

FEDERAL TRADE COMMISSION
RECEIVED DOCUMENTS

JAN 14 2002

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

be frustrated and undermined unless its confidentiality protections are enforced. If this Court's protective order is to be given effect, then third parties must not be allowed to compel protected testimony without, at the very least, a credible demonstration that a

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

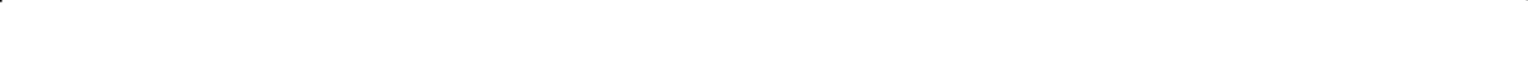
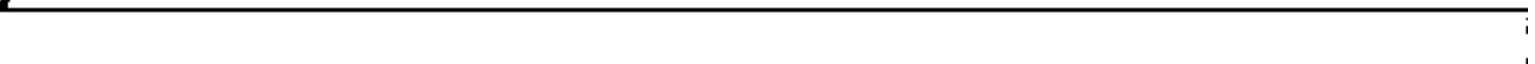
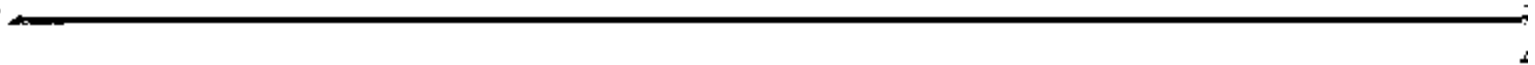
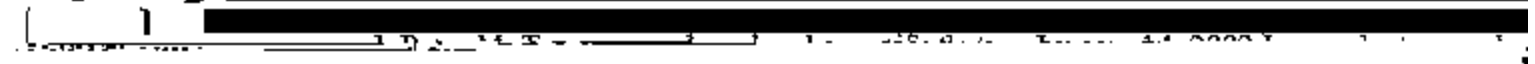
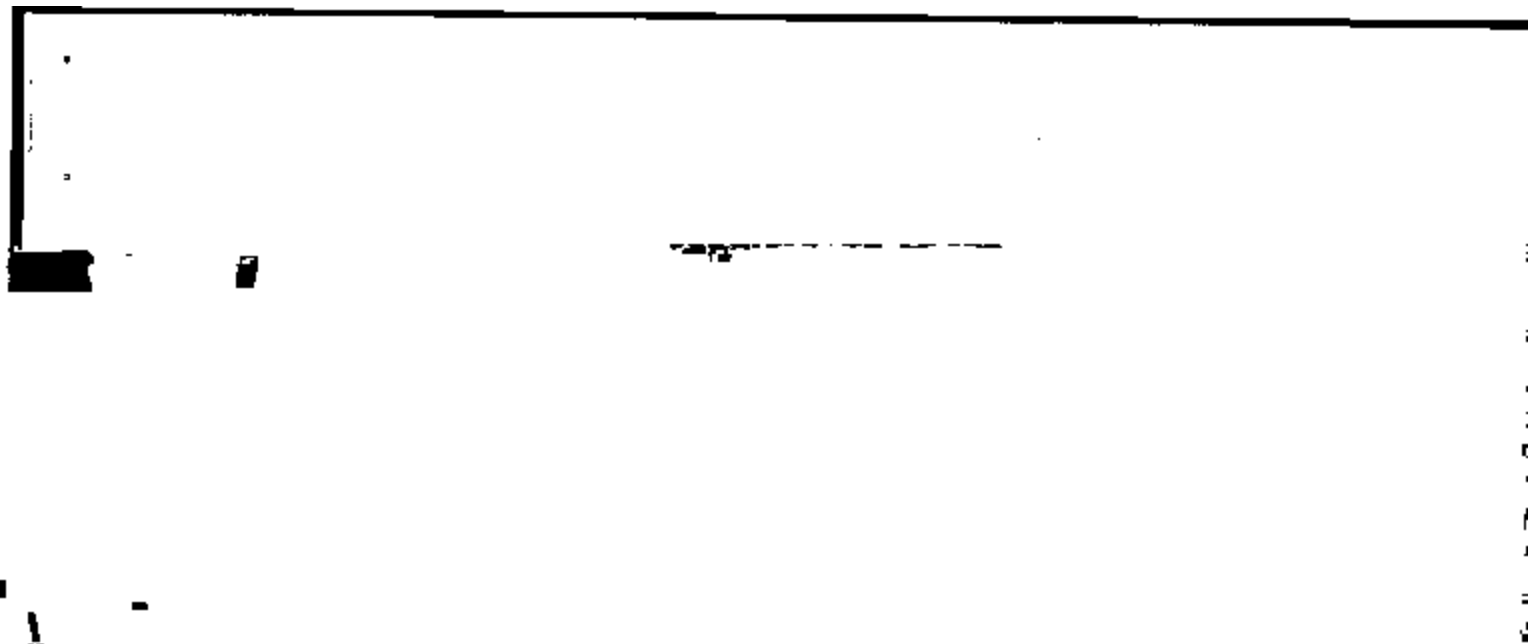
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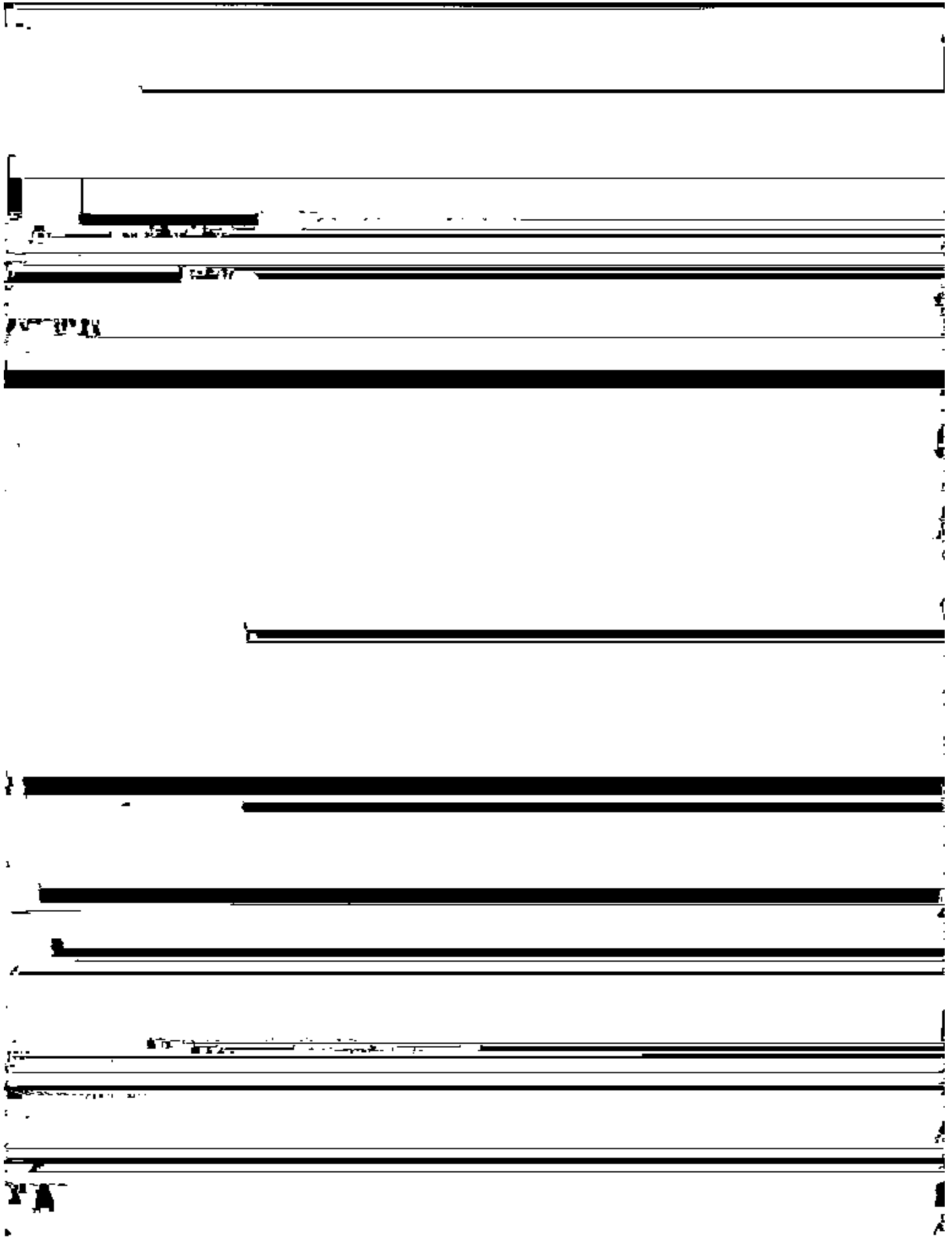
[REDACTED]

Rosenthal Depo. at 146. Upsher has not suggested any valid reason to believe that Mr.

CONCLUSION



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



record tape and other data compilations from which information can be obtained, and includes

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

confidentiality or non-disclosure agreements; proprietary technical or professional information

designations that the document constitutes or contains "Confidential Discovery Material."

(b) Designation of Documents as "RESTRICTED CONFIDENTIAL,
ATTORNEY EYES ONLY"

In order to permit Producing Parties to provide additional protection for a limited number of documents which contain highly sensitive commercial information, Producing Parties may designate documents as "Restricted Confidential, Attorney Eyes Only" by placing on or affixing such legend on each page of the document. It is anticipated that documents to be

(c) Disclosure to Experts/Consultants, Deponents or Witnesses in Each Instance Who Are Officers, Directors, or Employees of Pharmaceutical Companies

If any Party desires to disclose Restricted Confidential, Attorney Eyes Only material to any Expert/Consultant, deponent or witness in each instance who is an officer, director, or employee of a pharmaceutical company ("the individual"), the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific individual to whom the Restricted Confidential, Attorney Eyes Only material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the proposed individual. The Producing Party may object to the disclosure of the Restricted Confidential, Attorney Eyes Only material within five (5) business days of receiving notice of an intent to disclose the Restricted Confidential, Attorney Eyes Only

material to any individual who is an officer, director, or employee of a pharmaceutical company.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

the disclosing Party may disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual.

(d) Disputes Concerning Designation or Disclosure of Restricted Confidential, Attorney Eyes Only Material

Disputes concerning the designation or disclosure of Restricted Confidential,

~~From Confidential, Restricted Confidential, Attorney Eyes Only, or Confidential~~

[REDACTED]

[REDACTED]

[REDACTED]

been demonstrated for such use.

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

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

(b) Outside Counsel;

(c) Experts/Consultants;

(d) witnesses or deponents at trial or deposition;

(e) the Administrative Law Judge, the Hearing Officer, or the Commission;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

individual is Scott Lodin, Vice President and General Counsel.

6. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to an Expert/Consultant unless such Expert/Consultant is a

address and/or affiliation of the proposed expert who may testify and a current curriculum vitae _____

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(c) Resolution of Disclosure or Confidentiality Disputes

failed to resolve _____ the issues, a Party seeking to disclose Confidential Discovery Material or _____

by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be stamped "CONFIDENTIAL - FTC Docket No. 9293."

9. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking

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

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

13. *In camera* provisions

materials *in camera* status; (3) specify the time period for which *in camera* treatment is sought for each document; and (4) attach as exhibits to the application the documents containing the specific information for which *in camera* treatment is sought.

A blanket *in camera* order for an entire pleading is contrary to public policy and will not be granted. The parties must specifically identify the portions of a pleading, document, deposition transcript, or exhibit for which *in camera* treatment is sought. Entire documents or exhibits will rarely, if ever, be eligible for *in camera* treatment. The parties are reminded that Rule 3.45 places the burden of showing that public disclosure will likely result in a clearly

defined portion of the document for which *in camera* treatment is sought. In addition, the parties

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

to submit applications for *in camera* treatment in advance of filing motions which include confidential materials and that deadlines for filing motions attaching confidential materials will not be extended for failure to file applications for *in camera* treatment in a timely manner. The

[REDACTED]

57b-2, or with Rules 3.22, 3.45 or 4.11(b)-(e), 16 C.F.R. §§ 3.22, 3.45 and 4.11(b)-(e).¹ Any Party or Producing Party may move at any time for, treatment *in camera* of any Confidential Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter.

15. At the conclusion of this Matter, Respondent's counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other notes, containing Confidential Discovery Material which have not been made part of the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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

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

ORDERED:


D. Michael Channell

Dated: August 7, 2000

UNITED STATES OF AMERICA

In the Matter of

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