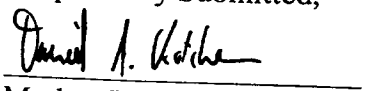
UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

COMPLAINT COUNSEL'S SECOND MOTION TO COMPEL RESPONDENT ANDRX TO PRODUCE DOCUMENTS

Pursuant to § 3.38 of the Federal Trade Commission's Rules of Practice, complaint counsel hereby move for an order compelling respondent Andrx to: (1) produce certain documents responsive to complaint counsel's First Request for Documents and Things issued to Andrx, and (2) permit Hoechst to produce certain documents, given to Hoechst by Andrx, covered by a protective order in the Hoechst-Andrx patent litigation. The bases of this motion are set forth in the accompanying Memorandum in Support of Complaint Counsel's Second Motion to Compel Andrx to Produce Documents and the attachments to this memorandum.

Respectfully Submitted,



Markus H. Meier
Bradley S. Albert
Daniel A. Kotchen

Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Dated: July 21, 2000

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

TO: The Honorable D. Michael Chappell
Administrative Law Judge

MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S SECOND MOTION TO COMPEL ANDRX TO PRODUCE DOCUMENTS

In the nearly three months since we issued our initial document request, Andrx still has yet to produce a single document in this litigation. Andrx's latest tactic to delay discovery is to refuse to produce documents which it concedes are responsive, relevant, and non-privileged because complaint counsel will not agree with Andrx's interpretation of the protective order – an interpretation which Andrx previously has advanced, but which Your Honor has already rejected.[1] We respectfully request this Court to compel Andrx to: (1) produce documents responsive to our first document request, including documents that even Andrx admits are non-

[1] *See* Court's Order denying Andrx's May 30th Motion (attached as Exhibit 2).

privileged and relevant, and (2) permit Hoechst to produce certain documents, given to Hoechst by Andrx, covered by a protective order in the Hoechst-Andrx patent litigation.[2]

On May 3, 2000, we issued to Andrx our first request for documents. On June 28, 2000, Andrx's counsel wrote that they were "just about in a position to begin" the production in this case, but before doing so, that they needed "written clarification concerning complaint counsel's interpretation of ¶ 4" of the protective order:[3]

> Specifically, Andrx requires assurances that complaint counsel will neither divulge to any non-party any documents or information supplied by Andrx and designated "CONFIDENTIAL" nor summarize, in any way, all or any part of such information in any communications with persons or entities that are not parties to this proceeding, whether that summary is in the form of a letter or otherwise and whether or not the information is deemed by complaint counsel to be confidential.

We responded that same day that "we intend to fully abide by the terms of the Court's protective order (as amended April 28, 2000), including ¶ 4, which relates to the disclosure of 'Confidential Discovery Material.'"[4] Despite this assurance, Andrx informed us during a telephone conference on June 30, 2000, that they would not begin producing any documents until we provided additional commitments consistent with their interpretation of ¶ 4, as set forth in their letter of June 28. This is the same issue upon which Andrx has already filed a motion, and which has been fully briefed by both parties. In denying Andrx's motion, this Court summarily

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[2] This is our second motion to compel Andrx to produce documents. On July 7, 2000, we filed our first motion to compel, which focused on certain specifications that Andrx alleges are not relevant to this litigation.

[3] *See* Letter from Jonathan Lupkin to Brad Albert, dated June 28, 2000 (attached as Exhibit 3).

[4] *See* Letter from Bradley Albert to Jonathan Lupkin, dated June 28, 2000 (attached as Exhibit 4).

rejected Andrx's position.[5] Having turned to Your Honor once unsuccessfully "in the face of a disagreement over confidentiality,"[6] Andrx now has taken matters into its own hands by trying to force us to accept – as a condition of getting any responsive documents from Andrx – its interpretation of the protective order that has been rejected by this Court.

Even more problematic, Andrx is using this "confidentiality concern" not only to deny us discovery from Andrx, but also to frustrate our legitimate discovery from Hoechst. We have requested from Hoechst certain documents provided to Hoechst by Andrx during their patent litigation, which was settled and dismissed more than a year ago.[7] Under that matter's protective order, Hoechst may only produce these admittedly non-privileged, relevant documents if Andrx agrees to the production. Hoechst has requested permission from Andrx to produce these documents to us, but Andrx has refused.[8]

Andrx is the only party to this litigation that has outright refused – and continues to refuse – to cooperate in discovery. We produced all of our non-privileged documents at the earliest possible time; Hoechst is in the process of complying fully with three separate document requests; and Carderm has completed an overseas search for documents in an effort to comply with our document request. Andrx, in contrast, is operating as if it is above both the Commission

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[5] *See* Court's Order denying Andrx's May 30th Motion (attached as Exhibit 2).

[6] Andrx's May 30th Motion, at 13-14 (attached as Exhibit 5).

[7] *See* Specification 4 of Complaint Counsel's First Request for Documents and Things Issued to Hoechst Marion Roussel, Inc. (attached as Exhibit 6), requesting documents relating to Andrx's Reformulated Product.

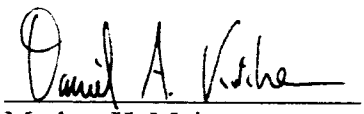
[8] *See* Letter from Peter Bernstein to Daniel Kotchen, dated July 20, 2000 (attached as Exhibit 7)

rules and Your Honor's Order. The discovery period is more than half over, our expert report is due in roughly six weeks, and we should not be made to wait any longer for documents Andrx itself concedes are non-privileged and relevant.

* * * * *

For the reasons discussed above, our Motion to Compel Respondent Andrx to Produce Documents Responsive to Complaint Counsel's First Request for Documents and Things should be granted.

Respectfully Submitted,



Markus H. Meier
Bradley S. Albert
Daniel A. Kotchen

Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Dated: July 21, 2000

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

ORDER GRANTING COMPLAINT COUNSEL'S SECOND MOTION TO COMPEL RESPONDENT ANDRX TO PRODUCE DOCUMENTS

IT IS HEREBY ORDERED that complaint counsel's second motion for an order compelling respondent Andrx to produce certain documents responsive to complaint counsel's First Request for Documents and Things issued to Andrx is GRANTED.

Dated: _____, 2000

_____
D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

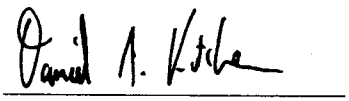
I, Daniel A. Kotchen, hereby certify that on July 21, 2000, I caused a copy of Complaint Counsel's Second Motion to Compel Andrx to Produce Documents, Proposed Order, and Memorandum in Support of Counsel's Second Motion to Compel Andrx to Produce Documents (including the attachments to the memorandum) to be served upon the following persons either by hand or by Federal Express:

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

Louis M. Solomon, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, NY 10111

James M. Spears, Esq.
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004

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



Daniel A. Kotchen

EXHIBIT 1

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

Declaration of Daniel A. Kotchen

Pursuant to 16 C.F.R. § 3.22(f), Daniel A. Kotchen declares as follows:

1. I am an attorney with the Federal Trade Commission and serve as complaint counsel In the Matter of Hoechst Marion Roussel, Inc., Carderm Capital L.P., and Andrx Corp., Docket No. 9293. I submit this declaration to represent that complaint counsel has conferred with Andrx in an effort in good faith to resolve by agreement the issues raised in Complaint Counsel's Second Motion to Compel Andrx to Produce Documents. Complaint counsel and Andrx have been unable to reach such an agreement.

2. On May 3, 2000, complaint counsel issued to Andrx our First Request for Documents and Things. Andrx responded to this request on June 1, 2000, objecting to each of the specifications within the document request and failing to produce any responsive documents.

3. Bradley Albert, a Commission attorney also serving as complaint counsel in this matter, and I participated in three "meet and confer" sessions (on June 7, 13, and 30) with Hal

Shaftel and Jonathan Lupkin, counsel for Andrx. During each of these conferences, we discussed and negotiated the scope of the specifications within our document request. However, during our final meet and confer, on June 30, 2000, Mr. Shaftel told Mr. Albert and myself that Andrx did not intend to produce any documents to us unless we provided additional assurances of confidentiality, as set forth in a letter from Mr. Lupkin to Mr. Albert, dated June 28, 2000. We informed Andrx's counsel that we intended to abide by the protective order, but this was not satisfactory to them. We have not resolved our differences with respect to this issue.

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

Daniel A. Kotchen

Dated: July 21, 2000

EXHIBIT 2

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

ORDER

On May 30, 2000, Respondent Andrx filed its Motion for an Order (1) Granting Respondents Access to Documents Available to Complaint Counsel; (2) Declaring that Complaint Counsel's Disclosure of Information to Third Parties Violated Statutory and Regulatory Confidentiality Restrictions and the Protective Order Entered in this Matter; and (3) Prohibiting Complaint Counsel from Further Disclosing Confidential Information to Third Parties. On June 12, 2000, Complaint Counsel filed its Memorandum in Opposition to Respondent Andrx's motion.

Having considered Respondent Andrx's motion and Complaint Counsel's response thereto, it is hereby ORDERED that Respondent Andrx's motion is DENIED.

ORDERED:

D M Chappell

Judge D. Michael Chappell
Administrative Law Judge

Date: June 15, 2000

EXHIBIT 3

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP

45 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10111
(212) 956-3700
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RICHARD T. SHARP
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BERTRAND C. SELLIER
DAVID E. NACHMAN
EDWIN M. BAUM
HAL S. SHAFTEL
ROBERT L. MAZZEO
JONATHAN P. HUGHES
LEONARD S. BAUM
MARGARET A. DALE
COLIN A. UNDERWOOD

JOHN J. O'CONNELL
OF COUNSEL

WAYNE M. AARON
LISA M. BABISKIN
JESSICA L. BIER
JEREMY I. BOHRER
DEAN T. CHO
ANDRE K. CIZMARIK
ROBERT S. FRENCHMAN
STEVEN H. HOLINSTAT
MICHAEL S. LAZAROFF
SERGIO A. LLORIAN
JONATHAN D. LUPKIN
CAROLINE S. PREES
SHARON M. SASH
JENNIFER R. SCULLION
CHARLES D. STAR
EMILY STERN

WRITER'S DIRECT DIAL

(212) 424-0758

June 28, 2000

VIA FACSIMILE

Bradley S. Albert, Esq.
United States Federal Trade Commission
Bureau of Competition, Health Care Division
601 Pennsylvania Avenue, NW
S-3115
Washington, D.C. 20580

Re: In re Hoechst Marion Roussel, Inc. et al. (Docket No. 9293)

Dear Brad:

We are just about in a position to begin Andrx's supplemental document production in this case. Before we begin our production, however, and given the highly confidential information contained in Andrx's documents, we require written clarification concerning Complaint Counsel's interpretation of ¶4 of Judge Chappell's April 28, 2000 protective order. Specifically, Andrx requires assurances that Complaint Counsel will neither divulge to any non-party any documents or information supplied by Andrx and designated "CONFIDENTIAL" nor summarize, in any way, all or any part of such information in any communications with persons or entities that are not parties to this proceeding, whether that summary is in the form of a letter or otherwise and whether or not the information is deemed by Complaint Counsel to be confidential.

We are confident that Complaint Counsel will grant us these assurances.

Sincerely,

Jonathan D. Lupkin

cc: James M. Spears, Esq. (via fax)

EXHIBIT 4

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition

June 28, 2000

VIA FACSIMILE

Jonathan D. Lupkin
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, NY 10111

Re: Hoechst-Andrx Generic Cardizem, FTC Docket No. 9293

Dear Jonathan:

I am writing in response to your letter from earlier today.

We intend to fully abide by the terms of the Court's protective order (as amended April 28, 2000), including ¶ 4, which relates to the disclosure of "Confidential Discovery Material."

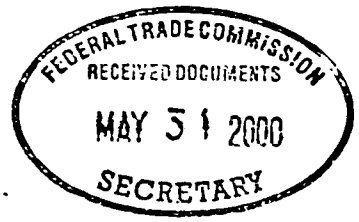
We look forward to receiving the beginning of Andrx's document production in response to our first set of document requests (issued on May 3, 2000).

Sincerely,

Bradley Albert
Counsel for the Complaint

EXHIBIT 5

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'S MOTION FOR AN ORDER (1) GRANTING RESPONDENTS ACCESS TO DOCUMENTS AVAILABLE TO COMPLAINT COUNSEL; (2) DECLARING THAT COMPLAINT COUNSEL'S DISCLOSURE OF INFORMATION TO THIRD PARTIES VIOLATED STATUTORY AND REGULATORY CONFIDENTIALITY RESTRICTIONS AND THE PROTECTIVE ORDER ENTERED IN THIS MATTER; AND (3) PROHIBITING COMPLAINT COUNSEL FROM FURTHER DISCLOSING CONFIDENTIAL INFORMATION TO THIRD PARTIES

Pursuant to § 3.22 of the Federal Trade Commission's Rules of Practice, Respondent Andrx Corporation hereby moves for an order (1) granting respondents access to the documents from the FTC staff's investigatory files, ascertained or generated during the pre-complaint investigation, because such materials have been made or are available to Complaint Counsel; (2) declaring that Complaint Counsel violated statutory and regulatory confidentiality restrictions, as well as the Protective Order entered by this Court in this matter, by releasing to third parties a letter from the non-public investigation containing confidential Andrx information; and (3) prohibiting Complaint Counsel and other FTC staff from further communicating information from the investigatory files in these proceedings to any third parties without Andrx's consent or, in the absence of consent, without this Court's approval.

The bases of this motion are set forth in Andrx's accompanying Memorandum in Support of its Motion for an Order (dated May 30, 2000).

Dated: New York, New York
May 30, 2000

Respectfully Submitted,

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP

By: _____

Louis M. Solomon
Hal S. Shaftel
Colin A. Underwood
Jonathan D. Lupkin
Michael S. Lazaroff
Sharon M. Sash
45 Rockefeller Plaza
New York, New York 10111
(212) 956-3700

Counsel for Respondent Andrx Corporation

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

ORDER GRANTING RESPONDENT ANDRX'S MOTION FOR AN ORDER (1) GRANTING RESPONDENTS ACCESS TO DOCUMENTS AVAILABLE TO COMPLAINT COUNSEL; (2) DECLARING THAT COMPLAINT COUNSEL'S DISCLOSURE OF INFORMATION TO THIRD PARTIES VIOLATED STATUTORY AND REGULATORY CONFIDENTIALITY RESTRICTIONS AND THE PROTECTIVE ORDER ENTERED IN THIS MATTER; AND (3) PROHIBITING COMPLAINT COUNSEL FROM FURTHER DISCLOSING CONFIDENTIAL INFORMATION TO THIRD PARTIES

IT IS HEREBY ORDERED that Respondent Andrx's motion for an order (1) granting respondents access to the documents from the FTC staff's investigatory files, ascertained or generated during the pre-complaint investigation, because such materials have been made or are available to Complaint Counsel; (2) declaring that Complaint Counsel violated statutory and regulatory confidentiality restrictions, as well as the Protective Order entered by this Court in this matter, by releasing to third parties a letter from the non-public investigation, containing confidential Andrx information; and (3) prohibiting Complaint Counsel and other FTC staff from further communicating

information from the investigatory files in these proceedings, to any third parties without Andrx's consent or, in the absence of consent, without this Court's approval, is GRANTED.

Dated: June _____, 2000

D. Michael Chappell
Administrative Law Judge

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'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN ORDER (1) GRANTING RESPONDENTS ACCESS TO DOCUMENTS AVAILABLE TO COMPLAINT COUNSEL; (2) DECLARING THAT COMPLAINT COUNSEL'S DISCLOSURE OF INFORMATION TO THIRD PARTIES VIOLATED STATUTORY AND REGULATORY CONFIDENTIALITY RESTRICTIONS AS WELL AS THE PROTECTIVE ORDER ENTERED IN THIS MATTER; AND (3) PROHIBITING COMPLIANT COUNSEL FROM FURTHER DISCLOSING CONFIDENTIAL INFORMATION TO THIRD PARTIES

Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, New York 10111
(212) 956-3700

Respondent Andrx Corporation ("Andrx") submits this memorandum in support of its motion for an order (1) granting respondents access to the documents from the FTC staff's investigatory files, ascertained or generated during the pre-complaint investigation, because such materials have been made or are available to Complaint Counsel; (2) declaring that Complaint Counsel violated statutory and regulatory confidentiality restrictions, as well as the Protective Order entered by this Court in this matter, by releasing to third parties a letter from the non-public investigation, containing confidential Andrx information; and (3) prohibiting Complaint Counsel and other FTC staff from further communicating information from the investigatory files in these proceedings, to any third parties without Andrx's consent or, in the absence of consent, without this Court's approval.

Preliminary Statement

Complaint Counsel has taken the position that respondents are not entitled to access all the materials obtained or generated as part of the pre-Complaint investigation that have been made or are available to Complaint Counsel. That one-sided approach is patently unfair and contrary to applicable law. But Complaint Counsel goes even further, claiming that it alone can select what information from the investigation to disclose to third parties or disseminate into the public domain. In violation of statutory and regulatory provisions, as well as the Protective Order entered in these proceedings, Complaint Counsel recently released to third parties a letter, dated October 5, 1999, from the FTC staff (Bradley S. Albert) to Andrx's counsel (Louis M. Solomon) (the "October 1999 Letter"), which was part of the non-public investigation. The October 1999 Letter revealed the identity of Andrx witnesses who voluntarily provided information in reliance on express guarantees of confidentiality. Complaint Counsel therefore seeks to have it both ways: it both has denied Andrx access to information compiled during the pre-Complaint investigation and, at the

same time, claims the right unilaterally to determine what information from that confidential, non-public investigation to disclose to third parties or publicly disseminate.

By arrogating to itself the role of "gatekeeper" of the confidential information from the pre-complaint investigatory files, Complaint Counsel has disregarded the procedural rules and common sense notions of fairness. Moreover, given the two-and-a-half year head start the FTC has had in developing its case during the pre-complaint investigation, due process requires that, since Complaint Counsel has been given access to the files of the investigation, Complaint Counsel share the information derived from those files with respondents, who have been allowed less than six months to complete their discovery. Respondents also should have access to the investigatory files as part of a mechanism to protect against further misuses by Complaint Counsel of the confidential information in the files. There is a well-documented history in this case of FTC staff members leaking information from the investigation. By releasing the October 1999 Letter, Complaint Counsel itself has participated in those improper disclosures. As a safeguard, Complaint Counsel and respondents ought to reach agreement, prior to the release of information from the files, based on equal access to those files. In the event any disputes arise over the public disclosure of such information, the matter should be presented to the Administrative Law Judge for determination. When we raised this issue with Complaint Counsel, promptly after it came to our attention on May 24, 2000, Complaint Counsel agreed to refrain from making further disclosures from the confidential investigatory files pending resolution of this motion.

Factual Background

A. Complaint Counsel Has Denied Respondents Fair Access To The Pre-Complaint Investigatory Files

The pre-complaint investigation concerning this matter occurred over a period of approximately two-and-a-half years. During that period, the FTC, its employees, staff, or agents received information from a multitude of sources and generated its own information on this matter. In its Initial Disclosures, for example, Complaint Counsel identified over fifty entities, in addition to respondents, from which the FTC staff received information. Essentially all of the sources identified are large commercial entities, some of which Complaint Counsel describes as competitors or potential competitors of Andrx. (All of this information is referred to herein as "investigatory" files.)

There is substantial overlap between the FTC personnel involved in the investigatory stage and Complaint Counsel. At least four people are serving in both roles. Despite Andrx's repeated requests, Complaint Counsel has refused to give respondents access to the investigatory files. By June 1, 2000, Andrx intends to make a motion to compel against Complaint Counsel addressed to particular document requests. Here, the issue is different and implicates a broader problem of Complaint Counsel having a monopoly over the investigatory files and the resulting informational disparity between the parties.

By Scheduling Order dated April 26, 2000, respondents were given fewer than six months to start and complete their discovery and prepare for a trial commencing in early December 2000. The short time-frame makes it imperative that respondents obtain the information that the FTC compiled in an investigation lasting well over two years and made available to Complaint Counsel. Among other things, Complaint Counsel has not provided information generated by the investigatory staff, including documentation memorializing witness interviews or other factual

information, which may contain factual material supportive of respondents' positions. Complaint Counsel also has not identified all entities or individuals who provided information to the investigatory staff. Such sources, too, may have information supportive of respondents' positions.

As Andrx has stated to Complaint Counsel, the risk is that evidence potentially important to respondents will remain unknown to them -- information made fully available to Complaint Counsel.

B. The FTC's Breaches of Confidentiality

Complaint Counsel has advised Andrx, astonishingly, that it believes it is vested with discretion to decide what information to disclose to third parties or publicly disseminate out of the non-public investigatory files. In addition to claiming that discretion generally, Complaint Counsel has acknowledged that it recently disseminated the October 1999 Letter. In compliance with the Protective Order, Andrx is not attaching a copy of the October 1999 Letter because it is Confidential Material protected from disclosure. The letter, however, was provided by Complaint Counsel -- without any advance notice to respondents -- to counsel for plantiffs in the consolidated action brought against Andrx and HMR in the U.S. District Court for the Southern District of Michigan. The letter revealed confidential information about the identify of Andrx witnesses who voluntarily supplied information in reliance on statutory protections of confidentiality. The letter has now been publicly filed by the plaintiffs in the Michigan action.

The dissemination of the October 1999 Letter is not an isolated incident. At the initial scheduling conference on April 24, 2000, respondents brought to the attention of the Administrative Law Judge the issue of leaks and other improper ex parte communications from the FTC staff. See 4/24 Tr. at 34-38. In particular, respondents raised the comments of Molly Boast, the Deputy Director of the FTC's Bureau of Competition, who spoke on April 6, 2000, at a panel of

the American Bar Association, about the HMR-Andrx Stipulation in the context of these proceedings. In addition, Andrx has described numerous leaks to the press by the FTC staff during the non-public investigation, the dissemination by FTC staff members of confidential information about Andrx, and the FTC staff's communication of their internal deliberations to a purported competitor of Andrx. See Andrx's Memorandum in Opposition to Complaint Counsel's Motion to Strike Certain Affirmative Defenses, (dated May 19, 2000), at pp. 19-21. The information communicated by the FTC staff included information that Andrx supplied to the FTC solely upon assurances that the information would be maintained within the Commission and in confidence.

In response to the evidence of improper disclosures by the FTC staff, Complaint Counsel committed, on the record, to take steps to ensure that the FTC would cease publicizing confidential material about this proceeding. See 4/24 Tr. at 38. The disclosure of the October 1999 Letter demonstrates that the improper disclosures have continued.

ARGUMENT

I.

RESPONDENTS SHOULD HAVE ACCESS TO THE INVESTIGATORY FILES AVAILABLE TO COMPLAINT COUNSEL

To ensure fairness and due process, the FTC's own rules separate the investigative and adjudicative phases of a proceeding See 16 C.F.R. § 2.1 *et seq.* (rules governing "investigations and inquiries") and §3.1 *et seq.* (separate "rules . . . govern procedure in adjudicative proceedings"). As the D.C. Circuit stated in FTC v. Atlantic Richfield Co., 567 F.2d 96, 102 (D.C. Cir. 1977):

> It is recognized that the Federal Trade Commission and the other regulatory agencies have two separate functions to perform, investigative and adjudicative. It is also recognized that the regulatory agencies have an obligation to keep those roles separate insofar as is possible, in order to

> insure the judicial fairness of adjudicative proceedings and also the unrestricted vigor of investigative proceedings. Indeed, such confidence as the public and the courts have in the integrity of the FTC and other agencies' adjudicative processes may be said to rest in great part on their effort and success in keeping separate these two diverse functions.

See also id. at 99. ("The Commission has, in stating its rules of practice, clearly separated the rules relating to nonadjudicative procedures (such as investigations) from those dealing with adjudicative proceedings").

Given that dichotomy of functions, the FTC staff's making investigatory files available to Complaint Counsel -- acting in the separate prosecutorial role -- waives any potential privileges otherwise applicable to that information. The information obtained during the non-public investigation, as a matter of statute and regulation, may be confidential as to third parties, but not to Andrx and the other respondents as parties to these proceedings. Indeed, any other result would be patently unfair because Complaint Counsel would have the advantage of a two plus year head-start in preparing its case, while Andrx would not have, given the short six-month period before trial, a fair opportunity ever to catch up.

Here, the entirety of the investigatory files have been made available exclusively to Complaint Counsel. In turn, Complaint Counsel has taken the position that it can, at its own discretion and pace, select what information it will keep confidential, produce to respondents, and disclose to third parties. The law, however, is to the contrary, and Complaint Counsel is not vested with authority to "cherry pick" what information it wants to disclose and how to use it.

Finding that the separation of investigative and adjudicatory functions is a "very important issue" (569 F.2d at 100), the D.C. Circuit in Atlantic Richfield Co. acknowledged the "persuasive argument" (id. at 103) that Complaint Counsel is not entitled to pre-Complaint investigatory files without sharing them with respondent. In arguing otherwise, the FTC relied on 16

C.F.R. § 3.43(c), which merely provides that "[i]nformation obtained in investigations . . . may be disclosed by counsel representing the Commission when necessary in connection with adjudicative proceedings and may be offered in evidence . . ."(emphasis added). Expressing skepticism at the FTC's position, the Court stated:

> Such an interpretation would appear to be inconsistent with all the rest of Part 3, Subpart D, which endeavors to create for the Administrative Law Judge control over the adjudicatory process, including all aspects of discovery, and to make the FTC adjudicatory process as fair to each side in every respect as in a federal court. Secondly, the literal words of this particular rule do not mention transfer from one branch of the FTC to the other, but, rather, seem merely to provide or authorize the offering in evidence and the public disclosure of information obtained by any means. The phraseology does not indicate that the Administrative Law Judge is to be bypassed, for the free and unauthorized transfer from one branch of the FTC to another would appear to negate all the authority and responsibility of the Administrative Law Judge, all the notice and opportunity to object, which is the object of the preceding portion of Part 3 re adjudicative proceedings. Id. at 104.

Pending clarification from the FTC as to the application of its rules, the Court of Appeals in Atlantic Richfield directed "the prosecution staff . . . to return immediately to the investigative staff" the investigatory files transferred to it. Id. at 106.

The Commission has expressed the view that Complaint Counsel is not prohibited from accessing investigatory files -- however, that does not address the issue of equal access by both Complaint Counsel and respondents.[1] Here, the fair application of the rules requires that respondents have precisely the same access to the investigatory files as Complaint Counsel has been given. By granting equal access, the due process concerns expressed in Atlantic Richfield over the

[1] See Exxon Corporation, FTC Docket No. 8934, 1980 FTC LEXIS 121 (February 8, 1980) *6 (noting Commission "policy of not preventing Complaint Counsel in an adjudicative proceeding from having access to other Commission files").

unfairness of giving Complaint Counsel exclusive access to information is reconciled with the FTC's position that Complaint Counsel should not be precluded from having access to the files. Particularly under the circumstances in this case, it would be insufficient simply to assume respondents can seek and obtain the same information from third parties in under six months as the FTC already compiled over the course of two-and-a-half years. The informational imbalance also is heightened here because Complaint Counsel includes numerous staff members who actually participated in the investigation.[2]

The same principle of fair access to investigatory files was recognized in Intel Corporation, FTC Docket No. 9288, 1999 FTC LEXIS 206 (March 2, 1999) *4, which imposed "a protective order preventing complaint counsel even from having access to or making use of the investigative subpoena documents" in order to "protect [respondent's] right to procedural due process." In prohibiting Complaint Counsel from obtaining information derived from investigative subpoenas served while the adjudicative proceeding was pending, the ALJ found:

> A protective order is therefore necessary to prevent Complaint Counsel from using extrajudicial discovery to obtain an unfair and impermissible advantage, or at least, to prevent 'a basis for a respondent to fear that those powers are being abused.' Id. at *4.

Nor does Complaint Counsel have any basis on which to assert privileges as to the investigatory files that it has access to. For example, in Champion Spark Plug Company, 1980 FTC LEXIS 200 at *8, the ALJ found

> Once the complaint is issued the Commission becomes a third party to the adjudicative proceeding, with Complaint Counsel becoming a party . . . [and requests for] documents in files of officers of Federal Trade Commission

[2] Any argument that respondents can obtain discovery and thereby do not need access to otherwise privileged portions of investigatory files is not well-taken because of, among other things, the FTC rules, as amended in 1997, requiring expedited discovery and a disposition of the case within one year. Here, respondents are faced with initial disclosures identifying well over fifty potential witnesses and have been given fewer than six months to complete discovery. Respondents do not have a genuine opportunity to redo the work that the FTC did during its two and a half year investigation.

other than those of counsel supporting the complaint is, in effect, a demand directed at a third party.

By treating Complaint Counsel as a party and other FTC staff members separately as a third party, there is no basis for attaching any privileges to information transmitted between them. Therefore, any release of information from the FTC Staff to Complaint Counsel eliminates the work product, deliberative process, and any other privileges covering the material since it involves information from a third party.

Furthermore, as a matter of rudimentary due process, it is grossly unfair -- if not wholly improper -- to obtain discovery from third parties without sharing the information with the other parties. See, e.g., Richardson v. State of Florida, 137 F.R.D. 401, 403, 404 (M.D.Fla. 1991) ("issuance of an ex parte subpoena destroys the normal processes of discovery" and "it is inherent in Rule 45 [of the Federal Rules of Civil Procedure] that notice be given to another party when documents are to be obtained from a person who is not a party to the action"); Spencer v. Steinman, 179 F.R.D. 484, 487, 488 (E.D.Pa. 1998)("It is settled that a party issuing a subpoena to a nonparty for the production of documents during discovery must provide prior notice to all parties to the litigation" and "parties...need notice in order to monitor the discover[y] and in order to pursue access to any information that may or should be produced"); Matter of Beiny, 132 A.D.2d 190, 522 N.Y.S.2d 511 (1st Dep't 1987) (sanctioning counsel for failing to provide adversary with notice of third party discovery).

Complaint Counsel here was intimately involved in the pre-complaint investigation or has now been given full access and advantage of all information ascertained and developed during what should have been the procedurally and functionally separate investigative stage of the proceedings. Respondents should similarly be given access to the investigational files in order to

insure that the FTC adjudicatory process comports with due process and is "as fair to each side in every respect as in a federal court." See FTC v. Atlantic Richfield Co., *supra*, at 104.

II.

COMPLAINT COUNSEL DISCLOSED CONFIDENTIAL MATERIAL IN VIOLATION OF STATUTORY AND REGULATORY PROHIBITIONS AND THE PROTECTIVE ORDER

Under the FTC Act and the FTC's own Rules of Practice, investigatory hearings, and any information gained therein, are non-public. See, e.g. 16 C.F.R. § 2.8(c). To protect against the dissemination of confidential, non-public information, the information obtained by the FTC during a pre-Complaint investigation "shall not be disclosed" absent notification by the Commission of its intent to do so to the party supplying it and providing that party with the opportunity to object. 15 U.S.C. §57b-2(c) (emphasis added).

In entering the Protective Order on May 8, 2000, this Court recognized the statutory and regulatory framework of confidentiality on non-public investigative material. The Protective Order provides that "Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter" (defined specifically to mean this administrative proceeding). Protective Order, ¶ 3. Additionally, certain Discovery Material is designated "Confidential" and subject to heightened confidentiality restrictions under the Protective Order and, as such, may be only be disclosed in defined circumstances to specified individuals. See Protective Order, ¶ 3. The FTC investigational files, including the "information derived therefrom" pursuant to paragraph 1, are expressly determined to be Confidential under the terms of the Protective Order. The Protective Order states:

> To the extent any such material is made part of this proceeding, all documents heretofore obtained by compulsory process or voluntarily from any Party, regardless of whether designated confidential by the Party, and transcripts of any investigational hearings, interviews and

depositions, which were obtained during the pre-complaint stage of this Matter shall be treated as Confidential Discovery Material.

Protective Order, ¶ 3. Accordingly, the transcripts of investigational hearings and any information contained therein are subject to the strict terms of the Protective Order and are not available for public disclosure.[3]

In this case, the FTC staff repeatedly has violated the confidentiality safeguards in the applicable statutory and regulatory scheme and now in the Protective Order. Andrx would not dwell on this subject except for Complaint Counsel's expressed position that it has discretion to determine what information may be disclosed from the investigatory files and to whom. Complaint Counsel violated its confidentiality obligations by disclosing the October 1999 Letter prepared as part of the non-public investigation. That disclosure, which described the identity of Andrx witnesses, violated the FTC Act, the Protective Order, and the applicable case law.

Contrary to the legal restrictions set forth in the FTC Act (see §57b-2(c)), Andrx received no warning or any other indication whatsoever that the letter identifying the names of its confidential witnesses would be released to third parties. The identity of Andrx's witnesses is subject to both a FOIA exemption and an FTC Act exemption from public disclosure. 5 U.S.C. § 552(b)(7)(D) (the "FOIA" statute) exempts from disclosure material compiled for law enforcement purposes to the extent that the production could reasonably be expected to disclose the identity of a confidential source; 15 U.S.C. §57b-2(f) specifically exempts material received during the investigative phase from disclosure under 5 U.S.C. § 552.

Complaint Counsel's dissemination of the October 1999 Letter also violated the Protective Order. The terms of the Protective Order make clear that the investigative transcript --

[3] Additionally, the Protective Order does not automatically treat all investigative material as available for use by Complaint Counsel in this matter; rather, "[t]he material . . . shall only be available for use in this proceeding once an independent basis has been demonstrated for such use" Protective Order, ¶3 (emphasis added).

and the "information derived therefrom" -- are protected from public disclosure. In describing witness names and the dates of voluntary investigational testimony, the October 1999 Letter was part of the nonpublic investigation and contained confidential information, as demonstrated by the fact that the identity of the witnesses was elicited, on the record, by testimony.

In disclosing that information, Complaint Counsel's conduct is contrary to the case law and even its own position in other adjudicative proceedings. See, e.g., In the Matter of Olin Corp., Docket No. 9196 (complaint counsel claiming privilege with respect to the identities of persons who provided complaint counsel with information relevant to the proceeding, with the basis found in federal law, e.g., Roviaro v. U.S., 353 U.S. 53 (1957)); In the Matter of Champion Spark Plug Company, 1980 FTC LEXIS 200 at *8).[4]

There is no justification for Complaint Counsel's patently improper disclosure of the October 1999 Letter except perhaps a misplaced zeal to try to help plaintiffs in class action litigation against respondents. This is not a proper role for Complaint Counsel to be playing when the Commission itself has gone out of its way to state publicly that it has made no determination that Andrx did anything wrong and that the purpose of this proceeding is "the development of a full factual record" in order to "allow the Commission to further consider the issues". Complaint Counsel surely had no justification for violating federal law, the Rules of the Commission, and the Protective Order entered by this Court.

When confronted with its conduct in releasing the October 1999 Letter, Complaint Counsel first candidly acknowledged that he was responsible for the disclosure but then tried to rationalize it by saying that there was nothing confidential in the Letter, which misses the point and

[4] The D.C. courts have held that protected information in the grand jury context includes "the identities of witnesses" and that this information may not be disclosed. See Crooker v. IRS, 1995 U.S.Dist. LEXIS 7031 (D.D.C. 1995); Senate of the Commonwealth of Puerto Rico v. U.S. Dep't of Justice, 262 U.S.App. D.C. 166, 823 F.2d 574 (D.C.Cir. 1987).

in any event is wrong. When it was then pointed out that the Letter disclosed the names of Andrx's witnesses who had given confidential information to the FTC staff under an express promise of confidentiality as part of a non-public investigational hearings -- and, indeed, the very names of these persons is treated as confidential by the rules and case law -- Complaint Counsel then backslid to an argument that the Letter revealed the names of persons already disclosed in the Initial Disclosure. This, too, is flatly incorrect: not all the names are disclosed, and in any event no disclosure is made that these persons have been the subject of non-public investigational hearings. Complaint Counsel's casting about for an explanation for its improper conduct further demonstrates its clear violation of its confidentiality obligations. Andrx is entitled to a declaration to that effect.

III.

COMPLAINT COUNSEL SHOULD BE PRECLUDED FROM MAKING FURTHER DISCLOSURES OF INFORMATION FROM THE INVESTIGATIVE FILES ABSENT RESPONDENTS' CONSENT OR THIS COURT'S APPROVAL

Complaint Counsel cannot decide for itself what information should be disclosed to third parties or the public generally. Nor does it provide any comfort whatsoever for Complaint Counsel to argue, as it has to Andrx, that it will exercise the discretion it claims to have in compliance with its statutory and other obligations. We have seen how Complaint Counsel exercises discretion, and the improper release of the confidential October 1999 Letter was the result. Given that there is no adequate remedy once an improper disclosure is made, it is critical to have an appropriate mechanism in place to safeguard against such a disclosure since it then becomes too late.

Accordingly, the rule should be adopted in these proceedings (which we thought the Protective Order already did) that either the investigatory information cannot be publicized at all or that respondents must be asked to consent to its disclosure. In the face of a disagreement over

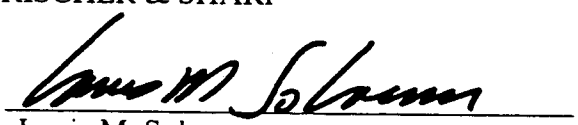
confidentiality. Complaint Counsel should seek a ruling from the Administrative Law Judge authorizing the disclosure.

Conclusion

In light of the foregoing, the Court should issue an order (i) granting respondents access to all materials available to Complaint Counsel out of the FTC staff's investigative files pertaining to this matter; (ii) declaring that Complaint Counsel improperly disclosed information in violation of the statutory and regulatory restrictions and the Protective Order; and (iii) prohibiting Complaint Counsel, and any other FTC staff members, from further communicating information from the investigative files to any third parties without Andrx's consent or, alternatively, the Court's approval.

Dated: New York, New York
May 30, 2000

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP

By 

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CERTIFICATE OF SERVICE

I, Hal S. Shaftel , hereby certify that on May 30, 2000, I caused a copy of RESPONDENT ANDRX'S MOTION FOR AN ORDER (1) GRANTING RESPONDENTS ACCESS TO DOCUMENTS AVAILABLE TO COMPLAINT COUNSEL; (2) DECLARING THAT COMPLAINT COUNSEL'S DISCLOSURE OF INFORMATION TO THIRD PARTIES VIOLATED STATUTORY AND REGULATORY CONFIDENTIALITY RESTRICTIONS AND THE PROTECTIVE ORDER ENTERED IN THIS MATTER; AND (3) PROHIBITING COMPLAINT COUNSEL FROM FURTHER DISCLOSING CONFIDENTIAL INFORMATION TO THIRD PARTIES, PROPOSED ORDER, AND MEMORANDUM IN SUPPORT to be served upon the following persons by Federal Express:

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

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

Richard Feinstein, Esq.
Markus H. Meier, Esq.
Federal Trade Commission
Room 3114
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James M. Spears, Esq.
Shook, Hardy & Bacon, L.L.P
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Washington, D.C. 20004

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

Hal S. Shaftel

EXHIBIT 6

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

COMPLAINT COUNSEL'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS ISSUED TO HOECHST MARION ROUSSEL, INC.

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, complaint counsel hereby requests that respondent Hoechst Marion Roussel, Inc. (hereinafter "HMRI") produce all documents and other things responsive to the following requests, within its possession, custody, or control, within twenty days in accordance with the Definitions and Instructions set forth below.

DEFINITIONS

A. The term "the company" means HMRI, its domestic and foreign parents, predecessors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.

B. The term "document" means all written, recorded, or graphic materials of every kind, prepared by any person, that are in the possession, custody, or control of the company. It includes all electronically-stored data accessible through computer or other information retrieval systems or devices. The term "document" includes the complete original document (or a copy thereof if the original is not available), all drafts, whether or not they resulted in a final document, and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. Documents covered by this subpoena include, but are not limited to, the following: letters; memoranda; reports; contracts and other agreements; studies; plans; entries in notebooks, calendars and diaries;

minutes, records, and transcripts of conferences, meetings, telephone calls or other communications; published and unpublished speeches or articles; typed and handwritten notes; electronic mail; facsimiles (including the header showing the receipt date and time); tabulations; statements, ledgers, and other records of financial matters or commercial transactions; diagrams, graphs, charts, blueprints, and other drawings; technical plans and specifications; advertising and product labels; photographs, photocopies, slides, microfilm, microfiche, and other copies or reproductions; film, audio and video tapes; tape, disk, and other electronic recordings; and computer printouts.

C. The term "relating to" means, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting on, discussing, describing, identifying, referring to, reflecting, reporting on, stating, dealing with, or in any way pertaining to.

D. The term "documents sufficient to show" means documents that are necessary and sufficient to provide the specified information. If summaries compilations, lists or synopses are available that provide the information, these should be provided in lieu of the underlying documents.

E. The terms "each," "any," and "all" mean "each and every."

F. The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of this subpoena anything that might otherwise be outside its scope.

G. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.

H. The term "plan" means a proposal, recommendation or consideration, whether or not precisely formulated, finalized, authorized, or adopted.

I. The term "year" means either the calendar year or, for financial records, the fiscal year.

J. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.

K. The term "agreement" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

L. The term "person" includes HMRI and means any natural person, corporate entity, sole proprietorship, partnership, association, governmental entity, or trust.

M. The phrase "HMRI's patent infringement suit against Andrx" means the patent infringement suit filed against Andrx Pharmaceuticals, Inc. (hereinafter "Andrx") by HMRI, in the United States District Court for the Southern District of Florida, for Andrx's alleged infringement of patents covering HMRI's Cardizem CD.

N. The term "Stipulation and Agreement" means the Stipulation and Agreement HMRI and Andrx entered into on or about September 24, 1997.

O. The term "Termination Agreement" means the Stipulation and Order entered into between HMRI and Andrx on or about June 8, 1999 which resolved HMRI's patent infringement suit against Andrx and terminated the Stipulation and Agreement.

P. The term "Reformulated Product" means the formulation of Andrx's generic Cardizem CD product which was approved for sale by the FDA pursuant to a supplement to ANDA 74-752 filed by Andrx on September 11, 1998.

Q. The term "Joint Development Agreement" means any agreement with any person to research, develop, manufacture, or market a product that, at the time the agreement is executed, has not received final FDA approval.

R. The term "Licensing Agreement" means any agreement with any person in which one party to the agreement is paid or pays a royalty in connection with the marketing of a product.

S. The term "SKU" means stock keeping unit.

T. The term "net sales" means total gross sales after deducting discounts, rebates, returns, allowances and excise taxes. Gross sales includes sales whether manufactured by the company itself or purchased from sources outside the company and resold by the company in the same manufactured form as purchased.

U. The term "gross profit" means total net sales less cost of goods sold.

V. The term "net profit" means gross profit less direct business unit expenses, including, but not limited to, national marketing and promotion costs, business research costs, clinical trial costs and supplies, samples, and processing costs.

W. The term "Cardiovascular Therapy Products" means the products within code 31000 of IMS's Uniform System of Classification.

X. The term "Machine Readable Form" means magnetic media, electronic data, and information submitted in machine readable form shall be submitted in the following forms and formats:

1. Magnetic Storage Media: (a) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (b) 5.25-inch microcomputer floppy diskettes recorded in high or low densities; (c) 3.5-inch microcomputer floppy diskettes recorded in high or low densities; (d) CD-readable disks formatted to ISO 9660 specifications; (e) QIC-80 magnetic tapes formatted to Travan®-1, 2120 Ximat XL, or 2120 Ximat specification, uncompressed; (f) 5.25-inch ISO-standard rewritable optical disks with 512 sectors, formatted to 1.2 gigabytes; or (g) Iomega ZIP® disk. The FTC will accept 4mm and 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Files provided on 8mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs but may be accepted with files compressed using TAR or CPIO or created using DD copy or ufsdump.

2. File and Record Structures

   a. Magnetically-Recorded Information from Centralized Non-Microcomputer-Based Systems:

      (1) File Structures: Only sequential files are acceptable. All other file structures must be converted into sequential format.

      (2) Record Structures: Only fixed length records are acceptable. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points, and signs printed.

   b. Magnetically-Recorded Information from Microcomputers: Microcomputer-based word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or prior version, or Microsoft Word 97 or prior version format. Spreadsheets should be in Microsoft Excel (.xls) 97 or prior version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access (.mdb) 97 or earlier version, or dBase-compatible (.dbf), version 4 or prior format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated or fixed length field format, with field names as the first record. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases,

graphics, and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a proprietary backup program format with prior authorization only or in compressed PKZip® or WINZIP® format.

3. Documentation: Brief documentation of each file on tape or disk must be provided.

   a. Files provided on disk must be accompanied by the following information:

      (1) full pathname; and

      (2) the disk on which the files reside. In the case of complex files, all component files that are part of a given file must be specified with full pathnames. Where necessary, paths that must be created in order to successfully read submitted files on respondents' equipment also must be provided.

   b. For sequential database files, the documentation also must include:

      (1) the number of records in the file;

      (2) the length and block size of each record; and

      (3) the record layout, including (i) the name of each element, (ii) the respective element size in bytes, and (iii) the element's data type. The documentation should be included in the same package as the tape, along with a printout of the first 100 records in report format.

4. Shipping: Magnetic media must be shipped clearly marked:
MAGNETIC MEDIA DO NOT X-RAY

INSTRUCTIONS

1. Except for privileged material, the company will produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. The company should submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking

it to indicate the responsive document to which it corresponds. Except for privileged material, the company will not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

2. Unless otherwise indicated, each specification in this subpoena covers documents dated, generated, received, or in effect from **January 1, 1995**. Respondent HMRI should supplement, amend or correct the disclosure and responses to these requests, on a continuing basis, to the extent it ascertains any additional responsive information.

3. In lieu of original hard-copy documents or electronically-stored documents, the company may submit legible copies. However, if the coloring of any document communicates any substantive information, the company must submit the original document or a like-colored photocopy.

4. If it is claimed that any document responsive to any request is privileged, work product or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product or other ground for nondisclosure. As to any such document, state: (a) the reason for withholding it or other information relating to it; (b) the author of the documents; (c) each individual to whom the original or a copy of the document was sent; (d) the date of the documents or oral communication; (e) the general subject matter of the document; and (f) any additional information on which you base your claims of privilege. Any part of an answer to which you do not claim privilege or work product should be given in full.

5. If the company has produced documents responsive to this request in the course of the pre-complaint investigation of this matter, FTC File No. 981-0368, those documents need not be produced again, provided that the company clearly indicates in its answer to the document request the portion of the document request for which it has already supplied the information called for.

6. Unless otherwise stated, each paragraph or subparagraph herein shall be construed independently and without reference to any other paragraph or subparagraph for purpose of limitation.

7. In the event that any document required to be identified or produced has been destroyed, lost, discarded, or otherwise disposed of, any such document is to be identified as completely as possible, including, but not limited to, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

SPECIFICATIONS

In accordance with the instructions and definitions above, submit the following:

SPECIFICATION 1: Documents relating to any communications between HMRI and any person relating to a diltiazem product, including, but not limited to, HMRI's Cardizem CD, any bioequivalent or generic version of Cardizem CD, U.S. Patent No. 5,470,584, HMRI's patent infringement suit against Andrx, the Stipulation and Agreement, the Termination Agreement, and Andrx's ANDA application for a generic or bioequivalent version of Cardizem CD.

SPECIFICATION 2: Minutes from meetings of any HMRI Board of Directors, HMRI management, executive, ad hoc or any other committee or working group relating to a generic version of Cardizem CD, including, but not limited to, minutes relating to the manufacture and sale of a bioequivalent or generic version of Cardizem CD, Andrx's Reformulated Product, HMRI's patent infringement suit against Andrx, the Stipulation and Agreement, any actual or potential legal challenge or legal scrutiny of the Stipulation and Agreement, and the Termination Agreement.

SPECIFICATION 3: Documents relating to the Termination Agreement, including, but not limited to, any discussions, communications, or negotiations concerning the Termination Agreement and any drafts thereof (whether or not incorporated in the executed Termination Agreement).

SPECIFICATION 4: Documents relating to Andrx's Reformulated Product, including, but not limited to the likelihood that the product infringed (or infringes) a patent owned or controlled by HMRI; Andrx's ability to market the product; any actual, considered, or possible effect the product had or would have had on any HMRI obligation pursuant to the Stipulation and Agreement; and any actual, considered, possible, or proposed effect the product had or would have had on Andrx's obligation pursuant to the Stipulation and Agreement.

SPECIFICATION 5: Documents relating to the use of HMRI's Probucol for prevention of restenosis after coronary angioplasty, including, but not limited to:

(a) business, strategic, or marketing plans;

(b) the development and cost of development of Probucol to be used in the prevention of restenosis after coronary angioplasty;

(c) HMRI's consideration of developing Probucol for the prevention of restenosis after coronary angioplasty;

(d) projected sales (in units and dollars), profits and date(s) of commercial introduction of Probucol;

(e) consideration by HMRI of entering into an agreement with any person relating Probucol; and

(f) communications between HMRI and any person relating to Probucol.

SPECIFICATION 6: Documents relating to Quatro Scientific, Inc. ("Quatro") and Quatro's interest in HMRI's Probucol, including, but not limited to any considered, proposed, potential, or actual agreement between HMRI and Quatro; any communications with Lawrence Meyer or any other person; and communications between Quatro and any person relating to Probucol.

SPECIFICATION 7: Documents relating to any considered, proposed, potential, or actual agreement between HMRI and Biovail Corporation concerning Cardizem CD, a bioequivalent or generic version of Cardizem CD, or Probucol.

SPECIFICATION 8: For each SKU of Cardizem CD, by month, documents in Machine Readable Form relating to any measure of the sale, price, revenues, and profit of each SKU, including, but not limited to:

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

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

(c) sales returns in units and dollars;

(d) cost of goods sold in dollars;

(e) gross and net profit in dollars;

(f) sales, promotion, or marketing expenses;

(g) the list price and wholesale acquisition cost;

(h) product returns in units and dollars; and

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

SPECIFICATION 9: IMS data and reports in Machine Readable Form relating to all Cardiovascular Therapy Products.

SPECIFICATION 10: Since January 1, 1992, for each HMRI product that faced competition from a bioequivalent or generic version of the HMRI product, including Cardizem CD, documents in Machine Readable Form sufficient to show the date of market entry of each bioequivalent or generic version of the HMRI product.

SPECIFICATION 11: For the two years before and after the date of market entry identified in response to Specification 10, documents in Machine Readable Form sufficient to show, by month:

(a) the gross and net sales (in units and dollars) of the HMRI product and the bioequivalent or generic version(s) of the HMRI product;

(b) HMRI's sales, promotion, or marketing expenses;

(c) the price of the HMRI product and the bioequivalent or generic verion(s) of the HMRI product, including, but not limited to, the list price and the Wholesale Acquisition Cost;

(d) rebates, credits, allowances, chargebacks, and any other adjustment to price and

(e) product returns in units and dollars.

SPECIFICATION 12: Provide a copy in Machine Readable Form of each invoice for all cardiovascular therapy products sold by HMRI.

SPECIFICATION 13: Documents relating to HMRI's or any other person's plans relating to Cardizem CD, including, but not limited to: business plans; short term and long range strategies and objectives; collaboration plans; budgets and financial projections; research and development efforts; and presentations to management committees, executive committees, and boards of directors.

SPECIFICATION 14: Documents relating to HMRI's contracts involving Cardizem CD, including, but not limited to, actual contracts or drafts thereof, as well as discussions, communications, or negotiations related to an actual or proposed contract.

SPECIFICATION 15: Provide a copy of each settlement of any patent infringement action to which HMRI is or was a party, and include drafts (whether or not included in the settlement), as well as any communications relating to the settlement.

SPECIFICATION 16: Provide a copy of each Licensing Agreement and Joint Development Agreement to which HMRI is or was a party.

SPECIFICATION 17: Documents relating to the substance of the text of Footnote 5 in the document entitled "Confidential Submission of Hoechst Marion Roussel, Inc. to the Federal Trade Commission" and dated February 22, 2000, including, but not limited to, all data in Machine Readable Form of generic products' historic erosion rates of brand-name products' dollar or unit sales.

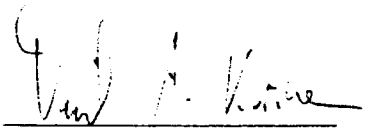
CERTIFICATE OF SERVICE

I, Daniel A. Kotchen, hereby certify that on May 3, 2000, I caused a copy of Complaint Counsel's First Request for Production of Documents and Things Issued to Carderm Capital L.P. to be served upon the following persons by facsimile and by Federal Express:

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

Louis M. Solomon, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, NY 10111

James M. Spears, Esq.
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004



Daniel A. Kotchen

EXHIBIT 7

LAW OFFICES

SHOOK, HARDY & BACON L.L.P.

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LONDON
ZURICH
GENEVA
MELBOURNE
BUENOS AIRES

Peter D. Bernstein
(202) 662-4858
pbernstein@shb.com

July 20, 2000

BY HAND DELIVERY

Daniel Kotchen, Esq.
Federal Trade Commission
Room 3115
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: **In the Matter of Hoechst Marion Roussel, Inc., Carderm Capital L.P., and Andrx Corporation, FTC Docket No. 9293**

Dear Dan:

Specification 4 of Complaint Counsel's First Request for the Production of Documents and Things Issued to Hoechst Marion Roussel, Inc. seeks documents relating to Andrx's "Reformulated Product." Some of these materials were provided to HMRI by Andrx during the course of the Florida patent infringement action and were designated as "Confidential." The remainder include materials containing "Confidential" information and may otherwise be protected by applicable privileges.

Paragraph 15 of the Stipulated Protective Order entered in that litigation provides that a party receiving a request to produce "Confidential" information must notify the producing party of the request and make a timely objection to the production. (A copy of the Stipulated Protective Order is attached.) Upon receiving the document request, notice was provided to counsel for Andrx and the pro forma objection to production was noted during the meet and confer conference regarding the First Request.

Since that time, we have been informed by counsel for Andrx that Andrx has significant confidentiality concerns with respect to these document and that Andrx will oppose the production of these documents absent some further agreement as to how these documents should properly be handled. As a result, we are constrained by the Florida Protective Order from making production absent an order from the Administrative Law Judge.

Please feel free to call me should you have any questions.

Sincerely,

Peter D. Bernstein

enclosure

cc: Louis M. Solomon, Esq. (w/out enclosure)
Peter O. Safir, Esq. (w/out enclosure)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Broward Division

HOECHST MARION ROUSSEL, INC.
and CARDERM CAPITAL L.P.,

Plaintiffs and
Counterclaim Defendants,

vs.

96-06121 Civ-Roettger

ANDRX PHARMACEUTICALS, INC.,

Magistrate Judge Seltzer

Defendant and
Counterclaim Plaintiff,

vs.

HOECHST AG,

Third Party
Counterclaim Defendant.

_____/

STIPULATED PROTECTIVE ORDER

Plaintiffs, Hoechst Marion Roussel, Inc. and Carderm Capital L.P. (collectively, "HMR"), and defendant Andrx Pharmaceuticals, Inc. ("Andrx"), hereby stipulate to the following Protective Order Pursuant to Rule 26(c), F.R.Civ.P., subject to the approval of the Court:

1. Each document furnished in this litigation by a party or its representatives which contains or reveals any trade secrets, confidential business information or know-how may be designated "CONFIDENTIAL" by stamping on each page of the document the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or where sufficient space is not available "CONFIDENTIAL

INFORMATION" or "CONFIDENTIAL" (hereinafter sometimes referred to as Confidential Information or Confidential).

2. All documents produced for inspection in lieu of providing copies shall be deemed confidential and subject to this order. Not until a copy of a document is produced without any confidential stamp may the documents or the information therein be deemed not to include Confidential Information.

3. Confidential Information shall be disclosed to no one except (i) to the Court presiding over this action and its personnel; (ii) to any court to which an appeal in this action might lie and its personnel; (iii) court stenographers; (iv) to the attorneys and staff of the following law firms: Jones, Day, Reavis & Pogue, Shutts & Bowen, Arent Fox Kintner Plotkin & Kahn, Isicoff & Ragatz, P.A., and Hedman, Gibson & Costigan, P.C.; (v) to in-house counsel of Andrx and HMR and their staff, provided each such in-house counsel signs an Undertaking in the form annexed hereto as Exhibit A before such disclosure; (vi) to current employees of the party who furnished the Confidential Information during their depositions, provided in advance of such disclosure, the party who furnished the Confidential Information is notified of such intended disclosure and may require each such employee to agree in writing not to disclose, discuss or use the information outside the deposition; and (viii) to any other person with respect to whom the parties execute a written agreement permitting access, provided such access is limited to the written agreed-upon terms and conditions.

4. In addition to the above-designated individuals, outside experts or consultants and their respective staffs whose advice and consultation are being or will be used in connection with preparation for trial or trial of this case may have access to Confidential Information. Such outside experts and consultants and their respective staffs shall not include any present or former officer or director or present employee of plaintiffs or defendants or any of their affiliated companies. Each outside expert or consultant shall execute an Undertaking in the form annexed hereto as Exhibit B prior to the disclosure of any Confidential Information to such expert or consultant. The Undertakings of the expert or consultant, along with a list of the expert or consultant's staff, shall be transmitted to counsel for the other party by hand or express mail no later than fourteen (14) days prior to disclosure of Confidential Information to such expert or consultant. If a party believes that disclosure of Confidential Information to such expert or consultant or any member of their staff would be injurious or prejudicial, it may object to disclosure to such person by delivering to the party proposing to make such disclosure a written objection by hand or express mail within seven (7) days of receipt of the Undertaking. If the parties cannot resolve their dispute, the party who selected the expert or consultant may apply to the Court for an order permitting disclosure of Confidential Information to the person regarding whom objection was made. No disclosure of Confidential Information may be made by a party to any person with respect to whom the objection has

been made unless the objection has been overruled by the Court. Each member of the staff of each expert or consultant shall execute an Undertaking in the form annexed hereto prior to disclosure of any Confidential Information to them.

5. Any party may designate any or all portions of deposition testimony as confidential by an indication on the record at the deposition, or by written notice within thirty (30) days after receipt of the transcript of that deposition. All depositions shall be treated as confidential for a period of at least thirty (30) days after a full and complete transcript of the deposition is available. The use and disclosure of such designated portions shall be governed by the same rules that govern the use or disclosure of "Confidential" documents herein.

6. If counsel for a receiving party wishes to disclose Confidential Information to individuals who are indicated on the face of the document to have been either an author or recipient of the document containing the Confidential Information, and the individual is not at the time of the proposed disclosure an employee of the disclosing party, the receiving party shall give notice in writing to the disclosing party of the proposed disclosure, such notice to contain the name of the individual to whom disclosure is to be made, and the documents which are to be disclosed. The disclosing party within fourteen (14) days (i) shall give written notice by hand or overnight delivery of any objection to the disclosure, in which event the receiving party may not make the objected to disclosure until the objection is overruled by the court; and (ii) may

require the individual to whom disclosure is to be made to sign an agreement precluding disclosure, discussion or use of the Confidential Information for any purpose outside this litigation. With respect to any employee to whom no objection is made as provided above, disclosure of the Confidential Information identified in the notice may be made fourteen (14) days after the notice was transmitted. In the event the disclosing party permits disclosure of documents containing Confidential Information to such author and/or recipients, disclosure and/or discussion of Confidential Information shall be strictly limited to that Confidential Information contained in the documents identified in the notice of proposed disclosure and to which the disclosing party has made no objection.

7. Notwithstanding the provision of paragraph 1 of this order, any party who discloses information to any other party during the course of discovery in the above-styled lawsuit without designating such disclosed information as "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" may subsequently elect to treat such disclosed information as Confidential Information upon a good faith determination that such information is, in fact, confidential or proprietary. The disclosing party shall notify the receiving party or parties in writing of the disclosing party's election to so treat the disclosed information, whereupon the receiving party or parties shall mark or stamp the newly designated Confidential Information with the words "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER." Confidential Information newly designated pursuant to this paragraph shall be

subject to the full force and effect of this order; provided, however, that the receiving party or parties shall under no circumstances be liable or accountable for any disclosure of the newly designated Confidential Information to any person during the interval between the time the newly designated Confidential Information is provided to the receiving party or parties without the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" and the time at which the disclosing party so designates the Confidential Information pursuant to this paragraph, nor shall the receiving party or parties be required to retrieve any information distributed prior to such designation.

8. At the conclusion of this litigation, by judgment or otherwise, all information designated "Confidential" shall be returned to the producing party along with all copies thereof, except that trial counsel may retain one copy of such information. All documents prepared by in-house attorneys or outside experts and consultants or their staffs designated as provided in paragraph 2, containing summaries, abstracts or quotations of or from documents protected by this order, shall after the conclusion of this litigation, be kept within the internal files of trial counsel for the party creating such work product documents or be destroyed.

9. To the extent the documents produced by the parties hereto contain the names and addresses of patients or health professionals such as physicians, nurses or hospitals in connection with reports of the properties and effects of any drug or medical device, counsel for the parties hereto or anyone

acting on their behalf will neither record in notes or elsewhere such information nor contact the said patients or health professionals with respect to such reports. Any documents included in said categories containing said names and addresses as to which counsel for any parties wish copies shall be copied with said names and addresses expunged. Said names and addresses shall be maintained as strictly confidential by counsel and shall not be shown or divulged to any person or in any way used unless application is made to this Court for an order permitting counsel to show or divulge the names and addresses and such order is granted by this Court.

10. The Court, upon a showing of good cause, may order the removal of the "Confidential" designation from any document, summary or abstract thereof or portions of testimony or otherwise amend this order.

11. Nothing in this order shall be deemed in any way to restrict the use of documents or information which a party lawfully obtains independently of formal discovery in this action, whether or not the same material is also obtained through formal discovery in this action.

12. In the event a party wishes to file any document, transcript or thing containing information which has been designated "Confidential" with the Court for any purpose, the party shall file it with the Court in a sealed envelope bearing the caption of the case and a legend substantially in the following form:

"CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER"
"Not to be Displayed or Revealed Except to the Court or Counsel for the Parties in this Action Unless Otherwise Ordered by the Court"

13. Neither the termination of this action nor the termination of employment of any person who had access to any Confidential Information shall relieve any person from the obligation of maintaining both the confidentiality and the restrictions on use of anything disclosed pursuant to this order.

14. Nothing in this order shall bar or otherwise restrict any attorney from rendering advice to a party-client in this action and in the course thereof, referring to or relying upon such attorney's examination of Confidential Information; provided, however, that in rendering such advice and in otherwise communicating with such client, the attorney shall not disclose any Confidential Information to unauthorized persons.

15. In the event that any person or party subject to this order having possession, custody or control of any Confidential Information of any opposing party receives from a non-party a subpoena or other process to produce such information, such person or party shall promptly notify by express mail the attorneys of record of the party claiming such confidential treatment of its Confidential Information sought by such subpoena or other process, and shall furnish such attorneys of record with a copy of said subpoena, process or order. The party or person receiving the subpoena or other process shall make a timely objection to production of the Confidential Information on the grounds that production is precluded by this

Protective Order. The party whose Confidential Information is sought by the subpoena or other process shall have the responsibility, in its sole discretion and at its own cost, to move against the subpoena or other process, or otherwise to oppose entry of an order by a court of competent jurisdiction compelling production of the Confidential Information. In no event shall the person or party receiving the subpoena or other process produce Confidential Information of any opposing party in response to the subpoena or other process unless and until such person or party is ordered to do so by a court of competent jurisdiction.

16. The identification by a party of an expert or consultant under paragraph 4 shall not constitute a waiver of any claim of work product immunity for any work done for the retaining party by such expert or consultant.

17. In the event that a party seeks discovery from a non-party to this suit, the non-party may invoke the terms of this Protective Order with respect to any Confidential Information provided to the parties by the non-party by so advising all parties to this suit in writing.

18. Entry of this Protective Order shall not constitute a waiver by the parties of any objections to disclosure and/or production of any information during discovery.

19. The production of a document or thing in whole or in part does not constitute an admission that the produced document or thing, or portion thereof, is relevant or is properly produced and does not constitute a waiver of the right to

otherwise properly withhold from production any other document or thing or to object to the admissibility of such document at trial.

20. Nothing herein shall prevent any party from applying to the Court for a modification of this Protective Order should the moving party feel the order, as originally entered, is hampering its efforts to prepare for trial; or from applying to the Court for further or additional protective orders; or from agreeing with the other parties to any modification of this Protective Order subject to the approval of the Court.

Dated: March 19, 1996

Thomas V. Heyman
JONES, DAY, REAVIS & POGUE
599 Lexington Avenue
New York, New York 10022
(212) 326-3939

Dated: March 25, 1996

John T. Kolinski
Florida Bar No. 307971
SHUTTS & BOWEN
201 S. Biscayne Boulevard
1500 Miami Center
Miami, Florida 33131
(305) 358-6300

Dated: March 19, 1996

Lawrence G. Meyer
ARENT FOX KINTNER PLOTKIN & KAHN
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6000

Attorneys for Plaintiffs and Counterclaim Defendants Hoechst Marion Roussel, Inc., and Carderm Capital L.P.

Dated: 3/25/96

Eric D. Isicoff
Florida Bar No. 372201
ISICOFF & RAGATZ, P.A.
1101 Brickell Avenue
Miami, Florida 33131
(305) 373-3232

Dated: March 21, 1996

James V. Costigan
HEDMAN, GIBSON & COSTIGAN
1185 Avenue of the Americas
New York, New York 10036
(212) 302-8989

Attorneys for Defendant and
Counterclaim Plaintiff
Andrx Pharmaceuticals, Inc.

IT IS SO ORDERED this 1 day of May, 1996.

UNITED STATES DISTRICT JUDGE

Copies furnished to:

All counsel of record

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Broward Division

HOECHST MARION ROUSSEL, INC.
and CARDERM CAPITAL L.P.,

Plaintiffs and
Counterclaim Defendants,

vs.

96-06121 Civ-Roettger

ANDRX PHARMACEUTICALS, INC.,

Magistrate Judge Seltzer

Defendant and
Counterclaim Plaintiff,

vs.

HOECHST AG,

Third Party
Counterclaim Defendant.

_____/

DECLARATION AND UNDERTAKING
OF _____

I, _____, declare that I am in-house counsel to _____ and hereby acknowledge that I may receive Confidential Information supplied by _____, as defined in the Protective Order of _____.

I certify my understanding that the Confidential Information is being provided to me pursuant to terms and restrictions of the Protective Order of _____ in the above-captioned case, and that I have been given a copy of and have read and understood my obligation under that order. I hereby agree to be bound by the terms of the order. I clearly

understand that the Confidential Information and my copies or notes relating thereto may only be disclosed to or discussed with those persons permitted by the Protective Order to receive such information.

At the conclusion of this litigation, I will destroy or return all materials containing Confidential Information, copies thereof and notes that I have prepared relating thereto, to trial counsel for my employer.

I hereby submit to the jurisdiction of this Court for the purposes of enforcement of the Protective Order and waive any and all objections to jurisdiction and venue.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Declaration and Undertaking is executed on the _____ day of _____, 1996 at [City or Town] _____ and [State] _____.

_____
[Signature]

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Broward Division

HOECHST MARION ROUSSEL, INC.
and CARDERM CAPITAL L.P.,

Plaintiffs and
Counterclaim Defendants,

vs.

96-06121 Civ-Roettger

ANDRX PHARMACEUTICALS, INC.,

Magistrate Judge Seltzer

Defendant and
Counterclaim Plaintiff,

vs.

HOECHST AG,

Third Party
Counterclaim Defendant.

_____/

DECLARATION AND UNDERTAKING
OF _____

I, _____, declare that I have been consulted by _____ in connection with the above-captioned lawsuit and hereby acknowledge that I am about to receive Confidential Information supplied by _____, as defined in the Protective Order of _____.

I declare that I am not a present or former officer or director or present employee of plaintiffs or defendant or their affiliated corporations.

I certify my understanding that the Confidential Information is being provided to me pursuant to terms and

restrictions of the Protective Order of _____ in the above-captioned case, and that I have been given a copy of and have read and understood my obligation under that order. I hereby agree to be bound by the terms of the order. I clearly understand that the Confidential Information and my copies or notes relating thereto may only be disclosed to or discussed with those persons permitted by the Protective Order to receive such information.

At the conclusion of my engagement in connection with this litigation, I will destroy or return all materials containing Confidential Information, copies thereof and notes that I have prepared relating thereto, to trial counsel for the party by whom I was retained.

I hereby submit to the jurisdiction of this Court for the purposes of enforcement of the Protective Order and waive any and all objections to jurisdiction and venue.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Declaration and Undertaking is executed on the _____ day of _____, 1996 at [City or Town] _____ and [State] _____.

_____
[Signature]