

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

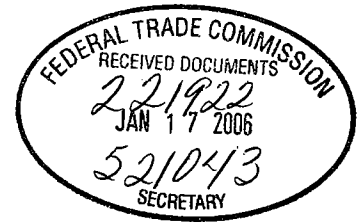
*In the Matter of*

BASIC RESEARCH, L.L.C.,  
A.G. WATERHOUSE, L.L.C.,  
KLEIN-BECKER USA, L.L.C.,  
NUTRASPORT, L.L.C.,  
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,  
BAN, L.L.C.,  
DENNIS GAY,  
DANIEL B. MOWREY, and  
MITCHELL K. FRIEDLANDER

*Respondents.*

**PUBLIC VERSION**

**DOCKET NO. 9318**



**RESPONDENTS' REVISED MOTION FOR *IN CAMERA* TREATMENT OF TRIAL  
EXHIBITS**

**INTRODUCTION**

Over the course of its investigation of Respondents and their businesses, and continuing through fact discovery in this case, the Commission has compelled from Respondents the production of over 61,000 pages of documents. The Commission utilized its compulsory process to obtain production of materials relating to an enormously broad range of categories, including without limitation: highly confidential financial information, business organization documents, secret product formulations, license agreements, consulting agreements, hundreds (if not thousands) of customer inquiries and other communications, proprietary advertising and marketing documents, confidential internal e-mail and correspondence, confidential communications with third-parties, employee development notes, work-product, private party litigation materials, non-disclose agreements, various business contracts, grant applications,

interview notes, and countless other types of documents. In addition to the documents and materials obtained from Respondents, the Commission has also engaged in extensive third-party discovery, and voluminous expert witness discovery, together likely accounting for several thousand additional pages of documents.

Literally tens of thousands of pages of documents obtained by the Commission through compulsory process are unrelated to the products and advertisements that form the basis of the Commission's claims against Respondents in this proceeding. Respondents respectfully submit the Commission has included in its designation of hearing exhibits dozens--and possibly hundreds--of documents so obtained that are wholly unrelated to the claims, defenses and issues here presented. Once listed as potential exhibits, however, Respondents are obliged to move the ALJ for *in camera* treatment of those exhibits so deserving.

Accordingly, on November 23, 2005, Respondents jointly moved the Administrative Law Judge ("ALJ") for an order granting *in camera* treatment of various trial exhibits designated by Respondents and the Commission. Specifically, Respondents moved on an admittedly large number of documents constituting Respondents' trade secrets, proprietary commercial information and highly confidential financial information. On November 28, 2005, Respondents filed a motion seeking leave to supplement the November 23, 2005, motion.

By Order dated December 5, 2005, the ALJ denied without prejudice Respondents' request for leave to supplement the November 23 filing. The ALJ cited relevant Commission law and provided some guidance to Respondents concerning the form a revised motion for *in camera* treatment should take. Among other things, the ALJ noted Respondents' obligation to identify individually (instead of by category, as was done in Respondents' November 23 motion) each document for which Respondents sought *in camera* treatment, together with a statement

specifically identifying the requested time period for which *in camera* treatment was sought for each document. Moreover, while not expressly ordering Respondents to reduce the number of documents for which *in camera* treatment was sought, the ALJ at least alluded to the fact that Respondents' request was overly broad.

Pursuant to 16 C.F.R. § 3.45, and the ALJ's December 5, 2005, Order, Respondents respectfully submit this Revised Motion for *In Camera* Treatment of Trial Exhibits in conformance with the ALJ's directive. Respondents here move the ALJ for an order granting *in camera* treatment for those of Respondents' and Complaint Counsel's trial exhibits pertaining to Respondents' trade secrets, commercial, customer and financial information fairly meeting the standards set forth in the cases cited below. The confidential information contained in these exhibits that, once disclosed, would result in a clearly defined, serious injury to Respondents, include, among other things:

- (1) Trade secrets, such as *secret formulas, the results of third-party testing, compilations of substantiation materials, confidential internal research and development; and*
- (2) Commercial information, such as *marketing strategies, private customer information, confidential consulting and license arrangements, advertising dissemination schedules; and*
- (3) Financial information, such as *advertising expenditures and gross revenue figures, profits and revenue balance sheets, royalty and licensing agreements, and confidential business organization materials.*

Virtually all of the documents and information covered by Respondents' instant motion are part of this proceeding solely as a result of the Commission's extraordinarily broad and

sweeping compulsory process. These documents and information are considered “non-public material” under 16 C.F.R. § 4.10, and are sufficiently secret and material to Respondents’ business, that public disclosure would necessarily result in a serious competitive injury to Respondents and their customers under prevailing Commission law.

Respondents’ position is supported both by intrinsic and extrinsic evidence. In the case of trade secrets, such as secret proprietary formulas, the confidential nature of the information may be inferred from the nature of the documents themselves. Nonetheless, all of the findings herein, including the conclusions relating to the confidential nature of the information at issue, are fully supported by the sworn statement of Carla Fobbs, Legal Administrator in the Basic Research, L.L.C., Compliance Department.

Respondents seek both indefinite and temporary *in camera* treatment of sensitive documents, depending on the unique nature of each discreet document. In conformance with the ALJ’s December 5, 2005, Order, the time period Respondents seek such treatment is identified on a document by document basis in Ms. Fobbs’ declaration. As the ALJ noted in his Order, indefinite *in camera* treatment is granted “only in those ‘unusual’ cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time.” *In re Evanston Northwestern Healthcare Corp., et al.*, 2005 F.T.C. LEXIS 27, at \*2 (Feb. 9, 2005); *In re Coca Cola Co.*, 1990 F.T.C. LEXIS 364, at \*7 (Oct. 17, 1990). Administrative courts have permitted indefinite *in camera* status for “trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged.” *Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at \*2; *see In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1189 (1961); *In re R.R. Donnelley & Sons Co.*, 1993 F.T.C. LEXIS 32 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 F.T.C. LEXIS 135 (Apr. 26, 1991).

Unlike trade secret information, the administrative courts typically limit *in camera* treatment for “business records,” like “ordinary business plans, marketing plans, or sales documents,” to between two to five years. *Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at \*2; *see also, In re E.I. Dupont de Nemours & Co.*, 1981 F.T.C. LEXIS 91 (Jan. 21, 1981); *In re Int’l Ass. of Conf. Interpreters*, 1996 F.T.C. LEXIS 298 (June 26, 1996).

As reflected in Ms. Fobbs’ declaration, Respondents request the ALJ extend indefinite *in camera* status only to the documents fairly falling within the following recognized highly confidential categories: product formulations, third-party testing, consumer information, and grant applications. The sensitivity of information in these categories will not lessen with the passage of time. *See Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at \*2. In contrast, Respondents request only temporary *in camera* status from two to five years, depending on the importance of each document, for those documents falling within the following categories: substantiation material, gross revenues and advertising expenditures, profits and revenue balance sheets, royalty and licensing agreements, marketing strategies, settlement documents, and dissemination schedules.

In further conformance with the ALJ’s implied directive, Respondents have very carefully reviewed each document that was the subject of Respondents’ first motion for *in camera* treatment, and, with the aid of the ALJ’s December 2005 Order, have removed from the instant motion nearly 400 documents for which Respondents initially sought *in camera* treatment—cutting nearly in half the number of documents now the subject of this Motion. Of those exhibits remaining and incorporated into this Motion, nearly 200 are included exclusively on the basis that the documents (selected both from Respondents’ and the Commission’s exhibit lists) contain private customer information, such as full names, addresses or e-mail addresses.

As Respondents understand Commission law (as well as other federal regulatory and statutory law that applies), Respondents are obliged to move for *in camera* treatment of these documents—constituting fully 36 percent of the exhibits incorporated into this Motion—to protect customer privacy.

## ARGUMENT

### **A. The Clearly Defined, Serious Injury Standard**

A showing of a “clearly defined, serious injury” is made by establishing the documents at issue are “sufficiently secret and sufficiently material to [Respondents’] business that disclosure constitutes a serious competitive injury.” *Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at \*1 (citing, *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984); *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188). Parties may rely on extrinsic evidence, such as affidavits or declarations, to make this showing. *Id.* at \*2 (citing, *In re North Texas Specialty Physicians*, 2004 F.T.C. LEXIS 109, at \*2-3 (Apr. 23, 2004)). In addition, a finding that a clearly defined serious injury would result from public disclosure may, in certain situations, be inferred from the nature of the documents themselves, such as in the case of certain trade secrets. *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188.

In *Bristol-Myers Company, et al.*, 90 F.T.C. 455, 456 (1977), the Commission outlined six factors bearing both on “secrecy” and “materiality”: (1) the extent to which the information is known outside the applicant’s business; (2) the extent to which the information is known by employees and others involved in the business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the

information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

The Commission has acknowledged that the showing of a serious injury does not necessarily require a specific demonstration of the manner in which other companies would use material to the disadvantage of the company whose information is at issue. *E.I. DuPont de Nemours & Co.*, 1981 F.T.C. LEXIS 91, at \*3. Rather, “it is proper to infer that disclosure of allegedly sensitive information would seriously affect a [company’s] commercial position.” *Id.* (citing, *General Foods Corporation*, Docket. No. 9085, at \*1-2 (August 1, 1980)). Thus, a general concern for the seriousness of injury to a company’s commercial or competitive position underlies the analysis. *Id.*

**B. Respondents’ Documents Meet The Clearly Defined Injury Standard**

Respondents’ and Complaint Counsel’s trial exhibits contain information that meets the “clearly defined, serious injury” standard. The documents fall within eleven distinct categories:

- (1) Attachment 1—Product Formulation;
- (2) Attachment 2—Third-Party Testing;
- (3) Attachment 3—Substantiation Composites;
- (4) Attachment 4—Grant Applications;
- (5) Attachment 5—Gross Revenue and Advertisement Expenditures;
- (6) Attachment 6—Profits, Revenue Balance Sheets and Confidential Corp. Info.;
- (7) Attachment 7—Royalty and Licensing Agreements;
- (8) Attachment 8—Customer Information;
- (9) Attachment 9—Advertising Dissemination Schedules;
- (10) Attachment 10—Marketing Strategy;

- (11) Attachment 11—Settlement Documents;<sup>1</sup> and
- (12) Attachment 12—Those Documents that Merit Coverage Under More than One of the Other Categories.<sup>2</sup>

The documents contained in each of these categories contain information sufficiently secret, and sufficiently material to Respondents’ business, that disclosure constitutes a serious competitive injury under prevailing Commission law, as they contain: *(a) trade secrets (b) confidential commercial information, and (c) confidential financial information*. A complete list of documents included in this Motion, in numerical order, is attached hereto as Table 1. The Table clearly identifies each document by exhibit number, brief description, bates number (where appropriate) and category.

**1. Product Formulation**

Respondents’ and Complaint Counsel’s listed trial exhibits contain highly confidential product formulation information. For example, documents in “Attachment 1” contain product formulation data—*i.e., a complete list of ingredients and ratios of amounts*—for all six challenged products. *See* Fobbs Dec., ¶ 10, *citing*, Attachment 1. It is difficult to imagine information more “secret” and “material.” Indeed, “the disclosure of a secret formula will almost invariably result in injury...” *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188 (“the impact of

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<sup>1</sup> Pursuant to 16 U.S.C. § 3.45(b), Respondents attach each page of each exhibit in which *in camera* or confidential material appears in Attachments 1-11 hereto in electronic form on enclosed CDs. For the convenience of the Court, each Attachment includes a table of the exhibits in the Attachment and references to paragraphs in the Declaration of Carla Fobbs supporting the Attachments’ *in camera* status. For further convenience of the Court, Respondents’ have also included an index of all of the exhibits for which Respondents’ seek *in camera* treatment in Table 1 attached hereto. Respondents’ shall supplement this filing with hard copies in numerical order of each of the exhibits in Attachments 1-11 on Monday, November 28, 2005.

<sup>2</sup> Respondents include in their Revised Motion this new category in an effort to better and more clearly organize the documents, to reduce the volume of material presented in connection with the instant motion, and hopefully to simplify for the ALJ the task of considering each document.



disclosure of a “trade secret,” as distinguished from other records, would almost certainly be productive of injury...”);<sup>3</sup> Fobbs Dec., ¶¶ 17-18.

These documents contain lists or descriptions of the ingredients and ratios of amounts for each of the challenged products. Fobbs Dec., ¶ 10, *citing*, Attachment 1. Accordingly, the injury flowing from disclosure of these documents may be inferred from the nature of the documents themselves. *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188. Nonetheless, the injury is also apparent in light of the “secrecy” and “materiality” factors set forth above and further addressed in the Fobbs Dec., ¶¶ 11-16.

Complaint Counsel has acknowledged the confidential nature of this information in subsequent filings with the Commission. Specifically, in Complaint Counsel’s Motion to Compel Production of Documentary Material and Answers to Interrogatories, Complaint Counsel omitted Exhibit “A” from Respondents’ Response to Complaint Counsel’s First Set of Interrogatories, notwithstanding the inclusion of the responses themselves. Accordingly, Respondents have established that the information contained in Attachment 1 is sufficiently secret, and sufficiently material to Respondents’ business, that a clearly defined, serious injury would result in the event of public disclosure.<sup>4</sup> Fobbs Dec., ¶ 18.

## **2. Third-Party Testing**

Respondents’ trial exhibits also contain highly confidential third-party testing. For example, “Attachment 2” to this Motion consists of confidential scientific testing results generated by private independent laboratories commissioned by Respondents to test their

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<sup>3</sup> Significantly, this Court previously acknowledged that Respondents’ product formulations constituted protected trade secrets. *In re Basic Research, et al.*, Docket No. 9318, Order Certifying Motions to Commission and Staying Proceedings, 9 (Apr. 6, 2005). Thus, disclosure of Respondents’ product formulations would invariably result in injury.

<sup>4</sup> Of course, Respondents address each such document individually in Ms. Fobbs’ declaration, per the ALJ’s December 2005 Order, as is the case with each category of documents described herein.

products. *See*, Fobbs Dec., ¶ 19, *citing*, Attachment 2. The results of those third-party tests of Respondents' products disclose highly secret, non-public technical information. Fobbs Dec, ¶¶ 20-21. Trade secret protection has been extended to include “secret formulas, research or processes” when the dissemination of the information would cause harm to the possessor company. *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1189. For example, *in camera* treatment has been granted to protect “batch data for CARB summertime gasoline.” *In re Union Oil Co. of California*, 2004 F.T.C. LEXIS 197, at \*7 (Oct. 7, 2004). Like in *Union Oil*, the batch data gathered from the third-party testing of Respondents' gels requires *in camera* protection. *See id.*

The results of the Respondents' third-party testing of their gels is also non-public trade secret research, which if revealed, would provide rivals a significant competitive advantage in creating competing products. Fobbs Dec., ¶ 22. If such information was disclosed, competitors would be able to bring to market products that compete directly with Respondents' products while at the same time avoiding the considerable time, money, and effort involved in researching similar products with the same active ingredients. *Id.* To prevent such disclosure, the Respondents go to great lengths to protect their research and testing material, even limiting access internally to only those who need it to carryout the duties of their employment. Fobbs Dec., ¶ 21.

### **3. Substantiation Materials**

Respondents' trial exhibits contain substantiation materials the Respondents compiled to support their advertising claims. *See* Attachment 3 to Fobbs Decl. At the FTC's direction during the CID, Respondents compiled a variety of published studies and other information, collectively combined to form the bases of the Respondents' substantiation for their making advertisement claims. Respondents implemented this process in order to comply with the Commission's

regulations and to ensure that the claims made in its advertisements accurately reflect the substantiation. *See* Fobbs Dec., ¶¶ 27-32.

Compilations, indexes or lists of information have regularly been protected as trade secrets. *See Unistar Corp. v. Child*, 415 So.2d 733 (Fla.3d DCA 1982). In *Unistar Corp.*, the plaintiff corporation compiled a list of gem dealers over a three-year period. *Id.* at 734. The plaintiff initially screened 12,000 potential sellers to ascertain their interest in being gem dealers for the plaintiff's jewels. *Id.* The initial list was narrowed to 4,200 parties who expressed interest in selling the plaintiffs gems. *Id.* Of those expressing interests, only 1,800 people eventually signed contracts with the plaintiff. *Id.* The plaintiff spent \$800,000 in mailings, solicitations, advertisements, and training seminars to cultivate interest in its product and create its list of dealers. *Id.* The plaintiff also periodically updated its list, destroying its outdated one. *Id.* Employees having access to the list were instructed to keep it at their desk and were prohibited from removing the list from the office. *Unistar Corp.*, 415 So.2d at 734. The court held that the list was a trade secret and could not be used by two former employees to compete against the plaintiff. *Id.* The court reasoned that the list of dealers was a result of "considerable effort, knowledge, time, and expense on the part of the plaintiff." *Id.*

Respondents' compilation of substantiation materials is also protected trade secret information. The Respondents, similar to *Unistar*, have expended an extraordinary amount of time and resources compiling information to substantiate claims made in their advertisements. *See* Fobbs Dec., ¶ 31; *Unistar Corp.*, 415 So.2d at 734. Similarly, Respondents have guarded against exposing the composite substantiation material to the public and its own employees who do not require the information to complete their employment duties. *See* Fobbs Dec., ¶¶ 27-28; *Unistar Corp.*, 415 So.2d at 734. Competitors can use the composite information, as they

attempted to do in *Unistar*, to save the cost and manpower of replicating the information involving similar products. *See* Fobbs Dec., ¶ 30; *Unistar Corp.*, 415 So.2d at 734. For the same reasons that the court held that the customer list was a trade secret in *Unistar*, the Respondents' composite of substantiation material is a trade secret deserving of *in camera* treatment because it represents a product of "considerable effort, knowledge, time, and expense on the part of" the Respondents. *See* Fobbs Dec., ¶¶ 27-32; *Unistar Corp.*, 415 So.2d at 734.

#### 4. Grant Applications

Respondents' trial exhibits contain highly confidential grant applications. For example, "Attachment 4" to this motion contains grant applications for small businesses regarding Respondents proposed study to further test the efficacy of their weight loss program. *See* Fobbs Dec.), ¶ 34, *citing*, Attachment 4. Methodologies used to make business decisions have been provided *in camera* protection. *North Texas Specialty Physicians*, 2004 F.T.C. LEXIS 109, at \*19-20. The Respondents' study employs a unique methodology, which tests the integration of many aspects involved in weight loss. *See* Fobbs Dec., ¶ 35; *North Texas Specialty Physicians*, 2004 F.T.C. LEXIS 109, at \*19-20.

Respondents' grant applications, much like its third-party testing, is also protectable trade secret information. Trade secret protection extends to "research or processes," the dissemination of which would harm the company possessing the information. *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1189. Respondents' grant proposals for a weight loss plan involving the use of its products constitutes "research and processes" deserving of *in camera* treatment. *See id.* Respondents spent time, money, and effort gathering qualified personnel to administer the study, developing a comprehensive testing methodology, and incorporating comments from the grant review board. *See* Fobbs Dec., ¶ 39. Disclosing grant information would allow Respondents'

rivals to benefit from Respondents' work-product and feedback, giving them an advantage when competing for limited grant funding. *See* Fobbs Dec., ¶¶ 38-39.

#### **5. Net Gross Revenue and Advertising Expenditures**

Respondents' trial exhibits contain highly confidential financial disclosures. For example, "Attachment 5" to this Motion contains net gross revenue and advertising expenditures for Respondents' companies. Specifically, these documents detail the amount of money Respondents spent on advertising for the challenged products and the total yearly revenue earned from sales of the challenged products. *See* Fobbs Dec., ¶ 42, *citing*, Attachment 5. This information is extremely sensitive for many reasons, including the fact that its release may "enable...competitors to construct an accurate financial model of [Respondents'] business, to its detriment." *E.I. Dupont de Nemours & Co.*, 1981 F.T.C. LEXIS 91, at \*4 (*in camera* status extended to "investment, earnings, profit, operative return and cost information"); *see also*, *North Texas Specialty Physicians*, 2004 F.T.C. LEXIS 109, at \*8-9 ("total revenues" satisfied clearly defined, serious injury standard); *Evanston Northwestern Healthcare Corporation*, 2005 F.T.C. LEXIS 27, at \*6 (*in camera* treatment given to a "financial and cost data"); *see also*, Fobbs Dec., ¶ 46.

Although Respondents believe the injury flowing from disclosure of their confidential financial information may be inferred from the nature of the documents themselves, this conclusion is further supported by the "secrecy" and "materiality" factors set forth above and further addressed in the Fobbs Dec., ¶¶ 43-48. Additionally, this Court previously determined that these documents "meet the standards for *in camera* treatment as confidential business records" because "disclosure of this information would result in a clearly defined serious competitive injury to Respondents." *In re Basic Research, et al.*, Docket No. 9318, Order

Certifying Motions to Commission and Staying Proceedings, 9 (Apr. 6, 2005). The effects of disclosing sensitive business information have not changed since the issuance of the Court Order. Accordingly, Respondents have established that the information contained in Attachment 5 is sufficiently secret, and sufficiently material to Respondents' business, that a clearly defined, serious injury would result in the event of public disclosure. Fobbs Dec., ¶ 49.

## **6. Profits and Revenue Balance Sheets, and Other Confidential**

### **Corporate Information**

Respondents' trial exhibits contain highly confidential financial information about its companies' assets and liabilities. For example, "Attachment 6" to this Motion contains combined balance sheets for Basic Research, Nutrastar, Majestic Enterprises and American Phytotherapy Research and Laboratory. *See* Fobbs Dec., ¶ 50, *citing*, Attachment 6. For reasons similar to those presented above regarding Respondents' financial information, the information contained in this document is highly confidential because its release may enable competitors to capitalize on Respondents' highly financial and corporate structure. *Evanston Northwestern Healthcare*, 2005 F.T.C. LEXIS 27, at \*6 (*in camera* treatment given to a "recent financial audit."); *E.I. DuPont de Nemours*, 1981 F.T.C. LEXIS 91, at \*4 (*in camera* status extended to "investment, earnings, profit, operative return and cost information."); *see also*, Fobbs Dec., ¶ 51. This conclusion is supported both by the nature of the documents as well as the "secrecy" and "materiality" factors. *See* Fobbs Dec., ¶ 51. Accordingly, Respondents have established that the information contained in the combined balance sheet is sufficiently secret, and sufficiently material to Respondents' business, that a clearly defined, serious injury would result in the event of public disclosure. Fobbs Dec., ¶ 52.

## **7. Royalty and Licensing Agreements**

Respondents' trial exhibits contain highly confidential contracts. "Attachment 7" to this Motion contains royalty and licensing agreements that Respondents entered into for the purpose of gaining an exclusive right to use proprietary information in creating the challenged products. *See* Fobbs Dec., ¶¶ 53-54, *citing*, Attachment 7. *In camera* status has been extended to contracts when those agreements have "secret, competitively sensitive [information], the disclosure of which could cause serious competitive injury" to respondents. *North Texas Specialty Physicians*, 2004 F.T.C. LEXIS 109, at \*3. Specifically, royalty and licensing agreements are among the types of commercial, financial, and trade secret information regularly afforded *in camera* protection. *Union Oil Co. of California*, 2004 F.T.C. LEXIS 198, at \*6.

Respondents' royalty and licensing agreements are kept in confidence within Respondents' organizations and hidden from competitors. *See* Fobbs Dec., ¶ 55. The royalty and licensing agreements are sensitive because the contracts disclose confidential payment amounts to third-party licensors and the terms under which the agreements are formed. *See id.* Respondents will be subject to serious competitive injury if the agreements are made available to the public because competitors would be able to review or reproduce the negotiated confidential royalty and licensing terms and payments to directly compete with Respondents. *See id.*

## **8. Customer Information**

Respondents' trial exhibits contain information that is highly sensitive to both Respondents and their customers. "Attachment 8" consists of advertisements, documents, electronic mail ("e-mail"), and letters containing personal customer information. Fobbs Dec., ¶ 57, *citing*, Attachment 8. Respondents are extremely vigilant about respecting the privacy rights of their customers, particularly when it comes to matters of health. Fobbs Dec., ¶ 58.

Accordingly, Respondents have instituted a formal privacy policy, pursuant to which customer information and communications are not disclosed to the public. Fobbs Dec., ¶ 58.

Public disclosure of consumer correspondence would violate Respondents' internal privacy policy, negatively affecting Respondents' reputation in this regard, and compromising the privacy rights of Respondents' customers, who do not expect their names, addresses, e-mail addresses or substantive communications will be made publicly available. Fobbs Dec., ¶ 59.

That such information is sufficiently confidential to warrant protection from public disclosure is fully supported by Commission authority on the sensitivity of patient information. *See Evanston Northwestern Healthcare*, 2005 F.T.C. LEXIS 27, at \*4 (*in camera* treatment given to a "patient demographic, diagnostic and payment information"); *North Texas Specialty Physicians*, 2004 F.T.C. LEXIS 109, at \*5 ("patient information" satisfied clearly defined, serious injury standard.). Moreover, this Court has previously acknowledged that posting a customer's information contained in an e-mail on the F.T.C. website violated the "consumer's reasonable expectation of privacy." *In re Basic Research, et al.*, Docket No. 9318, Order Certifying Motions to Commission and Staying Proceedings, 9 (Apr. 6, 2005). Applying the same reasoning, the Court's protection of the "consumer's reasonable expectation of privacy" should apply to all the documents disclosing customers' identifies. *See id.*



## 9. Advertising Dissemination Schedules

Respondents' trial exhibits contain highly confidential advertising dissemination schedules. "Attachment 9" contains detailed schedules of print advertisements for all the challenged products (except PediaLean) and television advertising schedules for Leptoprin (collectively, "Dissemination Schedules"). Fobbs Dec., ¶ 61.

The Dissemination Schedules are far more than simple schedules of when and where Respondents ran certain advertising, although that information is also included. They are the cumulative result of numerous prior advertising campaigns (both successful and unsuccessful) that have been modified and refined after expending substantial amounts of money, time and effort over a thirteen-year period to discover how to run an effective advertising campaign. Fobbs Dec., ¶ 66. Thus, the Dissemination Schedules are extremely valuable both to Respondents and its competitors because it provides a "blue print" of strategic advertising that could easily be copied by Respondents' competitors to successfully market similar products. Fobbs Dec., ¶ 66.

In light of the usefulness of this information, the Dissemination Schedules are similar to customer lists, sales data, or any other important information that has been accumulated over time exclusively through the substantial efforts of a particular company. *North Texas Specialty Physicians*, 2004 F.T.C. LEXIS 109, at \*4 (customer base including "top ten customers" and "business strategic planning" satisfied clearly defined, serious injury standard); *Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. at 500 (extension of *in camera* treatment for documents detailing sales of specific products). As such, it is appropriate to protect Respondents from companies unfairly trading upon this information to gain a competitive advantage. See Fobbs Dec., ¶ 65.

The sensitivity of this information is supported by the documents themselves and the “secrecy” and “materiality” factors. Fobbs Dec., ¶¶ 62-67. Additionally, this Court previously determined that the Dissemination Schedules in Attachment 9 qualified, at least in part, as *in camera* business information because the supporting affidavit demonstrated that “disclosure of this information would result in a clearly defined, serious competitive injury to Respondents.” *Basic Research, et al.*, Docket No. 9318, Order Certifying Motions to Commission and Staying Proceedings, 9 (Apr. 6, 2005). Accordingly, Respondents have established that the information contained in the Dissemination Schedules is sufficiently secret, and sufficiently material to Respondents’ business, that a clearly defined, serious injury would result in the event of public disclosure. Fobbs Dec., ¶ 68.

#### **10. Marketing Strategy**

Respondents’ trial exhibits contain highly confidential marketing strategy information. “Attachment 10” to this Motion contains e-mails and reports disclosing how to effectively market the six challenged products. *See* Fobbs Dec., ¶ 69, *citing*, Attachment 10. Marketing research typically provided protection includes *in camera* information “used by companies to gain a sales edge over competitors.” *Int’l Ass. of Conf. Interpreters*, 1996 F.T.C. LEXIS 298, at \*20. Respondents’ reports assessing the take-away message in their advertising, internal e-mail about the positioning of their product information, and tip sheets aiding customer service in effectively marketing the products are all “sales strategies for overtaking competitors.” *See* Fobbs Dec, ¶¶ 73-74; *Int’l Ass. of Conf. Interpreters*, 1996 F.T.C. LEXIS 298, at \*12-13.

Business strategies and market assessments have been provided *in camera* status when supporting declarations show the documents are “confidential” and their dissemination “would result in a clearly defined, serious injury.” *Evanston Northwestern Health Corp.*, 2005 F.T.C.

LEXIS 27, at \*6. Respondents' confidential marketing strategy information has uniformly been held in confidence both internally, limiting access to the information to only those who need it to complete their daily tasks, and externally from competitors. *See* Fobbs Dec., ¶¶ 70-72.

Allowing competitors access to Respondents' secret marketing information would enable Respondents' direct competitors to either develop a counter-marketing strategy or mimic Respondents' successful business methods; and ultimately gain a greater share of Respondents' market. *See* Fobbs Dec., ¶¶ 73-74.

### **11. Settlement Documents**

Respondents' trial exhibits contain highly confidential settlement documents. "Attachment 11" to this motion includes documents containing correspondence between the F.T.C. and Respondents regarding settlement of this case. *See* Fobbs Dec., ¶ 77, *citing*, Attachment 11. *In camera* treatment is appropriate when "public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved." *Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. at 500; *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188. Disclosing confidential settlement negotiations would result in a clearly defined, serious injury to Respondents because competitors would benefit from the time, money, and effort Respondents expended in attempting to resolve the case. *See* Fobbs Dec. ¶ 80. Additionally, the public may misperceive Respondents attempts to settle as an admission of guilt, thereby damaging Respondents' reputation and negatively affecting product sales. *See* Fobbs Dec. ¶ 82. Respondents have closely guarded access to its correspondence with the Federal Trade Commission to prevent public disclosure. *See* Fobbs Dec. ¶¶ 78-79. Public disclosure of settlement documents would cause a clearly defined, serious injury to Respondents. *See*

*Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. at 500; *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188.

## **12. Multiple Category Documents**

A number of exhibits incorporated into this Motion are deserving of *in camera* treatment under more than one of the categories described above. For the convenience of the ALJ, and to reduce the volume of material presented, those documents are not separately listed in each applicable category. They are, instead, compiled in a new Attachment 12, together with an individual description of each such exhibit explaining the bases that justify inclusion of the exhibit in the *in camera* motion.

## **CONCLUSION**

In light of the support offered, and the arguments and authority presented herein, Respondents respectfully submit that they have shown cause as to why the public disclosure of their confidential information would result in a clearly defined, serious injury to Respondents. Accordingly, the ALJ should enter an order providing for *in camera* treatment of the exhibits identified in the attachments and Ms. Fobbs' declaration for the time periods specified.

Dated this 12<sup>th</sup> day of January, 2006

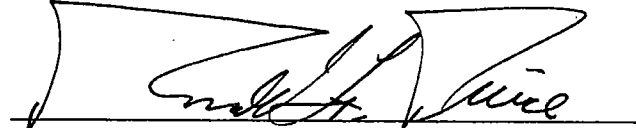
Respectfully submitted,



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Nutrasport LLC  
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Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ronald F. Price", is written over a horizontal line.

Ronald F. Price

**PETERS SCOFIELD PRICE**

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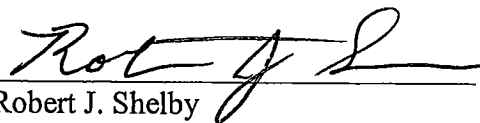
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Attorneys for Respondent Daniel B. Mowrey

DATED this 12 day of January 2006.

BURBIDGE & MITCHELL

A handwritten signature in black ink, appearing to read "Robert J. Shelby", written over a horizontal line.

Robert J. Shelby

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**Pro Se Respondent**



CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of January, 2006, I caused the foregoing **PUBLIC VERSION OF RESPONDENTS' REVISED MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS** and **ORDER ON RESPONDENTS' REVISED MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS** to be filed and served as follows:

- (1) an original and one paper copy filed by Federal Express and one electronic copy in PDF format mailed to:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW Room H-159  
Washington, DC 20580  
Email: [secretary@ftc.gov](mailto:secretary@ftc.gov)

- (2) one paper copy served by Federal Express to:

The Honorable Stephen J. McGuire  
Chief Administrative Law Judge  
600 Pennsylvania Avenue, NW, Room H-112  
Washington, D.C. 20580

- (3) one paper copy by first class U.S. Mail to

James Kohm  
Associate Director, Enforcement  
U.S. Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

- (4) one paper copy by first class U.S. mail and one electronic copy in PDF format by electronic mail to:

Laureen Kapin  
Laura Schneider  
Joshua S. Millard  
Edwin Rodriguez  
Walter C. Gross III  
Lemuel W. Dowdy  
Federal Trade Commission  
600 Pennsylvania Ave, NW, Suite NJ-2122  
Washington, D.C. 20580

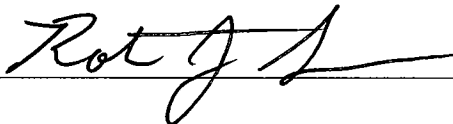
- (5) Email: [lkapin@ftc.gov](mailto:lkapin@ftc.gov)  
one paper copy by first class U.S. mail:

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Mitchell K. Friedlander  
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Salt Lake City, Utah 84116



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Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX023-A			1
CX-502			1
CX-787	R0041733		1
RX-045	N/A		1
RX-055	N/A		1
RX-068	N/A		1
RX-086	N/A		1
RX-144	N/A		1
RX-272	BPI000092 THRU BPI000093		1
RX-273	BPI000081 THRU BPI000091		1
RX-279	BPI000124 THRU BPI 000127	<b>REDACTED</b>	1
RX-303	NC00013 THRU  NC00016		1
RX-304	RE00241		1
RX-390	NC00017 THRU  NC00020		1
RX-391	RE00242		1
RX-393	NC00021		1
RX-555	R0041191 THRU R0041192		1
RX-635	FTC 4486 THRU 4494		1
RX-678	SH005180 THRU SH005197		1
RX-748	SH005205 THRU SH005206		1
RX-753	SH005045 THRU SH005047		1
RX-782	RE00243		1
CX-232			2
CX-698	R0054723- R0054727		2
CX-704	R0054714- R0054718		2
CX-705	R0054716- R0054718		2

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX-708	R0054719- R0054720		2
CX-709	R0054721- R0054722		2
RX-053	N/A		2
RX-280	SDT00484 THRU SDT00494		2
RX-281	SDT00500 THRU SDT00522		2
RX-282	SDT00470 THRU SDT000524		2
RX-283	SDT00525 THRU SDT000530	<b>REDACTED</b>	2
RX-284	SDT00533 THRU SDT000534		2
RX-285	SDT00495 THRU SDT000499		2
RX-286	SDT00531 THRU SDT000532		2
RX-287	SDT00416 THRU SDT00417		2
RX-288	LMS00662 THRU SDT00417		2
RX-290	SH004844 THRU SH004846		2
RX-292	SDT00867		2
RX-294	SDT00860 THRU SDT00866		2
RX-295	SDT00801 THRU SDT00859		2
RX-296	SDT00751 THRU SDT00752		2
RX-297	SDT00740 THRU SDT00745		2

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
RX-298	SDT00746 THRU SDT00750		2
RX-299	SDT00753 THRU SDT00796		2
RX-300	SDT00661 THRU SDT00739		2
RX-301	SDT00411 THRU SDT00423		2
RX-320	R0054714 THRU R0054715		2
RX-321	R0054716 THRU R0054718	<b>REDACTED</b>	2
RX-322	R0054719 THRU R0054720		2
RX-323	R0054721 THRU R0054722		2
RX-329	R006936 THRU R0007582		2
RX-415	R0009371 THRU 0010068		2
RX-706			2
RX-807			2
CX-166	R0000332		3
CX-167	R0007483		3
	R0009931 R0029913 R0035713		3
CX-168			3
CX-169	R0015244		3
CX-370	R0009356		3
	R0044460- R0044466		3
CX-374			3
	R0044468- R0044471		3
CX-378			3
	R0044472- R0044474		3
CX-379			3
CX-488			3
CX-498			3
CX-500			3
CX-518			3

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX-521			3
CX-531			3
CX-532			3
CX-533			3
CX-611			3
CX-627	PL000243- PL000253		3
CX-629	PL006252- PL006259		3
CX-632	R0015260- R0015265		3
CX-680	R0033488		3
CX-781	R0041966		3
CX-789	R0041578- R0041579	<b>REDACTED</b>	3
CX-808	R0054711		3
CX-809	R0054712- R0054713		3
CX-811	SDT00313- SDT00314		3
CX-862			3
CX-941			3
RX-063	N/A		3
RX-075	N/A		3
RX-181	LMS00358 THRU LMS00360		3
RX-221	R0000332 THRU R0004110		3
RX-316	R0009954 THRU R0009967		3
RX-455	R0015244		3
RX-592	R00124364 THRU R0015583		3
RX-708	NC11313 THRU NC11333		3
RX-720	LMS00556 THRU LMS00558		3
RX-727	R0029913 THRU 0032363		3
RX-779	R0035713		3

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
RX-788	R0035713 THRU R0036369		3
RX-268	R0007483		3
RX-760	R0034563		3
CX-109	NC11476- NC11498		4
CX-633	PL003131- PL003187		4
CX-634	PL003067- PL003082		4
CX-635	PL003083- PL003090		4
CX-636	NC11924- NC11984		4
CX-637	NC11419		4
RX-319	BPI000109 THRU BPI000123	<b>REDACTED</b>	4
RX-710	NC11476 THRU NC11498		4
RX-713	R0033392 THRU R0033394		4
RX-725	NC11201 THRU NC11202		4
RX-726	R0029913		4
CX-025			5
CX-026			5
RX-173	R0040774		5
CX-023			6
CX-024			6
CX-185	2000001		6
CX-186	1000001- 1000002		6
CX-261			6
CX-288			6
CX-334			6
CX-617			6
CX-645	R0033909		6
CX-646	R0040761		6
CX-650	R00335196- R0035197		6
CX-682	R0040683		6
CX-738	R0035131		6
CX-750	PL003056		6

**Table 1**

<b><u>Exhibit No.</u></b>	<b><u>Bates No.</u></b>	<b><u>Title or Description</u></b>	<b><u>Categories</u></b>
CX-759	R0033865		6
CX-823	R0040774		6
CX-830			6
CX-841	9010003- 9010005		6
CX-843	9000023		6
CX-844	900023		6
CX-845	9000022		6
CX-846	9000013- 9000021		6
CX-847	8000001- 8000026		6
CX-854	9000010- 9000012		6
CX-855	5037026-30		6
CX-890	R0040742- R0040743	<b>REDACTED</b>	6
CX-899	5007539- 5007567		6
RX-043	N/A		6
RX-094	N/A		6
RX-095	N/A		6
RX-096	N/A		6
RX-097	N/A		6
RX-125	FTC4495 THRU FTC4523		6
CX-152	COINFO- 000001/94- COINFO 000001-107 (BASIC RESEARCH BATES: 8000001- 8000014)		7
CX-191	4000001- 4000008		7
CX-817	SDT00277- SDT00279		7
CX-819	R0040434- R0040437		7
CX-820	R0040631- R0040634		7
CX-821	SDT00160		7
CX-826	8000015		7
CX-829	5037698- 5037705		7



Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX-848	8000015- 8000018-19		7
CX-851	4000017-22		7
CX-852	4000009- 4000016		7
RX-091	N/A		7
RX-093	4000001 THRU 4000008		7
RX-306	N/A		7
RX-307	FR000027		7
RX-308	N/A		7
RX-676	R0034016 THRU R0034018		7
RX-677	SH005164 THRU SH005165	<b>REDACTED</b>	7
CX-102	R0035439- R0035440		8
CX-108	NC11007; NC11011		8
CX-120	R0042305- R0042306		8
CX-448	5004217- 5004307		8
CX-639	R0010385		8
CX-640	5003717		8
CX-641	5004616		8
CX-643	RR0032727- R0032730		8
CX-648	5003716		8
CX-652	5003722		8
CX-653	5003725- 5003727		8
CX-654	5003697		8
CX-655	R0004675 (ALSO MARKED AS R0037698		8
CX-658	R0004678- R0004682		8
CX-659	5003694		8
CX-669	NC01619- NC01622		8
CX-670	R0035181- R0035182		8
CX-679	R0032962- R0032963		8

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX-681	5004420		8
CX-683	5001561		8
CX-685	5003604		8
CX-687	5004406- 5004407		8
CX-707	R0004316		8
CX-727	R0036603		8
CX-739	R0034495 (ALSO MARKED AS R0033487)		8
CX-740	R0034494		8
CX-767	R0034030- R0034031	<b>REDACTED</b>	8
CX-782	R0041815		8
CX-783	R0041795- R0041796		8
CX-793	R0041513		8
RX-191	R0004359		8
RX-192	R0004277		8
RX-194	R0004373		8
RX-195	R0004436		8
RX-196	R0004466		8
RX-199	R0005030 THRU R0005031		8
RX-204	R0004363	8	
RX-206	R0004969	8	
RX-219	R0006105 THRU R0006486	8	
RX-256	R0004370	8	
RX-262	R0005136	8	
RX-309	5003620	8	
RX-310	5003627	8	
RX-311	R0007976	8	
RX-312	R0009771	8	
RX-313	R0008052 THRU R0008054	8	
RX-314	R0008100	8	
RX-315	5003676	8	
RX-327	R0007620 THRU R0008441	8	
RX-356	5003556	8	
RX-358	5003557	8	
RX-360	5003558	8	

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
RX-362	5003559		8
RX-364	5003560		8
RX-367	5003562		8
RX-368	5003563 THRU 5003564		8
RX-371	5003566		8
RX-373	R0007682		8
RX-374	R0007677		8
RX-375	5003567		8
RX-394	R0010753 THRU R0010754		8
RX-396	R0010272		8
RX-398	R0010547 THRU R0010550	<b>REDACTED</b>	8
RX-400	R0010701		8
RX-401	R0010711		8
RX-402	R0010852		8
RX-404	R0011016		8
RX-414	R0011280 THRU R0012190		8
RX-418	R0012191 THRU R0012242		8
RX-436	R0010231		8
RX-437	R0010199		8
RX-438	R0010200		8
RX-439	R0012197		8
RX-440	R0012198		8
RX-441	R0012199		8
RX-442	R0010155		8
RX-443	R0010161		8
RX-447	R0010623		8
RX-453	R0010818		8
RX-473	R0023367		8
RX-474	R0023042		8
RX-476	R0023051		8
RX-476	R0023188 THRU R0023189		8
RX-477	R0023311		8
RX-478	R0023528		8
RX-479	R0041196		8
RX-480	R0025312		8
RX-481	R0022817		8
RX-482	R0015831		8

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
RX-500	R0018140		8
RX-503	R0018428		8
RX-505	R0018459		8
RX-510	R0018757		8
RX-513	R0018840		8
RX-514	R0018881		8
RX-516	R0019356		8
RX-517	R0020013		8
RX-518	R0020148		8
RX-519	R0021664		8
RX-520	R0021469		8
RX-521	R0041698		8
RX-522	R0041635		8
RX-523	R0022966		8
RX-525	R0023463		8
RX-527	R0041177		8
RX-528	R0024644 THRU R0024645	<b>REDACTED</b>	8
RX-529	R0015693		8
RX-530	R0015706		8
RX-543	R0017769		8
RX-545	R0018175		8
RX-546	R0019919		8
RX-548	R0021694		8
RX-549	R0024319		8
RX-550	R0024558		8
RX-553	R0021727		8
RX-554	R0022859		8
RX-558	R0042593		8
RX-559	R0042528		8
RX-566	R0017446		8
RX-567	R0019587		8
RX-568	R0020238		8
RX-569	R0022237		8
RX-570	R0022439		8
RX-571	R0023663		8
RX-574	R0024255		8
RX-575	R0024274		8
RX-576	R0024283		8
RX-577	R0024284		8
RX-579	R0020768		8
RX-582	R0019551		8
RX-584	R0042305 THRU R0042306		8
RX-585	R0022679		8
RX-587	R0019618		8

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
RX-588	R0020525		8
RX-589	R0023414		8
RX-591	R0025315 THRU R0029723		8
RX-593	R0029724 THRU R0029727		8
RX-594	SDT01123		8
RX-597	R0019455		8
RX-598	R0029730		8
RX-599	R0029731 THRU R0029732	<b>REDACTED</b>	8
RX-600	R0029733		8
RX-601	R0019902		8
RX-602	R0020019		8
RX-603	R0042707		8
RX-606	R0042577		8
RX-607	R0042488		8
RX-609	R0042301		8
RX-610	R0042293		8
RX-611	R0042044		8
RX-612	R0042058		8
RX-613	R0041918		8
RX-614	R0041763		8
RX-615	R0041659		8
RX-616	PK0072		8
RX-617	R0023088 THRU R0023090		8
RX-618	R0023464		8
RX-619	R0023467 THRU R0023470		8
RX-620	R0023483		8
RX-621	R0029735 THRU R0029736		8
RX-622	R0023968		8
RX-623	R0023843		8
RX-624	R0024310		8
RX-625	R0024094		8
RX-626	SDT01122		8
RX-627	R0025012		8
RX-634	R0042395 THRU R0042396		8

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
RX-664	R0035181 THRU R0035182		8
RX-665	R0033160		8
RX-670	R0033288		8
RX-671	R0033360		8
RX-672	R0035327		8
RX-705	R0032625 THRU R0032708		8
RX-757	R0032709 THRU R0032722	<b>REDACTED</b>	8
RX-759	R0035546		8
RX-762	R0033043		8
RX-763	R0033044		8
RX-766	R0033066		8
RX-769	R0033037		8
RX-770	R0033037		8
RX-771	R0034562		8
RX-772	R0032714		8
RX-773	R0034560		8
RX-775	R0034549		8
RX-783	R0036394 THRU R0036396		8
RX-784	R0036569		8
RX-787	R0036706 THRU R0037113		8
RX-790	R0037114 THRU R0037239		8
RX-792	R0012191		8
RX-794	5003105		8
RX-586	R0022679		8
RX-608	R0042407		8
RX-666	R0033225 THRU R0033227		8
RX-667	R0033272		8
RX-761	R0034140		8
RX-767	R0033121 THRU R0033123		8
RX-768	R0034400 THRU R0034401		8

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX-302	R0041166- R0041166-G		9
CX-313	JF35		9
CX-314			9
RX-386	R0044178		9
CX-117	5032872- 5032962		10
CX-174	R0034416- R0034419		10
CX-203	R0034370 (ALSO MARKED AS R0033185)	<b>REDACTED</b>	10
CX-209	R0033070		10
CX-210	R0035122		10
CX-211	R0035116		10
CX-214	R0035133		10
CX-215	R0035138- R0035139		10
CX-246	R0034752		10
CX-283	R0035127		10
CX-285	R0035113		10
CX-286	R0035111		10
CX-289			10
CX-290			10
CX-291			10
CX-292	R0041870		10
CX-293	F0007-F0008		10
CX-295			10
CX-297	F0897		10
CX-298	R0042098		10
CX-303	R0037371- R0037637		10
CX-304	F0010		10
CX-306	R0035119		10
CX-309	F0853-F0855		10
CX-310	R0041788		10
CX-311			10
CX-312	SF3-SF4		10
CX-315			10
CX-316			10
CX-317	RK8		10
CX-318			10
CX-319			10
CX-320	R0012331		10
CX-321			10
CX-322			10
CX-323			10

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX-371	R0044459		10
CX-372	R0044647- R0044648		10
CX-380	R0044493- R0044494		10
CX-381	R0044514		10
CX-382	R0044518		10
CX-383	R0044519		10
CX-451			10
CX-455			10
CX-456			10
CX-457			10
CX-459			10
CX-644	R0033896- R00338983		10
CX-651	5004483		10
CX-675	R0033563- R0033564	<b>REDACTED</b>	10
CX-676	R0032944- R0032945		10
CX-678	R0040459- R0040460		10
CX-701	R0035355		10
CX-710	R0035123		10
CX-711	R0035121		10
CX-712	R0034074		10
CX-713	R0033691- R0033692		10
CX-714	R0033693		10
CX-718	R0034454- R0034455		10
CX-721	R0035436- R0035437		10
CX-722	R0004901		10
CX-724	R0035109		10
CX-728	R0034371- R0034377		10
CX-729	R0033779- R0033785		10
CX-731	R0035134- R0035136		10
CX-754			10
CX-760	R0033463- R0033464		10
CX-761	R0033873- R0033875		10
CX-762	R0033866- R0033867		10



Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX-764	R0034019- R0034020 (ALSO MARKED AS R0035414)		10
CX-772			10
CX-773	R0042680		10
CX-776	R0042372		10
CX-777	R0042331		10
CX-780	R0041966		10
CX-784			10
CX-785	R0041790- R0041791		10
CX-786	R0000306		10
CX-788	R0041630- R0041631		10
CX-790	R0041580- R0041582	<b>REDACTED</b>	10
CX-795	R0041317- R0041317-J		10
CX-798			10
CX-799			10
CX-805	R0042732 (ALSO MARKED AS R0042733)		10
CX-807		10	
CX-810	SDT00186- SDT00188		10
CX-893	R0040695		10
CX-935	5041713- 5041747		10
CX-953			10
RX-407	R0012283		10
RX-416	FTC4708 THRU FTC4740		10
RX-471	R0042045		10
RX-647	R0029786 THRU R0029896		10
RX-696	R0040296		10
CX-027			10
CX-818	SDT00389		10
RX-683	R0034002		10
RX-207	R0043238		10
CX-831			11
CX-869	FTC4442-4445		11

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
CX-870	FTC4446-4452, 4454		11
RX-098	FTC 4589 THRU FTC 4599		11
RX-099	FTC 4435 THRU FTC 4436		11
RX-100	FC000025 THRU FC000026		11
RX-103	FTC 4438 THRU FTC 4441		11
RX-105	FTC 4442 THRU FTC 4445	<b>REDACTED</b>	11
RX-106	FTC 4446 THRU FTC 4453		11
RX-110	FC000057 THRU FC000060		11
RX-111	FTC 4465 THRU FTC 4470		11
RX-115	FTC 4475 THRU FTC 4476		11
RX-120	FC000062 THRU FC000081		11
RX-126	FTC4524 THRU FTC 4561		11
RX-127	FC000187 THRU FC000232		11
RX-134	FTC 4566 THRU FTC 4571		11
RX-136	FC000290		11
RX-137	FTC 4572 THRU FTC 4576		11
RX-138	FTC 4577 THRU FTC 4585		11

**Table 1**

<b><u>Exhibit No.</u></b>	<b><u>Bates No.</u></b>	<b><u>Title or Description</u></b>	<b><u>Categories</u></b>
RX-139	FTC 4586 THRU FTC 4587		11
CX-116			12
CX-134			12
CX-148			12
CX-149			12
CX-163			12
CX-182			12
CX-183			12
CX-196			12
CX-197			12
CX-198			12
CX-254			12
CX-255			12
CX-281		<b>REDACTED</b>	12
CX-299	R0041604		12
CX-875	FTC4486-4494		12
CX-879	FTC4632-4639		12
CX-89			12
CX-902	5012810- 5012855		12
CX-903	5033259- 5033283		12
CX-904	5033482- 5033509		12
CX-917	5033482- 5033509		12
CX-919	5033164- 5033207		12
CX-920	CYT0810- CYT1064		12
CX-921	5036691- 5036775		12
CX-932	5003164- 5033207		12
CX-934	5033482- 5033509		12
CX-936	5033259- 5033293		12
CX-937	5033482- 5033509		12
CX-939	5033164- 5033207		12
RX-038	N/A		12
RX-039	N/A		12
RX-040	N/A		12
RX-041	N/A		12

Table 1

<u>Exhibit No.</u>	<u>Bates No.</u>	<u>Title or Description</u>	<u>Categories</u>
RX-042	N/A		12
RX-046	N/A		12
RX-047	N/A		12
RX-048	N/A		12
RX-051	N/A		12
RX-052	N/A		12
RX-054	N/A		12
RX-124	FC000147 THRU FC000155		12
RX-142	FTC 4632 THRU FTC 4639	<b>REDACTED</b>	12
RX-172	FTC 4632 THRU FTC 4639		12
RX-274	BPI000043 THRU BPI000045		12
RX-276	BPI000021 THRU BPI000024		12
RX-348	R0007011 THRU R0007064		12
RX-349	LMS00689 THRU LMS00700		12
RX-814	N/A		12
CX-77			12
CX-801			12

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

*In the Matter of*

BASIC RESEARCH, L.L.C.,  
A.G. WATERHOUSE, L.L.C.,  
KLEIN-BECKER USA, L.L.C.,  
NUTRASPORT, L.L.C.,  
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,  
BAN, L.L.C.,  
DENNIS GAY,  
DANIEL B. MOWREY,  
MITCHELL K. FRIEDLANDER

***PUBLIC VERSION***

**DOCKET NO. 9318**

**DECLARATION OF CARLA FOBBS**

1. My name is Carla Fobbs. I am over twenty-one years of age, of sound mind, and fully competent and able to testify to the matters set forth herein. Unless otherwise indicated, I have personal knowledge of the facts set forth herein.

2. I am employed as the Legal Administrator in the Compliance Department of Basic Research, LLC. I am familiar with the documents of Basic Research, LLC, A.G. Waterhouse, LLC, Klein-Becker usa, LLC, Nutrasport, LLC, Sövage Dermalogic Laboratories, LLC and Ban, LLC, and the level of confidentiality associated with the subject matter contained therein.

3. This Declaration is submitted in support of Respondents' Revised Motion for *In Camera* Treatment of Trial Exhibits.

4. A small number of agents acting at my direction assisted me in reviewing each of the documents appearing on the Exhibit Lists of Respondents and Complaint Counsel. This

comprehensive review was conducted for purposes of determining which designated exhibits contain confidential information, the public disclosure of which would cause a clearly defined, serious injury to Respondents.

5. Following receipt of the ALJ's December 5, 2005, Order on our Motion, we conducted a second review of all the documents that were the subject of our first motion for *in camera* treatment.

6. I again employed in our second review a coordinated approach utilizing the assistance of a small number of agents working under my direction. These agents were again instructed on the Commission's strict standards for *in camera* treatment of trial exhibits and were provided copies of the ALJ's December 2005 Order for purposes of conducting the review.

7. I have personally received reports and updates concerning the nature and scope of the review conducted. I am personally informed of the content of individual documents and groups of documents that were reviewed, and the specific bases upon which Respondents are moving for *in camera* treatment of documents.

8. Based on our review, several hundred of Respondents' and Complaint Counsel's trial exhibits contain Respondents' confidential information which, if disclosed to the public, would cause a clearly defined, serious injury to Respondents, or disclose confidential personal information of Respondents' customers, which Respondents are obliged to keep confidential. The types of documents that require confidential treatment include those containing trade secrets, financial information, and various types of commercial information. Each document is individually reviewed in turn below and, for convenience's sake, organized and generally categorized as follows:

- (i) Product Formulation (Composite Attachment 1);
- (ii) Third Party Testing (Composite Attachment 2);

- (iii) Substantiation Materials (Composite Attachment 3);
- (iv) Grant Applications (Composite Attachment 4);
- (v) Advertising Expenditures (Composite Attachment 5);
- (vi) Profits and Revenue (Composite Attachment 6);
- (vii) Royalty Agreements (Composite Attachment 7);
- (viii) Marketing Strategies (Composite Attachment 8);
- (ix) Customer Information (Composite Attachment 9);
- (x) Settlement Documents (Composite Attachment 10);
- (xi) Dissemination Schedule (Composite Attachment 11); and
- (xii) Multiple Category (Composite Attachment 12).

The documents themselves are attached hereto in hard-copy and electronic copy, and are arranged according to these categories.

9. For convenience sake, the subject documents are also summarized in Table 1, attached to Respondents' Motion for *In Camera* Treatment.

**TRADE SECRETS**

**Composite Attachment 1: Product Formulation**

10. Composite Attachment 1, attached hereto, contains documents revealing product formulation data for PediaLean, LeptoPrin, Anorex, Tummy Flattening Gel, Cutting Gel and Dermalin-APg ("Challenged Products"), including specific ingredients and their percent ratios.

11. [REDACTED]

12. [REDACTED]

**REDACTED**



[REDACTED]

17. Public disclosure of the product formulation information would provide an unfair competitive edge to Respondents' competitors and, in turn, destroy Respondents' market share for their products in this and other countries. The individual documents included in this category are:

- a. [REDACTED]

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

[REDACTED]

18. For all the foregoing reasons, public disclosure of Respondents' product formulation information would cause a clearly defined, serious injury to Respondents.

**Composite Attachment 2: Third Party Testing**

19. Composite Attachment 2, attached hereto, contains third-party clinical and chemical testing of the Challenged Products and/or their ingredients. As such, the documents in question include the protocol for the studies, the results thereof, study agreement forms, and reports containing analyses of the results.

20. [REDACTED]

21. [REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

23. [REDACTED]

[REDACTED]

[REDACTED]

24. [REDACTED]

[REDACTED]

[REDACTED] The exhibits for which Respondents move for *in camera* treatment under this category are:

a. [REDACTED]

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

[REDACTED]

dd. [REDACTED]

[REDACTED]

25. For all the foregoing reasons, public disclosure of Respondents' third-party testing would cause a clearly defined, serious injury to Respondents.

**Composite Attachment 3: Substantiation Materials**

26. Composite Attachment 3, attached hereto, contains compilations of materials substantiating Respondents advertising claims.

27. [REDACTED]

[REDACTED]

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

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**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



**REDACTED**

33. Public disclosure of aggregate substantiation would cause a clearly defined, serious injury to Respondents.

**Composite Attachment 4: Grant Applications and Supporting Documentation**

34. Composite Attachment 4, attached hereto, contains Respondents' grant applications, comments, and revisions to the applications for the challenged products.

35. [REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**REDACTED**

39.

[REDACTED]

40. The grant applications for the challenged products cannot be replicated or acquired by any unauthorized third parties by proper means. The following documents fall within this category:

a.

[REDACTED]

b.

[REDACTED]

**REDACTED**

**REDACTED**

**REDACTED**

[REDACTED]

k. [REDACTED]

l. [REDACTED]

41. Public disclosure of Respondents' grant applications would cause a clearly defined, serious injury to Respondents.

**REDACTED**

FINANCIAL INFORMATION

**Composite Attachment 5: Gross Revenue and Ad Expenditures**

42. Composite Attachment 5, attached hereto, contains documents showing net gross revenues and advertising expenditures for all six challenged products. Net gross revenue is defined as "gross figures less promotional discounts."

43. [REDACTED]

44. [REDACTED]

45. [REDACTED]

46. [REDACTED]

47. [REDACTED] s.



[REDACTED]

[REDACTED]

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] respondents move the following documents for *in camera*

treatment for the time periods specified:

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

49. Public disclosure of Respondents' net gross revenue and advertising expenditures would cause a clearly defined, serious injury to Respondents.

**Composite Attachment 6: Profits and Revenue, and Other Confidential Corporate Information**

50. Composite Attachment 6, attached hereto, contains documents referring to the balance sheets for Basic Research, American Phyotherapy Research Laboratory, [REDACTED] and [REDACTED] each detailing their total assets and liabilities.

51. Respondents' balance sheets analyzing their assets and liabilities contain highly confidential financial information for all the reasons detailed above regarding [REDACTED]

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

[REDACTED]

[REDACTED]

ee. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ff. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

gg. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

52. Public disclosure of the balance sheets detailing Respondents' assets and liabilities would cause a clearly defined, serious injury to Respondents, as would disclosure of other highly confidential corporate structure and ownership documentation.

**REDACTED**

**Composite Attachment 7: Licensing and Royalty Agreements**

53. Composite Attachment 7, attached hereto, contains licensing and royalty agreements executed by Respondents.

54. [REDACTED]

55. [REDACTED]

These documents are:

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

r.

[REDACTED]

56. Public disclosure of the licensing and royalty agreements would cause a clearly defined, serious injury to Respondents.

COMMERCIAL INFORMATION

**Composite Attachment 8: Customer Information**

57. Composite Attachment 8, attached hereto, includes documents containing consumers' personal contact and health information.

58. Respondents are extremely vigilant about respecting the privacy rights of their customers, particularly when it comes to matters of health. [REDACTED]

[REDACTED]

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



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**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

XXXXXXXXXX BY 772  
[REDACTED]

60. Public disclosure of Respondents' customers' names and email addresses would cause a clearly defined, serious injury to both Respondents and their customers.

**Composite Attachment 9: Advertising Dissemination Schedules**

61. Composite Attachment 9, attached hereto, consists of advertising dissemination schedules detailing which of the challenged products were advertised in specifically identified media outlets.

62. [REDACTED]

63. [REDACTED]

64. [REDACTED]

65. [REDACTED]

**REDACTED**

**REDACTED**

**REDACTED**

[REDACTED]

68. Public disclosure of the advertising dissemination schedules would cause a clearly defined, serious injury to Respondents.

**Composite Attachment 10: Marketing Strategy**

69. Composite Attachment 10, attached hereto, contains Respondents' emails and other documents disclosing confidential marketing strategies.

70. Respondents' documents related to their marketing strategy, are not known outside Respondents' businesses to anyone other than those professionals who have a duty to maintain such information in confidence.

71. [REDACTED]

72. [REDACTED]

73. [REDACTED]

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

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**REDACTED**

**REDACTED**





**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

SSSS.

[REDACTED]

tttt.

[REDACTED]

uuuu.

[REDACTED]

76. Public disclosure of documents containing marketing strategy would cause a clearly defined, serious injury to Respondents.

**Composite Attachment 11: Settlement Documents**

77. Composite Attachment 11, attached hereto, includes Respondents' correspondence with the FTC regarding pre-complaint settlement negotiations. The documents are letters or e-mails between Respondents' counsel and attorneys for the FTC. A copy of Composite Attachment 11 is attached to this declaration.

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

z. [REDACTED]

aa. [REDACTED]

84. Public disclosure of the communications between Respondents and the FTC would cause a clearly defined, serious injury to Respondents.

**Composite Attachment 12: Multiple Category Documents**

85. The following exhibits are entitled to *in camera* treatment because they satisfy the criteria for more than one of the categories described in detail above:

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

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**REDACTED**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

[REDACTED]

v v [REDACTED]

c [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

86. Public disclosure of the communications between Respondents and the FTC would cause a clearly defined, serious injury to Respondents.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed: January 12<sup>th</sup>, 2006.

  
\_\_\_\_\_  
CARLA FOBBS

**REDACTED**

**Public-Composite Attachment 1**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX023-A			1
CX-502			1
CX-787		R0041733	1
RX-045		N/A	1
RX-055		N/A	1
RX-068		N/A	1
RX-086		N/A	1
RX-144		N/A	1
RX-272		BPI000092 THRU BPI000093	1
RX-273		BPI000081 THRU BPI000091	1
RX-279		BPI000124 THRU BPI 000127	1
RX-303	<b>REDACTED</b>	NC00013 THRU NC00016	1
RX-304		RE00241	1
RX-390		NC00017 THRU NC00020	1
RX-391		RE00242	1
RX-393		NC00021	1
RX-555		R0041191 THRU R0041192	1
RX-635		FTC 4486 THRU 4494	1
RX-678		SH005180 THRU SH005197	1
RX-748		SH005205 THRU SH005206	1
RX-753		SH005045 THRU SH005047	1
RX-782		RE00243	1

**Public-Composite Attachment 2**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-232			2
CX-698		R0054723- R0054727	2
CX-704		R0054714- R0054718	2
CX-705		R0054716- R0054718	2
CX-708		R0054719- R0054720	2
CX-709		R0054721- R0054722	2
RX-053		N/A	2
RX-280	<b>REDACTED</b>	SDT00484 THRU SDT00494	2
RX-281		SDT00500 THRU SDT00522	2
RX-282		SDT00470 THRU SDT000524	2
RX-283		SDT00525 THRU SDT000530	2
RX-284		SDT00533 THRU SDT000534	2
RX-285		SDT00495 THRU SDT000499	2
RX-286		SDT00531 THRU SDT000532	2
RX-287		SDT00416 THRU SDT00417	2
RX-288		LMS00662 THRU SDT00417	2
RX-290		SH004844 THRU SH004846	2
RX-292		SDT00867	2
RX-294		SDT00860 THRU SDT00866	2
RX-295		SDT00801 THRU SDT00859	2

**Public-Composite Attachment 2**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-296		SDT00751 THRU SDT00752	2
RX-297		SDT00740 THRU SDT00745	2
RX-298		SDT00746 THRU SDT00750	2
RX-299		SDT00753 THRU SDT00796	2
RX-300	<b>REDACTED</b>	SDT00661 THRU SDT00739	2
RX-301		SDT00411 THRU SDT00423	2
RX-320		R0054714 THRU R0054715	2
RX-321		R0054716 THRU R0054718	2
RX-322		R0054719 THRU R0054720	2
RX-323		R0054721 THRU R0054722	2
RX-329		R006936 THRU R0007582	2
RX-415		R0009371 THRU 0010068	2
RX-706			2
RX-807			2

**Public-Composite Attachment 3**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-166		R0000332	3
CX-167		R0007483	3
CX-168		R0009931 R0029913 R0035713	3
CX-169		R0015244	3
CX-370		R0009356	3
CX-374		R0044460- R0044466	3
CX-378	<b>REDACTED</b>	R0044468- R0044471	3
CX-379		R0044472- R0044474	3
CX-488			3
CX-498			3
CX-500			3
CX-518			3
CX-521			3
CX-531			3
CX-532			3
CX-533			3
CX-611			3
CX-627		PL000243- PL000253	3
CX-629		PL006252- PL006259	3
CX-632		R0015260- R0015265	3
CX-680		R0033488	3
CX-781		R0041966	3
CX-789		R0041578- R0041579	3
CX-808		R0054711	3
CX-809		R0054712- R0054713	3
CX-811		SDT00313- SDT00314	3
CX-862			3
CX-941			3
RX-063		N/A	3
RX-075		N/A	3
RX-181		LMS00358 THRU LMS00360	3
RX-221		R0000332 THRU R0004110	3
RX-316		R0009954 THRU R0009967	3
RX-455		R0015244	3



**Public-Composite Attachment 3**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-592		R00124364 THRU R0015583	3
RX-708		NC11313 THRU NC11333	3
RX-720	<b>REDACTED</b>	LMS00556 THRU LMS00558	3
RX-727		R0029913 THRU 0032363	3
RX-779		R0035713	3
RX-788		R0035713 THRU R0036369	3
RX-268		R0007483	3
RX-760		R0034563	3

**Public-Compiste Attachment 4**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-109		NC11476- NC11498	4
CX-633		PL003131- PL003187	4
CX-634		PL003067- PL003082	4
CX-635		PL003083- PL003090	4
CX-636	<b>REDACTED</b>	NC11924- NC11984	4
CX-637		NC11419	4
RX-319		BPI000109 THRU BPI000123	4
RX-710		NC11476 THRU NC11498	4
RX-713		R0033392 THRU R0033394	4
RX-725		NC11201 THRU NC11202	4
RX-726		R0029913	4

Public-Composite Attachment 5

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-025	<b>REDACTED</b>		5
CX-026			5
RX-173		R0040774	5

**Public-Composite Attachment 6**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-024			6
CX-185		2000001	6
CX-186		1000001- 1000002	6
CX-261			6
CX-288			6
CX-334			6
CX-617			6
CX-645		R0033909	6
CX-646		R0040761	6
CX-650	<b>REDACTED</b>	R00335196-	
CX-682		R0035197	6
CX-738		R0040683	6
CX-750		R0035131	6
CX-759		PL003056	6
CX-823		R0033865	6
CX-830		R0040774	6
CX-841			6
CX-843			6
CX-844			6
CX-845		6	
CX-846		6	
CX-847		6	
CX-854		6	
CX-855		6	
CX-890		6	
CX-899		6	
RX-043		N/A	6
RX-094		N/A	6
RX-095		N/A	6
RX-096		N/A	6
RX-097		N/A	6
RX-125		FTC4495 THRU FTC4523	6

**Public-Composite Attachment 7**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-191		4000001-4000008	7
CX-817		SDT00277- SDT00279	7
CX-819		R0040434- R0040437	7
CX-820		R0040631- R0040634	7
CX-821		SDT00160	7
CX-826		8000015	7
CX-829		5037698-5037705	7
CX-848	<b>REDACTED</b>	8000015-8000018- 19	7
CX-851		4000017-22	7
CX-852		4000009-4000016	7
RX-091		N/A	7
RX-093		4000001 THRU 4000008	7
RX-306		N/A	7
RX-307		FR000027	7
RX-308		N/A	7
RX-676		R0034016 THRU R0034018	7
RX-677		SH005164 THRU SH005165	7

**Public-Composite Attachment 8**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-102		R0035439- R0035440	8
CX-108		NC11007; NC11011	8
CX-120		R0042305- R0042306	8
CX-448		5004217- 5004307	8
CX-639		R0010385	8
CX-640		5003717	8
CX-641		5004616	8
CX-643		RR0032727- R0032730	8
CX-648		5003716	8
CX-652	<b>REDACTED</b>	5003722	8
CX-653		5003725- 5003727	8
CX-654		5003697	8
CX-655		R0004675 (ALSO MARKED AS R0037698	8
CX-658		R0004678- R0004682	8
CX-659		5003694	8
CX-669		NC01619- NC01622	8
CX-670		R0035181- R0035182	8
CX-679		R0032962- R0032963	8
CX-681		5004420	8
CX-683		5001561	8
CX-685		5003604	8
CX-687		5004406- 5004407	8
CX-707		R0004316	8
CX-727		R0036603	8
CX-739		R0034495 (ALSO MARKED AS R0033487)	8
CX-740		R0034494	8
CX-767		R0034030- R0034031	8
CX-782		R0041815	8
CX-783		R0041795- R0041796	8
CX-793		R0041513	8
RX-191		R0004359	8
RX-192		R0004277	8

**Public-Composite Attachment 8**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-194		R0004373	8
RX-195		R0004436	8
RX-196		R0004466	8
RX-199		R0005030 THRU R0005031	8
RX-204		R0004363	8
RX-206		R0004969	8
RX-219		R0006105 THRU R0006486	8
RX-256		R0004370	8
RX-262		R0005136	8
RX-309		5003620	8
RX-310		5003627	8
RX-311		R0007976	8
RX-312		R0009771	8
RX-313	<b>REDACTED</b>	R0008052 THRU R0008054	8
RX-314		R0008100	8
RX-315		5003676	8
RX-327		R0007620 THRU R0008441	8
RX-356		5003556	8
RX-358		5003557	8
RX-360		5003558	8
RX-362		5003559	8
RX-364		5003560	8
RX-367		5003562	8
RX-368		5003563 THRU 5003564	8
RX-371		5003566	8
RX-373		R0007682	8
RX-374		R0007677	8
RX-375		5003567	8
RX-394		R0010753 THRU R0010754	8
RX-396		R0010272	8
RX-398		R0010547 THRU R0010550	8
RX-400		R0010701	8
RX-401		R0010711	8
RX-402		R0010852	8
RX-404		R0011016	8
RX-414		R0011280 THRU R0012190	8

**Public-Composite Attachment 8**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-418		R0012191 THRU R0012242	8
RX-436		R0010231	8
RX-437		R0010199	8
RX-438		R0010200	8
RX-439		R0012197	8
RX-440		R0012198	8
RX-441		R0012199	8
RX-442		R0010155	8
RX-443		R0010161	8
RX-447		R0010623	8
RX-453		R0010818	8
RX-473		R0023367	8
RX-474		R0023042	8
RX-476		R0023051	8
RX-476	<b>REDACTED</b>	R0023188 THRU R0023189	8
RX-477		R0023311	8
RX-478		R0023528	8
RX-479		R0041196	8
RX-480		R0025312	8
RX-481		R0022817	8
RX-482		R0015831	8
RX-500		R0018140	8
RX-503		R0018428	8
RX-505		R0018459	8
RX-510		R0018757	8
RX-513		R0018840	8
RX-514		R0018881	8
RX-516		R0019356	8
RX-517		R0020013	8
RX-518		R0020148	8
RX-519		R0021664	8
RX-520		R0021469	8
RX-521		R0041698	8
RX-522		R0041635	8
RX-523		R0022966	8
RX-525		R0023463	8
RX-527		R0041177	8
RX-528		R0024644 THRU R0024645	8
RX-529		R0015693	8
RX-530		R0015706	8
RX-543		R0017769	8
RX-545		R0018175	8
RX-546		R0019919	8
RX-548		R0021694	8
RX-549		R0024319	8



**Public-Composite Attachment 8**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-550		R0024558	8
RX-553		R0021727	8
RX-554		R0022859	8
RX-558		R0042593	8
RX-559		R0042528	8
RX-566		R0017446	8
RX-567		R0019587	8
RX-568		R0020238	8
RX-569		R0022237	8
RX-570		R0022439	8
RX-571		R0023663	8
RX-574		R0024255	8
RX-575		R0024274	8
RX-576		R0024283	8
RX-577		R0024284	8
RX-579		R0020768	8
RX-582		R0019551	8
RX-584	<b>REDACTED</b>	R0042305 THRU R0042306	8
RX-585		R0022679	8
RX-587		R0019618	8
RX-588		R0020525	8
RX-589		R0023414	8
RX-591		R0025315 THRU R0029723	8
RX-593		R0029724 THRU R0029727	8
RX-594		SDT01123	8
RX-597		R0019455	8
RX-598		R0029730	8
RX-599	R0029731 THRU R0029732	8	
RX-600	R0029733	8	
RX-601	R0019902	8	
RX-602	R0020019	8	
RX-603	R0042707	8	
RX-606	R0042577	8	
RX-607	R0042488	8	
RX-609	R0042301	8	
RX-610	R0042293	8	
RX-611	R0042044	8	
RX-612	R0042058	8	
RX-613	R0041918	8	
RX-614	R0041763	8	
RX-615	R0041659	8	
RX-616	PK0072	8	

**Public-Composite Attachment 8**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-617		R0023088 THRU R0023090	8
RX-618		R0023464	8
RX-619		R0023467 THRU R0023470	8
RX-620		R0023483	8
RX-621		R0029735 THRU R0029736	8
RX-622		R0023968	8
RX-623		R0023843	8
RX-624		R0024310	8
RX-625		R0024094	8
RX-626	<b>REDACTED</b>	SDT01122	8
RX-627		R0025012	8
RX-634		R0042395 THRU R0042396	8
RX-664		R0035181 THRU R0035182	8
RX-665		R0033160	8
RX-670		R0033288	8
RX-671		R0033360	8
RX-672		R0035327	8
RX-705		R0032625 THRU R0032708	8
RX-757		R0032709 THRU R0032722	8
RX-759		R0035546	8
RX-762		R0033043	8
RX-763		R0033044	8
RX-766		R0033066	8
RX-769		R0033037	8
RX-770		R0033037	8
RX-771		R0034562	8
RX-772		R0032714	8
RX-773		R0034560	8
RX-775		R0034549	8
RX-783		R0036394 THRU R0036396	8
RX-784		R0036569	8
RX-787		R0036706 THRU R0037113	8

**Public-Composite Attachment 8**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-790		R0037114 THRU R0037239	8
RX-792		R0012191	8
RX-794		5003105	8
RX-586		R0022679	8
RX-608		R0042407	8
RX-666	<b>REDACTED</b>	R0033225 THRU R0033227	8
RX-667		R0033272	8
RX-761		R0034140	8
RX-767		R0033121 THRU R0033123	8
RX-768		R0034400 THRU R0034401	8

Public-Composite Attachment 9

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-302	<b>REDACTED</b>	R0041166- R0041166-G	9
CX-313		JF35	9
CX-314			9
RX-386		R0044178	9

**Public-Composite Attachment 10**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-117		5032872- 5032962	10
CX-174		R0034416- R0034419	10
CX-203	<b>REDACTED</b>	R0034370 (ALSO MARKED AS R0033185)	10
CX-209		R0033070	10
CX-210		R0035122	10
CX-211		R0035116	10
CX-214		R0035133	10
CX-215		R0035138- R0035139	10
CX-246		R0034752	10
CX-283		R0035127	10
CX-285		R0035113	10
CX-286		R0035111	10
CX-289		10	
CX-290		10	
CX-291		10	
CX-292		R0041870	10
CX-293		F0007-F0008	10
CX-295			10
CX-297		F0897	10
CX-298		R0042098	10
CX-303		R0037371- R0037637	10
CX-304		F0010	10
CX-306		R0035119	10
CX-309		F0853-F0855	10
CX-310		R0041788	10
CX-311			10
CX-312		SF3-SF4	10
CX-315			10
CX-316			10
CX-317		RK8	10
CX-318			10
CX-319			10
CX-320		R0012331	10
CX-321			10
CX-322			10
CX-323			10
CX-371		R0044459	10
CX-372		R0044647- R0044648	10
CX-380		R0044493- R0044494	10
CX-381		R0044514	10
CX-382		R0044518	10
CX-383		R0044519	10

**Public-Composite Attachment 10**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-451			10
CX-455			10
CX-456			10
CX-457			10
CX-459			10
CX-644		R0033896- R00338983	10
CX-651		5004483	10
CX-675		R0033563- R0033564	10
CX-676		R0032944- R0032945	10
CX-678		R0040459- R0040460	10
CX-701		R0035355	10
CX-710		R0035123	10
CX-711	<b>REDACTED</b>	R0035121	10
CX-712		R0034074	10
CX-713		R0033691- R0033692	10
CX-714		R0033693	10
CX-718		R0034454- R0034455	10
CX-721		R0035436- R0035437	10
CX-722		R0004901	10
CX-724		R0035109	10
CX-728		R0034371- R0034377	10
CX-729		R0033779- R0033785	10
CX-731	R0035134- R0035136	10	
CX-754			10
CX-760		R0033463- R0033464	10
CX-761		R0033873- R0033875	10
CX-762		R0033866- R0033867	10
CX-764		R0034019- R0034020 (ALSO MARKED AS R0035414)	10
CX-772			10
CX-773		R0042680	10
CX-776		R0042372	10
CX-777		R0042331	10
CX-780		R0041966	10
CX-784			10

**Public-Composite Attachment 10**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-785		R0041790- R0041791	10
CX-786		R0000306	10
CX-788		R0041630- R0041631	10
CX-790		R0041580- R0041582	10
CX-795		R0041317- R0041317-J	10
CX-798			10
CX-799			10
CX-805	<b>REDACTED</b>	R0042732 (ALSO MARKED AS R0042733)	10
CX-807			10
CX-810		SDT00186- SDT00188	10
CX-893		R0040695	10
CX-935		5041713- 5041747	10
CX-953			10
RX-407		R0012283	10
RX-416		FTC4708 THRU FTC4740	10
RX-471		R0042045	10
RX-647		R0029786 THRU R0029896	10
RX-696		R0040296	10
CX-027			10
CX-818		SDT00389	10
RX-683		R0034002	10
RX-207		R0043238	10

**Public-Composite Attachment 11**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-831			11
CX-869		FTC4442-4445	11
CX-870		FTC4446-4452, 4454	11
RX-098		FTC 4589 THRU FTC 4599	11
RX-099		FTC 4435 THRU FTC 4436	11
RX-100		FC000025 THRU FC000026	11
RX-103	<b>REDACTED</b>	FTC 4438 THRU FTC 4441	11
RX-105		FTC 4442 THRU FTC 4445	11
RX-106		FTC 4446 THRU FTC 4453	11
RX-110		FC000057 THRU FC000060	11
RX-111		FTC 4465 THRU FTC 4470	11
RX-115		FTC 4475 THRU FTC 4476	11
RX-120		FC000062 THRU FC000081	11
RX-126		FTC4524 THRU FTC 4561	11
RX-127		FC000187 THRU FC000232	11
RX-134		FTC 4566 THRU FTC 4571	11
RX-136		FC000290	11
RX-137		FTC 4572 THRU FTC 4576	11
RX-138		FTC 4577 THRU FTC 4585	11



Public-Composite Attachment 11

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-139	<b>REDACTED</b>	FTC 4586 THRU FTC 4587	11

**Public-Composite Attachment 12**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-116			12
CX-134			12
CX-148			12
CX-149			12
CX-163			12
CX-182			12
CX-183			12
CX-196			12
CX-197			12
CX-198			12
CX-254			12
CX-255			12
CX-281			12
CX-299	<b>REDACTED</b>	R0041604	12
CX-875		FTC4486-4494	12
CX-879		FTC4632-4639	12
CX-89			12
CX-902		5012810-5012855	12
CX-903		5033259-5033283	12
CX-904		5033482-5033509	12
CX-917		5033482-5033509	12
CX-919		5033164-5033207	12
CX-920		CYT0810-CYT1064	12
CX-921	5036691-5036775	12	
CX-932	5003164-5033207	12	
CX-934	5033482-5033509	12	
CX-936	5033259-5033293	12	
CX-937	5033482-5033509	12	
CX-939	5033164-5033207	12	
RX-038		N/A	12
RX-039		N/A	12
RX-040		N/A	12
RX-041		N/A	12
RX-042		N/A	12
RX-046		N/A	12

**Public-Composite Attachment 12**

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-047		N/A	12
RX-048		N/A	12
RX-051		N/A	12
RX-052		N/A	12
RX-054		N/A	12
RX-124		FC000147 THRU FC000155	12
RX-142		FTC 4632 THRU FTC 4639	12
RX-172	<b>REDACTED</b>	FTC 4632 THRU FTC 4639	12
RX-274		BPI000043 THRU BPI000045	12
RX-276		BPI000021 THRU BPI000024	12
RX-348		R0007011 THRU R0007064	12
RX-349		LMS00689 THRU LMS00700	12
RX-814		N/A	12
CX-77			12
CX-801			12

