

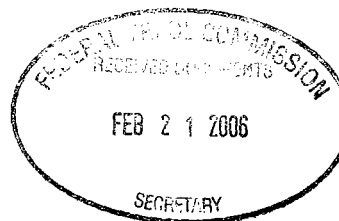
UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

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' SUPPLEMENTAL MOTION FOR *IN CAMERA* TREATMENT OF
TRIAL EXHIBITS**

On November 23, 2005, Respondents jointly moved the Chief Administrative Law Judge (“ALJ”) for an order granting *in camera* treatment of various trial exhibits designated by Respondents and the Commission (the “Original Motion”). Respondents moved on an admittedly large number of exhibits 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 Original Motion.

By Order dated December 5, 2005 (the “December 5th Order”), the ALJ denied without prejudice Respondents’ request for leave to supplement the November 23 filing. The ALJ explained that Respondents’ were obliged to identify individually (instead of by category, as was done in the Original Motion) each exhibit 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 exhibit. The ALJ further explained that “Respondents must significantly reduce the number of documents for which they seek *in camera* treatment to only those documents which are sufficiently secret and material to their business that disclosure would result in serious competitive injury.” December 5th Order, at 2.

Pursuant to the December 5th Order, on January 13, 2006, Respondents submitted their Revised Motion for *In Camera* Treatment of Trial Exhibits (the “First Revised Motion”). That submission included a careful review of each and every exhibit that was the subject of the Original Motion and included: 1) a declaration of Carla Fobbs providing an exhibit-by-exhibit *in camera* analysis and a statement specifically identifying the requested time period for which *in camera* treatment is sought for each individual exhibit;¹ and excluded 2) approximately 400 exhibits that Respondents had requested be given *in camera* treatment in their Original Motion.

However, by order dated January 25, 2006 (the “January 25th Order”), the ALJ denied without prejudice Respondents’ First Revised Motion. Specifically, the ALJ advised, *inter alia*, that Respondents needed to: 1) “narrowly tailor” their *in camera* requests for portions of depositions, discovery responses and expert reports; 2) redact all customer information from documents thereby obviating the need to move for *in camera* treatment on these documents; and 3) be aware of the presumption under Commission precedent that *in camera* treatment will not be provided to information that is three or more years old. *See* January 25, 2006 Order, pp. 2-4.²

¹ Notably, this exercise increased the length of Ms. Fobbs’ declaration from 17 pages to 248 pages.

² The ALJ also noted that the number of boxes of documents for which Respondents sought *in camera* treatment inexplicably increased from the Original Motion to the First Revised Motion. January 25th Order at 2. By way of explanation, Respondents inadvertently omitted several pages of their substantiation compilations in the Original Motion. In the Revised Motion, Respondents added the previously omitted pages of substantiation which, as a result of the sheer volume of materials Respondents’ compiled to support their advertising claims, increased the number of boxes of documents. However, the number of exhibits for which Respondents sought *in camera* treatment in the Revised Motion actually decreased by approximately 400 exhibits.

Accordingly, pursuant to 16 C.F.R. § 3.45 and the December 5th and January 25th Orders, Respondents' submitted a Second Revised Motion for *In Camera* Treatment of Trial exhibits in which Respondents: 1) carefully re-reviewed all deposition transcripts, discovery responses and expert reports and further "narrowly tailored" Respondents' requests for *in camera* treatment of these exhibits through precise redaction wherever possible; 2) redacted all customer information from exhibits for which Respondents' previously sought *in camera* treatment thereby eliminating Attachment 8 "Customer Information" from the Motion; 3) provided additional legal and factual authority supporting Respondents' arguments; and 4) obtained an additional declaration supporting the motion from Respondents' employee Gina Gay.

Unfortunately, after filing the Second Revised Motion, Respondents discovered that many of the narrow designations of deposition transcripts incorporated in the Fobbs Declaration in support of the Motion were not reflected in the accompanying Table and Composites, which were provided as a summary for the ALJ's aid and assistance. Moreover, it appears that narrow designations were omitted from the Fobbs Declaration for eight exhibits comprising deposition transcripts. Finally, it appears Respondents inadvertently left in their Motion four exhibits that should not have been included. Accordingly, Respondents respectfully move the ALJ for leave to withdraw from consideration for *in camera* treatment the following:

1. Exhibit CX-232, in its entirety;
2. Exhibit CX-521, in its entirety;
3. Exhibit CX-899, in its entirety;
4. Exhibit RX-053; in its entirety;
5. Exhibit CX-077, save for pages 29-30; 32-33; 43-44; and 120-121;
6. Exhibit CX-117, save for pages 34; 36 and 96-98; and Exhibit 6 to the deposition;

7. Exhibit CX-134, save for pages 29-32; 142; 169-180; and 189-194;
8. Exhibit CX-281, save for pages 23; 25-26; 35-37; 43-48; 67; 87-88; 91-92; and 141-148;
9. Exhibit CX-935, save for pages 97-98;
10. Exhibit RX-041, save for pages 29-30; 32-33; 43-44; and 120-121; and Exhibits 2, 4, 8 and 9 to the deposition; and
11. Exhibit RX-042, save for pages 23; 25-26; 35-37; 43-48; 67; 87-88; 91-92 and 141-148; and Exhibits 4, 6-7, 9, 12-13, 15, 17, 20-21, 24-26, 31-33, 36-43 and 46-47 to the deposition.

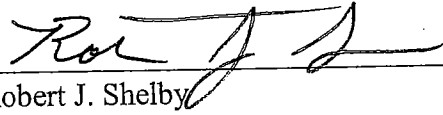
Respondents submit herewith, as a courtesy to the ALJ and the Commission's lawyers, a Supplemental Corrected Declaration of Carla Fobbs, which includes a discussion explaining why the narrowly tailored excepted pages listed above are entitled to *in camera* treatment, as well as corrected versions of the Tables and Composites submitted with the Second Revised Motion.³ The corrected Tables and Composites are identical to those submitted with the Second Revised Motion, except that they now reflect the narrow designations of the Exhibits listed above, as well as those deposition exhibits for which our Second Revised *in camera* Motion was narrowly tailored, but for which that fact was not correctly reflected in the summary tables.

Because the instant Supplemental Motion is designed only to limit the scope of Respondents' Second Revised Motion, and is more narrow than the same, Respondents incorporate herein the Memorandum in support of the Second Revised Motion and do not separately file yet another supporting memorandum.

³ The portion of Ms. Fobbs' Declaration addressing this language is in italics for the ALJ's convenience.

DATED this 17 day of February, 2006.

BURBIDGE & MITCHELL

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

Robert J. Shelby

BURBIDGE & MITCHELL

215 S. State Street, #920

Salt Lake City, Utah 84111

Telephone: 801/355-6677

Facsimile: 801/355-2341

Attorneys for Respondent Dennis Gay

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2006, I caused the foregoing **PUBIC VERSION-RESPONDENTS' SUPPLEMENTAL MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS** to be filed and served as follows:

- (1) an original, one paper copy delivered by federal express one electronic copy in PDF format emailed to:

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

- (2) two paper copies delivered 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 electronic PDF copy by email:

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

(5) one paper copy by first class U.S. mail:

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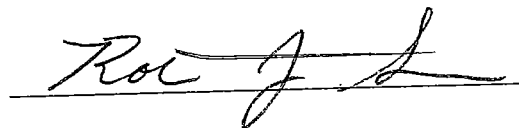
A handwritten signature in cursive script, appearing to read "Ron J. Price", is written over a horizontal line.

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-023			6
CX023-A			1
CX-025			5
CX-026			5
CX-027			10
CX-077			12
CX-089			12
CX-109		NC11476- NC11498	4
CX-116			12
CX-117		5032872- 5032962	10
CX-134			12
CX-148			12
CX-149			12
CX-152	REDACTED	COINFO- 000001/94- COINFO 000001-107 (BASIC RESEARCH BATES: 8000001- 8000014)	7
CX-163			12
CX-166		R0000332	3
CX-167		R0007483	3
CX-168		R0009931 R0029913 R0035713	3
CX-169		R0015244	3
CX-182			12
CX-183			12
CX-185		2000001	6
CX-186		1000001- 1000002	6
CX-191		4000001- 4000008	7
CX-196			12
CX-197			12
CX-198			12
CX-203		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

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-246		R0034752	10
CX-254			12
CX-255			12
CX-261			6
CX-281			12
CX-283		R0035127	10
CX-285		R0035113	10
CX-286		R0035111	10
CX-288			6
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-299	REDACTED	R0041604	12
CX-302	REDACTED	R0041166- R0041166-G	9
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-313		JF35	9
CX-314			9
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-334			6
CX-370		R0009356	3
CX-371		R0044459	10
CX-372		R0044647- R0044648	10
CX-374		R0044460- R0044466	3
CX-378		R0044468- R0044471	3
CX-379		R0044472- R0044474	3

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
		R0044493-	
CX-380		R0044494	10
CX-381		R0044514	10
CX-382		R0044518	10
CX-383		R0044519	10
		5004217-	
CX-448		5004307	10
CX-451			10
CX-455			10
CX-456			10
CX-457			10
CX-459			3
CX-488			3
CX-498			3
CX-500			1
CX-502			3
CX-518			3
CX-531			3
CX-532			3
CX-533			3
CX-611			6
CX-617			
		PL000243-	
CX-627		PL000253	3
		PL006252-	
CX-629		PL006259	3
		R0015260-	
CX-632		R0015265	3
		PL003131-	
CX-633		PL003187	4
		PL003067-	
CX-634		PL003082	4
		PL003083-	
CX-635		PL003090	4
		NC11924-	
CX-636		NC11984	4
CX-637		NC11419	4
CX-645		R0033909	6
CX-646		R0040761	6
		R00335196-	
CX-650		R0035197	6
CX-651		5004483	10
		R0032944-	
CX-676		R0032945	10
CX-680		R0033488	3
CX-682		R0040683	6
		R0054723-	
CX-698		R0054727	2
CX-701		R0035355	10
		R0054714-	
CX-704		R0054718	2

REDACTED

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-705		R0054716- R0054718	2
CX-708		R0054719- R0054720	2
CX-709		R0054721- R0054722	2
CX-710		R0035123	10
CX-711		R0035121	10
CX-712		R0034074	10
CX-714		R0033693	10
CX-718		R0034454- R0034455	10
CX-721		R0035436- R0035437	10
CX-722		R0004901	10
CX-724		R0035109	10
CX-731		R0035134- R0035136	10
CX-738		R0035131	6
CX-750		PL003056	6
CX-754			10
CX-759		R0033865	6
CX-760		R0033463- R0033464	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-781		R0041966	3
CX-784			10
CX-785		R0041790- R0041791	10
CX-786		R0000306	10
CX-787		R0041733	1
CX-788		R0041630- R0041631	10
CX-789		R0041578- R0041579	3
CX-795		R0041317- R0041317-J	10
CX-798			10
CX-799			10
CX-801			12

REDACTED

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-805		R0042732 (ALSO MARKED AS R0042733)	10
CX-807			10
CX-808		R0054711	3
CX-809		R0054712- R0054713	3
CX-810		SDT00186- SDT00188	10
CX-811	REDACTED	SDT00313- SDT00314	3
CX-817		SDT00277- SDT00279	7
CX-818		SDT00389	10
CX-821		SDT00160	7
CX-823		R0040774	6
CX-826		8000015	7
CX-829		5037698- 5037705	7
CX-830			6
CX-831			11
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-848		8000015- 8000018-19	7
CX-851		4000017-22	7
CX-852		4000009- 4000016	7
CX-854		9000010- 9000012	6
CX-855		5037026-30	6
CX-862			3
CX-869		FTC4442-4445	11
CX-870		FTC4446-4452, 4454	11
CX-875		FTC4486-4494	12
CX-879		FTC4632-4639	12
CX-899		5007539- 5007567	6
CX-902		5012810- 5012855	12
CX-903		5033259- 5033283	12

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
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	REDACTED	5033482- 5033509	12
CX-935		5041713- 5041747	10
CX-936		5033259- 5033293	12
CX-937		5033482- 5033509	12
CX-939		5033164- 5033207	12
CX-941			3
CX-953			10
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-043		N/A	6
RX-045		N/A	1
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-068		N/A	1
RX-091		N/A	7
RX-093		4000001 THRU 4000008	7
RX-094		N/A	6
RX-095		N/A	6
RX-096		N/A	6
RX-097		N/A	6
RX-098		FTC 4589 THRU FTC 4599	11
RX-099		FTC 4435 THRU FTC 4436	11

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-100		FC000025 THRU FC000026	11
RX-103		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	REDACTED	FTC 4465 THRU FTC 4470	11
RX-115		FTC 4475 THRU FTC 4476	11
RX-120		FC000062 THRU FC000081	10
RX-124		FC000147 THRU FC000155	12
RX-125		FTC4495 THRU FTC4523	6
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
RX-139		FTC 4586 THRU FTC 4587	11

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-142		FTC 4632 THRU FTC 4639	12
RX-144		N/A	1
RX-172		FTC 4632 THRU FTC 4639	12
RX-173		R0040774	5
RX-181		LMS00358 THRU LMS00360	3
RX-207		R0043238	10
RX-221	REDACTED	R0000332 THRU R0004110	3
RX-268		R0007483	3
RX-272		BPI000092 THRU BPI000093	1
RX-273		BPI000081 THRU BPI000091	1
RX-274		BPI000043 THRU BPI000045	12
RX-276		BPI000021 THRU BPI000024	12
RX-279		BPI000124 THRU BPI 000127	1
RX-280		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

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-286		SDT00531 THRU SDT00532	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
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-303		NC00013 THRU NC00016	1
RX-304		RE00241	1
RX-306		N/A	7
RX-307		FR000027	7
RX-308		N/A	7
RX-316		R0009954 THRU R0009967	3
RX-319		BPI000109 THRU BPI000123	4

REDACTED

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
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	REDACTED	R006936 THRU R0007582	2
RX-348		R0007011 THRU R0007064	12
RX-349		LMS00689 THRU LMS00700	12
RX-386		R0044178	9
RX-390		NC00017 THRU NC00020	1
RX-391		RE00242	1
RX-393		NC00021	1
RX-407		R0012283	10
RX-415		R0009371 THRU 0010068	2
RX-416		FTC4708 THRU FTC4740	10
RX-455		R0015244	3
RX-471		R0042045	10
RX-555		R0041191 THRU R0041192	1
RX-592		R00124364 THRU R0015583	3
RX-635		FTC 4486 THRU 4494	1
RX-647		R0029786 THRU R0029896	10
RX-676		R0034016 THRU R0034018	7

Table 1

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-677		SH005164 THRU SH005165	7
RX-678		SH005180 THRU SH005197	1
RX-683		R0034002	10
RX-696		R0040296	10
RX-706			2
RX-708	REDACTED	NC11313 THRU NC11333	3
RX-710	REDACTED	NC11476 THRU NC11498	4
RX-713		R0033392 THRU R0033394	4
RX-720		LMS00556 THRU LMS00558	3
RX-725		NC11201 THRU NC11202	4
RX-726		R0029913	4
RX-727		R0029913 THRU 0032363	3
RX-748		SH005205 THRU SH005206	1
RX-753		SH005045 THRU SH005047	1
RX-779		R0035713	3
RX-782		RE00243	1
RX-788		R0035713 THRU R0036369	3
RX-807			2
RX-814		N/A	12

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DENNIS GAY,
DANIEL B. MOWREY,
MITCHELL K. FRIEDLANDER

)
) **CONFIDENTIAL**
) **[CORRECTED]**¹
) **PUBLIC VERSION**

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) **DOCKET NO. 9318**
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SUPPLEMENTAL 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.

¹ In the original filing of this document on February 3, 2006, Respondents' inadvertently failed to identify their confidential information with brackets or other conspicuous markings to indicate the material for which Respondents seek confidential treatment in accordance with 16 C.F.R. § 3.22. Thus, pursuant to 16 C.F.R. § 3.22, Respondents' respectfully submit this corrected version of their original filing. Except for the bracketed and bolded sections identifying the material Respondents' seek to be treated confidential and the resulting change in pagination, this document is identical to the original bearing the same name filed on February 3, 2006.

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

4. A small number of agents acting at my direction assisted me in multiple reviews of each of the documents appearing on the Exhibit Lists of Respondents and Complaint Counsel. These comprehensive reviews were 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 Administrative Law Judge's ("ALJ") December 5, 2005 Order (the "December 5th Order") on our Original Motion, we conducted a second review of all of the documents that were the subject of our Original Motion pursuant to the directives set forth in the December 5th Order. Subsequently, following receipt of the ALJ's January 25, 2006 Order (the "January 25th Order") on our First Revised Motion, we conducted a third review of the documents subject of the First Revised Motion pursuant to the directives set forth in the January 25th Order.

6. In all three reviews, I employed a coordinated approach utilizing the assistance of a small number of agents working under my direction. These agents were instructed on the Commission's strict standards for *in camera* treatment of trial exhibits and were provided copies of the ALJ's December 5th and January 25th Orders for purposes of conducting the reviews.

7. I have personally received reports and updates concerning the nature and scope of the reviews 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 reviews, 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. 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 in Attachments hereto as follows:

- (1) Attachment 1—Product Formulation;
- (2) Attachment 2—Third-Party Testing;
- (3) Attachment 3—Substantiation Compilations;
- (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 **[NO LONGER USED]**;
- (9) Attachment 9—Advertising Dissemination Schedules;
- (10) Attachment 10—Marketing Strategy;
- (11) Attachment 11—Settlement Documents; and
- (12) Attachment 12—Those Documents that Merit Coverage Under More than One of the Other Categories.

The documents themselves are attached to the Second Revised Motion in both hard-copy and electronic form, 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

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. The product formulation documents comprise charts, emails, faxes and other internal documents. The product formulation information is not known outside of Respondents' business, except by certain third-party companies who manufacture the products. In those instances, Respondents have maintained confidentiality agreements with each manufacturer in order to protect the secrecy of the information in question.

12. Product formulation information is closely guarded. Only those employees within Respondents' businesses whose job duties require them to have such knowledge are permitted access. Under such circumstances, the employees are only provided the amount of information necessary for them to perform their job duties. For example, an employee in marketing may know the name of the active ingredient of a product in order to include that information in an advertisement, but that person is not provided with information of all of the ingredients, their respective ratios, or other trade secret information about the proprietary blends. By contrast, an employee in the research and development department may have information about the exact formulation of a product, including the ratio of all of the ingredients, because the research and development department was involved in creating and/or researching the product formulation.

13. All of Respondents' employees who receive product formulation information understand that this information is highly confidential, proprietary, and cannot be disclosed to any person, even within Respondents' business, who does not need to know it.

14. Competitors place great value on obtaining Respondents' product formulation information. With such information, competitors can market identical products in direct competition with Respondents without having to expend the significant time, energy, and money that Respondents spent creating and developing these products. Even the product formulation for the discontinued products, Anorex and Leptoprin, would be valuable to Respondents' competitors because ephedra-containing products may still be being sold in other countries where sale of such products is allowed. As such, competitors could easily save hundreds of thousands of dollars and years of research and development costs and time if they had access to Respondents' product formulation data.

15. Respondents expended literally hundreds of thousands of dollars and years researching and developing the Challenged Products.

16. It is extraordinarily difficult for a third party to acquire the product formulation for the Challenged Products. The only way that a third party could properly acquire this information would be to "reverse-engineer" one of the products that it purchased commercially. It is my understanding that this process involves obtaining a sample of one of the products and conducting numerous tests on it in an effort to determine its composition. It is also my understanding that this process is very expensive and time consuming, and in any event, it is extremely difficult to determine the exact ingredients since the proprietary compounds involved are chemically complex.

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:

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

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. Respondents heavily restrict access to third-party testing information to employees of Respondents' companies. Only those individuals involved in the scientific research and development of the product are exposed to the results and methodologies contained in the third-party testing. The only other individuals who have access to this information are the third-parties conducting the actual testing, all of whom execute confidentiality agreements with Respondents.

21. Respondents guard their third-party testing information very closely as the results contain highly confidential information regarding the product's composition, impurities, efficacy, absorption and other technical information. All of Respondents' employees who receive such information understand that this information is highly confidential and cannot be disclosed to anyone, even within Respondents' businesses, if such individuals do not need to know it.

22. Respondents' competitors place great value on obtaining the results of the third-party studies. These studies provide ingredient and composition information on the Challenged Products. The reports themselves typically include an analysis of the results and the performance of the product at issue. Competitors find such information useful in, among other things, the development of similar or derivative products. In many cases, competitors could market identical products in direct competition with Respondents' products armed solely with this information. Exposing competitors to this information would therefore give them an unfair advantage by saving them considerable research time, expense and effort.

23. Respondents have spent hundreds of thousands of dollars and years gathering accurate and comprehensive data on the Challenged Products. Furthermore, great effort was spent to carefully select appropriate third-parties with the requisite knowledge and skill to conduct the tests, and to develop an appropriate protocol.

24. Although a third party could duplicate certain of the tests performed on the Challenged Products, such an endeavor would be difficult without the protocol and methodology used in the testing itself. In this regard, each study is unique in that it entails carefully selected protocols, variables, and controls. The exhibits for which Respondents move for *in camera* treatment under this category are:

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

Attachment 3: Substantiation Compilations

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

27. Access to the substantiation compilations is restricted even among employees of Respondents' businesses. Although access to each of the materials standing alone (e.g., a single published study contained within the compilation), is obviously not restricted to Respondents' businesses. It is the merger and compilation of such materials in their entirety that is valuable

and confidential. The only other individuals possessing the substantiation compilations are those directly involved in the FTC investigation of Respondents' advertising claims.

28. Within Respondents' businesses, substantiation compilations are only available to those employees whose job duties require them to have such information. For example, an employee in the research and development department or the legal department would be exposed to such materials, whereas customer service employees are not.

29. Respondents protect their substantiation compilations very carefully. All of Respondents' employees who receive such information understand that selection and assembly of this information is highly confidential and may not be disclosed to any person, even within Respondents' businesses, who does not need to know it.

30. The substantiation compilations are invaluable and provide Respondents with a competitive advantage. During the development of their products, Respondents accumulated and compiled the substantiation materials to support their advertising claims and to confirm the effectiveness of specific forms, amounts and modes of administration of the key ingredients. The compilations were sent in response to a CID request from the Federal Trade Commission ("FTC") for Respondents to substantiate specific advertising claims. The methodology and procedures for complying with FTC requests have obvious value. Any competitor marketing similar products could use the compilations to justify their own or similar advertising claims.

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Therefore, disclosing the substantiation compilations to Respondents' competitors would result in a clearly defined, serious competitive injury to respondents.

31. Respondents have expended considerable time and resources carefully constructing these compilations. [

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32. The combinations of materials in the substantiation compilations are unique. To Respondents' knowledge, they exist nowhere else. It is highly unlikely that a third party could duplicate the exact construction of these compilations without having access to them. Even attempting this process would be extremely expensive, time consuming, and difficult.

Respondents move on the following specific exhibits under this category:

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33. Public disclosure of the substantiation compilations would result in a clearly defined, serious injury to Respondents.

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. Respondents' applications for government grants are not known outside Respondents' business, except by hired consultants who are under an obligation to keep Respondents' information confidential.

36. The grant applications are only known to those individuals within Respondents' businesses whose job duties require them to have such knowledge. For example, Respondents' research and development department has information about the grant proposals because department members are involved in developing and writing the proposals, but other employees generally do not have knowledge of the grant applications.

37. Respondents protect their research information very closely. All of Respondents' employees who receive such information understand that this information is highly confidential and cannot be disclosed to any person, even within Respondents' businesses, who does not need to know it. Further, this information is not disclosed outside the company, except to those professional consultants who have a duty to maintain such information in confidence.

38. The grant applications for the challenged products are valuable to Respondents' competitors because it provides them an advantage in competing with Respondents' for limited grant funding. [

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39. Respondent spent a considerable amount of time, effort, and money developing scientific methodology for their studies and compiling appropriate information to complete grant applications. [REDACTED]

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40. The grant applications and the draftings of products cannot be replicated or acquired by any unauthorized third party by respondents. The following documents are within this category: [REDACTED]

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

FINANCIAL INFORMATION

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. Respondents' financial information, including but not limited to the net gross revenue figures and advertising expenditures for the challenged products, is not known outside Respondents' businesses to anyone other than professionals, such as accountants and attorneys, who are under a duty to maintain such information in strict confidence.

44. The net gross revenue and advertising expenditures for the challenged products is only known to those individuals within Respondents' businesses whose job duties require them to have such knowledge. For example, Respondents' corporate officers and supervisors in the advertising and accounting departments have access to such information, but other employees generally do not.

45. Respondents zealously protect their financial information. All of Respondents' employees who receive such information understand that this information is highly confidential

and cannot be disclosed to any person, even within Respondents' businesses, who does not have a need to know. Further, this information is not disclosed outside the company, except to those professionals who have a duty to maintain such information in confidence.

46. The net gross revenue and advertising expenditures for the challenged products are valuable to Respondents' competitors because it allows them to construct accurate financial models of Respondents' business to Respondents' detriment.

47. The net gross revenue figures were achieved based on the time, energy, and money spent by Respondents in developing, marketing, and promoting the challenged products. Respondents' efforts are also revealed, in part, by the amounts spent in advertising each of the challenged products.

48. The net gross revenue and advertising expenditures for the challenged products cannot be replicated or acquired by any third parties by proper means. There is simply no way to determine how many sales Respondents made of each product or how much Respondents spent in advertising each product. Respondents move the following documents for *in camera* treatment for the time periods specified:

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

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, Nutrastar, and Majestic Enterprises, 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 Respondents' net gross revenue and advertising expenditures. Respondents protect and limit access to their balance sheets containing their assets and liabilities in the same way that they protect and limit access to their net gross revenue and advertising expenditure data. Respondents' balance sheets disclosing their assets and liabilities are valuable to Respondents' competitors because they allow the competitors to construct an accurate financial model of Respondents' business to Respondents' detriment. Additionally, the balance sheets revealing Respondents' assets and liabilities could not be replicated or acquired by any third parties by proper means. The Respondents' businesses are privately held, and disclosure of highly confidential information concerning ownership would be extraordinarily damaging. The following documents are entitled to *in camera* treatment under this category:

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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.

Attachment 7: Licensing and Royalty Agreements

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

54. Respondents' licensing and royalty agreements entitle Respondents to exclusive use of confidential information in developing their products. Respondents' licensing and royalty agreements also contain the rights and obligations of Respondents as the licensee and the owner of the information as the licensor. The agreements set forth the terms under which Respondents can use the confidential information and financial discloses regarding the percentage of royalties that Respondents pay to the licensor. These agreements also reveal an important, secret marketing strategy that forms a part of Respondents' confidential business model.

55. Respondents' licensing and royalty agreements are confidential financial information for all the reasons detailed above regarding Respondents' net gross revenue and advertising expenditures. Respondents protect and limit access to their licensing and royalty agreements in the same way that they protect and limit access to their net gross revenue and advertising expenditure data. Respondents' licensing and royalty agreements are valuable to Respondents' competitors because they reveal the amounts paid to the licensors for the right to use the information and the terms and conditions that Respondents rely upon when obtaining licenses. Upon obtaining Respondents' license and royalty agreements, corporate rivals could more effectively compete against Respondents for exclusive licenses. Additionally, Respondents have taken extreme measures to protect their identity as a licensee under these agreements and disclosure would harm Respondents. Finally, the licensing and royalty agreements could not be replicated or acquired by any third parties by proper means. These documents are:

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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. Pursuant to the directives set forth in the ALJ's January 25th Order, Respondents are redacting all customer information from the hearing exhibits for which they originally sought in camera treatment. Consequently, Respondents are no longer seeking in camera treatment on approximately 200 exhibits previously referenced in Attachment 8 and, thus, are intentionally leaving this section blank.

58. Intentionally left blank.

59. Intentionally left blank.

60. Intentionally left blank.

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. Respondents' commercial information, including but not limited to the advertising dissemination schedules, is not known outside Respondents' business to anyone other than Respondents' advertising agency, which has executed a non-disclosure agreement requiring it to keep confidential Respondents' proprietary commercial information, including the highly secret information on the advertising dissemination schedules.

63. The details of the advertising dissemination schedules are only known to those individuals within Respondents' businesses whose job duties require them to have such knowledge. For example, Respondents' corporate officers and supervisors in the advertising and accounting departments have access to such information, but other employees generally do not have knowledge of the advertising dissemination schedules.

64. Respondents zealously protect their commercial advertising information. All of Respondents' employees who receive such information understand that this information is highly confidential and cannot be disclosed to any person, even within Respondents' businesses, who does not need to know it.

65. The advertising dissemination schedules are valuable to Respondents' competitors because they allow the competitors to mirror for their competing products Respondents' successful advertising campaigns. This would allow competitors to profit from the extraordinary time, energy, and money Respondents have spent in perfecting their complex marketing strategy.

66. The advertising dissemination schedules are essentially blue prints for how to successfully market various types of products. The advertising dissemination schedules are a

result of the time, energy, and money spent by Respondents perfecting their marketing and promotional strategies for the challenged products over a thirteen-year period.

67. It would be virtually impossible for the advertising dissemination schedules to be replicated or acquired by any third parties by proper means. This would require a competitor to obtain every magazine and newspaper across the country to determine where Respondents advertised their products. Further, the competitor would have to monitor every minute of television program nationwide to discover when and how Respondents promote their products on television. Finally, the competitor would have to know which advertisements resulted in the most sales—something captured by implication in Respondent’s advertising schedules but not otherwise available anywhere else. Those exhibits meeting this threshold are:

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

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. The details of the marketing strategies, like the advertising dissemination schedules, are only known to those individuals within Respondents' businesses whose job duties require them to have such knowledge. For example, Respondents' corporate officers and supervisors in the marketing and customer service departments have access to such information, but other employees generally do not.

72. Respondents protect their commercial information very closely. All of Respondents' employees who receive such information understand that this information is highly confidential and cannot be disclosed to any person, even within Respondents' businesses, who does not need to know it.

73. Documents containing marketing strategies are valuable to Respondents' competitors because they allow the competitors to mirror Respondents' successful marketing for

their competing products. This information would allow competitors to profit from the time, energy, and money Respondents have spent perfecting their marketing strategy.

74. The marketing strategy documents include independent research of the messages contained in the advertisements, phone scripts used to effectively market various products, and in-house sales tip sheets. The documentation containing marketing strategies are a result of the time, energy, and money spent by Respondents perfecting their promotion strategies for the challenged products.

75. It would be virtually impossible for the marketing strategy documents to be replicated or acquired by any third parties by proper means. The following exhibits are, therefore, entitled to *in camera* protection:

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

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.

78. Correspondence related to the FTC's investigation of Respondents prior to the filing of the complaint and both parties' efforts to reach a settlement agreement is not known by anyone outside Respondents' businesses, and the FTC.

79. The details of the settlement negotiations are only known to those individuals within Respondents' businesses whose job duties require them to have such knowledge. For example, Respondents' corporate officers, legal counsel, and supervisors in the compliance department have access to such information, but other employees generally do not.

80. Disclosing the e-mails and letters exchanged during the pretrial investigation pertaining to settlement discussions would permit competitors and the public access to privileged and confidential communications made by Respondents' attorneys on its behalf. Competitors would also benefit from the time, effort, and money that Respondents put into resolving this case.

81. Some of the proposed consent orders contain language that prevents the agreements from being part of the public record in an adjudicatory proceeding unless and until the Commission accepts the agreement. All attempts at settlement to date have failed and the Commission has not accepted any settlement agreements involving any of Respondents in this case.

82. It is my understanding that Complaint Counsel has the burden of proving at an adjudicatory hearing that Respondents violated the Federal Trade Commission Act. Publicly disseminating Respondents' attempts to settle this case or communicate with the FTC may be misconstrued by the public as an admission of guilt, or used by the competitors in negative advertising.

83. It would be virtually impossible for the correspondence regarding settlement to be replicated or acquired by any third parties by proper means. These exhibits include:

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

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:

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86. Public disclosure of these documents would cause a clearly defined, serious injury to Respondents because they satisfy the criteria for more than one of the categories described in detail above.

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

DATED this 15th day of February, 2005.

Carla R. Fobbs
Carla Fobbs

PUBLIC-Composite 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-068		N/A	1
RX-144		N/A	1
RX-272		BPI000092 THRU BPI000093	1
RX-273	REDACTED	BPI000081 THRU BPI000091	1
RX-279		BPI000124 THRU BPI 000127	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

PUBLIC-Composite 2

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
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-280		SDT00484 THRU SDT00494	2
RX-281		SDT00500 THRU SDT00522	2
RX-282		SDT00470 THRU SDT00052 4	2
RX-283		SDT00525 THRU SDT00053 0	2
RX-284		SDT00533 THRU SDT00053 4	2
RX-285		SDT00495 THRU SDT00049 9	2
RX-286		SDT00531 THRU SDT00053 2	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

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PUBLIC-Composite 2

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-295		SDT00801 THRU SDT00859	2
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		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

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PUBLIC-Composite 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
		R0009931	
		R0029913	
CX-168		R0035713	3
CX-169		R0015244	3
CX-370		R0009356	3
		R0044460-	
CX-374		R0044466	3
		R0044468-	
CX-378		R0044471	3
		R0044472-	
CX-379		R0044474	3
CX-488			3
CX-498			3
CX-500			3
CX-518			3
CX-531			3
CX-532			3
CX-533			3
CX-611			3
		PL000243-	
CX-627		PL000253	3
		PL006252-	
CX-629		PL006259	3
		R0015260-	
CX-632		R0015265	3
CX-680		R0033488	3
CX-781		R0041966	3
		R0041578-	
CX-789		R0041579	3
CX-808		R0054711	3
		R0054712-	
CX-809		R0054713	3
		SDT00313-	
CX-811		SDT00314	3
CX-862			3
CX-941			3
RX-181		LMS00358 THRU LMS00360	3
		R0000332	
RX-221		THRU R0004110	3
RX-268		R0007483	3
RX-316		R0009954 THRU R0009967	3
RX-455		R0015244	3

REDACTED

PUBLIC-Composite 3

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
RX-592		R0012436 4 THRU R0015583	3
RX-708		NC11313 THRU NC11333	3
RX-720	REDACTED	LMS00556 THRU LMS00558	3
RX-727		R0029913 THRU 0032363	3
RX-779		R0035713	3
RX-788		R0035713 THRU R0036369	3

PUBLIC-Composite 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		NC11924- NC11984	4
CX-637		NC11419	4
RX-319	REDACTED	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 5

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

REDACTED

PUBLIC-Composite 6

Exhibit No.	Title or Description	Bates No.	Categories
			6
CX-023		2000001	6
CX-185		1000001- 1000002	6
CX-186			6
CX-261			6
CX-288			6
CX-334			6
CX-617		R0033909	6
CX-645		R0040761	6
CX-646		R0033519	
		6-	
CX-650		R0035197	6
CX-682		R0040683	6
CX-738		R0035131	6
CX-750		PL003056	6
CX-759		R0033865	6
CX-823		R0040774	6
CX-830			6
		9010003- 9010005	6
CX-841		9000023	6
CX-843		900023	6
CX-844		9000022	6
CX-845		9000013- 9000021	6
CX-846		8000001- 8000026	6
CX-847		9000010- 9000012	6
CX-854		5037026- 30	6
CX-855		N/A	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

REDACTED

PUBLIC-Composite 7

Exhibit No.	Title or Description	Bates No.	Categories
CX-152		COINFO-000001/94- COINFO 000001- 107 (BASIC RESEARC H BATES: 8000001- 8000014)	7
CX-191		4000001- 4000008	7
CX-817		SDT00277- SDT00279	7
CX-821		SDT00160	7
CX-826		8000015	7
CX-829		5037698- 5037705	7
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	7

REDACTED

Compsite 8
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<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
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PUBLIC-Composite 9

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

REDACTED

PUBLIC-Composite 10

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-448		5004217- 5004307	10
CX-027			10
CX-117		5032872- 5032962	10
CX-203		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

REDACTED

PUBLIC-Composite 10

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
		R0044493-	
CX-380		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		5004483	10
CX-651		R0032944-	
CX-676		R0032945	10
CX-701		R0035355	10
CX-710		R0035123	10
CX-711		R0035121	10
CX-712		R0034074	10
CX-714		R0033693	10
CX-718		R0034454-	
		R0034455	10
CX-721		R0035436-	
		R0035437	10
CX-722		R0004901	10
CX-724		R0035109	10
CX-731		R0035134-	
		R0035136	10
CX-754			10
CX-760		R0033463-	
		R0033464	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
CX-785		R0041790-	
		R0041791	10
CX-786		R0000306	10
CX-788		R0041630-	
		R0041631	10
CX-795		R0041317-	
		R0041317-	
		J	10
CX-798			10

REDACTED

PUBLIC-Composite 10

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-799			10
CX-805		R0042732 (ALSO MARKED AS R0042733)	10
CX-807			10
CX-810		SDT00186	10
CX-818		SDT00188	10
CX-935		SDT00389	10
CX-953		5041713-	10
RX-120		5041747	10
RX-207		FC000062	10
RX-407		THRU FC000081	10
RX-416		R0043238	10
RX-471		R0012283	10
RX-647		FTC4708	10
RX-683		THRU FTC4740	10
RX-696		R0042045	10
		R0029786	10
		THRU R0029896	10
		R0034002	10
		R0040296	10

REDACTED

PUBLIC-Composite 11

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

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PUBLIC-Composite 11

CX-831			11
RX-139		FTC 4586 THRU FTC 4587	11

REDACTED

PUBLIC-Composite 12

<u>Exhibit No.</u>	<u>Title or Description</u>	<u>Bates No.</u>	<u>Categories</u>
CX-077			12
CX-089			12
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		R0041604	12
CX-299			12
CX-801			
CX-875		FTC4486-4494	12
CX-879		FTC4632-4639	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

REDACTED

PUBLIC-Composite 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	REDACTED	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