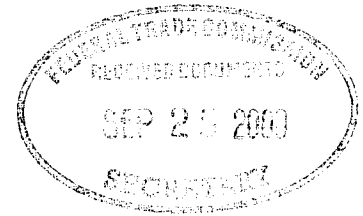


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



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

**AVENTIS PHARMACEUTICALS, INC.'S
OPPOSITION TO JOINT MOTION TO AMEND, MODIFY AND REISSUE THE
PROTECTIVE ORDER GOVERNING DISCOVERY MATERIALS TO BE PRODUCED
BY NON-PARTIES KAISER FOUNDATION HEALTH PLAN, INC., BLUE CROSS
BLUE SHIELD OF MICHIGAN, AND UNITED HEALTHCARE**

Respondent Aventis Pharmaceuticals, Inc. ("Aventis") respectfully submits this Opposition to Joint Motion to Amend, Modify And Reissue The Protective Order Governing Discovery Materials to be Produced by Non-parties Kaiser Foundation Health Plan, Inc., Blue Cross Blue Shield of Michigan, and United Healthcare ("Joint Motion").

I. Introduction

The Joint Motion seeks two changes to the Second Amended Protective Order Governing Discovery Material ("Protective Order"). First, it claims the Protective Order does not afford sufficient protection to commercially sensitive information. Secondly, it request that a new

provision be added to protect personal information about patients and insureds. Aventis objects to both changes as untimely and unnecessary.

II. Argument.

A. The Joint Motion is Untimely and Should be Dismissed

Aventis' position is that the Joint Motion is untimely and should be dismissed for this reason alone. Although the companies filing the Joint Motion (with the exception of United Healthcare) agreed by letter dated July 19, 2000, to begin producing documents immediately, not one document has been produced. Exhibit 1 to Declaration of D. E. Wilson, Jr., at Tab A ("Wilson Declaration").

Counsel for the filers of the Joint Motion received the Protective Order by telefax on August 7, 2000. The cover memorandum to that transmission, sent to every counsel for an entity on whom Aventis had served a third party *subpoena duces tecum* stated, in full:

Attached please find a copy of the Second Amended Protective Order Governing Discovery Material in the above-referenced case. It incorporates all of the amendments to date, including an "Attorney Eyes Only" provision. This removes any confidentiality reasons for not complying with the subpoena duces tecum. If you plan to object to the subpoena on the grounds that it requires your client to produce confidential information, please let me know, in writing, at your earliest convenience so that we can discuss your concerns before either side initiates proceedings before the Administrative Law Judge.

Thank you for your attention.

Ex. 2 to Wilson Declaration.

On September 12, 2000, over a month later, and still not having produced a single document in response to the subpoena served on these companies on June 5, 2000¹, Kaiser, Blue Cross Blue Shield of Michigan and United Healthcare ask this Court to change the Protective Order. This is a delaying tactic and should not be allowed by the Court. Aventis respectfully submits that the Court should dismiss the motion and order document production to begin immediately.

B. Commercial Information is Already Adequately Protected

In addition to being out of time, the amendment proposed as to providing “additional” protection to highly sensitive commercial information is not necessary. In drafting the language that became the “Restricted Confidential, Attorney Eyes Only” provision (paragraph 2(b)) of the Protective Order, counsel for Aventis consulted with counsel representing a number of the entities requested to produce documents. There was swift agreement on the purpose of the amendment; the discussion centered on the wording to accomplish this purpose. Wilson Declaration at 4. Unfortunately, as counsel filing the Joint Motion stated, his client(s) were not available to participate fully in that process.

The focus of the discussions held with other counsel, including Complaint Counsel, was to provide protection for the very information sought to be covered by the Joint Motion’s proposed amendment. The motion leading to the current Protective Order was filed on July 24, 2000. That motion incorporated a number of changes proposed by counsel for recipients of third party subpoenae, and excluded some others. Wilson Declaration at 4. To date no other entity (or counsel) responding to a subpoena in this case has objected to the wording adopted by this court to protect

1. Ex. 3 to Wilson Declaration (copies of return receipts).

sensitive commercial information. Counsel for Aventis understands that the result contained in the Protective Order could have been reached through a number of different wordings. Nonetheless, there is no reason why an 11th hour filing objecting to the wording, but not the substance of the existing Protective Order, should be granted.

C. Request to Protect Personal Information about Patients and Insureds is Unnecessary

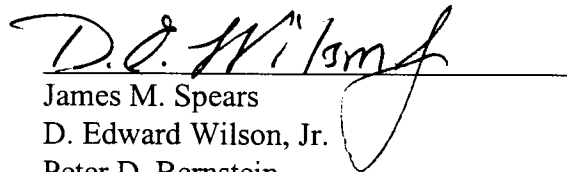
This part of the Joint Motion addresses a problem that has not arisen and does not exist. If the Court would like to add it to the Protection Order, it is of course free to do so. However, in discussions with producers of documents, Aventis has repeatedly made the point that it does not want any information about patients or insureds produced to it and that it will return documents with such information to the producer for redaction. Wilson Declaration at 5. Aventis remains willing to provide such assurances to producing parties.

III. Conclusion

For the foregoing reasons, Aventis respectfully requests that the Joint Motion be dismissed and the companies filing the joint motion be order to produce documents responsive to the subpoenae filed upon them forthwith.

Dated: September 25, 2000

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D. E. Wilson, Jr.", is written over a horizontal line. The signature is fluid and cursive.

James M. Spears
D. Edward Wilson, Jr.
Peter D. Bernstein
SHOOK HARDY & BACON, LLP
600 Fourteenth Street, N.W., Suite 800
Washington, D.C. 20005-2004
(202) 783-8400

Attorneys for Respondent
Aventis Pharmaceuticals, Inc.

**UNITED STATES OF AMERICA
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

**DECLARATION OF D. E. WILSON, JR., IN SUPPORT OF AVENTIS
PHARMACEUTICAL, INC.'S OPPOSITION TO JOINT MOTION TO AMEND,
MODIFY AND REISSUE THE PROTECTIVE ORDER GOVERNING DISCOVERY
MATERIALS TO BE PRODUCED BY NON-PARTIES KAISER FOUNDATION
HEALTH PLAN, INC., BLUE CROSS BLUE SHIELD OF MICHIGAN, AND UNITED
HEALTHCARE**

I, D. E. WILSON, JR., hereby state the following pursuant to Rule 3.22(f) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.22(f):

1. I am a member in good standing of the Bar of the District of Columbia Court of Appeals and am presently associated with the firm of Shook Hardy & Bacon LLP, counsel for respondent Aventis Pharmaceuticals, Inc. ("Aventis").

2. On June 5, 2000, I caused a subpoena *duces tecum* (copy of receipts attached at Tab 3) to be delivered to non-parties Kaiser Foundation Health Plan, Inc., Blue Cross Blue Shield of Michigan, and United Healthcare by mailing them, registered mail, return receipt requested, to the companies' respective addresses for service of process.

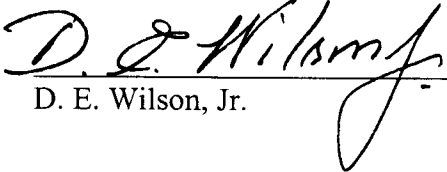
3. On July 19, 2000, I received a letter from counsel for the non-parties stating that these entities would begin producing documents. (Ex. 2). We have yet to receive any documents from any of these entities.

4. In early July, 2000, it became apparent that the an amendment to the protective order then in effect might be in order to facilitate the handling of highly sensitive commercial information. Conversations and drafting sessions were held with counsel representing a number of the non-party respondents. Drafts were shared with Complaint Counsel. While the substance of those sessions was incorporated into the motion to amend the protective order filed on July 24, 2000, the exact language from each suggestion could not be. One formulation not adopted was that supplied by counsel for the Joint Motion.

5. Throughout the document production process, counsel for Aventis has taken care to ensure that no information identifying any patient or insured is provided in response to any subpoena. Nothing in the subpoenae requests such information and if provided, such information will be returned without copying to the provider with a request either to redact or not submit.

Executed in Washington, D.C., on September 25, 2000.

Respectfully Submitted,


D. E. Wilson, Jr.

- Exhibit 1: Letter from Shawn G. Lisle, Esq. to D. E. Wilson, Jr., Esq., dated July 19, 2000
- Exhibit 2: Copy of Memorandum sent to counsel for all parties that received subpoenae, dated August 7, 2000.
- Exhibit 3: Copies of return receipts for Kaiser, Blue Cross Blue Shield of Michigan, and United Healthcare

Exhibit 1

PORTER WRIGHT MORRIS & ARTHUR LLP
Attorneys & Counselors at Law

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

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

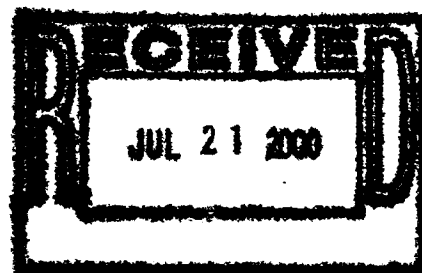
Facsimile: 202-778-3063
Toll Free: 800-456-7962

* Admitted in Pennsylvania Only

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,

A handwritten signature in black ink, appearing to read "Shawn Lisle", written in a cursive style.

Shawn Lisle

Exhibit 2

Exhibit 3

LAW OFFICES
SHOOK, HARDY & BACON LLP

HAMILTON SQUARE
 600 14TH STREET NW SUITE 800
 WASHINGTON DC 20005-2004

D.E.W., JR. - x47044

TO:

UNITED HEALTHCARE SERVICES INC
 C/O C T CORPORATION
 405 2ND AVENUE S
 MINNEAPOLIS MN 55401

Registered No. **R291384938** Date Stamp
 WASHINGTON, DC M.O.W.S.
 JUN 05 2000

Reg. Fee \$	\$6.00	Special Delivery	\$
Handling Charge	\$0.00	Return Receipt	\$1.25
Postage	\$0.77	Restricted Delivery	\$0.00

Received by *[Signature]*

Customer Must Declare Full Value \$ **\$0.00**

With Postal Insurance Without Postal Insurance

FROM **Shook, Hardy & Bacon LLP
 600 14th St., N.W., Suite 800
 Washington, D.C. 20005
 United Healthcare Services, Inc.
 C/O C T Corporation**

TO **405 2nd Avenue S.
 Minneapolis, MN 55401**

PS Form 3806, February 1995
 Receipt for Registered Mail (Customer Copy)
 (See Information on Reverse)

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
**United Healthcare Services, Inc.
 C/O C T Corporation
 405 2nd Avenue S.
 Minneapolis, MN 55401**

4a. Article Number: **R291384938**

4b. Service Type:
 Registered
 Certified
 Insured
 COD
 Express Mail
 Return Receipt for Merchandise

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Address see)

6. Signature Agent: *[Signature]*

PS Form 3811, December 1991 *U.S. GPO: 1993-352-714

DOMESTIC RETURN RECEIPT

LAW OFFICES

SHOOK, HARDY & BACON LLP

HAMILTON SQUARE
600 14TH STREET NW SUITE 800
WASHINGTON DC 20005-2004

D.E.W., JR. - x47044

TO:

KAISER PERMANENTE INSURANCE COMPANY
C/O THE PRENTICE-HALL CORPORATION SYSTEM INC
2730 GATEWAY OAKS DRIVE SUITE 100
SCRAMENTO CA 95833

Registered No.
R291384948

Date Stamp
JUN 05 2000
WASHINGTON, DC 20005

Reg. Fee \$	\$6.00	Special Delivery	\$0.00
Handling Charge	\$0.00	Return Receipt	\$0.00
Postage	\$0.71	Restricted Delivery	\$0.00
Received by	<u>[Signature]</u>		
Customer Must Declare Full Value \$	\$0.00	With Postal Insurance	<input type="checkbox"/>
		Without Postal Insurance	<input checked="" type="checkbox"/>
FROM	<u>Shook, Hardy & Bacon LLP</u> <u>600 14th St., N.W., Suite 800</u> <u>Washington D.C. 20005</u> <u>Kaiser Permanente Insurance Company</u> <u>c/o The Prentice-Hall Corporation System, Inc.</u>		
TO	<u>2730 Gateway Oaks Drive, Suite 100</u> <u>Sacramento CA 95833</u>		

PS Form 3806, February 1995
Receipt for Registered Mail (Customer Copy)
(See Information on Reverse)

your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
Kaiser Permanente Insurance Company
c/o The Prentice-Hall Corporation
System, Inc., Suite 100
2730 Gateway Oaks Drive
Sacramento, CA 95833
A.H.

4a. Article Number R291384948

4b. Service Type
 Registered
 Certified
 Express Mail
 Return Receipt for Merchandise

5. Signature (Addressee)
[Signature]

6. Signature (Agent)
[Signature]

7. Date of Delivery 6/1/2

8. Addressee's Address (Only if requested and fee is paid)

1. Addressee's Address

2. Restricted Delivery

Consult postmaster for fee.

I also wish to receive the following services (for an extra fee):

Thank you for using Return Receipt Service.

PS Form 3811, December 1991 *U.S. GPO: 1995-352-714

DOMESTIC RETURN RECEIPT

LAW OFFICES
SHOOK, HARDY & BACON LLP

HAMILTON SQUARE
 600 14TH STREET NW, SUITE 800
 WASHINGTON DC 20005-2004

D.E.W., JR. - x47044

TO:

BLUE CROSS AND BLUE SHIELD OF MICHIGAN
 C/O MR STEVEN C HESS
 600 LAFAYETTE EAST
 DETROIT MI 48226

Registered No. **R 291 384 943** **WASHINGTON DC Stamp**

Reg. Fee \$	\$6.00	Special Delivery	\$0.40
Handling Charge	\$0.00	Return Receipt	\$1.00
Postage	\$0.77	Restricted Delivery	\$0.00

Received by *[Signature]*

Customer Must Declare Full Value \$ **\$0.00**

With Postal Insurance
 Without Postal Insurance

FROM *Shook, Hardy & Bacon LLP
 600 14th St. N.W., Suite 800
 Washington, D.C. 20005
 Blue Cross and Blue Shield of Michigan c/o
 Mr. Steven C. Hess*

TO *600 Lafayette East
 Detroit, MI 48226*

All Entries Must Be in Ballpoint or Typed (Please Print)

To Be Completed By Customer

To Be Completed By Post Office

PS Form 3806, February 1995

Receipt for Registered Mail (Customer Copy)
 (See Information on Reverse)

IS YOUR RETURN ADDRESS COMPLETED ON THE REVERSE SIDE?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
*Blue Cross and Blue Shield
 c/o Mr. Steven C. Hess
 600 Lafayette East
 Detroit, MI 48226*

4a. Article Number **R 291 384 943**

4b. Service Type
 Registered
 Certified
 Express Mail
 Insured
 COD

7. Date of Delivery *2-7-95*

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)
J. CORRELLIUS

6. Signature (Agent)
ABC-BS

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

Thank you for using Return Receipt Service.

PS Form 3806, December 1991 U.S. GPO: 1993-352-714

DOMESTIC RETURN RECEIPT

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of

Hoechst Marion Roussel, Inc., et al.,

Respondents.

Docket No. 9293

CERTIFICATE OF SERVICE

I, D. E. Wilson, Jr., hereby certify that on September 25, 2000, a copy of Aventis Pharmaceuticals, Inc.'s Opposition to Joint Motion to Amend, Modify And Reissue The Protective Order Governing Discovery Materials to be Produced by Non-parties Kaiser Foundation Health Plan, Inc., Blue Cross Blue Shield of Michigan, and United Healthcare was served upon the following persons by hand delivery and/or Federal Express as follows:

Donald S. Clark, Secretary
Federal Trade Commission
Room 172
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Markus Meier
Federal Trade Commission
Room 3017
601 Pennsylvania Ave., N.W.
Washington, D.C. 20580

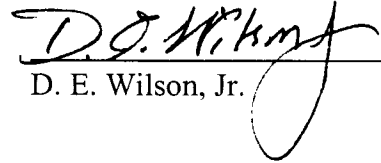
Richard Feinstein
Federal Trade Commission
Room 3114
601 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Louis M. Solomon [By FedEx]
Solomon, Zauderer, Ellenhorn,
Frischer & Sharp
45 Rockefeller Plaza
New York, NY 10111

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room 104
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Peter O. Safir
Kleinfeld, Kaplan and Becker
1140 19th St., N.W.
Washington, D.C. 20036

Shawn G. Lisle, Esquire
Porter, Wright, Morris & Arthur, LLP.
1667 K Street, N.W.
Suite 1100
Washington, D.C. 20006-1605


D. E. Wilson, Jr.