its behalf, never took the position that any of its generic versions of Cardizem CD infringed the '584 Patent.

Using such a broad definition, Andrx cannot be expected to know, or to be capable of determining, what position(s) each and every one of these people and entities *never took* as to each and every generic version of Cardizem CD. The same problem arises in Requests

17, 21 and 96-100. 17 and 21, like 22, ask Andrx to admit that the bevy of persons and entities defined as "Andrx" *never took* certain positions. In Requests 96-100, Complaint Counsel ask Andrx to admit to the *beliefs* of those persons and entities at the time "Andrx" entered into the HMR/Andrx Stipulation and Agreement. Andrx cannot reasonably be expected to know or to discover what the beliefs of multitudes of people were at that time, or to guess at whose beliefs Complaint Counsel believe might be relevant.

There are many other examples of requests making no sense in light of the definitions given by Complaint Counsel. For instance, Complaint Counsel define the term "Andrx's Original Formulation" to mean "ANDA 74-752 filed by Andrx with the FDA pursuant to 21 U.S.C. § 355(j) on September 22, 1995 and amended on April 4, 1996, for a generic or bioequivalent version of Cardizem CD." Request at 2. Having defined this term as a series of iterations of an FDA filing, Complaint Counsel then go on to repeatedly ask Andrx to admit facts regarding specific timing with respect to the "Original Formulation" -- requests which have no meaning because they seek to establish a single, specific time for multiple documents that did not exist contemporaneously. In addition, Request 53 asks Andrx to admit that "the 30-month Hatch-Waxman statutory injunction for Andrx's Original Formulation expired in July 1998." However, the 30-month period may be different depending upon whether it is counted from the initial filing or from a subsequent filing concerning the reformulated product -- both of which are covered by Complaint Counsel's ambiguous definition. This definition thus makes several of Complaint Counsel's requests unanswerable. See also, Requests 16-21, 51, 53-54, 56, 58, 76 and 96.

VII. Complaint Counsel's Requests Improperly Seek To Have Andrx Characterize Documents

The Commission has held that it is "unnecessary ordinarily to seek the opponent's admission of the truthfulness of his own document in order to accomplish the primary purpose of [Rule 3.32]." In re Frito-Lay, Inc., 66 F.T.C. 1521 (1964). The responding party should not be required to go through documents and assume the responsibility of determining what is relevant and what admissions should be made. Micro-Moisture, supra.

In addition, requests in which a party seeks admissions as to the accuracy of its interpretation of the content and/or meaning of documents are improper. Lakehead Pipe Line Company, Inc. v. American Home Assurance Co., 177 F.R.D. 454 (D.Minn. 1997) (upholding objection to requests that seek "to obtain, by implication, a synoptic characterization of the documents, or a gloss as to their intendment, on the specific ground that the documents speak for themselves.").

In contravention of the rules, 58[10] of the 93 requests at issue here improperly seek a characterization or interpretation of documents. For example, Requests 16-22 and 36-38 ask Andrx to admit that it took (or never took -- see section VI, supra) certain positions in written filings in the HMR/Andrx patent infringement litigation. Requests 32-33 ask Andrx to characterize the District Court's own filings, Requests 34-35 ask Andrx to characterize the decisions of various district courts, Requests 55, 59, 61-75, 77,82-84 and 110-111 all ask Andrx to characterize portions of the HMR/Andrx Stipulation, and Request 104 asks Andrx to characterize the Stipulation and Order terminating the patent action. Requests 113-117 and 134-135 ask Andrx to characterize various ANDAs. Requests 118-120 ask Andrx to characterize public filings by Hoechst. Requests 137-140 ask Andrx to admit to characterizations of

[10] 16-22, 32-39, 43, 46, 48, 55, 59, 61-75, 77, 82-84, 104, 110-111, 113-121, 134-135, 137-140 and 144-145.

correspondence, such as "Hoechst wrote to the FDA *suggesting* that Andrx was required to . . .." (Request 139). Requests 144-145 seek characterizations of advertising and promotional material. None of these ask Andrx to admit merely that specific documents contain specific language, as Complaint Counsel imply in their motion. Motion at 4 ("the bulk of the requests in this category identify specific documents and merely ask whether the documents . . . contain certain statements").

Notably, Andrx's responses to most of these improper requests go beyond simply objecting. The stated purpose of requests to admit is "to spare a party the burden and expense of proving elements of his case which his opponent does not intend to controvert and which indeed may be incontrovertible. Admissions serve the further and subsidiary purpose of clarifying the issues between the parties, revealing the areas of agreement and thereby exposing the matters of genuine controversy." Frito-Lay, supra. To that end, despite Complaint Counsel's failure to articulate proper requests, Andrx has gone out of its way to narrow the issues and eliminate unnecessary argument. Where appropriate, in response to requests that improperly ask Andrx to characterize filings or other specific documents to which Complaint Counsel have access, Andrx has stated that it "is willing to discuss with the government a stipulation as to the authenticity of these documents." Andrx's Responses, Nos. 16-22, 36-38, 46, 48, 55, 104, 110-111, 113-121, 134-135, 137-140 and 144-145. Complaint Counsel's reaction is telling: rather than engage in discussions that could avoid potential problems of proof, Complaint Counsel have elected to further waste Andrx and this Court's time with their baseless motion.

VIII. Andrx Properly Objected To Requests Seeking Legal Conclusions

At least 34 of the requests Complaint Counsel seek to have deemed admitted improperly demanded legal conclusions. It is well-settled that, while Rule 36 permits requests

for the application of law to the specific facts of the case, requests calling for pure legal conclusions are impermissible[11]. Playboy Enterprises, Inc. v. Welles, 60 F.Supp.2d 1050 (S.D.Cal. 1999); U.S. v. Block 44, Lots 3, 6, 177 F.R.D. 695 (M.D.Fla. 1997); Reliance Insurance Co. v. Marathon LeTourneau Co., 152 F.R.D. 524 (S.D.W.Va. 1994); see also, Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2255.

In their argument that Andrx's objections regarding legal conclusions were improper, Complaint Counsel misplace reliance on a single unpublished opinion (Audiotext, supra). See Motion at 2-3. In Audiotext, the District Court simply overruled objections to requests which "appear to require no more than the application of law to the facts of the case." However, there is nothing in the case describing the requests or detailing the Court's reasoning. In fact, the case expressly recognizes the principle, fully consistent with Andrx's objections, that

> [r]equests are not appropriate for argument. They should not put forward the requester's legal or factual contentions on the premise that, in the requester's view, they ought to be admitted. Requests for admissions should be made only if the requesting party has a reasonable expectation that the opponent should in good faith admit them. With respect to factual matters, a request is appropriate when it appears from what the opponent has indicated or from other circumstances that the issue may thereby be narrowed or focused.

Id. at *2.

In singularly relying on Audiotext, Complaint Counsel's argument wholly ignores the well-settled decisional law finding requests for admissions objectionable on the grounds that they seeks a legal conclusion. See, e.g., Welles, supra at 1057 (S.D.Cal. 1999) (admission that a legal definition applies; admission as to what a specific contract required); Block 44, supra (admission that party had burden of proof); Golden Valley Microwave Foods v. Weaver Popcorn, 130 F.R.D. 92, 96 (N.D.Ind. 1990) (admission as to validity of patent; admission as to

[11] Indeed, this is an objection that Complaint Counsel had no problem making in its own answers to Aventis' requests. See Complaint Counsel's answers to Aventis' request no. 27.

validity of claim); Currie v. U.S., 111 F.R.D. 56, 59 (M.D.N.C. 1986) (admission to a legal duty); English v. Cowell, 117 F.R.D. 132, 135 (C.D.Ill. 1986) (admission that party was subject to relevant statute); U.S. v. Watchmakers of Switzerland Information Center, Inc., 25 F.R.D. 197, 200 (S.D.N.Y. 1959) (admission that rulings are binding); P.R.S. International, Inc. v. Shred Pax Corp., 703 N.E.2d 71, 79-80 (Ill.Sup. 1998) (admission that conduct amounted to repudiation or breach of contract).

All of the requests to which Andrx objects are improper under Rule 3.31, Rule 36, and under the caselaw. In Requests 63-75, 77, 82-83, 104 and 110-111, Complaint Counsel ask Andrx to admit to results and/or requirements under the HMR/Andrx Stipulation and/or the HMR/Andrx Stipulation and Order. These requests are impermissible under the applicable rules, as admissions to a legal duty are not valid. Currie, supra. Nor is it proper to propound requests about the effect of a contract. See, e.g., P.R.S. International, Inc. v. Shred Pax Corp., 703 N.E.2d 71 (S.Ct.Ill. 1998) (requests relating to the legal effect of conduct under a contract are inappropriate). In Welles, supra, for example, the Court found that a request seeking admission that a specific contract required that defendant obtain written permission impermissibly required the defendant to make a conclusion of law. Request 3 (which Andrx has denied) asks Andrx to admit that the HMR/Andrx Stipulation "occurred in, or affected, interstate commerce." This is an impermissible request for admission of a pure legal conclusion that respondents "are subject to the relevant statutes." English, supra. Request 146, which asks Andrx to "[a]dmit that Andrx is a corporation within the meaning of Section 4 of the Federal Trade Commission Act," is improper for the same reason. Requests 11, 52 and 57 (all also denied by Andrx) are precisely the same type of request deemed improper by the Court in Welles, supra, where plaintiff sought an admission that defendant was a "public figure as defined in Curtis Publishing Co. v. Butts."

(citation omitted). Requests 23-29, which seek admissions as to the specifications of various patents are likewise improper, insofar as they ask Andrx to admit to the applicability of abstract legal definitions without seeking a factual conclusion. In Request 53, Complaint Counsel impermissibly ask Andrx to admit when it was and was not bound by a ruling. See Watchmakers, supra. Admissions as to the validity of a claim or patent are legal conclusions and thus "[run] counter to the proscription of FRCP Rule 36(a)." Golden Valley, supra, at 96. Request 106, which seeks an admission that Hoechst "does not have a good faith basis for initiating or prosecuting" a patent infringement action, is clearly impermissible on several grounds, including, without limitation, it both seeks a legal conclusion and an opinion as to what Hoechst may have been thinking. Complaint Counsel's motion must be denied as to requests 3, 11, 23-29, 52-53, 57, 63-75, 77, 82-83, 104, 106, 110-111, 134 and 146.

IX. Andrx is Agreeable to Supplementing Its Responses to Requests Nos. 107-109

Requests 107-109 call for information concerning certain discussions between the FTC staff and Andrx that Andrx believes were not a proper subject of this proceeding -- at least not unless Complaint Counsel also provided discovery on these discussions. However, the Court found otherwise when it denied a prior motion made by Andrx seeking such discovery. See Order dated November 8, 2000. Given that holding, Andrx is prepared to supplement its responses on these select requests prior to the hearing, and has undertaken to do so.

X. Complaint Counsel Has No Basis For Seeking To Have Its Requests Deemed Admitted

Given the nature and extent of Andrx's prior good faith responses --including many substantive responses -- to Complaint Counsel's requests for admissions, no basis exists, as described above, for requiring Andrx to supplement its answers. Even, however, if the Court

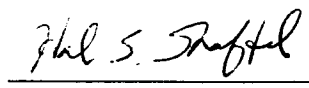
were to determine (and we decidedly believe that the Court should not) that any of Andrx's responses should be supplemented, the appropriate remedy is to give Andrx time to supplement its responses to those select requests and *not* to simply deem the alleged facts admitted. Where, as here, a party has acted in good faith to provide detailed answers to requests, the Court should not simply deem those requests admitted, even if any supplementation is required. See, e.g., Alexander v. Rizzo, 52 F.R.D. 235 (E.D.Penn. 1971) (denying motion to have requests admitted and ordering instead an amended answer); Advisory Committee Note to F.R.C.P. 36 (automatic admission may be "unfair").

Conclusion

For the foregoing reasons, Complaint Counsel's motion to compel should be denied in its entirety.

Dated: New York, New York
November 21, 2000

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP

By 

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ANDRX CORPORATION, a corporation.

Docket No. 9293

ANDRX CORPORATION'S RESPONSE TO COMPLAINT COUNSEL'S FIRST REQUESTS FOR ADMISSIONS ISSUED TO ANDRX CORPORATION

Pursuant to Federal Trade Commission ("FTC") Rules of Practice for Adjudicative Proceedings § 3.32, and subject to the general objections set forth in Appendix A hereto and the specific objections set forth below, respondent Andrx Corporation ("Andrx") hereby responds to Complaint Counsel's First Requests For Admissions (the "Requests"), as follows.

SPECIFIC RESPONSES

INTERSTATE COMMERCE

Request No. 1: Admit that Andrx markets and sells pharmaceutical products, including Cartia XT in the United States.

Response No. 1. Andrx admits only that it generally markets and offers for sale one or more pharmaceutical products, including Cartia XT, in the United States.

Request No. 2: Admit that Andrx's pharmaceutical products, including Cartia XT, are sold to consumers in states other than the state in which the products are manufactured.

Response No. 2. Andrx can neither admit not deny this request, since Andrx does not sell pharmaceutical products directly to consumers. Andrx admits only that its

pharmaceutical products, including Cartia XT, are available for sale in states other than the state in which the products are manufactured.

Request No. 3: Admit that the HMR/Andrx Stipulation and Agreement occurred in, or affected, interstate commerce.

Response No. 3. Andrx objects to this request and states that no response is required inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx denies this request.

FDA REGULATIONS

Request No. 4: Admit that a pharmaceutical manufacturer must file an ANDA with the FDA to receive FDA approval to market a generic product that is AB-rated to a brand-name product listed in the Orange Book.

Response No. 4. Andrx objects to this request and states that no response is required inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx denies this request.

Request No. 5: Admit that the FDA takes, on average, 12 to 18 months to review and approve an ANDA.

Response No. 5. Andrx can neither admit nor deny this request. No time frame is given to the request, and Andrx lacks personal knowledge sufficient to admit or deny.

Request No. 6: Admit that a First Filer is eligible for the 180-day Exclusivity Period.

Response No. 6. Andrx objects to this request and states that no response is required to this request inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. Andrx further responds that it can neither admit

Request No. 21: Admit that in the HMR/Andrx Patent Infringement Litigation, Andrx never took the position that Andrx's Original Formulation infringed the '584 Patent.

Response No. 21. Andrx objects to this request on the grounds that there is no requirement for Andrx to characterize written filings made by Andrx in the patent litigation or to ferret through thousands of pages of documents in that litigation to answer this request. To the extent any additional response is required to this request, Andrx denies the request, including because of the definition of Andrx and Andrx's Original Formulation. Andrx has produced or made available to Complaint Counsel in this matter the papers filed at the District Court in the patent litigation. Andrx is willing to discuss with the government a stipulation as to the authenticity of these documents.

Request No. 22: Admit that in the HMR/Andrx Patent Infringement Litigation, Andrx never took the position that any of its generic versions of Cardizem CD infringed the '584 Patent.

Response No. 22. Andrx objects to this request on the grounds that there is no requirement for Andrx to characterize written filings made by Andrx in the patent litigation or to ferret through thousands of pages of documents in that litigation to answer this request. To the extent any additional response is required to this request, Andrx states that it cannot admit nor deny this request because of the definition of Andrx. Andrx has produced or made available to Complaint Counsel in this matter the papers filed at the District Court in the patent litigation. Andrx is willing to discuss with the government a stipulation as to the authenticity of these documents.

Request No. 23: Admit that the '584 Patent is a continuation of U.S. Patent No. 5,439,689 issued August 8, 1995.

Response No. 23. Andrx objects to this request and states that no response is required inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for

admission in this matter. To the extent any other response is required, Andrx states that it can neither admit nor deny this request because of the vagueness of the term "continuation", unless language of patent art is being referred to, in which case Andrx objects on the grounds of the first sentence of this answer.

Request No. 24: Admit that U. S. Patent No. 5,439,689 issued August 8, 1995, is a continuation of U. S. Patent No. 5,286,497 issued February 15, 1994.

Response No. 24. Andrx objects to this request and states that no response is required to this request inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx states that it can neither admit nor deny this request because of the vagueness of the term "continuation", unless language of patent art is being referred to, in which case Andrx objects on the grounds of the first sentence of this answer.

Request No. 25: Admit that the specification of the '584 Patent is substantially identical to the specification of U. S. Patent No. 5,439,689.

Response No. 25. Andrx objects to this request and states that no response is required inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx states that it can neither admit nor deny this request because of the vagueness of the term "substantially identical".

Request No. 26: Admit that the specification of the '584 Patent is substantially identical to the specification of U. S. Patent No. 5,286,497.

Response No. 26. Andrx objects to this request and states that no response is required inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx states that it

Request No. 30: Admit that the specification of U. S. Patent No.5,286,497 teaches one of ordinary skill in the art of the invention claimed in the'584 Patent how to practice the claimed invention.

Response No. 30. Andrx objects to this request and states that no response is required inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx states that it can neither admit nor deny this request because of the vagueness of the terms used.

Request No. 31: Admit that FDA regulations require that any drug sold pursuant to an approved ANDA satisfy the specification of the ANDA.

Response No. 31. Andrx objects to this request and states that no response is required inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx denies the request.

Request No. 32: Admit that the District Court made no finding that Andrx's Original Formulation infringed the '584 patent.

Response No. 32. Andrx objects to this request on the grounds that there is no requirement for Andrx to characterize written filings made by the parties or the court in the patent litigation. Andrx is unaware of any written findings made by the District Court and filed in connection with the patent litigation on the subject referred to.

Request No. 33: Admit that the District Court made no finding that Andrx's Original Formulation was substantially likely to infringe the '584 patent.

Response No. 33. Andrx objects to this request on the grounds that there is no requirement for Andrx to characterize written filings made by the parties or the court in the patent litigation. See Response to Request No. 32.

Request No. 34: Admit that no federal district court has found that Andrx's Original Formulation infringed the '584 patent.

Response No. 34. Andrx states that no response is required to this request for the reasons stated in the general objections and the objections to Request No. 32, which are incorporated herein by this reference. Andrx believes that it has made available to Complaint counsel the decisions of the various district courts concerning the '584 patent.

Request No. 35: Admit that no federal district court has found that Andrx's Original Formulation was substantially likely to infringe the '584 patent.

Response No. 35. Andrx incorporates herein its response to Request No. 34 as if fully set forth herein.

Request No. 36: Admit that in the HMR/Andrx Patent Infringement Litigation, Andrx took the position in its counterclaims filed with the District Court on February 20, 1996, that diltiazem is the relevant product market for purposes of the antitrust laws of the United States.

Response No. 36. Andrx objects to this request on the grounds that there is no requirement for Andrx to characterize written filings made by Andrx in the patent litigation. Andrx has produced or made available to Complaint Counsel in this matter the papers filed in the patent litigation. Andrx is willing to discuss with the government a stipulation as to the authenticity of these documents.

Request No. 37: Admit that in the HMR/Andrx Patent Infringement Litigation, Andrx took the position in its counterclaims filed with the District Court on February 20, 1996, that the sustained release (once-a day) form of diltiazem is a relevant product sub-market for purposes of the antitrust laws of the United States.

Response No. 37. Andrx incorporates herein by this reference its response to Request No. 36 as if fully set forth herein.

Request No. 38: Admit that in the HMR/Andrx Patent Infringement Litigation, Andrx took the position in its counterclaims filed with the District Court on February 20, 1996, that the United States is the relevant geographic market with respect to the relevant product market and relevant product sub-market for purposes of the antitrust laws of the United States.

Response No. 38. Andrx incorporates herein by this reference its response to Request No. 36 as if fully set forth herein.

HMR/ANDRX STIPULATION AND AGREEMENT

Request No. 39: Admit that in July 1997, representatives of Hoechst and Andrx met to discuss a possible agreement relating to the HMR/Andrx Patent Infringement Litigation.

Response No. 39. Denied. In or around July 1997, representatives of Hoechst and Andrx communicated concerning a possible partial settlement relating to the patent litigation.

Request No. 40: Admit that the first draft of the HMR/Andrx Stipulation and Agreement was prepared in July 1997.

Response No. 40. Andrx has insufficient knowledge to either admit or deny this request. Andrx states that it has produced all non-privileged documents concerning this issue that were responsive to the government's requests and objects to having to characterize those documents as "drafts" or the "first draft".

Request No. 41: Admit that the HMR/Andrx Stipulation and Agreement was executed on September 24, 1997.

Response No. 41. Andrx admits that the stipulation and agreement was executed on or about September 24, 1997.

Request No. 42: Admit that the HMR/Andrx Stipulation and Agreement was negotiated over the course of nearly two months.

Response No. 42. Andrx can neither admit or deny this request because of the ambiguity of the word "negotiated". Andrx has produced all non-privileged relevant documents concerning this issue and has given the testimony of witnesses with knowledge concerning the length of time the discussions took place.

Request No. 43: Admit that during the negotiation of the HMR/Andrx Stipulation and Agreement, Hoechst and Andrx exchanged at least 40 drafts of the HMR/Andrx Stipulation and Agreement.

Response No. 43. Andrx objects to this request on the grounds that it is not obliged to characterize documents that have already been produced to the government. To the best of Andrx's knowledge, it has produced all non-privileged documents relating to this issue.

Request No. 44: Admit that the language "other bioequivalent or generic versions of Cardizem CD" first appears in paragraph 2 of the HMR/Andrx Stipulation and Agreement in a August 15,1997 draft, Bates stamped 1584-1600.

Response No. 44. Andrx objects to this request in that it is not obliged to ferret through documents already produced to the government and characterize documents that the government does not claim fail to speak for themselves. Andrx states that, to the best of its knowledge, it has produced all non-privileged documents relating to this issue.

Request No. 45: Admit that Hoechst was responsible for inserting the language "other bioequivalent or generic versions of Cardizem CD" into paragraph 2 of the August 15, 1997 draft of the HMR/Andrx Stipulation and Agreement, Bates stamped 1584-1600.

Response No. 45. Andrx can neither admit nor deny this request. The Stipulation and Agreement was a negotiated document. The recollection of specific Andrx employees or representatives on this issue has already been explored by the government, and to

the best of Andrx's knowledge, Andrx is unaware of any non-privileged information concerning this requested admission other than documents and the recollection of persons involved.

Request No. 46: Admit that the language "other bioequivalent or generic versions of Cardizem CD" is crossed out in paragraph 2 of the August 26, 1997 draft of the HMR/Andrx Stipulation and Agreement, Bates stamped 1512-23.

Response No. 46. Andrx objects to this request on the ground it is not obliged to characterize documents produced in this action, which speak for themselves. Andrx has produced or made available to Complaint Counsel in this matter the nonprivileged documents relating to this issue. Andrx is willing to discuss with the government a stipulation as to the authenticity of these documents.

Request No. 47: Admit that Andrx was responsible for crossing out the language "other bioequivalent or generic versions of Cardizem CD" from paragraph 2 of the August 26, 1997 draft of the HMR/Andrx Stipulation and Agreement, Bates stamped 1512-23.

Response No. 47. Andrx can neither admit nor deny this request. The Stipulation and Agreement was a negotiated document. The recollection of specific Andrx employees or representatives on this issue has already been explored by the government, and to the best of Andrx's knowledge, Andrx is unaware of any non-privileged information concerning this requested admission other than the documents and the recollections of persons whose depositions the government has already taken.

Request No. 48: Admit that the language "other bioequivalent or generic versions of Cardizem CD" appears in paragraph 2 of the September 3, 1997 draft of the HMR/Andrx Stipulation and Agreement, Bates stamped 1487-98.

Response No. 48. Andrx objects to this request on the ground it is not obliged to characterize documents produced in this action. Andrx has produced or made available

to Complaint Counsel in this matter the nonprivileged documents relating to this issue. Andrx is willing to discuss with the government a stipulation as to the authenticity of these documents.

Request No. 49: Admit that Hoechst was responsible for inserting the language "other bioequivalent or generic versions of Cardizem CD" into paragraph 2 of the September 3, 1997 draft of the HMR/Andrx Stipulation and Agreement, Bates stamped 1487-98.

Response No. 49. Andrx can neither admit nor deny this request. The Stipulation and Agreement was a negotiated document. The recollection of specific Andrx employees or representatives on this issue has already been explored by the government, and to the best of Andrx's knowledge, Andrx is unaware of any non-privileged information concerning this requested admission other than the documents or the recollections of persons involved.

Request No. 50: Admit that Andrx received FDA tentative approval for Andrx's Original Formulation on September 17, 1997.

Response No. 50. Denied.

Request No. 51: Admit that the HMR/Andrx Stipulation and Agreement was entered into eight days after Andrx received FDA tentative approval for Andrx's Original Formulation.

Response No. 51. Andrx can neither admit nor deny this request because of the ambiguity and vagueness in the definition of "Original Formulation". Andrx admits only that the date on or about September 24, 1997, is approximately seven or eight days after the date on or about September 17, 1997 (although the accurate date appears to be September 15, 1997).

Request No. 52: Admit that Andrx could not receive final FDA approval to market Andrx's Original Formulation until after the termination of the 30-month Hatch-Waxman statutory injunction.

Response No. 52. Andrx objects to this request and states that no response is required to this request inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx denies the request.

Request No. 53: Admit that the 30-month Hatch-Waxman statutory injunction for Andrx's Original Formulation expired in July 1998.

Response No. 53. Andrx objects to this request and states that no response is required to this request inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx states that it can neither admit nor deny this request because of the vagueness of the term "Original Formulation".

Request No. 54: Admit that Hoechst and Andrx entered into the HMR/Andrx Stipulation and Agreement more than 8 months before Andrx received final FDA approval to market Andrx's Original Formulation.

Response No. 54. Andrx can neither admit nor deny this request because of the ambiguity and vagueness in the definition of "original formulation". Andrx admits that July 1998 is more than eight months after September 1997.

Request No. 55: Admit that under the HMR/Andrx Stipulation and Agreement, Andrx agreed not to commence the sale of any "bioequivalent or generic version of Cardizem CD in the United States directly or indirectly" until the earlier of: (1) the date that Final Judgment was entered in the Patent Infringement Litigation; (2) the date that Andrx obtained a license from HMR pursuant to paragraphs 5, 6, or 7 of the HMR/Andrx Stipulation and Agreement; or (3) the date that Andrx received notice that HMR had decided to market or license a third party to market a generic version of Cardizem CD.

Response No. 55. Andrx objects to this request on the grounds that it is not obliged to characterize a written document in response to requests to admit. Andrx has produced a copy of the Stipulation and Agreement and is willing to consider reasonable stipulations concerning authenticity of documents. To the extent any further response is required, Andrx denies the request as incomplete and misleading.

Request No. 56: Admit that, on July 9,1998, Andrx received final FDA approval for Andrx's Original Formulation.

Response No. 56. Andrx can neither admit nor deny this request because of the definition of an "original formulation". Andrx states that on or about July 9, 1998, Andrx received correspondence from the FDA, which has been made available to the government.

Request No. 57: Admit that, as of July 9, 1998, FDA law and regulations permitted Andrx to begin the commercial sale of Andrx's Original Formulation.

Response No. 57. Andrx objects to this request and states that no response is required to this request inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx denies this request.

Request No. 58: Admit that Andrx did not begin the commercial sale of Andrx's Original Formulation on July 9, 1998.

Response No. 58. Andrx can neither admit nor deny this request because of the ambiguity of the definition of "original formulation". Andrx states that it did not begin the commercial sale of any Cardizem CD generic product on July 9, 1998.

Request No. 59: Admit that, as of July 9, 1998, Hoechst became obligated to make payments of $10 million per quarter to Andrx under the terms of the HMR/Andrx Stipulation and Agreement.

Response No. 59. Andrx objects to this request on the grounds that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its expression of the agreement between the parties. Andrx further states that Hoechst made payments it was obligated to make under the Stipulation and Agreement.

Request No. 60: Admit that Andrx did not begin the commercial sale of any generic version of Cardizem CD until after Hoechst and Andrx terminated the HMR/Andrx Stipulation and Agreement.

Response No. 60. Andrx objects to this request on the grounds that it improperly characterizes what occurred in June 1999 and is misleading. Andrx admits only that it began the commercial sale of a general version of Cardizem CD after it received FDA approval of a generic product that Hoechst agreed not to sue for infringement, which was in June 1999.

Request No. 61: Admit that under Paragraph 8.B.i. of the HMR/ Andrx Stipulation and Agreement, if Andrx breached the terms of the HMR/Andrx Stipulation and Agreement: (1) the HMR/Andrx Stipulation and Agreement would terminate; (2) Andrx would not receive any further $10 million payments from Hoechst; and (3) Andrx would be required

to repay to Hoechst all payments made to Andrx by Hoechst under the HMR/Andrx Stipulation and Agreement.

Response No. 61. Andrx objects to this request on the ground that it is not obliged to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement.

Request No. 62: Admit that in the event Andrx commenced the sale of any "bioequivalent or generic version of Cardizem CD" in the United States while the HMR/Andrx Stipulation and Agreement was in effect: (1) the HMR/Andrx Stipulation and Agreement would terminate; (2) Andrx would not receive any further $10 million payments from Hoechst; and (3) Andrx would be required to repay to Hoechst all payments made to Andrx by Hoechst under the HMR/Andrx Stipulation and Agreement.

Response No. 62. Andrx objects to this request on the ground that it is not obliged to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement.

Request No. 63: Admit that under the HMR/Andrx Stipulation and Agreement, the phrase "bioequivalent or generic version of Cardizem CD" applied to products that infringed the '584 Patent.

Response No. 63. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement and is vague and ambiguous. Andrx further states that it can neither admit nor deny this request because of the confusion in time between when the stipulation was entered and the result of a trial on infringement. Andrx further states that the phrase bioequivalent or generic

Request No. 66: Admit that under the HMR/ Andrx Stipulation and Agreement, Andrx agreed not to relinquish or otherwise compromise any rights accruing under its ANDA.

Response No. 66. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement.

Request No. 67: Admit that under the HMR/Andrx Stipulation and Agreement, the phrase "any rights accruing under [Andrx's] ANDA" included any rights Andrx had to a 180-day Exclusivity Period.

Response No. 67. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement and confuses time periods.

Request No. 68: Admit that in the event Andrx relinquished or otherwise compromised any rights accruing under ANDA 74-752 while the HMR/Andrx Stipulation and Agreement was in effect: (1) the HMR/Andrx Stipulation and Agreement would terminate; (2) Andrx would not receive any further $10 million payments from Hoechst; and (3) Andrx would be required to repay to Hoechst all payments made to Andrx by Hoechst under the HMR/Andrx Stipulation and Agreement.

Response No. 68. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement. To the extent any further answer is required, Andrx denies the request.

Request No. 69: Admit that in the event Andrx relinquished or otherwise compromised its 180-day Exclusivity Period while the HMR/Andrx Stipulation and Agreement was in

Request No. 72: Admit that under the HMR/Andrx Stipulation and Agreement, in the event that Andrx lost the HMR/Andrx Patent infringement Litigation, Andrx could choose to exercise the option to acquire a license to Hoechst's Intellectual Property.

Response No. 72. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement.

Request No. 73: Admit that under the HMR/Andrx Stipulation and Agreement, in the event that Andrx lost the HMR/Andrx Patent Infringement Suit, Andrx could choose not to exercise the option to acquire a license to Hoechst's Intellectual Property.

Response No. 73. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement.

Request No. 74: Admit that under the HMR/Andrx Stipulation and Agreement, in the event that Andrx lost the HMR/Andrx Patent Infringement Suit and Andrx chose not to exercise the option to acquire a license to Hoechst's Intellectual Property, Andrx would keep all of the payments made to it by Hoechst.

Response No. 74. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement.

Request No. 79: Admit that under the HMR/Andrx Stipulation and Agreement, Hoechst made a $10 million payment to Andrx on October 1,1998.

Response No. 79. Denied. See response to Request No. 78.

Request No. 80: Admit that under the HMR/Andrx Stipulation and Agreement, Hoechst made a $10 million payment to Andrx on January 4, 1999.

Response No. 80. Denied. See response to request no . 78

Request No. 81: Admit that under the HMR/Andrx Stipulation and Agreement, . Hoechst made a $10 million payment to Andrx on April 1, 1999.

Response No. 81. Denied. See response to Request No. 78.

Request No. 82: Admit that under the HMR/Andrx Stipulation and Agreement, in the event that Andrx lost the HMR/Andrx Patent Infringement Litigation, Andrx did not have to refund any of the $10 million a quarter paid to it by Hoechst.

Response No. 82. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement.

Request No. 83: Admit that under the HMR/Andrx Stipulation and Agreement, in the event that Andrx won the patent litigation, Hoechst would pay Andrx an additional $60 million a year for the period from Andrx's receipt of final FDA approval for its Original Formulation through the duration of the HMR/Andrx Stipulation and Agreement.

Response No. 83. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or to characterize the written agreement, a copy of which has been produced to the government. Additionally, Andrx can neither admit nor deny this request because it is incomplete in its description of the parties' agreement.

Request No. 84: Admit that Hoechst did not file with the District Court a motion for a preliminary injunction in the HMR/Andrx Patent Infringement Action.

Response No. 84. Andrx objects to this request on the ground that it is not obliged to ferret through and characterize for the government documents that Andrx has produced or has made available to the government in this action.

Request No. 85: Admit that the HMR/Andrx Stipulation and Agreement was not presented to the District Court for approval.

Response No. 85. Andrx can neither admit nor deny this request because it is not specific as to time. To the extent any other response is required, Andrx denies the request.

Request No. 86: Admit that the District Court did not approve the HMR/Andrx Stipulation and Agreement.

Response No. 86. Andrx can neither admit nor deny this request for the reasons set forth in the response to Request No. 85.

Request No. 87: Admit that the HMR/Andrx Stipulation and Agreement was not presented to any federal district court for approval.

Response No. 87. Denied.

Request No. 88: Admit that the HMR/Andrx Stipulation and Agreement was not approved by any federal district court.

Response No. 88. Denied.

Request No. 89: Admit that under the HMR/Andrx Stipulation and Agreement, Hoechst paid to Andrx approximately $89.83 million.

Response No. 89. Subject to the general objections, Andrx admits this request.

Request No. 90: Admit that Andrx disclosed publicly in September 1997 that it had entered into the HMR/Andrx Stipulation and Agreement.

Response No. 90. Subject to the general objections, Andrx admits this request.

Request No. 91: Admit that Andrx did not disclose publicly in September 1997 the terms of the HMR/Andrx Stipulation and Agreement.

Response No. 91. Denied. Andrx disclosed the material terms of the Stipulation and Agreement in September 1997.

Request No. 92: Admit that Andrx did not disclose publicly in September 1997 the actual text of the HMR/Andrx Stipulation and Agreement.

Response No. 92. Subject to the general objections, Andrx admits this request.

Request No. 93: Admit that Andrx has never disclosed publicly the terms of the HMR/Andrx Stipulation and Agreement.

Response No. 93. Denied.

Request No. 94: Admit that Andrx has never disclosed publicly the actual text of the HMR/Andrx Stipulation and Agreement.

Response No. 94. Denied.

Request No. 95: Admit that during the time between the execution of the HMR/Andrx Stipulation and Agreement in September 1997, and the termination of the agreement in June 1999, Hoechst had net U. S. sales of roughly $1.3 billion for Cardizem CD.

Response No. 95. Andrx has insufficient knowledge to either admit or deny this request.

Request No. 96: Admit that at the time Andrx entered into the HMR/Andrx Stipulation and Agreement, Andrx believed that it would receive FDA approval for Andrx's Original Formulation upon expiration of the 30 month Hatch-Waxman waiting period in July 1998.

Response No. 96. Andrx can neither admit nor deny this request because of the definition of Andrx and the definition of Original Formulation. To the extent any further answer is required, Andrx denies the request.

Request No. 97: Admit that at the time Andrx entered into the HMR/Andrx Stipulation and Agreement, Andrx believed that Faulding would receive tentative FDA approval of ANDA 75-984 prior to Final Judgement in the HMR/Andrx Patent Infringement Litigation.

Response No. 97. Andrx can neither admit nor deny this request. To the extent any further answer is required, Andrx denies the request.

Request No. 98: Admit that at the time Andrx entered into the HMR/Andrx Stipulation and Agreement, Andrx was uncertain as to whether or not Faulding would receive tentative FDA approval of ANDA 75-984 prior to Final Judgement in the HMR/Andrx Patent Infringement Litigation.

Response No. 98. Andrx can neither admit nor deny this request. To the extent any further answer is required, Andrx denies the request.

Request No. 99: Admit that at the time Andrx entered into the HMR/Andrx Stipulation and Agreement, Andrx believed that Biovail would receive tentative FDA approval to market a generic version of Cardizem CD prior to Final Judgement in the HMR/Andrx Patent Infringement Litigation.

Response No. 99. Andrx can neither admit nor deny this request. To the extent any further answer is required, Andrx denies the request.

Request No. 100: Admit that at the time Andrx entered into the HMR/Andrx Stipulation and Agreement, Andrx was uncertain as to whether or not Biovail would receive tentative FDA approval to market a generic version of Cardizem CD prior to Final Judgment in the HMR/Andrx Patent Infringement Litigation.

Response No. 100. Andrx can neither admit nor deny this request. To the extent any further answer is required, Andrx denies the request.

Request No. 101: Admit that Andrx took the position in its complaint in *Andrx v. Friedman*, Civ. No. 98-0099 (D. D. C.) that it was likely that the FDA would find Biovail's generic version of Cardizem CD approveable prior to Final Judgement in the HMR/Andrx Patent Infringement Litigation.

Response No. 101. Andrx objects to this request on the ground that it is not obliged to characterize documents that have been made available to the government. Andrx is willing to consider stipulating to the authenticity of documents. To the extent any further answer is required, Andrx denies the request.

ANDRX'S REFORMULATED PRODUCT

Request No. 102: Admit that on June 8, 1999, Hoechst and Andrx entered into the HMR/Andrx Stipulation and Order.

Response No. 102. Given the definition of Stipulation and Order, Andrx denies this request. Andrx states that on or about June 9, 1999, Hoechst and Andrx entered into a stipulation resolving by agreement the patent litigation subject to court approval.

Request No. 103: Admit that the HMR/Andrx Stipulation and Order terminated the HMR/Andrx Stipulation and Agreement.

Response No. 103. Andrx can neither admit nor deny this request because it is incomprehensible given the definition of Stipulation and Order. Andrx denies that a separate agreement was required to terminate the stipulation and agreement.

Request No. 104: Admit that under the HMR/Andrx Stipulation and Order, Hoechst agreed that it would not institute or prosecute any action alleging patent infringement

with respect to Andrx's Reformulated Product, so long as the Reformulated Product's SR2 beads release on average not less than 68% of the total amount of diltiazem after 18 hours when tested in the U. S. Pharmacopeia XXII Type 2 apparatus using 900 ml of 0.1 HCl at 37 degrees C and a paddle speed of 100 rpm.

Response No. 104. Andrx objects to this request on the ground that it is not obliged to offer legal conclusions or characterize a written instrument that has been made available to the government. Andrx is willing to enter into discussions with the government concerning a stipulation concerning the authenticity of documents.

Request No. 105: Admit that Hoechst has not initiated or prosecuted any action alleging patent infringement with respect to Andrx's Reformulated Product.

Response No. 105. Denied.

Request No. 106: Admit that Hoechst does not have a good faith basis for initiating or prosecuting a patent infringement action with respect to Andrx's Reformulated Product so long as Andrx's Reformulated Product's SR2 beads release on average not less than 68% of the total amount of diltiazem after 18 hours when tested in the U. S. Pharmacopeia XXII Type 2 apparatus using 900 ml of 0.1 HCl at 37 degrees C and a paddle speed of 100 rpm.

Response No. 106. Andrx states that no response is required to this request inasmuch as it calls for a legal conclusion, beyond the proper scope of requests for admission in this matter. To the extent any response is required, Andrx states that it can neither admit nor deny this request since Andrx does not know about every patent that Hoechst has or might acquire and for the reasons set forth in response to Request 112.

Request No. 107: Admit that in May 1999 Federal Trade Commission (FTC) staff discussed with Andrx an outline for a proposed consent order relating to the FTC's investigation of Hoechst and Andrx, FTC File No. 981-0368.

Response No. 107. Andrx states that it shall neither admit nor deny this request on the grounds that any such discussion was in the nature of settlement discussions. Andrx

reserves the right fully to disclose the substance of those discussions in the event any portions of them are disclosed by the government or are required to be disclosed.

Request No. 108: Admit that Hoechst and Andrx reached an agreement in principle on the HMR/Andrx Stipulation and Order less than 3 weeks after the FTC staff discussed with Andrx an outline for a proposed consent order relating to the FTC's investigation of Hoechst and Andrx, FTC File No. 981-0368.

Response No. 108. Andrx states that it shall neither admit nor deny this request unless directed to do so on the grounds set forth in response to Request No. 107. Andrx denies that any discussions with the FTC had anything to do with the agreement in principle referred to in this request.

Request No. 109: Admit that the terms of the HMR/Andrx Stipulation and Order entered into by Hoechst and Andrx reflected at least some of the same terms proposed by the FTC's staff when the FTC staff discussed a proposed consent order relating to the FTC's investigation of Hoechst and Andrx, FTC File No. 981-0368.

Response No. 109. Andrx states that it shall neither admit nor deny this request unless directed to do so on the grounds set forth in response to Request No. 107. Andrx states that discussions with the FTC staff had nothing to do with the terms of agreement reached between Andrx and HMR.

Request No. 110: Admit that if Andrx and Hoechst had not entered into the HMR/Andrx Stipulation and Order, under the terms of the HMR/Andrx Stipulation and Agreement, Andrx would not have been permitted to commence the commercial sale of Andrx's Reformulated Product.

Response No. 110. Andrx objects to this request on the grounds that there is no requirement for Andrx to offer legal conclusions or characterize writings made available by Andrx to the FTC in this matter. Andrx is willing to discuss entering into stipulations concerning the authenticity of documents to be used at the trial of this matter. To the extent any response to this request is required, Andrx denies the requested admission.

Request No. 111: Admit that if Andrx and Hoechst had not entered into the HMR/Andrx Stipulation and Order, under the terms of HMR/Andrx Stipulation and Agreement, Andrx would have had to repay Hoechst all amounts previously paid if it had commenced the commercial sale of Andrx's Reformulated Product.

Response No. 111. Andrx objects to this request on the grounds that there is no requirement for Andrx to offer legal conclusions or characterize writings made available by Andrx to the FTC in this matter. Andrx is willing to discuss entering into stipulations concerning the authenticity of documents to be used at the trial of this matter. To the extent any response to this request is required, Andrx denies the requested admission.

Request No. 112: Admit that Hoechst's outside legal counsel James M. Spears believed that Hoechst and Andrx should enter into the HMR/Andrx Stipulation and Order because he understood that the FTC wanted the HMR/Andrx Stipulation and Agreement "ended in no uncertain terms."

Response No. 112. Andrx states that it can neither admit nor deny this request for the reason. Andrx does not know in any way cognizable under the rules what Hoechst's outside legal counsel "believed".

BIOVAIL

Request No. 113: Admit that Biovail filed ANDA 75-1169 for a generic version of Cardizem CD on April 21,1997.

Response No. 113. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning the Biovail filing is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

Request No. 114: Admit that as part of ANDA 75-1169, Biovail submitted to the FDA a Paragraph IV Certification stating that its generic Cardizem CD product did not infringe the patents listed in the Orange Book for Cardizem CD.

Response No. 114. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning the Biovail filing is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

Request No. 115: Admit that Hoechst did not sue Biovail for patent infringement concerning the generic Cardizem CD product that was the subject of Biovail's ANDA 75-1169.

Response No. 115. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning the Biovail filing is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

FAULDING

Request No. 116: Admit that Faulding filed its application for a generic version of Cardizem CD, ANDA 75-984, on October 11, 1996.

Response No. 116. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning the Faulding filing is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

Request No. 117: Admit that as part of ANDA 75-984, Faulding submitted to the FDA a Paragraph IV Certification stating that its generic Cardizem CD product did not infringe the patents listed in the Orange Book for Cardizem CD.

Response No. 117. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning the Faulding filing is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

Request No. 118: Admit that on January 31,1997, Hoechst filed a patent infringement action in the District of New Jersey, alleging that Faulding's generic product infringed U. S. Patent No. 5,439,689.

Response No. 118. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning the Faulding filing is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

Request No. 119: Admit that the January 31,1997 complaint filed by Hoechst against Faulding in the patent infringement action in the District of New Jersey did not allege that Faulding's generic product that is the subject of ANDA 75-984 infringed the '584 patent.

Response No. 119. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning the Faulding filing is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

Request No. 120: Admit that Hoechst has not initiated or prosecuted a patent infringement claim alleging that Faulding's generic product that is the subject of ANDA 75-984 infringed the '584 patent.

Response No. 120. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning the Faulding filing is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

Request No. 121: Admit that sales of Faulding's generic Cardizem CD product commenced on December 21,1999.

Response No. 121. Andrx states that it can neither admit nor deny this request. The only knowledge Andrx has concerning this is from the same documents that are available to the government, and Andrx is under no obligation to characterize those documents. Andrx is willing to consider entering into stipulations concerning the authenticity of documents.

CALCIUM CHANNEL BLOCKER PRODUCTS

Request No. 122: Admit that Cardizem CD was first sold in the United States in January 1992.

Response No. 122. Andrx states that it can neither admit nor deny this request since Andrx does not know when Cardizem CD was first sold in the United States.

Request No. 123: Admit that Cardene SR was first sold in the United States in March 1992.

Response No. 123. Andrx states that it can neither admit nor deny this request since Andrx does not know when Cardene SR was first sold in the United States.

Request No. 124: Admit that Dilacor XR was first sold in the United States in June 1992.

Response No. 124. Andrx states that it can neither admit nor deny this request since Andrx does not know when Dilacor XR was first sold in the United States.

Request No. 125: Admit that Norvasc was first sold in the United States in September 1992.

Response No. 125. Andrx states that it can neither admit nor deny this request since Andrx does not know when Norvasc was first sold in the United States.

Request No. 126: Admit that Adalat CC was first sold in the United States in July 1993.

Response No. 126. Andrx states that it can neither admit nor deny this request since Andrx does not know when Adalat CC was first sold in the United States.

Request No. 127: Admit that Sular was first sold in the United States in January 1996.

Response No. 127. Andrx states that it can neither admit nor deny this request since Andrx does not know when Sular was first sold in the United States.

Request No. 128: Admit that Tiazac was first sold in the United States in January 1996.

Response No. 128. Andrx states that it can neither admit nor deny this request since Andrx does not know when Tiazac was first sold in the United States.

Request No. 129: Admit that Covera HS was first sold in the United States in May 1996.

Response No. 129. Andrx states that it can neither admit nor deny this request since Andrx does not know when Covera HS was first sold in the United States.

Request No. 130: Admit that Dynacirc CR was first sold in the United States in December 1996.

Response No. 130. Andrx states that it can neither admit nor deny this request since Andrx does not know when Dynacirc CR was first sold in the United States.

Request No. 131: Admit that Verelan PM was first sold in the United States in March 1999.

Response No. 131. Andrx states that it can neither admit nor deny this request since Andrx does not know when Verelan PM was first sold in the United States.

OTHER

Request No. 132: Admit that on January 31,1996, Hoechst and Carderm filed the HMR/Andrx Patent Infringement Litigation against Andrx in the Southern District of Florida.

Response No. 132. Andrx states that, to the best of its knowledge, the patent infringement litigation against Andrx concerning Cardizem CD was filed on or about January 31, 1996.

Request No. 133: Admit that on April 4,1996, Andrx filed with the FDA an amendment to its ANDA No. 74-752.

Response No. 133. Andrx admits that it filed an amendment to its ANDA No. 74-752 on or about April 4, 1996.

Request No. 134: Admit that Andrx's April 4, 1996 amendment to ANDA No. 74-752 added an additional dissolution specification for the SR2 beads which requires that each lot of the SR2 beads release not less than 55% of the total amount of diltiazem after 18 hours when tested in the U. S. Pharmacopeia XXII Type 2 apparatus using 900 ml of 0.1 HCl at 37 degrees C and a paddle speed of 100 rpm.

Response No. 134. Andrx objects to this request on the ground that it is not required to offer legal conclusions or characterize written documents that have been made available

to the government in this proceeding. Andrx is willing to discuss stipulating to the authenticity of documents.

Request No. 135: Admit that on September 11, 1998, Andrx filed a supplement to its ANDA NO. 74-752, which sought to add a small amount of a new ingredient to the SR2 bead coating and to change the dissolution specification for the SR2 bead to "not less than 65% of the total diltiazem after 18 hours."

Response No. 135. Andrx objects to this request on the ground that it is not required to characterize written documents that have been made available to the government in this proceeding. Andrx is willing to discuss stipulating to the authenticity of documents.

Request No. 136: Admit that on October 7,1998, Andrx notified Hoechst that it had filed a supplement to its approved ANDA No. 74-752.

Response No. 136. Andrx admits that it notified Hoechst that it had filed a supplement to its ANDA No. 74-752 on or about October 7, 1998.

Request No. 137: Admit that on January 8,1999, Hoechst informed Andrx that FDA regulations required Andrx to provide Hoechst with a new Paragraph IV Certification that Andrx's Reformulated Product does not infringe the patents listed in the Orange Book for Cardizem CD.

Response No. 137. Andrx objects to this request on the ground that it is not obliged to characterize written documents made available to the government in this proceeding. Andrx remains willing to discuss with the government the stipulation concerning the authenticity of documents. Andrx further responds that its only knowledge concerning this request comes from documents made available to the government.

Request No. 138: Admit that on January 19,1999, Andrx informed Hoechst that it did not believe it was required to provide a new Paragraph IV Certification with respect to the Andrx's Reformulated Product.

Response No. 138. Andrx objects to this request on the ground that it is not obliged to characterize written documents made available to the government in this proceeding.

Andrx remains willing to discuss with the government the stipulation concerning the authenticity of documents. Andrx further responds that its only knowledge concerning this request comes from documents made available to the government.

Request No. 139: Admit that on January 15,1999, Hoechst wrote to the FDA suggesting that Andrx was required to file a new Paragraph IV Certification for Andrx's Reformulated Product.

Response No. 139. Andrx objects to this request on the ground that it is not obliged to characterize written documents made available to the government in this proceeding. Andrx remains willing to discuss with the government the stipulation concerning the authenticity of documents. Andrx further responds that its only knowledge concerning this request comes from documents made available to the government.

Request No. 140: Admit that on February 3,1999, Andrx provided a Paragraph IV Certification to the FDA stating that Andrx's Reformulated Product did not infringe the patents listed in the Orange Book for Cardizem CD, including the '584 patent.

Response No. 140. Andrx objects to this request on the ground that it is not obliged to characterize written documents made available to the government in this proceeding. Andrx remains willing to discuss with the government the stipulation concerning the authenticity of documents. Andrx further responds that its only knowledge concerning this request comes from documents made available to the government.

Request No. 141: Admit that Andrx purchases micronized diltiazem HCl API from Plantex USA, Inc.

Response No. 141. Andrx admits that it has on one or more occasions purchased micronized diltiazem HCl API from Plantex USA, Inc.

Request No. 142: Admit that Andrx used micronized diltiazem HCl API in manufacturing Andrx's Original Formulation.

Response No. 142. Andrx can neither admit nor deny this request on the grounds of the vagueness of the definition of Original Formulation. Andrx states that, to the best of its knowledge, it has used the to referenced product in one or more batches of each formulation of its Cardizem CD generic.

Request No. 143: Admit that Andrx uses micronized diltiazem HCl API in manufacturing Cartia XT.

Response No. 143. Andrx admits that it has used micronized diltiazem HCl API in manufacturing one or more batches of Cartia XT.

Request No. 144: Admit that Andrx [sic] advertising and promotional materials for Cartia XT explicitly mention Cardizem CD.

Response No. 144. Andrx objects to this request on the grounds that it is not obliged to characterize written documents made available to the government in this proceeding. Andrx remains willing to discuss entering into a stipulation concerning the authenticity of documents.

Request No. 145: Admit that Andrx [sic] advertising and promotional materials for Cartia XT do not explicitly mention any prescription drug other than Cardizem CD.

Response No. 145. Andrx objects to this request on the grounds that it is not obliged to characterize written documents made available to the government in this proceeding. Andrx remains willing to discuss entering into a stipulation concerning the authenticity of documents.

Request No. 146: Admit that Andrx is a corporation within the meaning of Section 4 of the Federal Trade Commission Act.

GENERAL OBJECTIONS

1. Andrx objects to the requests, which number 146 in total, on the grounds that they are intended to harass, are unduly burdensome and, therefore, run afoul of §3.31 of the FTC's Rules of Practice.

2. Andrx objects to the 146 requests because, taken as a whole, they are unreasonably cumulative and, therefore, run afoul of §3.31 of the FTC's Rules of Practice.

3. Andrx objects to the 146 requests because they are unreasonably cumulative and, therefore, run afoul of §3.31 of the FTC's Rules of Practice.

4. Andrx objects to the 146 requests because the vast majority of them are more properly characterized as interrogatories. As such, Complaint Counsel's service of these mischaracterized interrogatories is a blatant attempt to circumvent the 25 interrogatory limit imposed by § 3.35 of the FTC's Rule of Practice and the Amended Scheduling Order entered in this action.

5. Andrx objects to the requests to the extent that they seek information more readily or properly ascertained through other discovery procedures and, therefore, run afoul of §3.31 of the FTC's Rules of Practice.

6. Andrx objects to the requests to the extent that they seek admissions of law and are, therefore, beyond the scope of §3.32 of the FTC's Rules of Practice .

7. Andrx objects to the requests to the extent they seek information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

8. Andrx objects to the requests to the extent that they seek to impose upon Andrx the obligation to make inquiry of individuals or research facts that are not within the company's possession, custody or control.

9. Andrx objects to the requests to the extent that they seek admissions of legal argument likely to be made by Complaint Counsel at the trial of this matter.

10. Andrx objects to the requests, including the "Definitions and Instructions", to the extent they are vague or ambiguous and to the extent that they impose requirements beyond those imposed by the FTC's Rules of Practice and the ordered entered by the Administrative Law Judge.

11. Andrx objects to the requests to the extent that they seek proprietary, or confidential, business information or trade secrets.

12. Andrx objects to the requests insofar as they purport to seek admissions that reveal confidential information protected from disclosure or which is subject to the attorney-client privilege, work product privilege, or any other privilege or immunity. All of the following responses to the individual requests should be read to state that Andrx will not provide any information that is privileged or otherwise immune from discovery.

13. Andrx objects to the requests to the extent they purport to demand discovery on terms, or to impose obligations upon Andrx, which are beyond the scope of, or different from, the provisions governing discovery in the Federal Trade Commission's Procedures and Rules of Practice, other applicable Federal Rules, and this Court's applicable orders.

14. By furnishing information in connection with this response, Andrx is neither agreeing nor representing that any or all of such information or documents are

relevant, material, competent or admissible into evidence in connection with this action. The information being provided in these responses are qualified as being based on a reasonable inquiry by Andrx. Andrx reserves the right to object on any ground to the use of any such information in any subsequent proceeding or at the trial of this or any other action. Andrx responds to each of the requests without waiver of any objections to the use of the information and documents at the time of trial, including but not limited to authenticity, materiality, competency or admissibility.

15. Each of the above answers should be read to include, "and in all other respects denies the request" in that, except as set forth in the above answers, Andrx denies the requested admissions specifically.

16. For each of the above answers that Andrx cannot either admit or deny, each such answer should be read to state that Andrx has made reasonable inquiry and that the information known to or readily obtainable by it is insufficient to enable it to admit or deny.

Each of the foregoing is specifically incorporated into each of the preceding responses regardless of whether they are explicitly stated therein.

CERTIFICATE OF SERVICE

I, Carolyn A. Dizon, hereby certify that on October 18, 2000, I caused a copy of Respondent Andrx Corporation's Response to Complaint Counsel's First Requests for Admissions Issued to Andrx Corporation to be served upon the following persons by overnight delivery:

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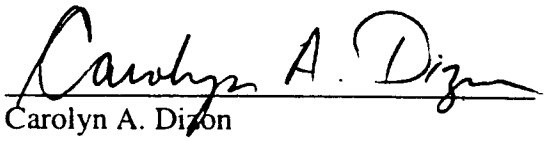

Carolyn A. Dizon