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: Administrative Law Judge D. Michael Chappell

NON-PARTY WITNESS AETNA U.S. HEALTHCARE, INC.'S MOTION FOR A PROTECTIVE ORDER PURSUANT TO 16 CFR §3.31(c)(2)&(d)

I. INTRODUCTION

Pursuant to 16 C.F.R. § 3.31(d), Aetna U.S. Healthcare, Inc. ("Aetna") hereby moves for a protective order providing that Aetna and its employees do not have to produce further documents or things to respondent pursuant to a subpoena *duces tecum* sent to Aetna and its employees by respondent Hoechst Marion Roussel, Inc. ("HMRI"). A copy of the Subpoena *Duces Tecum* sent by HMRI is attached as Exhibit A to the Affidavit of Jennifer S. Abrams In Support Of Non-Party Witness Aetna U.S. Healthcare, Inc.'s Motion For A Protective Order Pursuant To 16 C.F.R. §3.31(c)(2) & (d) ("Abrams Aff."), filed concurrently herewith.

Aetna moves for a protective order regarding HMRI's subpoena *duces tecum* on the grounds that (1) the subpoena was not properly served on Aetna or its employees, (2) the information sought is irrelevant to respondent's defenses in this action, (3) such information is readily available from other sources, (4) much of this information constitutes valuable trade secrets and/or confidential material, the disclosure of which would cause irreparable harm to Aetna, and (5) the subpoena poses an undue burden on Aetna and its employees because the requested information is unreasonably duplicative and/or cumulative of itself and of the information produced in a related action.

As discussed below, these objections give rise to a right to a protective order here.

II. BACKGROUND

A. THERE EXISTS AN MDL ACTION PENDING IN MICHIGAN SEEKING RESTITUTION AND DAMAGES ON BEHALF OF VICTIMS OF THE SAME ANTITRUST VIOLATIONS FOR WHICH THE FTC BRINGS THIS MATTER

According to the Complaint filed in this matter, the Federal Trade Commission believes that HMRI, Andrx and Carderm Capital L.P. have engaged in anticompetitive

conduct by, *inter alia*, contractually preventing the entry of bioequivalent generic versions of Cardizem CD into the marketplace.

In 1998, consumers and others who claimed to be victimized by this very same anticompetitive conduct filed class actions in state courts across the country against respondents HMRI and Andrx, seeking restitution and resulting damages. The vast majority of these actions were removed to federal court and then consolidated for pre-trial purposes before the Eastern District of Michigan by the Judicial Panel for Multidistrict Litigation. They are captioned *In re Cardizem CD Antitrust Litigation*, MDL No. 1287 (NGE) (the "MDL Action"). Although it is not a party to the instant matter, Aetna is one of the named plaintiffs in the MDL Action.

B. THE DISTRICT COURT IN THE MDL ACTION HAS ALREADY DETERMINED THAT THE REQUESTED INFORMATION IS IRRELEVANT, AND IS SUBJECT TO TRADE SECRET PRIVILEGE PROTECTION

Respondent HMRI served broad document requests on Aetna in this action that seek virtually the same documents as those that it had already requested in the MDL Action (the "MDL Requests"). Aetna's formularies are the central feature of both sets of document requests.[1] In response to the MDL Requests, Aetna produced over 18,500

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[1] Aetna's formularies are lists of prescription medications generally covered under Aetna's pharmacy benefit plans, and include brand-name and generic drugs that have been approved by the FDA as safe and effective. A formulary helps provide access to quality, affordable prescription drug benefits. Drugs chosen for Aetna's formulary have gone through an extensive review process. The drugs listed on the formulary either represent an important therapeutic advance, or are clinically equivalent and possibly more cost-effective than other drugs not on the formulary. *See*, Abrams Aff. Exh. F; *see also*, http://www.aetna.com/.

pages to respondents in that action, including Aetna's drug formularies for the relevant time period.

However, Aetna objected, *inter alia*, to producing information concerning the manner in which decisions regarding formulary lists are created, determined, maintained, or utilized and the identification of members of any committee which makes decisions regarding formularies (the "Withheld Documents") on the grounds that such documents were clearly irrelevant and subject to trade secret privileges.

HMRI moved to compel productions of the Withheld Documents in the MDL Action. On July 7, 2000, the MDL Court denied respondent's motion to compel Aetna to produce the Withheld Documents. *See*, July 7, 2000, Order in the MDL Action, a copy of which is attached as Exhibit C to the Abrams Aff., filed concurrently herewith. Specifically, the MDL court ruled that the Withheld Documents were (ii) irrelevant, and (ii) even if relevant, constitute trade secrets that are not sufficiently relevant or necessary to the adjudication of plaintiffs' claims to outweigh any potential injury to Aetna stemming from disclosure of these documents to HMRI and Andrx. See Transcript of July 7, 2000, Hearing at 19-20, attached to Abrams Aff. as Exhibit D.[2] Indeed, the MDL court ruled that:

> The arguments as to the relevancy with respect to both damages and the definition of the relevant market are speculative. . . . I can't find relevancy at all, and even if relevant, it's not sufficient and necessary to overcome trade secrets. So the motion with respect to Aetna [to compel discovery from Aetna] is denied. Transcript at 20.

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[2] Neither HMRI nor Andrx contested the fact that such documents constituted trade secrets.

Copies of respondents' discovery requests from the MDL Action are attached to the Abrams Aff. as Exhibit E. As the Court can see, the document requests in both actions are virtually identical. Both sets are broadly worded and both call for all documents related in any way to formularies – the prime category of contention here. Such documents are not relevant to respondents' defenses to antitrust claims in the MDL Action, and they are not relevant to such defenses here.

Given that, unlike the situation in the MDL action, Aetna is not even a party to this action, its right to a protective order here is even stronger.

III. ARGUMENT

A. HMRI'S SUBPOENA WAS NOT PROPERLY SERVED ON AETNA AND ITS EMPLOYEES

Pursuant to 16 C.F.R. § 4.4(b), all subpoenas directed to corporations must be served on an officer or agent authorized to accept service. Nevertheless, HMRI failed to comply with this simple rule in attempting to serve its subpoena directed to Aetna.

Instead, HMRI attempted to serve Aetna by mailing its subpoena to Aetna's offices in Pennsylvania without indicating on the envelope to whose attention it should be directed. In fact, the envelope was mysteriously addressed to "Aetna U.S. Healthcare, c/o Aetna U.S. Healthcare." *See*, Abrams Aff., Exhibit B. The HMRI subpoena *duces tecum* itself listed the subpoenaed party as the "Custodian of Records for: Aetna U.S. Healthcare." Aetna employed thousands of people in multiple locations, not one of which bears the title "Custodian of Records."

As a result of HMRI's carelessness, the subpoena was misdirected. Abrams Aff. ¶ 3. Specifically, although HMRI mailed its subpoena on June 5, 2000, for a production

date of June 26, 2000, it was only received by the legal department in Connecticut on July 10, 2000. Abrams Aff. ¶ 3.

HMRI thus failed to serve Aetna properly, *e.g.*, *via* delivery to an officer or director or to an authorized agent for the service of process for Aetna. Nevertheless, and without waiving its objection of improper service, Aetna attempted to respond to HMRI in a timely way. HMRI's counsel did not contact Aetna or its counsel before Aetna discovered the subpoena, despite the June 26, 2000, return date, and then failed to respond to Aetna's initial overtures regarding HMRI's subpoena. Abrams Aff. ¶ 4.

B. PURSUANT TO 16 CFR §3.31(d), A PROTECTIVE ORDER PROVIDING THAT AETNA AND ITS EMPLOYEES DO NOT HAVE TO PRODUCE ANY DOCUMENTS IS APPROPRIATE HERE

The information sought falls within four categories:

The first category of information relates to Aetna's formularies. See HMRI requests nos. 1-6, 12. Aetna is willing to and has produced its formularies, but not information regarding how formulary lists are created, determined, maintained, or utilized, or the identification of members of any committee that makes decisions regarding formularies. Such information is irrelevant and constitutes proprietary trade secrets which, if they became known, would cause Aetna irreparable harm in its business.

The second category of information relates to scientific analyses of pharmaceutical products designed for the treatment of hypertension and angina, including any addressing the substitutability of one drug for another. HMRI requests nos. 7-9. All such information that Aetna may have would be irrelevant and/or obtainable elsewhere, because Aetna is an insurer, not a medical research center.

The third category of information relates to agreements between Aetna and HMRI's competitors regarding cardiovascular pharmaceutical products. HMRI requests nos. 10-13. All such information is irrelevant, and constitutes trade secrets.

The fourth category of information relates to analyses of the effect of the sale of generic versions of pharmaceuticals on sales price and market share of pioneering pharmaceutical products. HMRI request no. 12. Again, Aetna is an insurer, not a pharmaceutical marketer or researcher, and any such information that Aetna may have is irrelevant to market share or other defenses, and is better obtained elsewhere.

On July 21, 2000, shortly after Aetna's counsel received HMRI's subpoena, Aetna served its objections and responses to the subpoena on HMRI.

Aetna has already produced to HMRI some 18,500-plus relevant documents.[3] Any documents not already produced constitute privileged trade secrets that are only tangentially relevant if at all, and may only be deemed to be included under HMRI's' requests because the requests are overly broad. HMRI has resisted all attempts by Aetna to persuade respondents to (i) accept the production as complete, or (ii) to explain what HMRI thinks Aetna has that is responsive and not privileged, or (iii) even to narrow its requests. Aetna now has no choice but to request a protective order denying HMRI any further documents.

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[3] By letter dated August 22, 2000, pursuant to a "meet and confer" with HMRI's counsel regarding HMRI's subpoena in this action, counsel for Aetna conveyed Aetna's permission that: "Hoechst may use all documents produced to it by Aetna in the MDL Action in the above-captioned [FTC] matter." By the same August 22, 2000 letter, Aetna confirmed that it did not waive its objection that the subpoena was improperly served. Aetna merely agreed to provide the documents to HMRI in this FTC proceeding in an attempt to reach an amicable and efficient resolution to HMRI's demands.

Pursuant to 16 CFR §3.31(d), this Court should grant Aetna's request for a protective order "deny[ing] discovery" where to do so would "protect a party or other person from annoyance, embarrassment, oppression or undue burden or expense . . ." Such a protective order is necessary here for five reasons.

1. The Requested Information Is Irrelevant To Respondents' Defenses In This Matter

Respondent is only entitled to discovery that it is "reasonably expected to yield information relevant to . . . the defenses of any respondent." 16 CFR §3.31 (c)(1). Like the Complaint in the MDL Action, the Complaint in this matter alleges that respondents engaged in anticompetitive conduct by preventing the entry of bioequivalent generic versions of Cardizem CD into the marketplace, thereby allowing HMRI illegally to continue its monopoly of the Cardizem CD market.[4] However, none of the categories of requested information not already produced is relevant to this matter.

The Michigan Court has already determined that the first category of information is too speculative to be relevant to either the definition of relevant market or the question of the quantum of damage caused by respondents' anticompetitive behavior. Abrams Aff., Transcript of July 7, 2000, hearing, Exh. D at 20. Significantly, damages are not even an issue here.

Moreover, HMRI cannot show how any analysis by Aetna of pharmaceutical products and the substitutability of drugs (the second and fourth categories) could be relevant to their defense in this matter. Aetna is an insurance company, not a medical

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[4] On June 6, 2000, the court in the MDL Action entered a detailed order ruling that the same agreement alleged to be illegal between respondents in the Complaint in this matter is a *per se* violation of the antitrust laws of the United States and of various states. A copy of that 46 page order is available at: http://www.mied.uscourts.gov/edmunds.htm.

research center, and, thus, its files cannot be used as scientific evidence. Likewise, Aetna's agreements with other drug manufacturers (third category) are equally irrelevant to the question of whether respondents engaged in anticompetitive conduct. This Court should enter a protective order denying further production to HMRI. *Muller & Co. v. FTC*, 142 F.2d 511, 520 (6th Cir. 1944) (where respondents have received all relevant information to which they were entitled from non-party competitor, request to compel production of nominally relevant trade secret information properly denied).

2. Any Relevant Subpoenaed Material Is Available From Other Sources Without Imposing Such A Heavy Burden On Non-Party Aetna: 16 CFR §3.31(c)(1)(i) & (iii)

Moreover, even assuming *arguendo*, any of the above information could be deemed relevant to respondents' defenses, Aetna is still entitled to a protective order.

Pursuant to 16 CFR § 3.31(c), this Court "shall" deny discovery that is: "obtainable from some other source that is more convenient, less burdensome, or less expensive;" or where "The burden and expense of the proposed discovery outweigh its likely benefit." 16 CFR § 3.31(c)(1)(i) and (iii). In the present instance, it is both inappropriate and burdensome to demand that Aetna produce the requested information.

Even if Aetna's internal analyses of cardiovascular products could be deemed "relevant" (using a broad definition of the word) (category nos. 2 and 4), there are far better sources for this type of information, including respondents' own analyses. As a prescription drug manufacturer, HMRI has presumably conducted research regarding the drugs at issue and has submitted such research to the FDA. Aetna is an insurance company and simply does not engage in such business. The small benefit to respondent

of Aetna's documents compared to the burden on Aetna of production and loss of trade secrets argues strongly against such production. *Muller & Co. v. FTC*, 142 F.2d at 520.

3. As The Michigan Court Has Already Ruled, Even If They Are Relevant, HMRI Has Not And Cannot Show That Aetna's Trade Secrets Are Discoverable

(i) The MDL Court Ruled the Requested Information Irrelevant

As discussed above, the MDL court has already determined that documents and information underlying the creation of formularies – as opposed to the actual formularies – are not relevant to respondents' defense and are privileged trade secrets. To put it mildly, it would add injury to insult to require Aetna to produce irrelevant material that is privileged. Yet, that is what respondents would have this Court do.

In the MDL Action, respondents never contested that material related to the creation, determination, maintenance and utilization of Aetna's formularies constituted trade secrets.[5] Accordingly, respondents should not be heard to claim the contrary now.

The manner in which decisions regarding formulary lists are created, determined, maintained or utilized by Aetna constitutes a trade secret because (i) it is a process used in Aetna's business to give it a competitive advantage over those who do not know or use the information; (ii) it is kept secret; and (iii) Aetna would suffer economic harm if this information became public, because drug manufacturers and others could use it to their economic advantage against Aetna. *See, e.g., Allen v. Howmedica Leibinger*, 190 F.R.D.

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[5] At the July 7, 2000, hearing, the court stated: "Everyone agrees that the process behind the formulary is a trade secret, and everyone agrees with the legal standard that the burden rests on the party seeking the information to show the relevancy and the necessity for the information." Transcript at 19, Exhibit D to Abrams Decl..

518, 525 (W.D. Tenn. 1999); MICH. COMP. LAWS §§445.1901 & 1902 (Uniform Trade Secrets Act; definition of "trade secret").

Indeed, Aetna has expended years and significant labor and resources in developing and refining the process by which it generates its formularies. *See*, Affidavit of Edward S. Curran, Jr. In Support Of Aetna U.S. Healthcare, Inc.'s Opposition To Hoechst Marion Roussel, Inc.'s Motion To Compel Production Of Documents And Interrogatory Answers Regarding Aetna Formularies, filed in the MDL Action in support of Aetna's opposition to respondent HMRI's motion to compel ("Curran Aff.") ¶ 5, a copy of which is attached to the Abrams Aff. as Exhibit F. That process, including the way formularies are created, determined, maintained and utilized, and the identity of those creating the formularies, is kept strictly confidential. Curran Aff. ¶ 4. Aetna guards its formulary creation process because the process gives Aetna a competitive advantage, both over direct competitors and in negotiations with drug manufacturers. Curran Aff. ¶ 6-7.

Moreover, Aetna and its contract partners would suffer irreparable harm if the requested information is disclosed to HMRI. While the relevance of the requested information is strained at best, Aetna would be irreversibly harmed if respondent learned such information. Among other things, if respondent had access to the requested information, it would have inside knowledge of Aetna's considerations in negotiating drug prices and in deciding what drugs to place on its formularies. Curran Aff. ¶ 7. This would give it a distinct advantage in negotiating drug prices. Likewise, allowing respondents access to Aetna's contracts with drug manufacturers and to depose Aetna employees who negotiate the contracts would grant respondents a distinct advantage in

negotiating drug prices, both with Aetna and with other insurers, and over respondents' own direct competitors.[6]

Accordingly, the very nature of the information HMRI seeks renders it a trade secret. *Ball Memorial Hospital, Inc. v. Mutual Hospital Insurance, Inc.*, 784 F.2d 1325 (7th Cir. 1986). In *Ball*, the Seventh Circuit upheld the district court decision finding that Blue Shield's data on prices bid by each hospital and the calculations Blue Shield performed to decide which hospitals to include in its preferred provider organization (aka, PPO) plans, constituted a trade secret. *See also*, *Muller*, 142 F.2d at 520, where the court denied respondents' demand for trade secret information as unreasonable where the non-party petitioner had already produced relevant, non-privileged material.

Because HMRI seeks production of trade secrets, it bears the burden of proving that the requested information is (i) relevant; (ii) necessary to prepare the case for trial; and (iii) that the potential harm to Aetna is outweighed by the need for discovery. *In re Remington Arms Co., Inc.*, 952 F.2d 1029, 1032-33 (1991); *Allen*, 190 F.R.D. at 525; *In re: Brand Name Prescription Drugs Antitrust Litigation*, 1994 U.S. Dist. LEXIS 17278 (ND Ill., December 5, 1994); Transcript, Exh. D to Abrams Aff. at 19. As the MDL court stated, HMRI did not dispute the applicable law.

Despite this burden, respondent cannot prove relevance, necessity or that the need for the information outweighs the possible harm of disclosure. In fact, in the MDL Action, respondent did not offer any arguments to support a finding that the requested information was necessary and that the need for disclosure outweighed the possible harm of disclosure. Yet, HMRI here again seeks trade secret material relating to formularies,

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[6] Given the multitude of unfair uses respondents could make of the requested information, there is little wonder why they asked for it.

and further seeks confidential documents and testimony relating to the negotiation of contracts with respondent's own competitors – other manufacturers of prescription drugs. To allow respondent access to trade secret, confidential and irrelevant material would be to allow it an impermissible – and potentially ruinous to Aetna - end-run around the MDL court.

Further, HMRI should not be allowed to pervert this proceeding instituted to enforce fair trade by using it to unfairly acquire the trade secrets and confidential material of its competitors. The MDL court ruled that HMRI had not met its burden. Respondent should not be allowed access to this sensitive material.

(ii) The Existing Protective Order in this Matter Does Not Address Aetna's Concerns Here

On August 7, 2000, respondent HMRI forwarded to Aetna's counsel a copy of the Order Granting Consent Motion To Amend And Reissue Protective Order in this action, contending that the Protective Order's confidentiality provisions mooted Aetna's concern that sensitive trade secret material may be revealed in a manner harmful to Aetna. However, the Protective Order does not meet Aetna's concerns for two reasons.

First, Aetna principally objects to further production because of the irrelevance of the requested materials. Respondent has not been able to articulate a single reason why the materials are relevant. Where a party fails to explain what documents it has not been able to review or why they would be relevant, courts routinely grant protective orders or deny motions to compel. *See, e.g., Ramirez v. Pacific Maritime Association*, 1992 U.S. Dist. LEXIS 22457, *13 (N.D. Cal. Oct. 14, 1992). The harm to Aetna, measured in the cost of producing documents and in the release of trade secrets, thus clearly outweighs any imagined legitimate gain to HMRI.

Second, the very people from respondents' organizations designated in the Protective Order as those who may review trade secrets are among those Aetna is anxious to prevent from seeing such materials. These are not outside counsel who will never be involved in the management of their clients' businesses. Aetna cannot risk exposure of its trade secrets to respondents.

4. The Huge Burden And Expense Of Compliance On Aetna, Who Is Not A Party To This Action, Is Not Justified: 16 CFR § 3.31(c)(1)(iii)

Aetna has produced in excess of 18,500 documents, including all pharmacy contract files from January 1, 1996 to the present for the state of Michigan, and data reflecting each reimbursement made to Michigan pharmacies for the period January 1, 1996 to February 2000.[7] Aetna also produced examples of contracts that Aetna maintained with Michigan employers during the class period. Abrams Aff. ¶ 9. Because of the potential massive volume and duplicative nature of possible discovery, the MDL judge limited discovery in that action to Michigan. Abrams Aff. ¶ 9.

Aetna's production in the MDL Action was in response to very similar document requests to those here. *See*, document requests, Exhibits A and E to Abrams Aff. For example, compare defendants' requests nos. 3-7 in the MDL Action to HMRI's requests nos. 1-6 in this action, requesting all documents having to do with Aetna's formularies;

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[7] Because Cartia XT was not commercially available, no figures exist for Aetna payments for Cartia XT during the relevant period. However, information is available on what Aetna paid for Cartia XT when it finally become available in June 1999. Aetna has produced all information regarding what Aetna paid for Cartia XT. Moreover, to the extent that the fact that a drug is placed on Aetna's formularies could be deemed relevant because of potential volume discounts, Aetna stipulated in the MDL Action that Cartia XT was placed on Aetna's formularies as soon as practicable after its commercial launch, and will so stipulate here if asked. Respondents will be able to reference Aetna's data and identify exactly when the first reimbursement for Cartia XT was made.

and compare HMRI's request no. 12 in this action, asking for all sales data for cardiovascular products, with defendants' interrogatory no. 4 in the MDL Action asking for just that data.[8]

All responsive data that is not subject to privilege has been furnished in the MDL Action. Those documents are equally responsive here, as the law and facts at issue in that matter are similar if not virtually identical. Aetna has already agreed to allow HMRI to use all discovery already produced in the MDL Action to be used in this action, pursuant to the terms of the Protective Order designating all such documents "Attorneys Eyes Only."

5. The Discovery Requests Are Unreasonably Duplicative: 16 CFR §3.31(c)(1)(i)

Significantly, a cursory glance at the subpoenas shows they are "unreasonably cumulative or duplicative" within themselves. For example, of the 13 requests in Exhibit A to HMRI's subpoena, 6 ask directly for all documents relating to Aetna's formularies.[9] A further 2 ask for documents relating to substitutability – which, given respondents' contentions Aetna construes as asking for formularies, which is all that Aetna has that might be construed as responsive. 3 more ask for all documents related to contracts with certain listed entities.

Further, HMRI's document requests are duplicative as compared to those in the MDL Action, as discussed. The enormous burden, harassment and waste required of

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[8] Even where the language is not exactly the same, the defined terms are so broad that anything that Aetna actually had that was responsive and not privileged has already been produced. As stated above, the MDL Court already denied respondents' motion to compel further documents.

[9] Respondent's broad use and definition of the term "relates to" encompasses anything that might tangentially touch on a subject, without being relevant. This makes the requests all the more redundant and harassing.

Aetna if it were to re-produce documents in response to the subpoenas requires that the Court enter a protective order to protect Aetna, who is not even a party to this matter.

IV. CONCLUSION

For the reasons stated above, Aetna respectfully requests that this Court grant its request for a protective order denying any further discovery from it to respondent. Aetna further requests that it have the opportunity to reply to any opposition to this motion that any party to this action may file.

Respectfully submitted,

Date: September 25, 2000

BERMAN, DeVALERIO, PEASE & TABACCO, P.C.

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Counsel for Aetna U.S. Healthcare, Inc.

/cardizem/ftc/aetna motion for PO

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: Administrative Law Judge D. Michael Chappell

AFFIDAVIT OF JENNIFER S. ABRAMS IN SUPPORT OF NON-PARTY WITNESS AETNA U.S. HEALTHCARE, INC.'S MOTION FOR A PROTECTIVE ORDER PURSUANT TO 16 C.F.R. §3.31(c)(2)&(d)

Production Of Documents Regarding Aetna Formularies; Defendant Hoechst Marion Roussel's Motion To Compel Production Of Documents By Duane Reade, Inc. And Louisiana Wholesale Drug Co.; Plaintiffs' Motion To Compel Production Of Documents," before the Honorable Marc L. Goldman, Magistrate Judge, July 7, 2000.

7. Attached hereto as Exhibit E is a copy of respondents' discovery requests served on Aetna in *In re Cardizem CD Antitrust Litigation*, Case No. 99-MD-1278.

8. Attached hereto as Exhibit F is a copy of the Affidavit of Edward S. Curran, Jr. In Support Of Aetna U.S. Healthcare, Inc.'s Opposition To Hoechst Marion Roussel, Inc.'s Motion To Compel Production Of Documents And Interrogatory Answers Regarding Aetna Formularies, filed in *In re Cardizem CD Antitrust Litigation*, Case No. 99-MD-1278 in support of Aetna's opposition to respondent HMRI's motion to compel.

9. Aetna has produced over 18,500 documents to HMRI in this action, including contract files from January 1, 1996 to the present for the state of Michigan, and data reflecting each reimbursement made to Michigan pharmacies for the period January 1, 1996 to February 2000. Aetna also produced examples of contracts that Aetna maintained with Michigan employers during the class period.

Dated: September 25, 2000

Jennifer S. Abrams

Subscribed and sworn to before me this 25th day of September, 2000.

LISA M. KIM
Commission # 1265660
Notary Public - California
San Francisco County
My Comm. Expires May 28, 2004

Notary Public

LISA KIM
Expires 5/28/2004

EXHIBIT A

SUBPOENA DUCES TECUM

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

1. TO Custodian of Records for:
Aetna U.S. Healthcare
980 Jolly Road
Blue Bell, PA 19422-0000
c/o Aetna U.S. Healthcare
980 Jolly Road
Blue Bell, PA 19422-0000

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

3. PLACE OF PRODUCTION OR INSPECTION

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

4. MATERIAL WILL BE PRODUCED TO

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

5. DATE AND TIME OF PRODUCTION OR INSPECTION

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

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See Exhibit "A" attached hereto

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

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

DATE ISSUED

MAY 17 2000

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

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

MOTION TO LIMIT OR QUASH

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

TRAVEL EXPENSES

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

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

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Exhibit A to Subpoena Duces Tecum

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

HMRI'S FIRST DOCUMENT PRODUCTION REQUEST TO AETNA US HEALTHCARE

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

DOCUMENT REQUESTS

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

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

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

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

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

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

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

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

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

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

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

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

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

DEFINITIONS AND INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SHOOK, HARDY & BACON L.L.P.

By: D. E. Wilson Jr.

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

Attorneys for Respondent Hoechst Marion Roussel, Inc.

Dated: June 5, 2000

Attachment 1, attached

Attachment 1 to Subpoena Duces Tecum
Issued on Behalf of HMRI

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

EXHIBIT B

Karen Goodwin
6/12/00

LAW OFFICES
SHOOK, HARDY & BACON L.L.P.
HAMILTON SQUARE
600 14TH STREET NW SUITE 800
WASHINGTON DC 20005-2004

D.E.W., JR. - x47044

TO:

AETNA US HEALTHCARE
C/O AETNA US HEALTHCARE
980 JOLLY ROAD
BLUE BELL PA 19422

RETURN RECEIPT REQUESTED

FIRST CLASS MAIL

0180-
19A

REGISTERED MAIL
R 291 384 941

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CASE NO: 99-MD-1278

IN RE CARDIZEM
ANTITRUST LITIGATION

HON. NANCY G. EDMUNDS
HON. MARC L. GOLDMAN

_____/

ORDER

For the reasons stated on the record at the hearing held on July 7, 2000, Hoechst Marion Roussel's Motion to Compel Production of Documents and Interrogatory Responses [D/E No. 144] regarding Aetna formularies is **DENIED**.

The parties are hereby informed that any objections to this order must be filed with the district court within ten days after entry, pursuant to Rule 72(a), Federal Rules of Civil Procedure.

Dated: July 07, 2000

MARC L. GOLDMAN
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

Pursuant to Rule 77(d), Federal Rules of Civil Procedure, copies have been mailed to:

Elwood S. Simon, Esq.
ELWOOD S. SIMON & ASSOCIATES
355 South Old Woodward Avenue
Suite 250
Birmingham, MI 48009

Stephen Lowey, Esq.
LOWEY, DANNENBERG, BEMPORAD & SELINGER PC
The Gateway, 11th Floor
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Richard Drubel, Esq.
BOIES & SCHILLER
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Bruce E. Gerstein, Esq.
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New York, NY 10036

Scott E. Perwin, Esq.
KENNY NACHWALTER SEYMOUR ARNOLD CRITCHLOW & SPECTOR, PA
1100 Miami Center
201 South Biscayne Boulevard
Miami, FL 33131-4327

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Louis M. Solomon, Esq.
SOLOMON ZAUDERER ELLENHORN FRISCHER & SHARP
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New York, NY 10111

Norman C. Ankers, Esq.
HONIGMAN MILLER SCHWARTZ & COHEN
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Detroit, MI 48226-3583

Judicial Panel Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
Room G-255 North
One Columbus Circle, N.E.
Washington, D.C. 20002-8004

Gina K. Wilson, Clerk

Dated: July 07, 2000

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

CARDIZEM CD ANTITRUST LITIGATION
_____/

LOUISIANA WHOLESALE DRUG CO., INC. et al.,

Plaintiffs

v.

HOECHST AKTIENGESELLSCHAFT, et al.,

Defendants
_____/

Case No. 99-MD-1278

Detroit, Michigan
Friday, July 7, 2000
Magistrate Judge Goldman

DEFENDANT HOECHST MARION ROUSSEL'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS REGARDING THE AETNA FORMULARIES; DEFENDANT HOECHST MARION ROUSSEL'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY DUANE READE, INC. AND LOUISIANA WHOLESALE DRUG CO.; PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS

BEFORE THE HONORABLE MARC L. GOLDMAN, MAGISTRATE JUDGE

TRANSCRIPT ORDERED BY: CRAIG L. JOHN (Dykema Gossett)

APPEARANCES:

For Plaintiff Aetna:
Berman, DeValerio, Pease & Tabacco
BY: NICOLE LAVALLEE
425 California St., Suite 2025
San Francisco, CA 94104

For Plaintiff Louisiana Wholesale and Sherman Act Plaintiffs:
Garwin, Bronzaft, Gernstein & Fisher
BY: BARRY TAUS
1501 Broadway, Suite 1416
New York, NY 10036

to recover from us, they would have gone after all those entities that paid for it and purchased it, as they're allowed to do. I don't know, because I don't know how they make such decisions, but I think there is certainly one glaring area where there is a strong difference, and I think that would be very relevant for us to probe in discovery.

THE COURT: Okay. Thank you. Do you want to respond to that?

MS. LAVALLEE: One quick comment, your Honor.

THE COURT: Okay. Quick comment. Then we'll move on.

MS. LAVALLEE: I just want to emphasize that what we're talking about here is very highly speculative about what these -- the processes behind these formularies can prove. This is a "but-for" argument. Defendants bear the burden of proving why the need is greater than potential injury. I don't think they've met that burden.

Thank you.

THE COURT: Okay. All right. I'm denying the motion. I'm going to deny it here on the record. Everyone agrees that the process behind the formulary is a trade secret, and everyone agrees with the legal standard that the burden rests on the party seeking the information to show the relevancy and the necessity for the information. Based upon the arguments of counsel, the briefs that have been submitted

to me, I'm going to find that the Defendants have not met that burden.

The arguments as to the relevancy with respect to both damages and the definition of the relevant market are speculative. I am not convinced that this information is relevant to damages or to a definition of a relevant market. And even if it could be found to be somewhat relevant, I don't believe it is sufficiently necessary to invade the trade secret of the -- of Aetna, with respect to the construction or creation of its formularies. All right. I don't think I need to say any more. I think that's basically the conclusion that I've reached. I can't find the relevancy -- I can't find relevancy at all, and even if relevant, it's not sufficient and necessary to overcome trade secrets. So the motion with respect to Aetna is denied.

All right. Let's move on to the next one, which I think the next one I want to hear is the Louisiana Wholesale motion. I think it's Defendant's motion to compel production of documents. Involves Louisiana Wholesale and Duane Reade, I believe sales documents; right?

MR. MATYE: Yes, your Honor.

THE COURT: Okay.

MR. MATYE: Joe Matye, Hoechst Marion Roussel.

The issue here, your Honor, Louisiana Wholesale and Duane Reade are named Plaintiffs in the Sherman Act class

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Southern Division

IN RE CARDIZEM CD ANTITRUST LITIGATION	MASTER FILE NO. 99-MD-1278 MDL DOCKET NO. 1278
THIS DOCUMENT RELATES TO: 98-CV-74043	Hon. Nancy G. Edmunds

HMRI'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF AETNA U.S. HEALTHCARE, INC.

Defendant Hoechst Marion Roussel, Inc. ("HMRI"), pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests that plaintiff Aetna U.S. Healthcare, Inc. ("Aetna") produce documents for inspection and copying, within 30 days, in response to the requests set forth below, at the offices of Shook, Hardy & Bacon L.L.P., 1200 Main Street, Kansas City, Missouri 64105.

DEFINITIONS AND INSTRUCTIONS

The definitions and instructions included in HMRI's First Set of Interrogatories to Plaintiff Aetna U.S. Healthcare, Inc. apply to these requests.

DOCUMENT REQUESTS

1. With respect to each of the plans identified in your response to Interrogatory Number 1, and for the time period January 1996 to present:

   a. all plan documents describing benefits and exclusions under the plan;

   b. all group policies and group agreements applicable to the plan;

   c. all brochures, booklets, mailings, advertisements, and marketing material which describe the benefits and exclusions under the plan;

   d. all brochures, booklets, mailings, advertisements, and marketing material which describe co-payments, co-insurance and deductibles applicable to prescription drug purchases under the plan;

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e. all documents evidencing or concerning changes in co-payment, co-insurance and deductible amounts applicable to prescription drug purchases under the plan;

f. all documents evidencing or concerning co-payment, co-insurance or deductible amounts for which individual plan participants were responsible in connection with purchases of Cardizem® CD, Cartia XT, and other generic versions of Cardizem® CD dispensed pursuant to doctors' prescriptions during the period January 1996 to present.

2. With respect to each pharmacy identified in your response to Interrogatory Number 4, and for the time period January 1, 1996 to present:

a. all documents evidencing or relating to the enrollment of the pharmacy as a participating pharmacy;

b. all documents evidencing or relating to your agreement with the pharmacy;

c. all documents evidencing or relating to any termination of your agreement with the pharmacy or any disenrollment of the pharmacy as a participating pharmacy;

d. all documents evidencing or relating to any changes in your agreement with the pharmacy;

e. all documents evidencing or relating to payments you made to the pharmacy for Cardizem® CD, Cartia XT, and other generic versions of Cardizem® CD dispensed pursuant to doctors' prescriptions;

f. all documents evidencing or discussing the formula(s) used for computing such payments, including but not limited to, mailings or other communications with pharmacies concerning the formula for calculating payments to the pharmacy for each type of drug and all changes in such formulas;

g. all documents evidencing or discussing any payments you received from the pharmacy.

3. All documents comprising the drug formularies identified in your response to Interrogatory Number 5.

4. For each drug formulary identified in your response to Interrogatory Number 5, and for the period January 1, 1996 to present:

a. all documents describing or relating to your policies or procedures for creating, maintaining, promulgating, and/or updating the formulary, including but not limited to, procedures for determining the drugs to be included in the formulary;

b. all documents describing or relating to any committee responsible for any aspect of creating, maintaining, promulgating, and/or updating the formulary;

c. all documents describing or relating to the methods for using the formulary to determine co-payments, co-insurance, or deductibles to be paid by individual plan participants, or reimbursements to be paid to individual plan participants or pharmacies, for each plan, for each group identified in your response to Interrogatory Number 2, and for each member identified in your response to Interrogatory Number 3;

d. all documents describing or relating to the inclusion in or exclusion from the formulary of Cardizem® CD;

e. all documents describing or relating to the inclusion in or exclusion from the formulary of Cartia XT and other generic versions of Cardizem® CD.

5. All documents comprising the drug formulary exclusion lists identified in your response to Interrogatory Number 6.

6. With respect to each formulary exclusion list identified in your response to Interrogatory Number 6, and for the period January 1, 1996 to present:

a. all documents describing or relating to your policies or procedures for creating, maintaining, promulgating, and/or updating the formulary exclusion list, including

8. All documents evidencing or relating to studies, analyses, or reports regarding the use and purchase of generic drugs generally, including prescribing practices of physicians as those practices relate to generic drugs.

9. All documents evidencing or relating to studies, analyses, or reports regarding methods or practices for controlling or reducing the cost of prescription drugs.

10. All documents evidencing or relating to contracts, agreements, or arrangements with HMRI, Andrx, and/or other manufacturers of anti-hypertensive drugs relating to any discounts, rebates, bundling, or other promotions for any anti-hypertensive drug.

11. All documents evidencing or relating to payments, credits, or rebates you received from HMRI, Andrx, and/or other manufacturers of anti-hypertensive drugs, if any, during the period January 1996 to present.

12. All documents evidencing or relating to contracts, agreements, or arrangements with wholesalers or distributors of anti-hypertensive drugs relating to any discounts, rebates, bundling, or other promotions for any anti-hypertensive drug.

13. All documents evidencing or relating to payments, credits, or rebates you received from wholesalers or distributors of anti-hypertensive drugs, if any, during the period January 1996 to present.

14. All documents evidencing or relating to contracts, agreements, or arrangements with pharmacy benefit managers.

15. All documents evidencing or relating to communications between you and any other third party payor concerning Cardizem® CD, Cartia XT, or other generic versions of Cardizem® CD

16. All documents that reflect or refer to any communication you or your representatives have had with any actual or potential member of the proposed Class.

17. All documents which evidence or relate to any communications, transactions, or dealings between you (or anyone acting on your behalf) and any of the defendants in this action (or any of their employees or agents) on any subject related to the claims asserted in this action.

18. All documents that reflect, refer, or relate to your employment or retention of counsel in this action including but not limited to any arrangement:

a. to pay a fee, including a legal fee, to anyone with respect to this action;

b. with respect to who will advance and who is responsible for payment of the costs and expenses incurred in connection with the prosecution of this action;

c. with respect to who will share in the recovery, if any, realized in this action;

d. to share a fee in this action with any person not a member of the plaintiff's counsel's firm.

19. All documents relating to or reflecting any communication between you and any other person or entity concerning Cardizem® CD, Cartia XT, or other generic versions of Cardizem® CD

20. All documents identified in your response to HMRI's First Set of Interrogatories not previously requested.

SHOOK, HARDY & BACON L.L.P.

By: _____

Joe Rebein
James R. Eiszner
Joseph G. Matye
Laurie A. Novion
One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105-2118
816-474-6550

-and-

DYKEMA GOSSETT PLLC
Craig L. John (P27146)
Andrew J. McGuinness (P42074)
Kimberly A. Bickersteth (P53854)
1577 North Woodward Avenue, Suite 300
Bloomfield Hills, Michigan 48304
248-203-0700

Attorneys for Defendant Hoechst Marion Roussel, Inc.

Dated: January 21, 2000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Southern Division

IN RE CARDIZEM CD ANTITRUST LITIGATION	MASTER FILE NO. 99-MD-1278 MDL DOCKET NO. 1278
THIS DOCUMENT RELATES TO: 98-CV-74043	Hon. Nancy G. Edmunds

HMRI'S FIRST SET OF INTERROGATORIES TO PLAINTIFF AETNA U.S. HEALTHCARE, INC.

Defendant Hoechst Marion Roussel, Inc. ("HMRI") propounds the following interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure to plaintiff Aetna U.S. Healthcare, Inc. to be answered under oath, in accordance with the definitions and instructions set forth below, within thirty days.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, the words "plaintiff," "you" or "your" shall mean Aetna U.S. Healthcare, Inc., and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates, including Prudential HealthCare.

2. "HMRI" refers to the Defendant Hoechst Marion Roussel, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

3. "Andrx" refers to Defendant Andrx Pharmaceuticals, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

4. The terms "document" or "documents" or "documentation" include the original or drafts or any kind of written, printed, recorded or graphic matter or sound reproduction, however

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

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

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

7. Unless otherwise stated, the requests herein refer to the time period of January 1, 1996 through present.

8. "Person" means all employees, individuals, and entities, including but not limited to corporations, associations, companies, partnerships, joint ventures, trusts and estates.

9. "Communication" means every manner of transmitting or receiving information, opinions, and thoughts whether orally or in writing.

10. "Cardizem® CD" means the diltiazem formulation sold under this name.

11. "Cartia XT" means the generic drug product which is sold under this name.

12. The term "generic drug equivalent" means the generic drug as referenced in your complaint and amended complaint.

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

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

15. The term "group" refers to an employer or other entity that purchases insurance or benefits under a health benefit plan and/or prescription benefit plan.

16. The term "members" refers to individuals who are enrolled in and eligible to receive benefits through a health benefit plan and/or prescription benefit plan.

17. The term "pharmacy" refers to any entity, including mail order vendors and other retailers, which dispenses drugs pursuant to doctors' prescriptions. When a pharmacy has more than one retail location or outlet, please answer the questions for each location separately.

18. The terms "Class" and "proposed Class" refer to the proposed class you seek to represent as defined in paragraph 17 of the State Law Plaintiffs' Coordinated First Amended Class Action Complaints.

19. The term "Amended Complaint" refers to the State Law Plaintiffs' Coordinated First Amended Class Action Complaints.

20. "Identify" when used in reference to a natural person, means to state the person's: (a) full name; (b) present (or last known) home and business address; and (c) present (or last known) occupation, business affiliation and job title.

21. "Identify" when used in reference to an entity means to state the entity's: (a) full name, (b) address and telephone number of its principal place of business; and (c) the state of its incorporation, if a corporation.

22. "Identify" when used in reference to a written Communication or document (including correspondence), means to: (a) state the nature of the written communication (e.g., letter, memorandum); (b) state the date it was created; (c) state the title of the document; (d) identify the creator(s) of the document; (e) state the date(s) (if any) it was sent to another person; (f) identify the person(s) to whom it was sent; and (g) identify the person(s) who has custody of the document.

23. "Identify" when used in reference to an oral communication, means to: (a) state the date and place of the communication (including a notation of whether the communication was in person or by telephone); (b) identify the persons who participated in the communication or who otherwise are aware of the substance of the communication; and (c) identify all documents recording, summarizing or confirming the communication.

24. "Identify" when used in reference to an agreement or contract, means to: (a) identify all persons who are or were parties to the agreement; (b) state the date upon which the agreement was finalized; (c) state the period during which the terms of the agreement are to be given effect; (d) state the period during which the terms of the agreement were actually given effect; (e) identify the persons responsible for negotiating and authorizing execution of the agreement; (f) identify all persons with knowledge of the agreement; and (g) identify all documents that reflect, refer or relate to the agreement.

25. The response to each interrogatory is to be numbered in a manner consistent with these interrogatories and is to be preceded by the specific interrogatory.

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

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

INTERROGATORIES

1. Identify all plans through which you paid pharmacies in the State of Michigan for Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions at any time during the period January 1996 to present. For each such plan:

   a. Identify the plan and its type (e.g., HMO, PPO, IPA, indemnity, etc.).

   b. For each plan identified in (a.), identify the entity(ies) that provide prescription benefit services under that plan.

   c. Identify any other health benefit plans under which you provide prescription benefit services.

Response:

2. For each plan identified in your response to Interrogatory Number 1, provide the name and address of each group that purchases insurance benefits under the plan. Separately, for each such group and plan:

a. state the number of members for each calendar month January 1996 to present;

b. state the membership turnover percentage for each month January 1996 to present;

c. describe all copayments, deductibles, and coverage limits applicable to prescription drug purchases for which members are responsible, and describe all changes in copayment and deductible amounts and coverage limits during the period January 1996 to present;

d. state the copayment amounts for each prescription, by drug type, including but not limited to, brand name versus generic, formulary versus non-formulary, designated versus non-designated, or any other categorization that requires a different copayment, and describe any changes in required copayments during the period January 1996 to present;

e. state separately for each drug (by dosage and pill count) the co-pay amounts for which individual plan participants were responsible for purchases of Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions, and describe all changes in such co-pay amounts during the period January 1996 to present.

Response:

3. For each plan identified in your response to Interrogatory Number 1, state the number of members who are not a part of any group, including but not limited to, self-employed individuals

and individuals purchasing insurance under COBRA provisions, and the number of those members who purchase prescription drug benefits through their plan. For each such member:

a. describe all copayments, deductibles, and coverage limits applicable to prescription drug purchases for which members are responsible, and describe all changes in copayment and deductible amounts and coverage limits during the period January 1996 to present;

b. state the copayment amounts for each prescription, by drug type, including but not limited to, brand name versus generic, formulary versus non-formulary, designated versus non-designated, or any other categorization that requires a different copayment, and describe any changes in required copayments during the period January 1996 to present;

c. state separately for each drug (by dosage and pill count) the co-pay amounts for which individual plan participants were responsible for purchases of Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions, and describe all changes in such co-pay amounts during the period January 1996 to present.

Response:

4. Identify all pharmacies in the State of Michigan that you paid for Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions at any time during the period January 1996 to present. For each such pharmacy:

a. If the pharmacy was not a participating pharmacy during the entire period January 1996 to present for each of the plans identified in your response to Interrogatory Number 1, identify the plans and time periods for which the pharmacy was approved.

b. State separately for each drug (by dosage and pill count), for each plan, for each group, and for each calendar month January 1996 to present, the total amount you paid to the pharmacy for Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions and the total number of such prescriptions.

c. State separately by plan and group, for each type of drug (as described in Interrogatory Numbers 2(d) and 3(b)), the formula used for determining the amount paid to the pharmacy and describe all changes in this formula occurring during the period January 1996 to present.

d. Describe all payments you received from the pharmacy and explain the reason(s) for such payment.

Response:

5. Identify all drug formularies used in connection with any of the plans identified in your response to Interrogatory Number 1 at any time during the period January 1996 to present. For each such formulary:

a. Identify the plan(s) and group(s) for which the formulary is used.

b. Describe all categories into which prescription drugs are grouped, including categories of drug types and categories used for determining co-payment or reimbursement amounts for individual participants and/or payments to pharmacies.

c. Describe the process used for determining the drugs to be included in the formulary.

d. If a committee determines the composition of the formulary, identify the name of the committee, and the committee members.

e. Describe how the formulary is used in determining co-payments by or reimbursements to individual participants for prescription drugs purchased under each plan for each group identified in your response to Interrogatory Number 2 and for each member identified in your response to Interrogatory Number 3.

f. Describe how the formulary is used in determining payments to pharmacies under each plan for prescription drugs the pharmacy dispensed.

g. State whether Cardizem® CD has been listed on the formulary and, if so, identify all category(ies) in which Cardizem® CD has been included.

h. State whether Cartia XT has been listed on the formulary and, if so, identify all category(ies) in which Cartia XT has been included.

i. If your responses to the above Interrogatory sub-parts are not applicable to the entire time period January 1996 to present, describe all changes occurring during that period.

Response:

6. Identify all drug formulary exclusion lists used in connection with the plans identified in your response to Interrogatory Number 1 at any time during the period January 1996 to present. For each such formulary exclusion list:

a. Identify the plan(s) and group(s) for which the formulary exclusion list is used.

b. Describe the process used for determining the drugs to be included on the formulary exclusion list.

c. If a committee determines the composition of the formulary exclusion list, identify the name of the committee, and the committee members.

d. Describe how the formulary exclusion list is used in determining co-payments by or reimbursements to members for prescription drugs purchased under each plan.

e. Describe how the formulary exclusion list is used in determining payments to pharmacies under each plan for prescription drugs dispensed, including circumstances under which drugs on the exclusion list are eligible or not eligible for payment or reimbursement.

f. State whether Cardizem® CD been included on the formulary exclusion list.

g. State whether Cartia XT been included on the formulary exclusion list.

h. If your responses to the above Interrogatory sub-parts are not applicable to the entire time period January 1996 to present, describe all changes occurring during that period.

Response:

7. Describe all of your contracts, agreements, or arrangements with HMRI, Andrx, and/or other manufacturers of anti-hypertensive drugs relating to any discounts, dating, rebates, bundling, or other promotions for any anti-hypertensive drug.

Response:

8. Identify all payments, credits or rebates you received from HMRI, Andrx, and/or other manufacturers of antihypertensive drugs, if any, by month or quarter, during the period January 1996 to present and state the reasons such payments were made.

Response:

9. Describe all of your contracts, agreements, or arrangements with wholesalers or distributors of anti-hypertensive drugs relating to any discounts, rebates, bundling, or other promotions for any anti-hypertensive drug received during the period January 1996 to present.

Response:

10. Identify all payments, credits or rebates you received from any wholesaler or distributor of anti-hypertensive drugs, if any, by month or quarter, during the period January 1996 to present and state the reasons such payments were made.

Response:

11. Describe all of your contracts, agreements, or arrangements with pharmacy benefit managers in effect at any time during the period January 1996 to present.

Response:

12. State whether you have acted as a named plaintiff in other class litigation and, if so, describe the prior class litigation, including the issue(s) involved, the defendant(s), and outcome.

Response:

13. Identify all managed-care "third party payors" (including self-funded employers), as described in paragraph 7 of your Amended Complaint, which paid pharmacies in the State of Michigan for Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions at any time during the period January 1996 to present.

14. With respect to each person who will or may testify (in person or by affidavit, report or declaration) as a non-expert witness in this action in support of plaintiffs' motion for class certification, identify such person and describe in detail the subject matter of his or her testimony.

Response:

15. State the method by which you intend to notify members of the proposed Class of the pendency of this action, their right either to participate in or opt out of this action, any proposed settlements of this action, and the results of this action, and estimate the cost of accomplishing each form of notice, and state whether you intend to pay the entire cost of such notice. If not, state how you intend to finance the cost of such notice.

Response:

16. Identify each source of funds to be used in prosecuting this action on behalf of the proposed Class.

Response:

17. Identify every agreement reflecting, referring, or relating to your employment or retention of counsel in this action and any arrangement:

a. to pay a fee, including without limitation a legal fee, to anyone with respect to this action;

b. with respect to who will advance and who is responsible for payment of the costs and expenses incurred in connection with the prosecution of this action;

c. with respect to who will share in and in what proportion of the recovery, if any, realized in this action; and

d. to share a fee in this action with any person not a member of plaintiff's counsel's firm.

Response:

18. Describe your counsel's experience in class action litigation and also state:

a. The full caption of every case in the past five years in which your counsel has represented members of a plaintiff class. If the full caption is unavailable, state the name of the case and the court in which it was filed, as well as the date of filing and case number; and

b. The full caption of every case in the past five years in which your counsel has represented a party either asserting or defending against a claim arising under either state or federal antitrust laws.

Response:

SHOOK, HARDY & BACON L.L.P.

By: _____

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-and-

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248-203-0700

Attorneys for Defendant Hoechst Marion Roussel, Inc.

Dated: January 21, 2000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Southern Division

IN RE CARDIZEM CD ANTITRUST LITIGATION	MASTER FILE NO. 99-MD-1278 MDL DOCKET NO. 1278
THIS DOCUMENT RELATES TO: 98-CV-74043	Hon. Nancy G. Edmunds

ANDRX'S FIRST SET OF INTERROGATORIES TO PLAINTIFF AETNA U.S. HEALTHCARE, INC.

Defendant Andrx Pharmaceuticals, Inc. ("Andrx") propounds the following interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure to plaintiff Aetna U.S. Healthcare, Inc. to be answered under oath, in accordance with the definitions and instructions set forth below, within thirty days.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, the words "plaintiff," "you" or "your" shall mean Aetna U.S. Healthcare, Inc., and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates, including Prudential HealthCare.

2. "HMRI" refers to the Defendant Hoechst Marion Roussel, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

3. "Andrx" refers to Defendant Andrx Pharmaceuticals, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

1/21/00

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

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

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

7. Unless otherwise stated, the requests herein refer to the time period of January 1, 1996 through present.

8. "Person" means all employees, individuals, and entities, including but not limited to corporations, associations, companies, partnerships, joint ventures, trusts and estates.

9. "Communication" means every manner of transmitting or receiving information, opinions, and thoughts whether orally or in writing.

10. "Cardizem® CD" means the diltiazem formulation sold under this name.

11. "Cartia XT" means the generic drug product which is sold under this name.

12. The term "generic drug equivalent" means the generic drug as referenced in your complaint and amended complaint.

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

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

15. The term "group" refers to an employer or other entity that purchases insurance or benefits under a health benefit plan and/or prescription benefit plan.

16. The term "members" refers to individuals who are enrolled in and eligible to receive benefits through a health benefit plan and/or prescription benefit plan.

17. The term "pharmacy" refers to any entity, including mail order vendors and other retailers, which dispenses drugs pursuant to doctors' prescriptions. When a pharmacy has more than one retail location or outlet, please answer the questions for each location separately.

18. The terms "Class" and "proposed Class" refer to the proposed class you seek to represent as defined in paragraph 17 of the State Law Plaintiffs' Coordinated First Amended Class Action Complaints.

19. The term "Amended Complaint" refers to the State Law Plaintiffs' Coordinated First Amended Class Action Complaints.

20. "Identify" when used in reference to a natural person, means to state the person's: (a) full name; (b) present (or last known) home and business address; and (c) present (or last known) occupation, business affiliation and job title.

21. "Identify" when used in reference to an entity means to state the entity's: (a) full name, (b) address and telephone number of its principal place of business; and (c) the state of its incorporation, if a corporation.

22. "Identify" when used in reference to a written Communication or document (including correspondence), means to: (a) state the nature of the written communication (e.g., letter, memorandum); (b) state the date it was created; (c) state the title of the document; (d) identify the creator(s) of the document; (e) state the date(s) (if any) it was sent to another person; (f) identify the person(s) to whom it was sent; and (g) identify the person(s) who has custody of the document.

23. "Identify" when used in reference to an oral communication, means to: (a) state the date and place of the communication (including a notation of whether the communication was in person or by telephone); (b) identify the persons who participated in the communication or who otherwise are aware of the substance of the communication; and (c) identify all documents recording, summarizing or confirming the communication.

24. "Identify" when used in reference to an agreement or contract, means to: (a) identify all persons who are or were parties to the agreement; (b) state the date upon which the agreement was finalized; (c) state the period during which the terms of the agreement are to be given effect; (d) state the period during which the terms of the agreement were actually given effect; (e) identify the persons responsible for negotiating and authorizing execution of the agreement; (f) identify all persons with knowledge of the agreement; and (g) identify all documents that reflect, refer or relate to the agreement.

25. The response to each interrogatory is to be numbered in a manner consistent with these interrogatories and is to be preceded by the specific interrogatory.

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

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

28. Whenever any request herein, in whole or in part, calls for information already supplied by plaintiff in answer to another one or more of these requests, or in answer to prior requests served in one of these actions before consolidation, or in response to any request by HMR in an action that is part of this multidistrict proceeding, you need not repeat information already supplied, provided that you clearly indicate in your answer (a) the portion of the request for which you have already supplied the information called for, and (b) the specific answer to the specific request (or subpart thereof) in which you have already supplied the information.

INTERROGATORIES

1. Identify all plans through which you paid pharmacies in the State of Michigan for Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions at any time during the period January 1996 to present. For each such plan:

a. Identify the plan and its type (e.g., HMO, PPO, IPA, indemnity, etc.).

b. For each plan identified in (a.), identify the entity(ies) that provide prescription benefit services under that plan.

c. Identify any other health benefit plans under which you provide prescription benefit services.

Response:

2. For each plan identified in your response to Interrogatory Number 1, provide the name and address of each group that purchases insurance benefits under the plan. Separately, for each such group and plan:

a. state the number of members for each calendar month January 1996 to present;

b. state the membership turnover percentage for each month January 1996 to present;

c. describe all copayments, deductibles, and coverage limits applicable to prescription drug purchases for which members are responsible, and describe

all changes in copayment and deductible amounts and coverage limits during the period January 1996 to present:

d. state the copayment amounts for each prescription, by drug type, including but not limited to, brand name versus generic, formulary versus non-formulary, designated versus non-designated, or any other categorization that requires a different copayment, and describe any changes in required copayments during the period January 1996 to present;

e. state separately for each drug (by dosage and pill count) the co-pay amounts for which individual plan participants were responsible for purchases of Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions, and describe all changes in such co-pay amounts during the period January 1996 to present.

Response:

3. For each plan identified in your response to Interrogatory Number 1, state the number of members who are not a part of any group, including but not limited to, self-employed individuals and individuals purchasing insurance under COBRA provisions, and the number of those members who purchase prescription drug benefits through their plan. For each such member:

a. describe all copayments, deductibles, and coverage limits applicable to prescription drug purchases for which members are responsible, and describe

all changes in copayment and deductible amounts and coverage limits during the period January 1996 to present;

b. state the copayment amounts for each prescription, by drug type, including but not limited to, brand name versus generic, formulary versus non-formulary, designated versus non-designated, or any other categorization that requires a different copayment, and describe any changes in required copayments during the period January 1996 to present:

c. state separately for each drug (by dosage and pill count) the co-pay amounts for which individual plan participants were responsible for purchases of Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions, and describe all changes in such co-pay amounts during the period January 1996 to present.

Response:

4. Identify all pharmacies in the State of Michigan that you paid for Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions at any time during the period January 1996 to present. For each such pharmacy:

a. If the pharmacy was not a participating pharmacy during the entire period January 1996 to present for each of the plans identified in your response to Interrogatory Number 1, identify the plans and time periods for which the pharmacy was approved.

b. State separately for each drug (by dosage and pill count), for each plan, for each group, and for each calendar month January 1996 to present, the total amount you paid to the pharmacy for Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions and the total number of such prescriptions.

c. State separately by plan and group, for each type of drug (as described in Interrogatory Numbers 2(d) and 3(b)), the formula used for determining the amount paid to the pharmacy and describe all changes in this formula occurring during the period January 1996 to present.

d. Describe all payments you received from the pharmacy and explain the reason(s) for such payment.

Response:

5. Identify all drug formularies used in connection with any of the plans identified in your response to Interrogatory Number 1 at any time during the period January 1996 to present. For each such formulary:

a. Identify the plan(s) and group(s) for which the formulary is used.

b. Describe all categories into which prescription drugs are grouped, including categories of drug types and categories used for determining co-payment or reimbursement amounts for individual participants and/or payments to pharmacies.

c. Describe the process used for determining the drugs to be included in the formulary.

d. If a committee determines the composition of the formulary, identify the name of the committee, and the committee members.

e. Describe how the formulary is used in determining co-payments by or reimbursements to individual participants for prescription drugs purchased under each plan for each group identified in your response to Interrogatory Number 2 and for each member identified in your response to Interrogatory Number 3.

f. Describe how the formulary is used in determining payments to pharmacies under each plan for prescription drugs the pharmacy dispensed.

g. State whether Cardizem® CD has been listed on the formulary and, if so, identify all category(ies) in which Cardizem® CD has been included.

h. State whether Cartia XT has been listed on the formulary and, if so, identify all category(ies) in which Cartia XT has been included.

i. If your responses to the above Interrogatory sub-parts are not applicable to the entire time period January 1996 to present, describe all changes occurring during that period.

Response:

6. Identify all drug formulary exclusion lists used in connection with the plans identified in your response to Interrogatory Number 1 at any time during the period January 1996 to present. For each such formulary exclusion list:

a. Identify the plan(s) and group(s) for which the formulary exclusion list is used.

b. Describe the process used for determining the drugs to be included on the formulary exclusion list.

c. If a committee determines the composition of the formulary exclusion list, identify the name of the committee, and the committee members.

d. Describe how the formulary exclusion list is used in determining co-payments by or reimbursements to members for prescription drugs purchased under each plan.

e. Describe how the formulary exclusion list is used in determining payments to pharmacies under each plan for prescription drugs dispensed, including circumstances under which drugs on the exclusion list are eligible or not eligible for payment or reimbursement.

f. State whether Cardizem® CD been included on the formulary exclusion list.

g. State whether Cartia XT been included on the formulary exclusion list.

h. If your responses to the above Interrogatory sub-parts are not applicable to the entire time period January 1996 to present, describe all changes occurring during that period.

Response:

7. Describe all contracts, agreements, or arrangements with HMRI, Andrx, and/or other manufacturers of anti-hypertensive drugs relating to any discounts, dating, rebates, bundling, or other promotions for any anti-hypertensive drug.

Response:

8. Identify all payments, credits or rebates you received from HMRI, Andrx, and/or other manufacturers of antihypertensive drugs, if any, by month or quarter, during the period January 1996 to present and state the reasons such payments were made.

Response:

9. Describe all contracts, agreements, or arrangements with wholesalers or distributors of anti-hypertensive drugs relating to any discounts, rebates, bundling, or other promotions for any anti-hypertensive drug received during the period January 1996 to present.

Response:

10. Identify all payments, credits or rebates you received from any wholesaler or distributor of anti-hypertensive drugs, if any, by month or quarter, during the period January 1996 to present and state the reasons such payments were made.

Response:

11. State whether you have acted as a named plaintiff in other class litigation and, if so, describe the prior class litigation, including the issue(s) involved, the defendant(s), and outcome.

Response:

12. Identify all managed-care "third party payors" (including self-funded employers), as described in paragraph 7 of your Amended Complaint, which paid pharmacies in the State of Michigan for Cardizem® CD and Cartia XT dispensed pursuant to doctors' prescriptions at any time during the period January 1996 to present.

13. With respect to each person who will or may testify (in person or by affidavit, report or declaration) as a non-expert witness in this action in support of plaintiffs' motion for class certification, identify such person and describe in detail the subject matter of his or her testimony.

Response:

d. to share a fee in this action with any person not a member of plaintiff's counsel's firm.

Response:

17. Describe your counsel's experience in class action litigation and also state:

a. The full caption of every case in the past five years in which your counsel has represented members of a plaintiff class. If the full caption is unavailable, state the name of the case and the court in which it was filed, as well as the date of filing and case number; and

b. The full caption of every case in the past five years in which your counsel has represented a party either asserting or defending against a claim arising under either state or federal antitrust laws.

Response:

SOLOMON, ZAUDERER, ELLENHORN
FRISCHER & SHARP

By: _____

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Attorneys for Defendant
Andrx Pharmaceuticals, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Southern Division

IN RE CARDIZEM CD ANTITRUST LITIGATION	MASTER FILE NO. 99-MD-1278 MDL DOCKET NO. 1278
THIS DOCUMENT RELATES TO: 98-CV-74043	Hon. Nancy G. Edmunds

ANDRX'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF AETNA U.S. HEALTHCARE, INC.

Defendant Andrx Pharmaceuticals, Inc. ("Andrx"), pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests that plaintiff Aetna U.S. Healthcare, Inc. ("Aetna") produce documents for inspection and copying, within 30 days, in response to the requests set forth below, at the offices of Solomon, Zauderer, Ellenhorn, Frischer & Sharp, 45 Rockefeller Plaza, New York, New York 10111..

DEFINITIONS AND INSTRUCTIONS

The definitions and instructions included in Andrx's First Set of Interrogatories to Plaintiff Aetna U.S. Healthcare, Inc. apply to these requests. Whenever any request herein, in whole or in part, calls for information already supplied by plaintiff in answer to another one or more of these requests, or in answer to prior requests served in one of these actions before consolidation, or in response to any request by HMR in an action that is part of this multidistrict proceeding, you need not repeat information already supplied, provided that you clearly indicate in your answer (a) the portion of the request for which you have already supplied the information called for, and (b) the

specific answer to the specific request (or subpart thereof) in which you have already supplied the information.

DOCUMENT REQUESTS

1. With respect to each of the plans identified in your response to Interrogatory Number 1, and for the time period January 1996 to present:

SAME AS INMCI #1

a. all plan documents describing benefits and exclusions under the plan;

b. all group policies and group agreements applicable to the plan;

c. all brochures, booklets, mailings, advertisements, and marketing material which describe the benefits and exclusions under the plan;

d. all brochures, booklets, mailings, advertisements, and marketing material which describe co-payments, co-insurance and deductibles applicable to prescription drug purchases under the plan;

e. all documents evidencing or concerning changes in co-payment, co-insurance and deductible amounts applicable to prescription drug purchases under the plan;

f. all documents evidencing or concerning co-payment, co-insurance or deductible amounts for which individual plan participants were responsible in connection with purchases of Cardizem® CD, Cartia XT, and other generic versions of Cardizem® CD dispensed pursuant to doctors' prescriptions during the period January 1996 to present.

2. With respect to each pharmacy identified in your response to Interrogatory Number 4, and for the time period January 1, 1996 to present:

SAME AS INMCI #1

a. all documents evidencing or relating to the enrollment of the pharmacy as a participating pharmacy;

b. all documents evidencing or relating to your agreement with the pharmacy;

c. all documents evidencing or relating to any termination of your agreement with the pharmacy or any disenrollment of the pharmacy as a participating pharmacy;

d. all documents evidencing or relating to any changes in your agreement with the pharmacy;

e. all documents evidencing or relating to payments you made to the pharmacy for Cardizem® CD, Cartia XT, and other generic versions of Cardizem® CD dispensed pursuant to doctors' prescriptions;

f. all documents evidencing or discussing the formula(s) used for computing such payments, including but not limited to, mailings or other communications with pharmacies concerning the formula for calculating payments to the pharmacy for each type of drug and all changes in such formulas;

g. all documents evidencing or discussing any payments you received from the pharmacy.

3. All documents comprising the drug formularies identified in your response to Interrogatory Number 5.

4. For each drug formulary identified in your response to Interrogatory Number 5, and for the period January 1, 1996 to present:

a. all documents describing or relating to your policies or procedures for creating, maintaining, promulgating, and/or updating the formulary, including but not limited to, procedures for determining the drugs to be included in the formulary;

b. all documents describing or relating to any committee responsible for any aspect of creating, maintaining, promulgating, and/or updating the formulary;

c. all documents describing or relating to the methods for using the formulary to determine co-payments, co-insurance, or deductibles to be paid by individual plan participants, or reimbursements to be paid to individual plan participants or pharmacies, for each plan, for each group identified in your response to Interrogatory Number 2, and for each member identified in your response to Interrogatory Number 3;

d. all documents describing or relating to the inclusion in or exclusion from the formulary of Cardizem® CD;

e. all documents describing or relating to the inclusion in or exclusion from the formulary of Cartia XT and other generic versions of Cardizem® CD.

5. All documents comprising the drug formulary exclusion lists identified in your response to Interrogatory Number 6.

6. With respect to each formulary exclusion list identified in your response to Interrogatory Number 6, and for the period January 1, 1996 to present:

a. all documents describing or relating to your policies or procedures for creating, maintaining, promulgating, and/or updating the formulary exclusion

list, including but not limited to, procedures for determining the drugs to be included in the formulary exclusion list;

b. all documents describing or relating to any committee responsible for any aspect of creating, maintaining, promulgating, and/or updating the formulary exclusion list;

c. all documents describing or relating to the methods for using the formulary exclusion list to determine co-payments, co-insurance, or deductibles to be paid by individual plan participants, or reimbursements to be paid to individual plan participants or pharmacies;

d. all documents describing or relating to the inclusion of Cardizem® CD on the formulary exclusion list;

e. all documents describing or relating to the inclusion of Cartia XT and other generic versions of Cardizem® CD on the formulary exclusion list.

7. All documents evidencing or relating to studies, analyses, or reports on the adequacy of the following drugs as substitutes for Cardizem® CD, or the effect of any such substitution on your coverage of drug costs under any plan or under plans generally:

a. Cardizem®;

b. generic versions of Cardizem®;

c. Cardizem® SR;

d. generic versions of Cardizem® SR;

e. Cartia XT;

f. other generic versions of Cardizem® CD;

g. Dilacor;

h. Tiazac;

i. branded calcium channel blockers;

j. generic calcium channel blockers.

8. All documents evidencing or relating to studies, analyses, or reports regarding the use and purchase of generic drugs generally, including prescribing practices of physicians as those practices relate to generic drugs.

9. All documents evidencing or relating to studies, analyses, or reports regarding methods or practices for controlling or reducing the cost of prescription drugs.

10. All documents evidencing or relating to contracts, agreements, or arrangements with HMRI, Andrx, and/or other manufacturers of anti-hypertensive drugs relating to any discounts, rebates, bundling, or other promotions for any anti-hypertensive drug.

11. All documents evidencing or relating to payments, credits, or rebates you received from HMRI, Andrx, and/or other manufacturers of anti-hypertensive drugs, if any, during the period January 1996 to present.

12. All documents evidencing or relating to contracts, agreements, or arrangements with wholesalers or distributors of anti-hypertensive drugs relating to any discounts, rebates, bundling, or other promotions for any anti-hypertensive drug.

13. All documents evidencing or relating to payments, credits, or rebates you received from wholesalers or distributors of anti-hypertensive drugs, if any, during the period January 1996 to present.

14. All documents evidencing or relating to communications between you and any other third party payor concerning Cardizem® CD, Cartia XT, or other generic versions of Cardizem® CD

15. All documents that reflect or refer to any communication you or your representatives have had with any actual or potential member of the proposed Class.

16. All documents which evidence or relate to any communications, transactions, or dealings between you (or anyone acting on your behalf) and any of the defendants in this action (or any of their employees or agents) on any subject related to the claims asserted in this action.

17. All documents that reflect, refer, or relate to your employment or retention of counsel in this action including but not limited to any arrangement:

a. to pay a fee, including a legal fee, to anyone with respect to this action;

b. with respect to who will advance and who is responsible for payment of the costs and expenses incurred in connection with the prosecution of this action;

c. with respect to who will share in the recovery, if any, realized in this action;

d. to share a fee in this action with any person not a member of the plaintiff's counsel's firm.

18. All documents relating to or reflecting any communication between you and any other person or entity concerning Cardizem® CD, Cartia XT, or other generic versions of Cardizem® CD

19. All documents identified in your response to Andrx's First Set of Interrogatories not previously requested.

SOLOMON. ZAUDERER. ELLENHORN
FRISCHER & SHARP

By: _____

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Attorneys for Defendant
Andrx Pharmaceuticals, Inc.

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CARDIZEM CD ANTITRUST LITIGATION

This Document Relates To:

Betnor, Inc., et al. v. Hoechst Aktiengesellschaft, et al., No. 99-C-73422

Aetna U.S. Healthcare, Inc., et al. v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73412

Galloway, Inc., et al. v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73871

Aetna U.S. Healthcare, Inc. v. Hoechst Aktiengesellschaft, et al., No. 99-CV-74262

Charles Zuccarini, et al. v. Hoechst Aktiengesellschaft, et al., No. 98-CV-74043

Aetna U.S. Healthcare, Inc. v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73239

Sunshine Pharmacy of New York, Inc. v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73845

Joseph D'Esposito, et al. v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73713

Shirlean Glover, et al. v. Hoechst Aktiengesellschaft, et al., No. 99-CV-74377

Eugenia Wynne Sams v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73190

Larry S. Sizemore v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73345

Albert Eirich v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73981

United Wisconsin Services, Inc., et al. v. Hoechst Aktiengesellschaft, et al., No. 99-CV-73666

Master File No. 99-MD-1278
MDL No. 1278

Honorable Nancy G. Edmunds

AFFIDAVIT OF EDWARD S. CURRAN, JR. IN SUPPORT OF AETNA U.S. HEALTHCARE, INC.'S OPPOSITION TO HOECHST MARION ROUSSEL, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INTERROGATORY ANSWERS REGARDING AETNA FORMULARIES

I, Edward S. Curran, Jr., swear and depose as follows:

1. I am employed by Aetna U.S. Healthcare, Inc. ("Aetna") as Head of Formulary Management. I submit this Affidavit in support of Aetna's opposition to defendant Hoechst Marion Roussel, Inc.'s ("HMRI") motion to compel. I have personal knowledge of the facts set forth below, and could and would testify thereto if called to do so.

2. In the course of its business, Aetna creates lists of certain prescription drugs out of categories of prescription drugs used for certain indications. These lists are called formularies. Aetna's formularies are lists of prescription medications generally covered under Aetna's pharmacy benefit plans, and include brand-name and generic drugs that have been approved by the FDA as safe and effective. Most drugs that appear on the formulary are subject to manufacturer volume discount arrangements.

3. The drugs listed on Aetna's formularies are Aetna's preferred drugs for certain indications: *e.g.*, Aetna prefers that members' doctors prescribe formulary drugs rather than other drugs in the same category, if the doctor determines the formulary drug would be appropriate. Aetna makes its formularies available to its affected members and providers by printed mailer, and *via* its web-site (which is also open to the public), for use in consultation with a member's doctor.

4. The process by which Aetna generates its formularies, including the way the formularies are created, determined, maintained, and utilized and the identity of members of the Pharmacy & Therapeutics Committee that is involved in the creation of the formularies for Aetna, is a trade secret. The members of the Pharmacy & Therapeutics Committee and all others involved in the creation of the formularies treat the process as confidential information. These individuals are bound by the Aetna Code of Conduct, which addresses the confidentiality of proprietary information.

5. Aetna has spent years refining the process by which it creates its formularies. Aetna has always kept all information regarding creation of its formularies secret.

6. If defendants, or other drug manufacturers, learned of the process by which Aetna decides to put drugs on its formularies, these drug manufacturers could use that information to gain a competitive advantage over Aetna, to Aetna's irreparable harm. Among other things, drug manufacturers could use the information to negotiate more favorable pricing treatment regarding placement of their drugs on Aetna's formularies.

7. Aetna's formularies give Aetna a competitive advantage over other health care benefit organizations, which try to create similar lists, and over other competitors of Aetna. Disclosure of Aetna's process of creating its formularies to other health care organizations and other competitors would irreparably harm Aetna in its business. Such competitors could imitate Aetna's formulary lists without expending the time, money and effort Aetna expended in creating its process of making formularies. Thus, such competitors could compete with Aetna for its business at substantially less cost to themselves.

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

Executed this 19th day of June, 2000, at WALTHAM, MASSACHUSETTS.

EDWARD S. CURRAN JR.

State of MASS.)
) ss:
County of MIDDLESEX)

I, EDWARD S. CURRAN, JR., being duly sworn, depose and say that the facts alleged in the above AFFIDAVIT OF EDWARD S. CURRAN, JR. IN SUPPORT OF AETNA U.S. HEALTHCARE, INC.'S OPPOSITION TO HOECHST MARION ROUSSEL, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INTERROGATORY ANSWERS REGARDING AETNA FORMULARIES is true according to the best of my knowledge, information and belief.

Petitioner
EDWARD S. CURRAN JR.

Subscribed and sworn to before me this 19th day of June, 2000.

Notary Public

Anne Marie Fuoteau

My commission expires: 1/26/07

In the Matter of

HOECHST MARION ROUSSEL, INC.
a corporation,

Docket No. 9293

CARDERM CAPITAL L.P.,
a limited partnership,

and

ANDRX CORPORATION,
a corporation.

ORDER GRANTING NON-PARTY WITNESS AETNA U.S. HEALTHCARE, INC.'S MOTION FOR A PROTECTIVE ORDER PURSUANT TO 16 C.F.R. §3.31(c)(2)&(d)

On September 25, 2000, non-party witness Aetna U.S. Healthcare, Inc. filed a motion for a protective order denying any further discovery from it to respondent Hoechst Marion Roussel, Inc. in this matter. Having reviewed all arguments submitted by Aetna U.S. Healthcare, Inc. and Hoechst Marion Roussel, Inc., it is hereby ORDERED that Aetna U.S. Healthcare, Inc.'s motion is GRANTED. Aetna U.S. Healthcare, Inc. shall not produce any further discovery to respondent Hoechst Marion Roussel, Inc. in this matter.

IT IS SO ORDERED.

Dated: _____, 2000

Administrative Law Judge D. Michael Chappell

In the Matter of

HOECHST MARION ROUSSEL, INC.
a corporation,

CARDERM CAPITAL L.P.,
a limited partnership,

and

ANDRX CORPORATION,
a corporation.

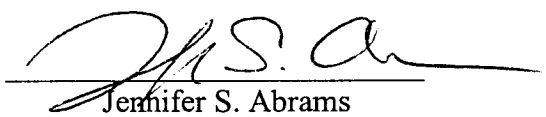
Docket No. 9293

To: Administrative Law Judge D. Michael Chappell

NOTICE OF APPEARANCE OF JENNIFER S. ABRAMS
PURSUANT TO 16 CFR § 4.1(d)

I, Jennifer S. Abrams, declare that I am a member in good standing of the bars of the States of California, (bar no. 178203) and Tennessee (bar no. 17700), am admitted to practice before the Supreme Courts of California and Tennessee and, *inter alia*, the U.S. District Court for the Northern District of California, am not a former member or employee of the Commission, and am therefore eligible to practice before the Commission. I submit this Notice pursuant to 16 C.F.R. §4.1(d).

Dated: September 25, 2000



Jennifer S. Abrams

UNITED STATES OF AMERICA
BEFORE THE 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

CERTIFICATE OF SERVICE

I, TYLER KELLY, an employee of Berman, DeValerio, Pease & Tabacco, P.C., 425 California Street, Suite 2025, San Francisco, CA 94104, hereby certify that on July 25, 2000, I served true copies of the following documents:

1. NON-PARTY WITNESS AETNA U.S. HEALTHCARE, INC.'S MOTION FOR A PROTECTIVE ORDER PURSUANT TO 16 C.F.R. §3.31(c)(2)&(d);

2. AFFIDAVIT OF JENNIFER S. ABRAMS IN SUPPORT OF NON-PARTY WITNESS AETNA U.S. HEALTHCARE, INC.'S MOTION FOR A PROTECTIVE ORDER PURSUANT TO 16 C.F.R. §3.31(c)(2)&(d);

3. ORDER GRANTING NON-PARTY WITNESS AETNA U.S. HEALTHCARE, INC.'S MOTION FOR A PROTECTIVE ORDER PURSUANT TO 16 C.F.R. §3.31(c)(2)&(d);

4. NOTICE OF APPEARANCE OF JENNIFER S. ABRAMS PURSUANT TO 16 C.F.R. §4.1(d)

on the following parties:

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission, Room 104
600 Pennsylvania Ave., N.W.,
Washington, D.C. 20580
Fax: 202-326-2427
(two courtesy copies)

Richard Feinstein
Director For Healthcare Services Office
Federal Trade Commission
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1140 19th Street, N.W.
Washington, D.C. 20036
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by placing same in sealed envelopes, affixing proper first class postage, and depositing them in the United States Mail at San Francisco, California.

Copies of the above-described documents were also sent via facsimile transmission to each recipient at the fax numbers shown above.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed at San Francisco, California, on July 25, 2000.

Tyler Kelly