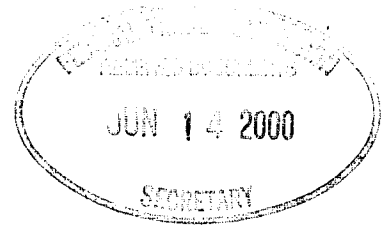


UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



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In the Matter of : Docket No. 9293

HOECHST MARION ROUSSEL, INC., :  
a corporation, : **MOTION OF PROSKAUER ROSE**

CARDERM CAPITAL L.P., : **LLP TO QUASH SUBPOENA**  
a limited partnership, : **SERVED BY ANDRX**

and : **CORPORATION**

ANDRX CORPORATION, :  
a corporation. :

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PRELIMINARY STATEMENT

Proskauer Rose LLP ("Proskauer") moves to quash the subpoena served on it in this proceeding by Andrx Pharmaceuticals ("Andrx"), dated May 12, 2000 (the "Subpoena"), for the sole reason that Andrx has been unwilling to consent to an order assuring Proskauer, or its client Biovail Corporation International ("Biovail"), that the documents at issue, all of which have already been obtained by Andrx in multi-district litigation pending in the Eastern District of Michigan (the "MDL"), will receive the same level of confidential treatment as is required under the protective order in the MDL.

Biovail and Andrx are direct competitors — both are now manufacturing generic versions of Cardizem CD. Certain highly sensitive information that Andrx has agreed, in the

MDL, that its business people may not see, should not now become available simply because Andrx wants the documents in this proceeding as well as the MDL. Without an order providing that the small portion of the documents afforded highly confidential, attorneys eyes only protection in the MDL will be similarly protected in this proceeding, Proskauer cannot consistent with its duties to Biovail, consent to the use of the documents here.

For this reason, unless and until an order is entered requiring Andrx never to provide any of the highly confidential, attorneys eyes only documents to non-attorneys, Proskauer cannot voluntarily comply with the Subpoena as to do so would be a breach of its obligations to its client, which is rightfully concerned about providing highly sensitive, commercially valuable materials to business people at Andrx, a direct competitor. Accordingly, Proskauer respectfully requests that the Commission quash Andrx's Subpoena.

#### STATEMENT OF FACTS

The facts on which this memorandum are based are set forth in the accompanying declaration of John Siegal, dated June 12, 2000 (the "Siegal Decl."). The exhibit numbers cited in this memorandum refer to the exhibits to the Siegal Declaration.

#### The Subpoena

The Subpoena was served on Proskauer on May 26, the Friday afternoon before the Memorial Day weekend. The first request contained in the Subpoena calls for "All documents Biovail produced in the action captioned Biovail Corporation International v. Hoechst Aktiengesellschaft, et al., N.J. No. 98-1434 (FSH)(SRC)" (the "New Jersey Action"). To date, on behalf of its client Biovail, Proskauer has produced approximately 450,000 documents in the New Jersey Action. To the extent that the Subpoena calls for any documents beyond the 450,000

that were produced on Biovail's behalf in the New Jersey Action, any such documents in Proskauer's possession would necessarily arise from the firm's work for Biovail in the New Jersey Action. As such, they are work-product, and Proskauer would object to their production on that basis.

#### The MDL Production

In the MDL, Andrx served a notice on its co-defendant, Hoechst Marion Roussel, Inc. ("Hoechst"), seeking all of the documents that had been produced to Hoechst by Biovail in the New Jersey Action. Andrx moved to compel compliance with that request. Biovail did not oppose the motion, which was granted, and Andrx has obtained Biovail's full New Jersey document production from Hoechst.

#### The MDL And New Jersey Protective Orders

The protective order governing discovery in the MDL provides that:

in order to permit the parties to provide additional protection for a limited number of documents which may contain particularly sensitive trade secrets or confidential research, development or commercial information, parties may designate documents or parts of documents as "Highly Confidential Information" by stamping the document with that legend. It is anticipated that any documents which may be designated as Highly Confidential Information would contain such sensitive trade secrets or confidential research, development or commercial information as to justify such designation, and the parties intend to use this particularly restrictive designation only for a limited number of documents.

(Exh. 3, ¶ 4.) The MDL protective order further provides that "Highly Confidential Information may be used by any person receiving it for no purpose other than prosecution, defense or settlement of" the MDL (id., ¶ 5), and that if a producing party does not agree to waive the above protection for Highly Confidential Information, it may be shown to a non-lawyer employee of a party only by order of the court in which the MDL is pending. (Id., ¶ 6.)

The Stipulated Protective Order entered in the New Jersey Action contains similar provisions. (Exh. 4, ¶¶ 2, 13.) Thus, when Biovail obtains discovery of Andrx documents, it will be subject to the very restrictions that Andrx refuses to accept for itself in this proceeding.

When Proskauer's client, Biovail, determined not to oppose Andrx's motion to compel in the MDL, thereby enabling Andrx to use Biovail's documents produced in the New Jersey Action in the MDL, Biovail did so in reliance on the guarantee under the protective order that the documents would only be used in the MDL and would always be afforded attorneys eyes only when they contain Highly Confidential Information.

Andrx's Refusal To Agree To Attorneys Eyes Only Confidentiality

In response to the Subpoena, Proskauer advised counsel for Andrx that it would agree to Andrx's use of the documents it has already obtained in the MDL, provided that Andrx is ordered to ensure that the documents will always be afforded the same level of confidentiality required under the protective orders in the MDL and New Jersey Actions. The protective order in this proceeding provides no category of protection for highly confidential information, however, nor does it require that such documents never be provided to non-lawyer personnel at the parties.

Andrx, through counsel, has declined to consent to the order Proskauer requested. Rather, Andrx's counsel has stated that currently under the confidentiality order in this proceeding, Andrx's only client representative entitled to see documents is an in-house corporate attorney. (Exh. 2, ¶ 5.) Andrx has refused, however, to agree to the order requested by Proskauer that it will not at any point seek to change its designated corporate representative to a non-attorney. Therefore, Proskauer cannot consent to the use of the documents in this

proceeding with a guarantee by Andrx that the highly confidential documents will always be afforded attorneys eyes only protection.

Andrx has not provided Proskauer with any explanation for its refusal to agree to the terms Proskauer seeks, other than its unwillingness to consent to an order that will be binding at all times throughout the pendency of this proceeding. Nor has Andrx provided any reason that it needs to reserve the option of being able at some later time to seek to provide the documents to non-lawyers at Andrx, and Proskauer is aware of no reason that the option for Andrx to seek to provide the documents to its business people would ever be reasonable or necessary.

#### ARGUMENT

As Biovail's counsel, Proskauer is duty bound to its client to seek to protect its highly confidential, proprietary information from any disclosure to business people at its direct competitor, Andrx. The protective orders in the MDL and the New Jersey Action provide reasonable assurances that have permitted the production of highly confidential information in a manner that it can be accessed only by attorneys for Andrx.

The protective order in this proceeding does not provide similar protection; thus, Proskauer cannot consent to Andrx's use of the documents it obtained in the MDL until it an order is entered providing that Andrx will never disclose highly confidential information to non-lawyers within Andrx.

The protective order in this proceeding could easily suffice to protect Biovail's (and, therefore, Proskauer's) legitimate confidentiality concerns simply through an order providing that Andrx may not seek to switch its client representative for purposes of the Proskauer documents to a non-lawyer. For some reason, however, Andrx refuses to consent to

such a simple and sensible order. As a result, Proskauer is not in a position to consent to the use of the documents Andrx seeks, and the Subpoena should be quashed.

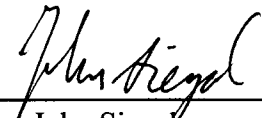
CONCLUSION

For the reasons set forth above, Proskauer respectfully requests that the Commission quash the subpoena issued by Andrx.

Dated: June 12, 2000

Respectfully Submitted,

PROSKAUER ROSE LLP

By:   
John Siegal

1585 Broadway  
New York, New York 10036  
(212) 969-3342  
Pro Se

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

In the matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation,

CARDERM CAPITAL L.P.,  
a limited partnership,

and


ANDRX CORPORATION,  
a corporation.

Docket No. 9293

**STATEMENT OF JOHN SIEGAL PURSUANT  
TO SECTION 3.22(F) OF THE CODE OF FEDERAL REGULATIONS**

I am associated with Proskauer Rose LLP (“Proskauer”), counsel for Biovail Corporation International. I submit this statement pursuant to §3.22(f) of the Code of Federal Regulations in connection with Proskauer's motion to quash the subpoena, dated May 12, 2000, directed to Proskauer by Andrx Corporation (“Andrx”). Over the past several weeks, I and my colleague, Francis D. Landrey, have engaged in several conversations and correspondence with Solomon, Zauderer, Ellenhorn, Frischer & Sharp, counsel for Andrx, in a good faith effort to resolve by agreement the issues raised by Proskauer’s motion. During those discussions, we were unable to reach agreement with counsel for Andrx resolving the objections to the subpoena.

Dated: June 12, 2000.

  
\_\_\_\_\_  
JOHN SIEGAL

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

In the matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation,

CARDERM CAPITAL L.P.,  
a limited partnership,

and

ANDRX CORPORATION,  
a corporation.

Docket No. 9293

**DECLARATION IN SUPPORT OF  
MOTION BY PROSKAUER ROSE  
LLP TO QUASH SUBPOENA SERVED  
BY ANDRX CORPORATION**

JOHN SIEGAL, a member of the Bar of the State of New York, declares under penalty of perjury:

1. I am associated with Proskauer Rose LLP ("Proskauer"), counsel to Biovail Corporation International ("Biovail"), a non-party to the above-captioned proceeding. I make this declaration in support of Biovail's motion to quash the subpoena, dated May 12, 2000 (the "Subpoena"), issued in this proceeding by Andrx Corporation ("Andrx").

2. The following documents are annexed as exhibits:

Exhibit 1 — A copy of the Subpoena;

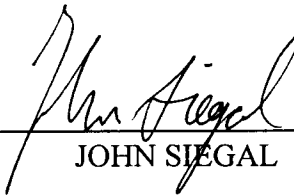
Exhibit 2 — A copy of the Protective Governing Discovery Material in this proceeding signed by Administrative Law Judge Michael D. Chappell on April 28, 2000;

Exhibit 3 — A copy of the Confidentiality Order in In Re Cardizem CD Antitrust Litigation, MDL No. 1278 (NGE) ("MDL Action"), in the United States District Court, District of Michigan, entered by United States District Judge Nancy G. Edmunds on January 8, 1999; and



Exhibit 4 — A copy of the Stipulated Protective Order in Biovail Corporation International v. Hoechst AG, et al., Civil Action No. 98-1434 (FSH)(SRC), in the United States District Court, District of New Jersey, signed by United States Magistrate Judge Stanley R. Chesler on August 25, 1998, as modified on November 23, 1998 and August 9, 1999.

I declare under penalty of perjury that the foregoing is true and correct. Executed  
on June 12, 2000.

  
\_\_\_\_\_  
JOHN SIEGAL



# SUBPOENA AD TESTIFICANDUM

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

<p>1. TO  <b>Proskauer Rose LLP</b>          By one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf concerning the subject matter of this action and/or of the subject matter of the documents described in Exhibit A          1585 Broadway, New York, NY 10036</p>	<p>2. FROM    <b>UNITED STATES OF AMERICA          FEDERAL TRADE COMMISSION</b></p>
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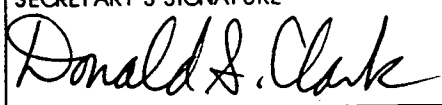
This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF HEARING    <b>Solomon, Zauderer, Ellenhorn,          Frischer &amp; Sharp</b>          45 Rockefeller Plaza          New York, New York 10111</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE    <b>Respondent Andrx Corporation</b></p> <hr/> <p>5. DATE AND TIME OF HEARING OR DEPOSITION    <b>June 16, 2000 at 10:00 a.m.</b></p>
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6. SUBJECT OF PROCEEDING

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

<p>7. ADMINISTRATIVE LAW JUDGE    <b>The Honorable D. Michael Chappell</b>    <b>Federal Trade Commission          Washington, D.C. 20580</b></p>	<p>8. COUNSEL REQUESTING SUBPOENA    <b>Solomon, Zauderer, Ellenhorn,          Frischer &amp; Sharp</b>          45 Rockefeller Plaza          New York, New York 10111  <b>Counsel for Respondent Andrx Corp.</b></p>
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<p>DATE ISSUED    <b>MAY 12 2000</b></p>	<p>SECRETARY'S SIGNATURE    </p>
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### GENERAL INSTRUCTIONS

#### APPEARANCE

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

#### MOTION TO LIMIT OR QUASH

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

#### TRAVEL EXPENSES

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

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

**RETURN OF SERVICE**

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*on the person named herein on:*

\_\_\_\_\_  
(Month, day, and year)

\_\_\_\_\_  
(Name of person making service)

\_\_\_\_\_  
(Official title)

## EXHIBIT A

### DEFINITIONS AND INSTRUCTIONS

1. As used here, the term "Biovail" shall refer to Biovail International Corporation, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, consultants (including public relations consultants and Anne George, John Grimaldi, Michael Sitrick, Steven Seiler or Sitrick and Company), controlling shareholders (and any entity controlled by any such controlling shareholder), attorneys or law firms, or other persons acting for or on behalf of any of them.

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

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

4. As used herein, the term "Proskauer" shall refer to Proskauer Rose LLP, including its partners, employees, agents, consultants or other person action for or on behalf of any of them.

5. As used herein, the term "Cleary" shall refer to Cleary, Gottlieb, Steen & Hamilton including its partners, employees, agents, consultants or other person action for or on behalf of any of them.

6. As used herein, the term "Keller and Heckman" shall refer to Keller and Heckman LLP, including its partners, employees, agents, consultants or other person action for or on behalf of any of them.

7. As used herein, the term "Verner, Liipfert," shall refer to Verner, Liipfert, Bernhard, Mcpherson and Hand, Chartered, including its partners, employees, agents, consultants or other person action for or on behalf of any of them.

8. As used herein, the term "Teva" shall refer to Teva Pharmaceutical Industries, Ltd. and each of its predecessors, successors, groups, divisions, subsidiaries (including without limitation Teva Pharmaceuticals USA) and affiliates and each of their present or former officers, directors, employees, agents, consultants, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

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

10. As used herein, the term "Mylan" shall refer to Mylan Laboratories, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, consultants,

controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

11. As used herein, the term "Forest" shall refer to Forest Laboratories, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, consultants, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

12. As used herein, the term "Direct Purchaser" shall refer to a purchaser who buys Cardizem<sup>®</sup> CD directly from HMR.

13. As used herein, the term "Indirect Purchaser" shall refer to a purchaser who buys Cardizem<sup>®</sup> CD from a source other than HMR, whether a wholesaler, retailer or some other source.

14. As used herein, the term "Substitute Cardiovascular Drug" shall mean any branded and/or generic drug which you understand some persons use or may use as a substitute in whole or in part for, or in lieu of, Cardizem<sup>®</sup> CD, including but not limited to therapeutic class.

15. As used herein, the term "person" shall mean any natural person, firm, partnership, corporation, incorporated association, organization, joint venture, cooperative, governmental body or other form of legal entity.

16. The word "document" or "documents" as used herein includes, without limitation, writings and printed matter of every kind and description, correspondence, memoranda, agreements, contracts, photographs, drawings, notes, records (tape, disc or other) or any communication, statements, invoices, purchase orders, records of hearings, reports of decisions of state or federal governmental agencies, telegrams, summaries or

records of telephone conversations, summaries of records of personal interviews, diaries, graphs, reports, notebooks, note charts, plans, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations opinions or reports of consultants, motion picture film, brochures, pamphlets, advertisements circulars, press releases, drafts marginal comments appearing on any document, micro-film, microfiche, computer printouts, programs, tapes, cassettes, disks, magnetic drums, and punch cards, all data stored in computer banks, all nonidentical copies of any item listed above and all other writings of any kind.

17. The word "communication" or "communications" as used herein means any effort to convey information, whether written or oral, recorded or unrecorded, including, but not limited to: (a) speeches and lectures, (b) statements, (c) monologues, (d) dialogues, (e) telephone conversations and conferences, (f) discussions, (g) conferences, (h) debates, (i) arguments, (j) discourses, (k) interviews, (l) conversations, (m) consultations, and (n) information conveyed through documents.

18. As used herein, the term "concerning" means related to, referring to, describing, evidencing or constituting.

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

20. If it is claimed that any document responsive to any request is privileged, work product or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product or other ground for nondisclosure. As to any such document, state: (a) the reason for withholding it or other information relating to it; (b) the author of the documents;

(c) each individual to whom the original or a copy of the document was sent; (d) the date of the documents or oral communication; (e) the general subject matter of the document; and (f) any additional information on which you base your claims of privilege. Any part of an answer to which you do not claim privilege or work product should be given in full.

21. Unless otherwise stated, the use of a verb in any tense shall be construed as the use of the verb in all other tenses as necessary to bring within the scope of the document requests that which might otherwise be construed outside its scope.

22. As used herein, the singular includes the plural and vice versa; the words "and" and "or" shall be both conjunctive and disjunctive; the word "all" means "any and all"; the word "any" means "any and all"; the word "including" means "including without limitation"; the word "he" or any other masculine pronoun includes any individual regardless of sex.

23. In the event that any document required to be identified or produced has been destroyed, lost, discarded or otherwise disposed of, any such document is to be identified as completely as possible, including, without limitation, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

24. Unless otherwise indicated, the time period covered by these interrogatories and document requests is from January 1, 1995 to date.

25. Whenever a document request, in whole or in part, calls for documents already supplied by Biovail in answer to a similar document request served in this action, you need not repeat information already supplied, provided that you clearly indicate in your answer to the document request (a) the portion of the document request for which the information called for has already been supplied by Biovail, and (b) the specific



document request (or subpart thereof) in answer to which Biovail has already supplied the requested documents.

### **SPECIFIC REQUESTS FOR DOCUMENTS**

1. All documents Biovail produced in the action captioned Biovail Corporation International v. Hoechst Aktiengesellschaft, et al., N.J. No. 98-1434 (MTB)(SRC).
2. All documents concerning regulatory approval, or the absence thereof, from any governmental agency, department or organization in the United States, Canada or elsewhere, including any employee, agent or representative thereof, in connection with Biovail manufacturing, developing, producing, licensing, marketing or selling any Substitute Cardiovascular Drug or diltiazem, including but not limited to any New Drug Application (NDA) or Abbreviated NDA (ANDA).
3. All documents concerning any communications between Biovail and any Direct Purchaser or Indirect Purchaser of Cardizem<sup>®</sup> CD, concerning (i) HMR; (ii) Andrx; (iii) Cardizem<sup>®</sup> CD; and/or (iv) Cartia XT.
4. All documents concerning any communications between Biovail and any potential manufacturer of a generic version of Cardizem<sup>®</sup> CD, including but not limited to Faulding Inc., concerning (i) HMR; (ii) Cardizem<sup>®</sup> CD; (iii) Andrx; and/or (iv) Cartia XT.
5. All documents concerning any communications between, on the one hand, Biovail (including its attorneys, public relations contractors (Anne George, John Grimaldi, Michael Sitrick, Steven Seiler, or Sitrick and Company) or other representatives and, on the other hand, any law firm, including but not limited to Lowey, Dannenberg, Benporad & Selinger, P.C., Berman, Devaleno, Pease & Tabacco, Boies & Schiller,

LLP, Niewald, Waldeck & Brown, P.C., Aronovitz & Associates, P.A., Garwin, Bronzaft, Gerstein & Fisher, L.L.P., Calvin, Richardson & Verner, concerning (i) HMR; (ii) Andrx; (iii) Cardizem<sup>®</sup> CD; and/or (iv) Cartia XT.

6. All documents concerning any purported agreement(s) between Andrx and HMR, including, but not limited to, any documents concerning the negotiation, execution, and/or modification of any such agreement(s).

7. All documents concerning Andrx's generic version of Cardizem<sup>®</sup> CD (Cartia XT).

8. All documents concerning any business relationship or proposed business relationship between Biovail and HMR.

9. All documents concerning meetings of the Board of Management, Board of Directors, or Managing Directors of Biovail at which any of the following subjects were raised, discussed or included on the agenda: (i) Cardizem<sup>®</sup> CD; (ii) potential, actual or past competition for Cardizem<sup>®</sup> CD in North America or Canada; (iii) Andrx; and (iv) litigation or governmental investigation concerning generic competition for Substitute Cardiovascular Drugs.

10. All communications between Biovail and the FTC concerning: (i) HMR; (ii) Andrx; (iii) any purported agreements between HMR and Andrx; (iv) Cardizem<sup>®</sup> CD; (v) Andrx's generic version of Cardizem<sup>®</sup> CD or any other generic version of Cardizem<sup>®</sup> CD; (vi) the market for Cardizem<sup>®</sup> CD; or (vii) the 100-day exclusivity period or the Mova decision.

11. All documents constituting communications between Proskauer, Cleary (including George Cary), Keller and Heckman, and Verner, Liipfert (or anyone at

those respective law firms) and any other party, including, without limitation, the FTC or FDA, with respect to (i) HMR; (ii) Andrx; (iii) Cardizem<sup>®</sup> CD; and/or (iv) Cartia XT.

12. All studies, market analyses or other documents concerning any market or submarket for Substitute Cardiovascular Drugs, including, without limitation, those analyses concerning the impact of a generic Cardizem<sup>®</sup> CD.

13. All documents concerning Biovail's actual or anticipated sales, revenues, royalties, or other payments or income from or based on Biovail's actual or planned generic version of Cardizem<sup>®</sup> CD.

14. All documents concerning Biovail's actual or anticipated prices or its policies or practices for setting, marketing or determining prices for Biovail's actual or planned generic version of Cardizem<sup>®</sup> CD.

15. All documents concerning any proposals or plans by Biovail with respect to the actual or anticipated commencement of commercial marketing of Biovail's generic version of Cardizem<sup>®</sup> CD.

16. All documents concerning communications with Sitrick and Company, or any principals, employees, or agents thereof, concerning Cardizem<sup>®</sup> CD or HMR or Andrx.

17. Any agreements ever operative between Biovail and Teva and/or any affiliated entities concerning in whole or in part Cardizem<sup>®</sup> CD or any generic version thereof.

18. All documents and communications concerning any agreements ever operative between Biovail and Teva and/or any affiliated entities concerning in whole or in part Cardizem<sup>®</sup> CD or any generic version thereof.

19. Any agreements ever operative between Biovail and Elan and/or any affiliated entities concerning in whole or in part Adalat or any generic version thereof.

20. All documents and communications concerning any agreements ever operative between Biovail and Elan and/or any affiliated entities concerning in whole or in part Adalat or any generic version thereof.

21. Any agreements ever operative between Biovail and Mylan and/or any affiliated entities concerning in whole or in part Verelan or any generic version thereof.

22. All documents and communications concerning any agreements ever operative between Biovail and Mylan and/or any affiliated entities concerning in whole or in part Verelan or any generic version thereof.

23. Any agreements ever operative between Biovail and Forest and/or any affiliated entities concerning Tiazac or any generic version thereof.

24. All documents and communications concerning any agreements ever operative between Biovail and Forest and/or any affiliated entities concerning Tiazac or any generic version thereof.

25. All documents concerning any agreement or arrangement, concerning which you are aware, involving an innovator or brand name pharmaceutical company, and a generic company, that marketed any form of:

- (a) payment from the brand name company to the generic company; or
- (b) licensing and/or royalty arrangements between the brand name company and the generic company.

26. All documents concerning any investigation by or on behalf of the FTC or any other governmental entity concerning Andrx and/or HMR.

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation,

CARDERM CAPITAL L.P.,  
a limited partnership,

and

ANDRX CORPORATION,  
a corporation.

Docket No. 9293

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

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

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

DEFINITIONS

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

2. "Commission" or "FTC" means the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting or purporting to act on its behalf,

excluding persons retained as consultants or experts for purposes of this Matter.

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

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

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

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

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

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

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

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

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

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

record, tape and other data compilations from which information can be obtained, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.

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

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



confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Discovery Material.

### TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose. The Parties, in conducting discovery from Third Parties, shall attach to such discovery requests a copy of this Protective Order and a cover letter that will apprise such Third Parties of their rights hereunder.
2. Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9293" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen (14) days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."
3. To the extent any such material is made part of this proceeding, all documents heretofore obtained by compulsory process or voluntarily from any Party, regardless of whether

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

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

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

(b) Outside Counsel;

(c) Experts/Consultants;

(d) witnesses or deponents at trial or deposition;

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

(f) court reporters and deposition transcript reporters;

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

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

5. In addition to the above-designated persons, certain named designated

individuals and in-house counsel not to exceed two attorneys per corporate party who do not have day to day business responsibilities shall be provided with access on the condition that each such in-house counsel or designated executive signs a declaration in the form attached hereto as Exhibit "A," which is incorporated herein by reference. For Respondent Carderm, the designated individual is Stephan Petri. For Respondent HMR, the designated individual is Edward Stratemeyer, Vice President and General Counsel. For Respondent Andrx, the designated individual is Scott Lodin, Vice President and General Counsel.

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

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

(b) to return such Confidential Discovery Material to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of the Expert/Consultant's assignment or retention;

(c) to not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

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

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

(a) Disclosure to Experts

If any Party desires to disclose Confidential Discovery Material to any expert who may testify, who is not an FTC employee, and who may have interests in the pharmaceutical industry beyond their employment as an expert in this Matter, the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific expert who may testify to whom the Confidential Discovery Material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the proposed expert who may testify, and a current curriculum vitae of such expert identifying all other present and prior employers and/or firms in the pharmaceutical industry for which or on behalf of which the identified expert has been employed or done consulting work in the preceding four (4) years. The Producing Party may object to the disclosure of the Confidential Discovery Material within five (5) business days of receiving notice of an intent to disclose the Confidential Discovery Material to the identified expert by providing the disclosing Party with a written statement of the reasons for the objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Confidential Discovery Material to the identified expert, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified expert. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not object to the disclosure of Confidential Discovery Material to the identified expert within five (5) business days, the

disclosing Party may disclose the Confidential Discovery Material to the identified expert.

(b) Challenges to Confidentiality Designations

If any Party seeks to challenge a Producing Party's designation of material as Confidential Discovery Material or any other restriction contained within this Protective Order, the challenging Party shall notify the Producing Party and all Parties of the challenge to such designation. Such notice shall identify with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation within five (5) business days of receiving notice of the confidentiality challenge by providing the challenging Party and all Parties with a written statement of the reasons for the designation. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Discovery Material, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party preserving its rights and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not preserve its rights within five (5) business days, the challenging Party may alter the designation as contained in the notice. The challenging Party shall notify the Producing Party and the other Party of any changes in confidentiality designations.

Regardless of confidential designation, copies of published magazine or

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

(c) Resolution of Disclosure or Confidentiality Disputes

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

8. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 4(b), 4(c) and 4(d) and paragraph 5 of this Protective Order until such person has executed and transmitted to Respondent's counsel or complaint counsel, as the case may be, a declaration or declarations, as applicable, in the form attached hereto as Exhibit "A," which is incorporated herein by reference. Respondents' counsel and complaint counsel shall maintain a file of all such declarations for the duration of the litigation. Confidential Discovery Material

shall not be copied or reproduced for use in this Matter except to the extent such copying or reproduction is reasonably necessary to the conduct of this Matter, and all such copies or reproductions shall be subject to the terms of this Protective Order. If the duplication process by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be stamped "CONFIDENTIAL - FTC Docket No. 9293."

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

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

will apprise the Third Party of its rights hereunder.

11. If anyone receives a discovery request in another proceeding that may require the disclosure of a Producing Party's Confidential Discovery Material, the subpoena recipient promptly shall notify the Producing Party of receipt of such request. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Producing Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Producing Party of its rights hereunder. The Producing Party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the subpoena recipient or anyone else covered by this Order to challenge or appeal any such order requiring production of Confidential Discovery Material, or to subject itself to any penalties for noncompliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission.

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

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



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

A blanket *in camera* order for an entire pleading is contrary to public policy and will not be granted. The parties must specifically identify the portions of a pleading, document, deposition transcript, or exhibit for which *in camera* treatment is sought. Entire documents or exhibits will rarely, if ever, be eligible for *in camera* treatment. The parties are reminded that Rule 3.45 places the burden of showing that public disclosure will likely result in a clearly defined, serious injury upon the person requesting *in camera* treatment. In addition, to sustain the burden of proof, an application must be supported by proper evidence, such as affidavits, to support all factual issues. See 16 C.F.R. § 3.43.

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

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

A Party that has received materials or information from another Party or a

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

(c) If any Party seeks to introduce into evidence, by filing a pleading or otherwise placing on the record, information which includes its own Confidential Discovery Material which has not previously been granted *in camera* status, and the Party seeks to prevent its own materials or information from being placed on the public record, at least 10 days prior to filing such pleading, -- unless it is impracticable (e.g., when filing a response or reply brief) in which case at least 5 days prior to filing such pleading -- the Party shall make an application to the Administrative Law Judge to request that such materials or information be treated as *in camera* information.

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

seeking to introduce such material has first obtained an *in camera* order or certifies that the other Party has been given proper notice prior to the introduction of such material.

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

(d) The parties are cautioned that compliance with this Order will require them to submit applications for *in camera* treatment in advance of filing motions which include confidential materials and that deadlines for filing motions attaching confidential materials will not be extended for failure to file applications for *in camera* treatment in a timely manner. The parties are further cautioned that it is rarely necessary to attach confidential information in support of pleadings. Absent strict adherence to these procedures, pleadings should be composed in a manner which sufficiently apprises the Court of the matter at issue and which does not identify or disclose any confidential information. Failure to comply with these procedures may result in pleadings or portions thereof being stricken from the record.

14. Nothing in this Protective Order shall be construed to conflict with the provisions of Sections 6, 10, and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 50, 57b-2, or with Rules 3.22, 3.45 or 4.11(b)-(e), 16 C.F.R. §§ 3.22, 3.45 and 4.11(b)-(e).<sup>1</sup> Any Party or Producing Party may move at any time for, treatment *in camera* of any Confidential

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

Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter.

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

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

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

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

(a) The Producing Party may request the return of any such Discovery Material within twenty (20) days of discovering that it was inadvertently produced or disclosed


(or inadvertently produced or disclosed without redacting the privileged content). A request for the return of any Discovery Material shall identify the specific Discovery Material and the basis for asserting that the specific Discovery Material (or portions thereof) is subject to the attorney-client privilege or the work product doctrine and the date of discovery that there had been an inadvertent production or disclosure.

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

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

19. Entry of the foregoing Protective Order is without prejudice to the right of the Parties to apply for further protective orders or for modification of any provision of this Protective Order.

ORDERED:

  
D. Michael Chappell  
Administrative Law Judge

Dated: April 28, 2000

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

EXHIBIT A

In the Matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation,

CARDERM CAPITAL L.P.,  
a limited partnership,

and

ANDRX CORPORATION,  
a corporation.

Docket No. 9293

DECLARATION CONCERNING PROTECTIVE ORDER  
GOVERNING DISCOVERY MATERIAL

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

1. [Statement of employment]

2. I have read the "Protective Order Governing Discovery Material" ("Protective Order") issued by Administrative Law Judge D. Michael Chappell on April 28, 2000, in connection with the above captioned matter. I understand the restrictions on my use of any Confidential Discovery Material (as this term is used in the Protective Order) in this action and I agree to abide by the Protective Order.

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

- a. that I will use such Confidential Discovery Material only for the purposes of preparing for this proceedings, and hearing(s) and any appeal of this proceeding and for no other purpose;
- b. that I will not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

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

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

- a. to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;
- b. to return such Confidential Discovery Material to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention; and
- c. to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.]

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Full Name [Typed or Printed]

\_\_\_\_\_  
Signature



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of )  
 )  
HOECHST MARION ROUSSEL, INC., )  
a corporation, )  
 )  
CARDERM CAPITAL L.P., )  
a limited partnership, )  
 )  
and )  
 )  
ANDRX CORPORATION, )  
a corporation. )

Docket No. 9293

**ORDER AMENDING PROTECTIVE ORDER  
GOVERNING DISCOVERY MATERIAL**

Upon consideration of Complaint Counsel's Motion to Amend Protective Order Governing Discovery Material, Respondents' counsels' opposition thereto, and arguments of counsel, IT IS HEREBY ORDERED that Complaint Counsel's motion is GRANTED, only as herein specified, and that Paragraphs 3 and 19 of the Terms and Conditions of the Protective Order Governing Discovery Material, entered in this matter on April 28, 2000, be amended as follows:


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

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

19. Entry of the foregoing Protective Order is without prejudice to the right of the Parties or Third Parties to apply for further protective orders or for modification of any provision of this Protective Order.

Except as expressly stated herein the remainder of the Protective Order Governing Discovery Material dated April 28, 2000, shall remain in effect.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Dated: May 8, 2000

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHARLES ZUCCARINI, on behalf  
of himself and all other similarly situated,

Plaintiff,

Case No. 98-74043

v.

Hon. Nancy G. Edmunds

HOECHST AKTIENGESELLSCHAFT et al,

Defendants.

CONFIDENTIALITY ORDER

At a session of the Court, held on  
\_\_\_\_\_ 1998.

JAN 18 1999

The Court orders, pursuant to the stipulation of the parties, as follows:

WHEREAS, the law firm of Lowey Dannenberg Bemporad & Selinger, P.C. ("LDBS"), in association with other counsel, represents Plaintiffs in certain class actions brought on behalf of persons, firms or corporations who have paid for the purchases of the drug Cardizem® CD, against defendants Hoechst Aktiengesellschaft ("Hoechst"), Hoechst Marion Roussel ("HMR") and Andrx Pharmaceuticals, Inc. ("Andrx") relating to the Cardizem® CD, in five state courts, all of which have been removed to the federal courts of those states, some of which are subject to remand motions, and bear federal index numbers as follows:

U.S.D.C. Northern District of California C-98-3609

U.S.D.C. Middle District of Alabama	CV-98-1057-N
U.S.D.C. Eastern District of Michigan	98-74043
U.S.D.C. Eastern District of Wisconsin	98-C-0933
U.S.D.C. Northern District of Illinois	98-C-7147 (the "Pending Actions");

WHEREAS, LDBS, in association with other counsel, has represented that it has been retained to represent other plaintiffs who have paid for the purchases of Cardizem® CD in other actions to be brought against defendants, asserting claims substantially equivalent to those asserted in the Pending Actions (the "Other Actions");

WHEREAS, the law firm of Shook, Hardy & Bacon, in association with other defendants' counsel, represents defendants Hoechst and HMR in the Pending Actions and expects to be retained to represent said defendants in the Other Actions;

WHEREAS, the law firm of Solomon, Zauderer, Ellenhorn, Frischer & Sharp, in association with other defendants' counsel, represents defendant Andrx in the Pending Actions and expects to be retained to represent said defendant in the Other Actions;

WHEREAS, the parties to the Pending Actions and their counsel have agreed that documents produced in any of the Pending Actions may be used for any permissible purposes in any of the Pending Actions and/or the Other Actions, if otherwise relevant and admissible in those actions, to the same extent as if the documents had been produced in those actions and to the extent this Stipulation and Agreement has been entered as an Order in said action;

WHEREAS, the parties and their counsel have agreed that certain categories of documents to be produced shall be treated as confidential or highly confidential pursuant to the terms of this Agreement; and that this Agreement shall apply to all Pending Actions and Other Actions; and

WHEREAS, the parties jointly agree that any party may present this Stipulation and Agreement to each court at any time in any of the Pending Actions or Other Actions in which discovery is to proceed and request that the court in each such action enter this Stipulation and Agreement as an order prior to the discovery in said action of documents or information otherwise covered by this Stipulation and Agreement, and that neither party shall oppose any such application to the Court.

NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

1. The term "document" shall include all evidentiary materials, whether in electronic or written form, and all drug samples or other materials produced or provided in discovery.
2. If any party or its counsel believes in good faith that any document required to be produced contains or reveals any trade secrets or confidential research, development or commercial information that is entitled to be protected pursuant to Rule 26(c), such document, or part thereof, may be stamped "confidential";

3. Confidential information may be used by any person receiving it for no purpose other than prosecution, defense or settlement of the Pending Actions and/or the Other Actions, and shall be disclosed by the persons receiving it to no one except (i) employees of the receiving party; (ii) the Court presiding over any action, including any appellate court and its personnel, with appropriate steps being taken to preserve the confidentiality of the information; (iii) court and deposition stenographers and videographers; (iv) counsel representing a party in any of the Pending Actions and/or Other Actions, including paralegal, secretarial and clerical personnel; and (v) independent outside consultants and experts, provided that any such consultant or expert signs an Undertaking in the form annexed hereto as Exhibit A before such disclosure. All such signed Undertakings shall be maintained on file by the party disclosing any Confidential or Highly Confidential Information to the independent consultant or expert and shall only be made available to the producing party for good cause shown by the producing party.

4. In addition, in order to permit the parties to provide additional protection for a limited number of documents which may contain particularly sensitive trade secrets or confidential research, development or commercial information, parties may designate documents or parts of documents as "Highly Confidential Information" by stamping the document with that legend. It is anticipated that any documents which may be designated as Highly Confidential Information would contain such sensitive trade secrets or confidential research, development or commercial information as to justify such designation, and the parties intend to use this particularly restrictive designation only for a limited number of documents.

5. Highly Confidential Information may be used by any person receiving it for no purpose other than prosecution, defense or settlement of the Pending Actions and/or the Other Actions and shall be disclosed to no one except (i) inside counsel of the receiving party; (ii) the Court presiding over any action, including any appellate court and its personnel, with appropriate steps being taken to preserve the confidentiality of the information; (iii) court and deposition stenographers and videographers; and (iv) outside counsel representing a party to any of the Pending Actions and/or Other Actions, including paralegal, secretarial and clerical personnel. Highly Confidential Information shall not be disclosed to non-lawyer employees or representatives of a party or to independent experts or consultants except as may be provided pursuant to Paragraph 6 below.

6. A party desiring to disclose Highly Confidential Information to a non-lawyer employee of a party or an independent expert or consultant or anyone not otherwise authorized by Paragraph 4 to receive such information may request in writing that the producing party agree to permit disclosure to such person, identifying such person by name, occupation, and place of employment, so as to allow the producing party to decide whether to object to disclosure of such Highly Confidential Information to such person. If the producing party objects to disclosure of Highly Confidential Information to such person, it shall move the appropriate Court for a protective order within ten (10) business days after receiving written notice from the party wishing to disclose of its desire to do so. Pending the resolution of such motion, the Highly Confidential Information shall be treated as such. The identification by a party of an independent expert or consultant under this paragraph shall not constitute a waiver of any claim of work product immunity for any work done for the retaining party by such expert or consultant.

7. Where a party obtains Confidential Information or Highly Confidential Information through the inspection of documents, the producing party may produce either original documents or legible copies. The producing party retains the right to have its representatives, including security personnel, present in the inspection room at all times. The documents being produced shall remain in the custody and control of the producing party at all times during the production process. The receiving party shall pay for the reasonable cost of reproducing documents.

8. Any party may designate any or all portions of deposition testimony as Confidential Information or Highly Confidential Information if such deposition testimony contains information that is properly designated as Confidential or Highly Confidential Information as defined herein. Deposition testimony concerning or relating to any document that has been designated as Confidential or Highly Confidential shall automatically be designated as Confidential or Highly Confidential without further designation by the party that produced the document, unless a lesser designation is specifically and expressly agreed to by the producing party. Deposition testimony shall be designated as Confidential Information or Highly Confidential Information by indication on the record at the deposition, or by written notice within thirty (30) days after receipt of the transcript of that deposition. If any testimony given during a deposition is designated as Confidential Information, the front cover of the deposition shall bear the legend "CONTAINS CONFIDENTIAL INFORMATION" and the pages of the transcript containing the testimony so designated shall clearly identify the testimony so designated. If any testimony given during a deposition is designated as Highly Confidential Information, the testimony so designated shall be bound separately from the remainder of the



deposition and the cover of such separately bound transcript shall bear the legend "CONTAINS HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY" and the pages of the transcript containing the testimony so designated shall clearly identify the testimony so designated.

9. Attendance at a deposition shall be limited to persons authorized to receive Confidential Information pursuant to Paragraph 2 above, but all parties authorized hereunder to designate the transcript as containing any Confidential Information may jointly consent in writing to a broader attendance. In addition, at the behest of any party authorized hereunder to designate the transcript as containing Highly Confidential Information, attendance may be further limited for portions of depositions at which Highly Confidential Information is discussed or documents designated as Highly Confidential are the subject of questioning, to those people authorized to receive Highly Confidential Information.

10. If the receiving party objects to a "Confidential" or "Highly Confidential" designation of any document or to a refusal to permit disclosure, the receiving party shall promptly notify the producing party of such objection in writing. The designating party or the party objecting to disclosure may apply to the Court within ten (10) business days of receipt of such objection for a protective order pursuant to Rule 23(c). On any such motion the designating party shall bear the burden of proof. Until the motion is decided, the documents at issue shall continue to be treated as Confidential or Highly Confidential, as the case may be. Any Court entering this Stipulation and Agreement as an order, upon a showing of good cause, may at any

time order the removal of the "Confidential" or "Highly Confidential" designation from any document, summary or abstract thereof or portions of testimony.

11. In the event a party wishes to file any pleading or other paper or thing containing Confidential Information or Highly Confidential Information with any Court for any purpose, the party shall file it with the Court in a sealed envelope bearing the caption of the case and a legend substantially in the following form:

**"CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER"**

12. In the event that any Confidential Information or Highly Confidential Information is utilized in motions, at trial or in the course of any appeal, the parties shall cooperate to have the Confidential Information or Highly Confidential Information sealed and that portion of the proceedings pertaining to the Confidential Information or Highly Confidential Information closed, unless the parties agree in writing to waive this requirement. The use of any Confidential Information or Highly Confidential Information at trial or during an appeal by any party, including the party that designated the material as Confidential Information or Highly Confidential Information, shall not constitute a waiver of such designation or of the producing party's right to insist that the material continue to be treated as Confidential Information or Highly Confidential Information in accordance with this Order by the parties thereafter.

13. In the event that any person or party subject to this Agreement having possession, custody or control of any Confidential Information or Highly Confidential Information of any opposing party receives from a non-party a subpoena or other process to produce such

information, such person or party shall promptly notify by facsimile and express mail the attorneys of record of the party that produced the Confidential Information or Highly Confidential Information sought by such subpoena or other process, and shall furnish such attorneys of record with a copy of said subpoena, process or order. The party or person receiving the subpoena or other process shall make a timely objection to production of the Confidential Information or Highly Confidential Information on the grounds that production is precluded by this Agreement, but shall have no other obligation to take any action to protect the Confidential Information or Highly Confidential Information and, providing notice has been appropriately provided to counsel for the producing party, shall have no obligation to oppose any motion to compel production. The producing party shall have the responsibility, in its sole discretion and at its own cost, to move against the subpoena or other process, or otherwise to oppose entry of an order by a court of competent jurisdiction compelling production of the Confidential Information or Highly Confidential Information. In no event shall the person or party receiving the subpoena or other process produce Confidential Information or Highly Confidential Information of any other party in response to the subpoena or other process unless and until such person or party is ordered to do so by a court of competent jurisdiction.

14. Neither the termination of any or all of the actions nor the termination of employment of any person who had access to any Confidential Information or Highly Confidential Information shall relieve any person of the obligation of maintaining both the confidentiality and the restrictions on use of anything disclosed pursuant to this Order.

15. Nothing in this Agreement shall be deemed in any way to restrict the use of documents or information which any party or counsel lawfully obtains independently of formal discovery in any of the actions, whether or not the same material is also obtained through formal discovery. Nothing contained herein shall in any way limit a producing party's use of its own Confidential Information.

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

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

18. The production of a document or thing in whole or in part shall not constitute an admission that the produced document or thing, or portion thereof, is relevant or is admissible in evidence and does not constitute a waiver of the right to object to the admissibility of such document at trial.

19. Nothing herein shall prevent any party from applying to the Court in any action for an order directing the parties to adhere to the terms of this Agreement; or from applying to the Court for further or additional protective orders.

20. Nothing in this Order shall be deemed to waive the attorney-client, work product, trial preparation materials privileges or any other applicable privilege. The inadvertent production or disclosure of any document, material or information subject to the attorney-client privilege, attorney-work product privilege, or any other applicable privilege against disclosure shall not be deemed a waiver, in whole or in part, of the producing party's claim of such privilege.

**NANCY G. EDMUNDS**

UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

ELWOOD S. SIMON & ASSOC., P.C.  
Attorneys for Plaintiff

By: *Lance C. Young*  
Lance C. Young (PS1254)  
355 South Old Woodward, #250  
Birmingham, Michigan 48009  
(248) 646-9730

**A TRUE COPY**  
CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
BY *[Signature]* DEPUTY CLERK

**HONIGMAN MILLER SCHWARTZ AND COHN**  
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(248) 203-0840

DET\_C207643.1

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA.

BILLY JOE LIGHTNER; LOMAX STANFORD;  
JANOKA, INC., d/b/a THE MEDICINE SHOPPE;  
SHOPPE; and FREDERICK MARK FLEGAL,  
individually and on behalf of all others similarly  
situated as more specifically alleged in the complaint,

Plaintiffs,

v.

HOECHST AKTIENGESELLSCHAFT,  
HOECHST MARION ROUSSEL, INC.,  
and ANDRX PHARMACEUTICALS, INC.,

Defendants.

Case No. 98-T-1057-N

STIPULATED  
CONFIDENTIALITY ORDER

I, \_\_\_\_\_, declare that I am authorized pursuant to the Stipulated  
Confidentiality Order dated \_\_\_\_\_ (the "Order") to receive Confidential  
Information produced by \_\_\_\_\_.

I certify my understanding that the Confidential Information is being provided to  
me pursuant to terms and restrictions of the Order, and that I have been given a copy of and have  
read and understood my obligation under that Order. I hereby agree to be bound by the terms of  
the Order. I clearly understand that the Confidential Information and any copies or notes relating  
thereto may only be disclosed to or discussed with those persons permitted by the Order to  
receive such information.

At the conclusion of this litigation, I will destroy or return all materials containing Confidential Information, copies thereof and notes that I have prepared relating thereto, to counsel of record for the party that has retained me in this action.

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

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Declaration and Undertaking is executed on the \_\_\_\_\_ day of \_\_\_\_\_, 1997 at [City or town] \_\_\_\_\_ and [state] \_\_\_\_\_.

\_\_\_\_\_  
[signature]



At the conclusion of this litigation, I will destroy or return all materials containing Confidential Information, copies thereof and notes that I have prepared relating thereto, to counsel of record for the party that has retained me in this action..

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

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Declaration and Undertaking is executed on the \_\_\_\_\_ day of \_\_\_\_\_, 1997 at [City or town] \_\_\_\_\_ and [state] \_\_\_\_\_.

\_\_\_\_\_  
[signature]

3

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

BIOVAIL CORPORATION  
INTERNATIONAL,

Plaintiff,

vs.

HOECHST AKTIENGESELLSCHAFT,  
HOECHST MARION ROUSSEL, INC.,  
HOECHST MARION ROUSSEL NORTH  
AMERICA, INC., CARDERM CAPITAL L.P.,  
HORST WAESCHE, DANIEL CAMUS,  
RICHARD J. MARKHAM, PETER W.  
LADELL, GERALD P. BELLE and JURGEN  
DORMANN

Defendants.

Civil Action No. 98-1434  
(MTB)

**STIPULATED PROTECTIVE  
ORDER**

**ENTERED FILED**  
on THE DOCKET  
on 8-25-1998 AUG 25 1998  
By: *A. Ross* AT 8:30 M  
WILLIAM T. WALSH  
CLERK

Plaintiff, Biovail Corporation International ("Biovail") and defendants Hoechst Aktiengesellschaft, Hoechst Marion Roussel, Inc., Hoechst Marion Roussel North America, Inc., Carderm Capital L.P., Horst Waesche, Daniel Camus, Richard J. Markham, Peter W. Ladell, Gerald P. Belle and Jurgen Dormann (collectively "Defendants"), hereby stipulate to the following Protective Order pursuant to Rule 26(c), Fed.R.Civ.P., subject to the approval of the Court:

- Each document furnished in this litigation by a party or its representatives which contains or reveals any trade secrets, confidential business information, know-how or confidential matter that may be protected pursuant to Fed.R.Civ.P. 26(c) may be designated "CONFIDENTIAL" by stamping on each page of the document the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or where sufficient space is not available "CONFIDENTIAL INFORMATION" or "CONFIDENTIAL." With respect to samples of

chemical compounds, one of these legends should be affixed to each container of a sample. With respect to electronic information, the parties shall agree on a method by which such documentation may be labeled. For purposes of this Protective Order, the term "document" shall include all discovery materials, whether in electronic or written form, such as interrogatories, requests for admission, document requests, responses to the foregoing, affidavits, samples or other materials produced or provided in discovery. Documents and other discovery materials designated "Confidential," as well as all materials which quote from or are based upon such material (including, but not limited to briefs, other papers and attorney work product) shall be subject to the provisions of this Order.

2. In addition, in order to permit the parties to provide additional protection for a limited number of documents which contain sensitive business strategic plans and/or competitive analyses, parties may designate documents as "RESTRICTED CONFIDENTIAL, ATTORNEYS EYES ONLY" by stamping such legend on each page of the document. It is anticipated that documents to be designated "RESTRICTED CONFIDENTIAL ATTORNEYS EYES ONLY" would include marketing plans, sales forecasts, business plans, operating plans, analyses of pricing or competition and that the parties intend this particularly restrictive designation to be utilized for a limited number of documents. Documents designated "RESTRICTED CONFIDENTIAL ATTORNEYS EYES ONLY" shall not be disclosed to individual defendants or "designated executives" under paragraph 6, hereof, but, in all other respects shall be treated as "Confidential Information" and all references in the Order and in the attachments hereto shall mean and include documents designated "RESTRICTED CONFIDENTIAL ATTORNEYS EYES ONLY".

3. All documents produced for inspection in lieu of providing copies shall be deemed Confidential and subject to this Order. Not until a copy of a document is produced

without any Confidential designation, or the Court orders otherwise, may the documents or the information therein be deemed not to include Confidential Information.

4. Confidential Information shall be used by any person receiving it for no purpose other than prosecution or defense of this action and shall be disclosed by the party receiving it to no one except (i) to the Court presiding over this action and its personnel; (ii) to any court to which an appeal in this action might lie and its personnel; (iii) court and deposition stenographers and videographers; (iv) to outside counsel engaged by a party, including paralegal, secretarial and clerical personnel; (v) to independent outside consultants and/or experts provided that such outside counsel and independent outside consultant and/or expert signs an Undertaking in the form annexed hereto as Exhibit A before such disclosure. Such executed affidavit or declaration shall be maintained on file by the receiving party and shall only be made available to the producing party if the individual to whom the Confidential Information has been disclosed is designated as a trial witness in the manner set forth in paragraph 4 *infra* or for good cause shown by the producing party. Such outside experts and consultants and their respective staffs shall not include any present officer, director or employee of the receiving party or any of its affiliated companies.

5. Once the receiving party determines that an outside expert or consultant will be designated as an expert witness for the trial of this case, such outside expert or consultant shall execute an Undertaking in the form annexed hereto as Exhibit B of this document. The Undertakings of these experts or consultants, along with a list of the expert or consultant's staff, shall be transmitted to counsel for the other party by hand or express mail within three (3) business days of such designation. If a party believes that disclosure of Confidential Information to such expert or consultant or any member of their staff is injurious or prejudicial, it may object to disclosure to such person or designation of such person by delivering to the party

proposing to make such disclosure a written objection by hand or express mail within seven (7) days of receipt of the Undertaking. If the parties cannot resolve their dispute, the party who selected the expert or consultant may apply to the Court for an order permitting disclosure of Confidential Information to the person regarding whom objection was made.

6. In addition to the above-designated individuals, any individual defendant as well as in-house counsel and certain designated executives (not to exceed three executives per corporate party) who are either: (i) actively involved in the supervision of this litigation; or (ii) required to actively consult with counsel on matters which require access to Confidential Information shall be provided with access on the condition that each such individual defendant, in-house counsel or designated executive signs an Undertaking in the form annexed hereto as Exhibit C before such disclosure. The Undertakings of each individual defendant, in-house counsel or designated executive shall be transmitted to counsel for the other party by hand or express mail no later than fourteen (14) days prior to disclosure any Confidential Information to such individual defendant, in-house counsel or designated executive. If the producing party believes that disclosure of Confidential Information to such individual defendants, in-house counsel or designated executive would be injurious or prejudicial, it may object to disclosure to such person by delivering to the party proposing to make such disclosure a written objection by hand or express mail within seven (7) days of receipt of the Undertaking. If the parties cannot resolve their dispute, the receiving party may apply to the Court for an order permitting disclosure of Confidential Information to the person regarding whom objection was made. Upon the mutual written consent of all parties to this litigation, the 14 day prior notice requirement and the right to object to disclosure to a particular in-house counsel may be waived.

7. Disclosure of Confidential Information may also be made to any other person with respect to whom the parties execute a joint written agreement permitting access, provided such access is limited to the written agreed-upon terms and conditions.

8. Any party may designate any or all portions of deposition testimony as Confidential by indication on the record at the deposition, or by written notice within thirty (30) days after receipt of the transcript of that deposition if such deposition testimony contains or reveals any trade secrets, confidential business information, know-how or confidential matter which may be protected by Fed.R.Civ.P. 26(c). All depositions shall be treated as Confidential for a period of at least thirty (30) days after a full and complete transcript of the deposition is available. Interrogatory answers designated "Confidential" shall be set forth separately and the first page thereof shall be marked "Confidential." The use and disclosure of such designated portions shall be governed by the same rules that govern the use or disclosure of "Confidential" documents herein.

9. Inspection of documents or things by either party shall be conducted by persons eligible under paragraphs 4 and 5 above. Such persons shall treat all information in such documents or things as containing Confidential Information until copies are produced and thereafter to the extent that such information is designated under paragraphs 1 and 2 above. Attendance at a deposition shall be limited to persons authorized to receive Confidential Information pursuant to paragraphs 4, 5 and 6 above but any party authorized hereunder to designate the transcript as containing any Confidential Information may consent to a broader attendance in writing. In addition, individual defendants and designated executives under paragraph 6 may be excluded from portions of depositions at which documents designated RESTRICTED CONFIDENTIAL ATTORNEYS EYES ONLY are the subject of questioning.

10. Where a party obtains Confidential Information through the inspection of documents, the producing party may produce either original documents or legible copies. The producing party retains the right to have its representatives, including security personnel, present in the inspection room at all times. The documents being produced shall remain in the custody and control of the producing party at all times during the production process. The receiving party shall pay for the cost of reproducing documents.

11. Nothing contained in this Order shall in any way limit a producing party's use of its own Confidential Information.

12. If counsel for a receiving party wishes to disclose Confidential Information to the individuals who are indicated on the face of the document to have been either an author or recipient of the document or a person named in the document containing the Confidential Information (regardless of whether such individual is at the time of the supposed disclosure an employee) the receiving party shall give notice to the producing party of the proposed disclosure, such notice to contain the name of the individual to whom disclosure is to be made, the documents which are to be disclosed and an executed Declaration and Understanding in the form annexed hereto as Exhibit D. The producing party within six (6) business days shall give written notice by hand or overnight delivery of any objection to the disclosure, in which event the receiving party may not make the objected to disclosure until the objection is overruled by the Court. With respect to any person to whom no objection is made as provided above, disclosure of the Confidential Information identified in the notice may be made seven (7) business days after the notice was transmitted. In the event the producing party permits disclosure of documents containing Confidential Information to such author and/or recipients, disclosure and/or discussion of Confidential Information shall be strictly limited to that Confidential

Information contained in the documents identified in the notice of proposed disclosure and to which the producing party has made no objection.

13. Notwithstanding the provision of paragraph 1 of this Order, any party who discloses information to any other party during the course of discovery in the above-styled lawsuit without designating such disclosed information as "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER," "CONFIDENTIAL INFORMATION", "CONFIDENTIAL" or "RESTRICTED CONFIDENTIAL ATTORNEYS EYES ONLY", may subsequently elect to treat such disclosed information as Confidential Information upon a determination that such information is, in fact, confidential or proprietary. The disclosing party shall notify the receiving party or parties in writing of the disclosing party's election to so treat the disclosed information and shall provide to the receiving party new copies of the newly designated Confidential Information properly marked or stamped with the words "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or "RESTRICTED CONFIDENTIAL ATTORNEYS EYES ONLY" in exchange for the materials previously produced. Confidential Information newly designated pursuant to this paragraph shall be subject to the full force and effect of this order with respect to future disclosure by the receiving party; provided, however, that the receiving party or parties shall under no circumstances be liable or accountable for any disclosure of the newly designated Confidential Information to any person during the interval between the time the newly designated Confidential Information is provided to the receiving party or parties without the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER," "CONFIDENTIAL INFORMATION" or "CONFIDENTIAL" and the time at which the disclosing party so designates the Confidential Information pursuant to this paragraph, nor shall the receiving party or parties be required to retrieve any information distributed prior to such designation.



14. At the conclusion of this litigation, by judgment or otherwise, all Confidential Information shall be returned to the producing party along with all copies thereof or shall be certified as having been destroyed, except that trial counsel may retain one copy of such information which shall remain subject to the provisions of this Order. All documents prepared by counsel of record, in-house attorneys or outside experts and consultants or their staffs designated as provided in paragraph 2, containing summaries, abstracts or quotations of or from documents protected by this Order, shall after the conclusion of this litigation, be kept within the internal files of counsel of record for the party creating such work product documents or be destroyed. In the event that, after the conclusion of this litigation, counsel believes there is a need to disclose Confidential Information to its client(s), counsel shall provide written notice of such proposed disclosure 24 days in advance to counsel for all other parties and shall provide Undertakings similar in form to those provided for pursuant to paragraph 5. Such disclosures shall not be made if any producing party objects thereto. This Court shall retain continuing jurisdiction to resolve any dispute concerning disclosure of Confidential Information following conclusion of this litigation.

15. To the extent the documents produced by the parties hereto contain the names and addresses of patients or health professionals such as physicians, nurses or hospitals in connection with clinical reports of the properties and effects of any drug or medical device, counsel for the parties hereto or anyone acting on their behalf will neither record in notes or elsewhere such information nor contact the said patients or health professional with respect to such reports. Any documents included in said categories containing said names and addresses as to which counsel for any parties wish copies shall be copied with said names and address expunged. Said names and addresses shall be maintained as strictly confidential by counsel and shall not be shown or divulged to any person or in any way used unless application is made to this Court for an order

permitting counsel to show or divulge the names and address and such order is granted by this Court. This paragraph limits a party's right to obtain discovery concerning the names and addresses of those directly involved in the clinical trials, but does not limit the right of either party to obtain data from clinical trials or to depose those having supervisory responsibility for such trials.

16. If the parties disagree as to whether a "Confidential" or "Restricted Confidential" designation or a refusal to permit disclosure to any person is proper, the party seeking to make disclosure may apply to the Court for an order permitting disclosure. On any such motion the parties shall bear the burdens of proof which would have applied had this protective order never been entered. In addition, the Court, upon a showing of good cause, may at any time order the removal of the "Confidential" designation from any document, summary or abstract thereof or portions of testimony or otherwise amend this Order.

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

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

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

19. Neither the termination of this action nor the termination of employment of any person who had access to any Confidential Information shall relieve any person from the

obligation of maintaining both the confidentiality and the restrictions on use of anything disclosed pursuant to this Order.

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

21. In the event that any person or party subject to this Order having possession, custody or control of any Confidential Information of any opposing party receives from a non-party a subpoena or other process to produce such information, such person or party shall promptly notify by express mail the attorneys of record of the party claiming such confidential treatment of its Confidential Information sought by such subpoena or other process, and shall furnish such attorneys of record with a copy of said subpoena, process or order. The party or person receiving the subpoena or other process shall make a timely objection to production of the Confidential Information on the grounds that production is precluded by this Protective Order, but shall have no other obligation to take any action to protect the Confidential Information and, providing notice has been appropriately provided to counsel for the party whose Confidential Information is sought by the subpoena or other process, shall have no obligation to oppose any motion to compel production. The party whose Confidential Information is sought by the subpoena or other process shall have the responsibility, in its sole discretion and at its own cost, to move against the subpoena or other process, or otherwise to oppose entry of an order by a court of competent jurisdiction compelling production of the Confidential Information. In no event shall the person or party receiving the subpoena or other process produce Confidential

Information of any opposing party in response to the subpoena or other process unless and until such person or party is ordered to do so by a court of competent jurisdiction.

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

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


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

25. The production of a document or thing in whole or in part does not constitute an admission that the produced document or thing, or portion thereof, is relevant or is properly produced and does not constitute a waiver of the right to otherwise properly withhold from production any other document or thing or to object to the admissibility of such document at trial.


26. Nothing herein shall prevent any party from applying to the Court for a modification of this Protective Order to resolve issues that may arise; or from applying to the Court for further or additional protective orders; or from agreeing with the other parties to any modification of this Protective Order subject to the approval of the Court. In the event of any motion to modify this Protective Order, the receiving party shall make no disclosure of any

Confidential Information which is the subject of such motion until the Court enters an order requiring such modification and all appeals from such order have been exhausted.


Dated: August 18, 1998

  
Liza M. Walsh  
CONNELL, FOLEY & GEISER  
85 Livingston Avenue  
Roseland, NJ 07086  
(973) 535-0500

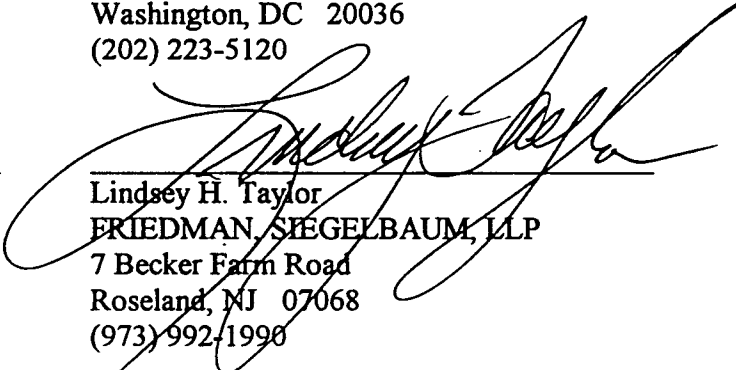
Dated: August 18, 1998

  
James M. Spears  
SHOOK, HARDY & BACON LLP  
801 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
(202) 783-8400

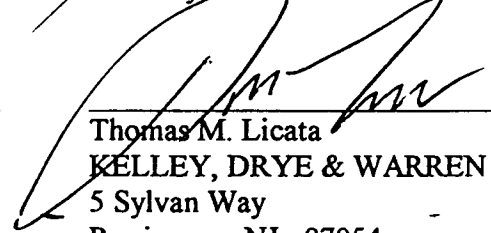
Dated: August 18, 1998

  
Stacy Ehrlich  
Peter O. Safir  
KLEINFELD, KAPLAN & BECKER  
1140 Nineteenth Street, N.W.  
Washington, DC 20036  
(202) 223-5120

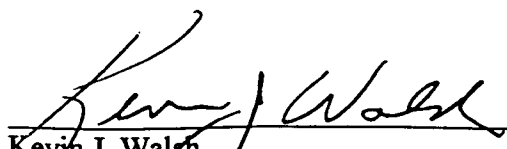
Dated: August 18, 1998

  
Lindsey H. Taylor  
FRIEDMAN, SEGELBAUM, LLP  
7 Becker Farm Road  
Roseland, NJ 07068  
(973) 992-1990  
Attorneys for Defendants

Dated: 18 August 1998

  
Thomas M. Licata  
KELLEY, DRYE & WARREN LLP  
5 Sylvan Way  
Parsippany, NJ 07054

Dated: August 18, 1998

  
Kevin J. Walsh  
KELLEY, DRYE & WARREN LLP  
101 Park Avenue  
New York, NY 10178  
(212) 808-7800

Attorneys for Plaintiffs

SO ORDERED:

  
United States Magistrate Judge

Date: 8/29/98

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

BIOVAIL CORPORATION  
INTERNATIONAL,

Plaintiff,

vs.

HOECHST AKTIENGESELLSCHAFT,  
HOECHST MARION ROUSSEL, INC.,  
HOECHST MARION ROUSSEL NORTH  
AMERICA, INC., CARDERM CAPITAL L.P.,  
HORST WAESCHE, DANIEL CAMUS,  
RICHARD J. MARKHAM, PETER W.  
LADELL, GERALD P. BELLE and JURGEN  
DORMANN

Defendants.

Civil Action No. 98-1434  
(MTB)

**DECLARATION AND  
UNDERTAKING OF**

---

I, \_\_\_\_\_, declare that I am outside counsel and/or outside consultant or expert engaged by \_\_\_\_\_ and hereby acknowledge that I may receive Confidential Information supplied by \_\_\_\_\_, as defined in the Protective Order of \_\_\_\_\_.

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

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

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

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Declaration and Undertaking is executed on the

\_\_\_\_\_ day of \_\_\_\_\_, 1997 at [City or town] \_\_\_\_\_ and

[state] \_\_\_\_\_.

\_\_\_\_\_  
[signature]



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

BIOVAIL CORPORATION  
INTERNATIONAL,

Plaintiff,

vs.

HOECHST AKTIENGESELLSCHAFT,  
HOECHST MARION ROUSSEL, INC.,  
HOECHST MARION ROUSSEL NORTH  
AMERICA, INC., CARDERM CAPITAL L.P.,  
HORST WAESCHE, DANIEL CAMUS,  
RICHARD J. MARKHAM, PETER W.  
LADELL, GERALD P. BELLE and JURGEN  
DORMANN

Defendants.

Civil Action No. 98-1434  
(MTB)

**DECLARATION AND  
UNDERTAKING OF**

---

I, \_\_\_\_\_, declare that I have been designated as a trial expert by \_\_\_\_\_ and possess Confidential Information supplied by \_\_\_\_\_ in connection with the above-captioned lawsuit and hereby acknowledge that I am about to receive Confidential Information supplied by \_\_\_\_\_, as defined in the Protective Order of \_\_\_\_\_.

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

I certify my understanding that the Confidential Information is being provided to me pursuant to terms and restrictions of the Protective Order of \_\_\_\_\_ in the above-captioned case, and that I have been given a copy of and have read and understood my obligation under the order. I hereby agree to be bound by the terms of the order. I clearly understand that the Confidential Information and my copies or notes relating thereto may only be

disclosed to or discussed with those persons permitted by the Protective Order to receive such information.

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

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

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Declaration and Undertaking is executed on the \_\_\_\_\_ day of \_\_\_\_\_, 1997 at [City or Town] \_\_\_\_\_ and [State]

\_\_\_\_\_

\_\_\_\_\_  
[signature]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

BIOVAIL CORPORATION  
INTERNATIONAL,

Plaintiff,

vs.

HOECHST AKTIENGESELLSCHAFT,  
HOECHST MARION ROUSSEL, INC.,  
HOECHST MARION ROUSSEL NORTH  
AMERICA, INC., CARDERM CAPITAL L.P.,  
HORST WAESCHE, DANIEL CAMUS,  
RICHARD J. MARKHAM, PETER W.  
LADELL, GERALD P. BELLE and JURGEN  
DORMANN

Defendants.

Civil Action No. 98-1434  
(MTB)

**DECLARATION AND  
UNDERTAKING OF**

---

I, \_\_\_\_\_, declare that I am in-house counsel, officer or employee of \_\_\_\_\_ and hereby acknowledge that I may receive Confidential Information supplied by \_\_\_\_\_, as defined in the Protective Order of \_\_\_\_\_.

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

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

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

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Declaration and Undertaking is executed on the \_\_\_\_\_ day of \_\_\_\_\_, 1997 at [City or town] \_\_\_\_\_ and [state] \_\_\_\_\_.

\_\_\_\_\_  
[signature]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

BIOVAIL CORPORATION  
INTERNATIONAL,

Plaintiff,

vs.

HOECHST AKTIENGESELLSCHAFT,  
HOECHST MARION ROUSSEL, INC.,  
HOECHST MARION ROUSSEL NORTH  
AMERICA, INC., CARDERM CAPITAL L.P.,  
HORST WAESCHE, DANIEL CAMUS,  
RICHARD J. MARKHAM, PETER W.  
LADELL, GERALD P. BELLE and JURGEN  
DORMANN

Defendants.

Civil Action No. 98-1434  
(MTB)

**DECLARATION AND  
UNDERTAKING OF**

---

I, \_\_\_\_\_, declare that I am potential witness contacted by \_\_\_\_\_ and hereby acknowledge that I may receive Confidential Information supplied by \_\_\_\_\_, as defined in the Protective Order of \_\_\_\_\_.

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

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

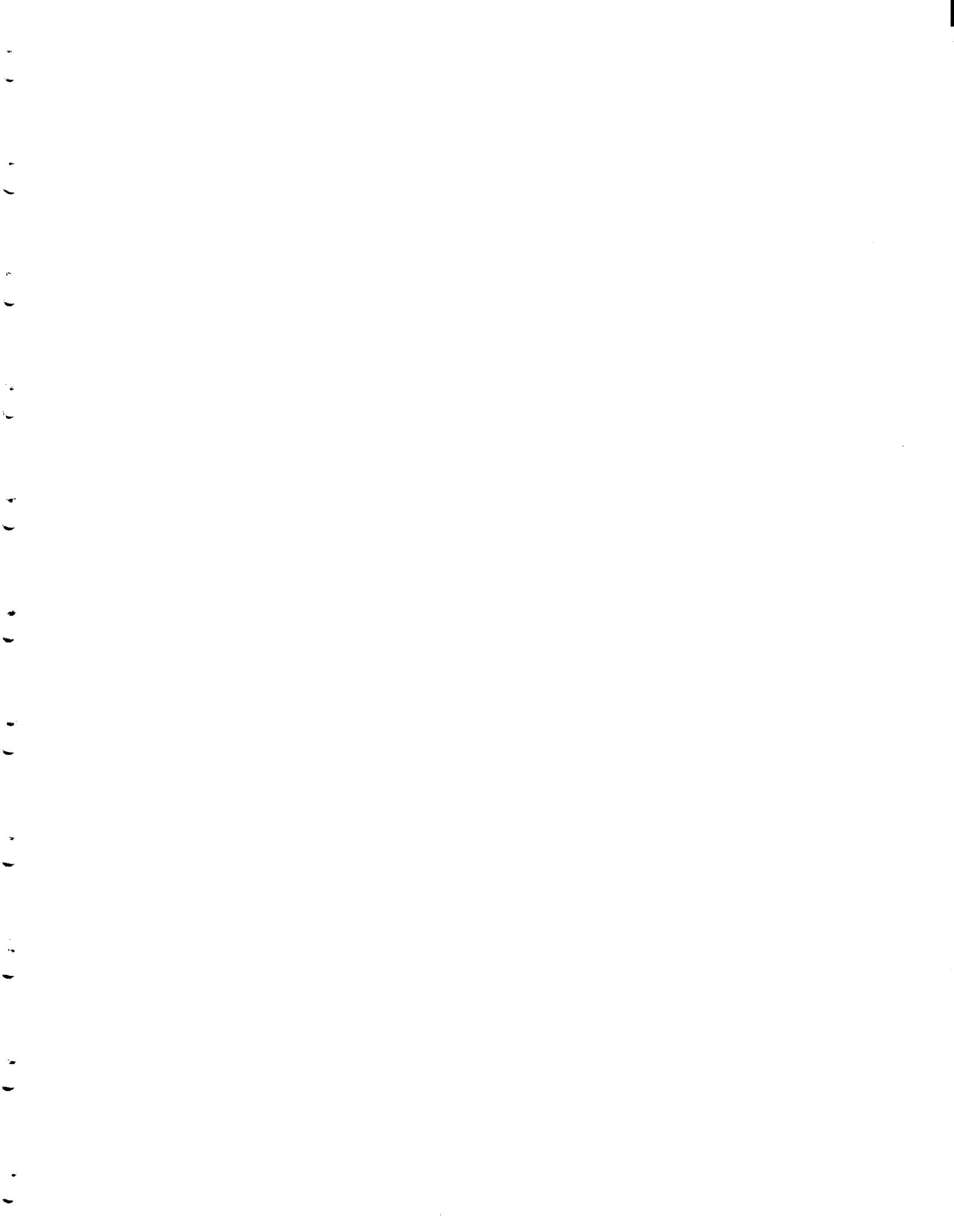
I hereby submit to the jurisdiction of this Court for the purposes of enforcement of the Protective Order and waive any and all objections to jurisdiction and venue.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Declaration and Undertaking is executed on the

\_\_\_\_\_ day of \_\_\_\_\_, 1997 at [City or town] \_\_\_\_\_ and

[state] \_\_\_\_\_

\_\_\_\_\_  
[signature]



RECEIVED  
WILLIAM T. WALSH, CLERK  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
1998 NOV 20 AM 10:59

*WJ*

CONNELL, FOLEY & GEISER LLP  
85 Livingston Avenue  
Roseland, New Jersey 07068  
(973) 535-0500  
(LW 4095)

**FILED**

NOV 20 1998

AT 8:30 .....M  
WILLIAM T. WALSH  
CLERK

Attorneys for Defendants  
Hoechst Aktiengesellschaft,  
Hoechst Marion Roussel, Inc.,  
Hoechst Marion Roussel North  
America, Inc., Horst Waesche,  
Daniel Camus, Richard J. Markham,  
Peter W. Ladell, Gerald P. Belle,  
And Jurgen Dormann

BIOVAIL CORPORATION  
INTERNATIONAL,

Plaintiff,

v.

HOECHST AKTIENGESELLSCHAFT,  
HOECHST MARION ROUSSEL, INC.,  
HOECHST MARION ROUSSEL NORTH  
AMERICA, INC., CARDERM CAPITAL  
L.P., HORST WAESCHE, DANIEL  
CAMUS, RICHARD J. MARKHAM,  
PETER W. LADELL, GERALD P. BELLE  
and Jurgen Dormann,

Defendants.

CIVIL ACTION NO. 98-1434 (MTB)

ORDER MODIFYING THE  
STIPULATED PROTECTIVE ORDER  
ENTERED AUGUST 25, 1998

**ENTERED**

on 11-23-1998  
THE DOCKET  
WILLIAM T. WALSH, CLERK  
By *AK*  
(Deputy Clerk)

THIS MATTER, having come before the Court on motion filed by counsel for defendants  
Hoechst Aktiengesellschaft, Hoechst Marion Roussel, Inc, Hoechst Marion Roussel North  
America, Inc., Horst Waesche, Daniel Camus, Richard J. Markham, Peter W. Ladell, Gerald P.  
Belle, and Jurgen Dormann (the "Hoechst defendants") seeking an order modifying the terms of



the Stipulated Protective Order entered in this action on August 25, 1998; and the Court having considered the written submissions and oral argument of counsel for all parties; and good cause having been shown,

IT IS on this 19 day of March, 1998

ORDERED that Paragraph 6 of the Stipulated Protective Order shall be amended to contain the following language at the end of such paragraph:

Notwithstanding any other provision of this Order, it is expressly understood and acknowledged by the parties, that in no event shall access be permitted to any Biovail employee, agent, expert, attorney or other representative who from October 26, 1998 forward engages in communications with Stephen Lowey, Esq. of the law firm of Lowey Dannenberg, Bemporad Sellinger, P.C. or any other attorney, law firm, consultant or other individual who may be engaged in the litigation of the matter of *Betnor, Inc. et al. V. Hoechst Aktiengesellschaft, Betnor, Inc. et al. V. Hoechst Aktiengesellschaft*, Case No. 997353, Superior Court of the State of California for the for the County of San Francisco or in any other comparable case against any defendant in this matter regarding the subject matter of this litigation or the class action suits.

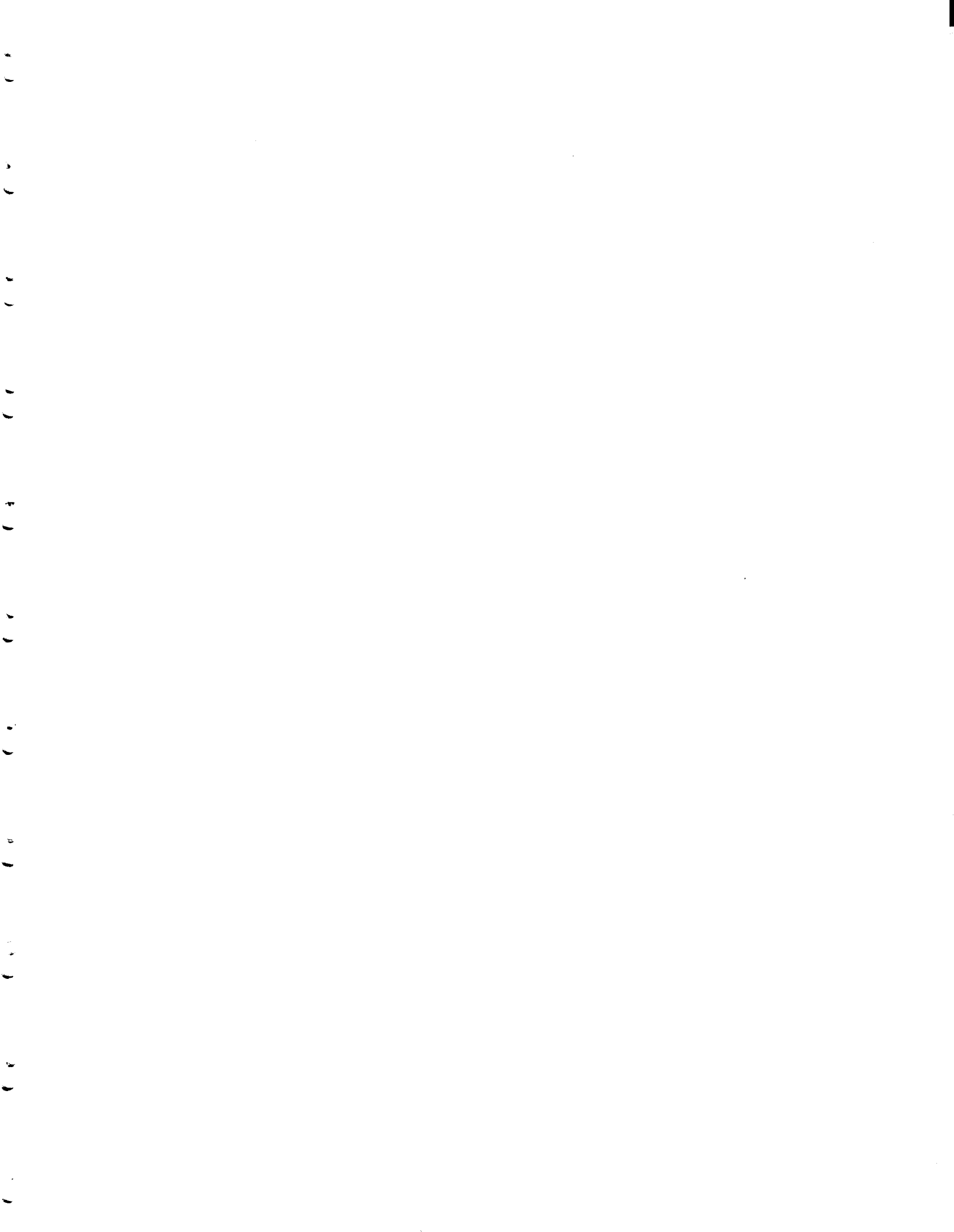
AND IT IS FURTHER ORDERED that the form Declaration and Undertaking attached as Exhibit C to the Stipulated Protective Order shall be amended to include the following language:

I further certify that neither I nor anyone subject to my direction or control will engage in any communications or consultations with Stephen Lowey, Esq., the law firm of Lowey Dannenberg Bemporad Sellinger, P.C. or any other attorney, law firm, consultant or other individual who may be engaged in the litigation of the matter of

*Betnor, Inc. et al. v. Hoechst Aktiengesellschaft, et al.* Case NO. 997353, Superior Court of the State of California for the County of San Francisco or in any other comparable case against any defendant in this matter regarding the subject matter of this litigation or the class action suits.

AND IT IS FURTHER ORDERED that Mr. Kenneth C. Cancellara, General Counsel of Biovail Corporation International, shall continue to be entitled to access to CONFIDENTIAL INFORMATION and information designated as RESTRICTED CONFIDENTIAL ATTORNEY EYES ONLY produced by defendants provided that he executes the form Declaration and Undertaking, as amended, attached as Exhibit C to the Stipulated Protective Order, and continues to abide by all terms of the Stipulated Protective Order, as amended.

  
STANLEY R. CHESLER, U.S.M.J.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CONNELL FOLEY & GEISER LLP  
85 Livingston Avenue  
Roseland, NJ 07068  
(973) 535-0500  
(LW 4095)  
Attorneys for the Hoechst Defendants

**FILED**

AUG 10 1999

8:30  
WILLIAM T. WALSH  
CLERK

BIOVAIL CORPORATION  
INTERNATIONAL,

Plaintiff,

vs.

HOECHST AKTIENGESELLSCHAFT,  
HOECHST MARION ROUSSEL, INC.,  
HOECHST MARION ROUSSEL NORTH  
AMERICA, INC., CARDERM CAPITAL  
L.P., HORST WAESCHE, DANIEL  
CAMUS, RICHARD J. MARKHAM,  
PETER W. LADELL, GERALD P. BELLE  
and JURGEN DORMANN

Defendants.

Civil Action No. 98-1434  
(MTB)

ORDER AMENDING  
THE PROTECTIVE ORDER

~~FILED~~

THE HOECHST  
8-11-99  
WILLIAM T. WALSH, CLERK  
Deputy Clerk

THIS MATTER, having come before the Court on a motion filed by counsel for Plaintiff, Biovail Corporation International, seeking an Order modifying the terms of paragraphs 2, 3, 4, and 5 of the Stipulated Protective Order entered in this action on August 23, 1998 and modified by order entered on November 23, 1998 (the "Protective Order"); and the Court having considered the written submissions and oral argument of counsel for all parties, and for the reasons stated on the record on June 14, 1999;

IT IS on this 9<sup>th</sup> day of August, 1999

ORDERED that the proposed modification to paragraph 2 of the Protective Order be and is hereby denied; and it is further

ORDERED that the proposed modification to paragraph 3 of the Protective Order be and is hereby denied; and it is further

ORDERED that paragraphs 4 and 5 of the Protective Order shall be amended to apply to non-testifying experts and provide as follows:

4. Confidential Information shall be used by any person receiving it for no purpose other than prosecution or defense of this action and shall be disclosed by the party receiving it to no one except (i) to the Court presiding over this action and its personnel; (ii) to any court to which an appeal in this action might lie and its personnel; (iii) court and deposition stenographers and videographers; (iv) to outside counsel engaged by a party, including paralegal, secretarial and clerical personnel provided that such outside counsel signs an undertaking in the form annexed hereto as Exhibit A; (v) to independent outside consultants and/or experts provided that such independent outside consultant and/or expert signs an Undertaking in the form annexed hereto as Exhibit B before such disclosure. Such outside experts and consultants and their respective staffs shall not include any present officer, director or employee of the receiving party or any of its affiliated companies.

5. Once the receiving party determines that an outside expert or consultant will be retained as a consultant or expert witness for the trial of this case, such outside expert or consultant shall execute an Undertaking in the form annexed hereto as Exhibit B of this document. The Undertakings of these experts or consultants, along with a list of the expert or consultant's staff, shall be transmitted to counsel for the other party by hand or express mail as follows: i) with respect to experts designated to testify at trial, within three (3) business days of such designations; and (ii) with respect to all other experts and consultants before any Confidential Information which has been designated "RESTRICTED CONFIDENTIAL ATTORNEYS EYES ONLY" is disclosed to such expert or consultant. The identity of the consultant, the consultants' staff and the Declarations and Undertaking thereof shall be disclosed only to the individuals identified in paragraphs 4 and 6 of the Protective Order. Nothing in the preceding sentence shall, once a consultant or non-testifying expert has been designated as an expert witness for the trial of this case, prevent the disclosure of the identity of the testifying expert, its expert's staff and the Declaration and Undertakings thereof from being disclosed as otherwise permitted under the Order. If a party believes that disclosure of Confidential Information to such expert or consultant or any member of their staff is injurious or prejudicial, it may object to disclosure to such person or designation of such person by delivering to the party proposing to make such disclosure a written objection by hand or express mail within seven (7) days of receipt of the Undertaking. If the parties cannot

resolve their dispute, the party who selected the expert or consultant may apply to the Court for an order permitting disclosure of Confidential Information to the person regarding whom objection was made;

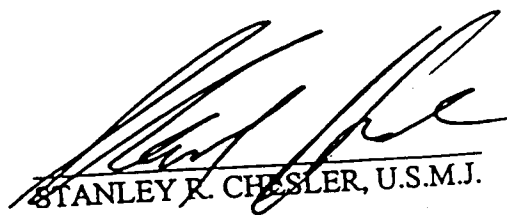
and it is further

ORDERED that the Declaration and Undertaking B shall be amended to apply to non-testifying experts and the first paragraph of the Declaration and Undertaking shall provide as follows:

I, \_\_\_\_\_, declare that I have been retained as a consultant and/or expert by \_\_\_\_\_ and possess Confidential Information supplied by \_\_\_\_\_ in connection with the above-captioned lawsuit and hereby acknowledge that I am about to receive Confidential Information supplied by \_\_\_\_\_, as defined in the Protective Order of \_\_\_\_\_.

and it is further

ORDERED that all other proposed modifications to paragraphs 4 and 5 of the Protective Order shall be denied.

  
STANLEY R. CHESLER, U.S.M.J.