

# PUBLIC RECORD

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



In the Matter of

Schering-Plough Corporation,  
a corporation,

Upsher-Smith Laboratories,  
a corporation,

and

American Home Products Corporation,  
a corporation.

DOCKET No. 9297

MOTION OF MERCK-MEDCO MANAGED CARE, L.L.C. FOR INCAMERA

(In further support of this motion, Mr. [redacted] is the [redacted].)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of

Schering-Plough Corporation,  
a corporation,

Unlawful Competition

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Having considered the memorandum of law and the accompanying declaration submitted by Merck-Medco in support of its motion, and the entire record herein, it is hereby

ORDERED that Merck-Medco's motion is GRANTED and that Upsher-Smith

Lebonyl (gabapentin) NDC 121 is added to covered treatment until January 15, 2002

[Redacted]

D. Michael Chappell  
Administrative Law Judge

Dated: January \_\_\_\_, 2002

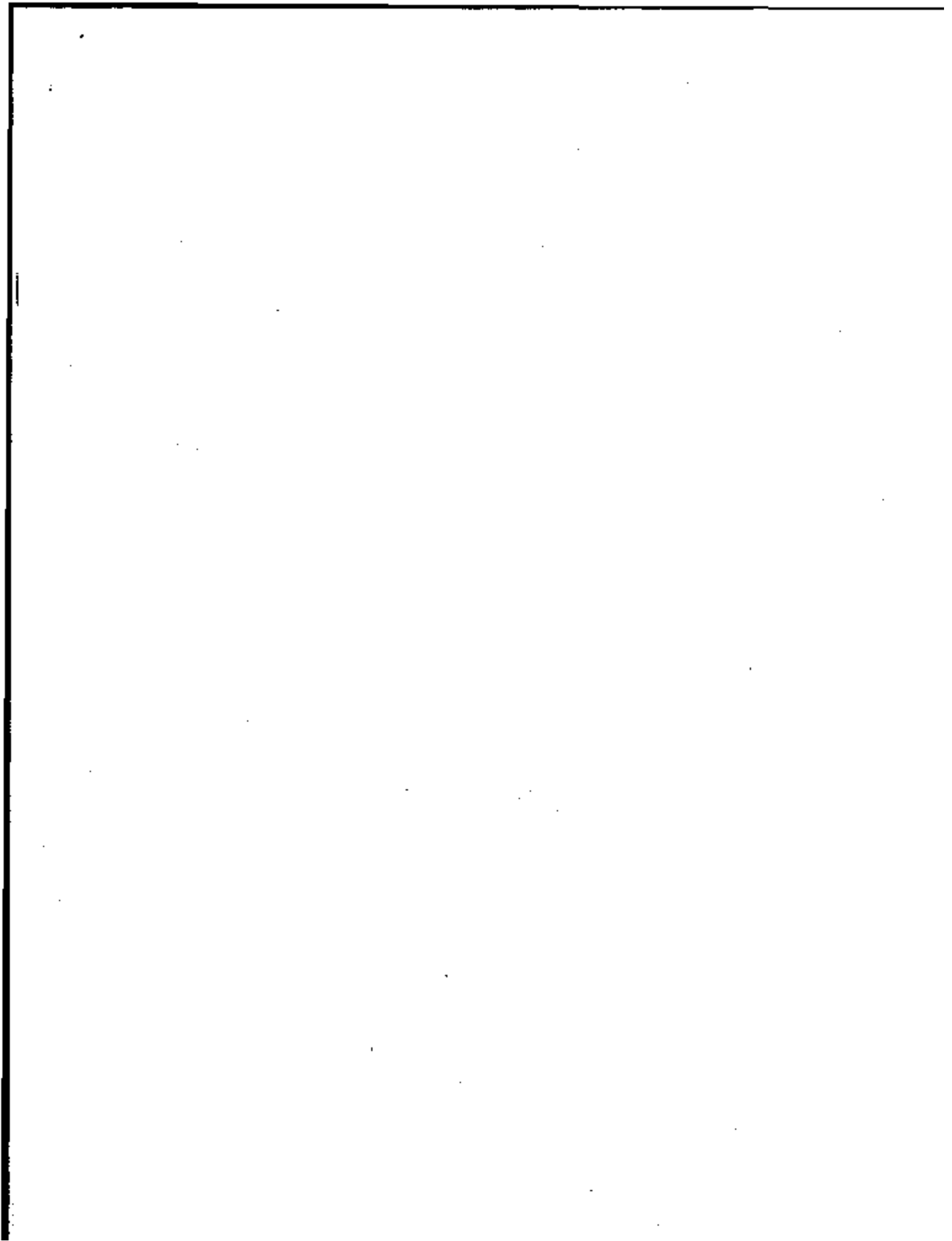
[Redacted]

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that this 1<sup>st</sup> day of January, 2009, I caused to be filed in

[REDACTED]

[REDACTED]



RESTRICTED CONFIDENTIAL  
ATTORNEY EYES ONLY  
Subject to Protective Order

▲ PRESCRIPTION DRUG PROGRAM PROPOSAL

FOR

SUBMITTED BY:

MEDICAL MEDICAL MANAGERS CLUB, I. E. C.

[REDACTED]

1970-01-01

[REDACTED]

[REDACTED]



**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

Subject to Protective Order  
FTC Docket 9297  
- In Camera Treatment Request

MERCK-MEDCO 0001  
Restricted Confidential

**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

**Subject to Protective Or**  
**FTC Docket 9297**  
**In Camera Treatment Req**

**MERCK-MEDCO IN**  
**Restricted Confidential**  
**Eyes Only - FTC Doc**

**RESTRICTED CONFIDENTIAL  
ATTORNEY EYES ONLY  
Subject to Protective Order**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ATTORNEY EYES ONLY  
Subject to Protective Order

UPSHER-SMITH LABORATORIES  
EXHIBIT USX 121

~~REDACTED - IN COMPLIANCE~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

ATTORNEY EYES ONLY  
Subject to Protective Order

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**PREPARED BY [REDACTED]**

**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

**Subject to Protective Order**  
**FTC Docket #297**  
**In Camera Treatment Request**

**MERCK-MEDCO 0001**  
**Restricted Confidential**  
**Excluded From FTC Proceeding**

**RESTRICTED CONFIDENTIAL  
ATTORNEY EYES ONLY  
Subject to Protective Order**

**UPSHER-SMITH LABORATORIES  
EXHIBIT USX 121**

**[REDACTED: *IN CAMERA*  
TREATMENT REQUESTED.]**

**Subject to Protective Order  
FTC Docket 9297  
In Camera Treatment Requested**

**MERCK-MEDCO I  
Restricted Confidential  
Case No. 9297**



**RESTRICTED CONFIDENTIAL**  
**ATTORNEY EYES ONLY**  
Subject to Protective Order

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

~~CONFIDENTIAL~~  
**ATTORNEY EYES ONLY**  
Subject to Protective Order

**UPSHER-SMITH LABORATORIES  
EXHIBIT USX 121**

**[REDACTED: *IN CAMERA*]**



ATTORNEY EYES ONLY  
Subject to Protective Order

IDENTIFIED SUBJECT INFORMATION

**RESTRICTED CONFIDENTIAL**  
**ATTORNEY EYES ONLY**  
Subject to Protective Order

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

Subject to Protective Order  
FTC Docket #297  
In Camera Treatment Request

MERCK-MEDCO #9  
Restricted Confidential  
Eyes Only - FTC Doc

**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

**Subject to Protective Order**  
**FTC Docket 9297**  
**In Camera Treatment Requested**

**MERCK-MEDCO 0001**  
**Restricted Confidential**  
**Eyes Only - FTC Docket**

**RESTRICTED CONFIDENTIAL**  
**ATTORNEY EYES ONLY**  
Subject to Protective Order

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

EXHIBIT USX 121



**ALSO REQUESTED CONFIDENTIAL  
ATTORNEY EYES ONLY  
Subject to Protective Order**

**UPSHER-SMITH LABORATORIES  
EXHIBIT USX 121**

**[REDACTED: *IN CAMERA*  
TREATMENT REQUESTED.]**

**Subject to Protective Order**

**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

**Subject to Protective Order**  
**FTC Docket 9297**  
**In Camera Treatment Requested**

**MERCK-MEDCO 000**  
**Restricted Confidential**  
**Eyes Only - FTC Docket**

**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

**Subject to Protective Order**  
**FTC Docket 9297**  
**In Camera Treatment Request**

**MERCK-MEDCO 0001**  
**Resubmit Confidential**  
**Exhibit 121 - FTC Docket**

ATTORNEY EYES ONLY  
Subject to Protective Order

UPSHER-SMITH LABORATORIES  
EXHIBIT USX 121

**[REDACTED: *IN CAMERA*  
TREATMENT REQUESTED.]**

Subject to Protective Order  
FTC Docket 9297  
In Camera Treatment Requested

MERCK-MEDCO 0001  
Proprietary Confidential  
Date Code: 8777 P/0001

RESTRICTED COPY AVAILABLE ONLY TO

**ATTORNEY EYES ONLY**

Subject to the Freedom of Information Act

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11-11-11

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ATTORNEY EYES ONLY**  
**Subject to Protective Order**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**RESTRICTED CONFIDENTIAL  
ATTORNEY EYES ONLY  
Subject to Protective Order**

**UPSHER-SMITH LABORATORIES  
EXHIBIT USX 121**

**[REDACTED: *IN CAMERA*  
TREATMENT REQUESTED.]**

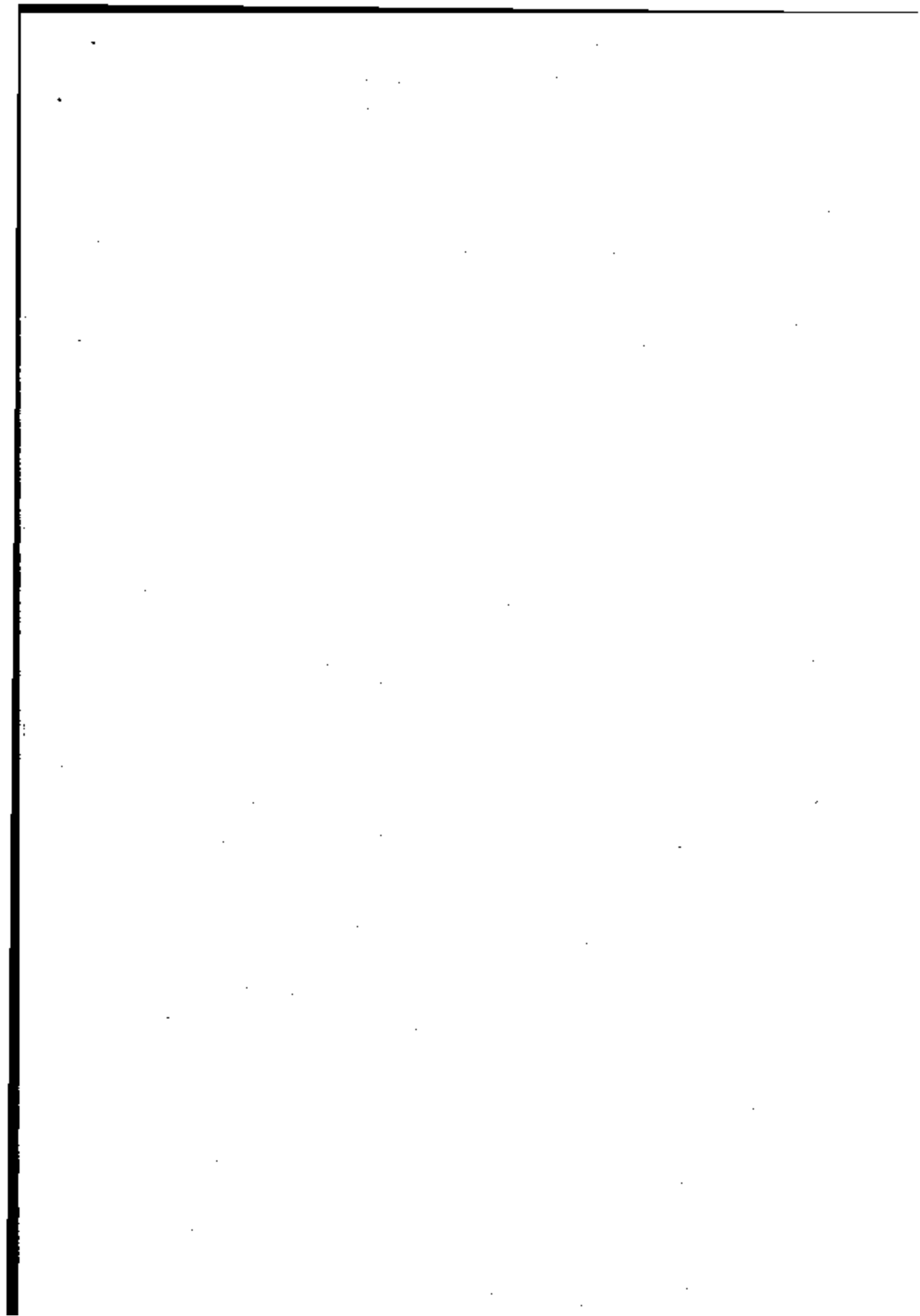


**RESTRICTED CONFIDENTIAL**  
**ATTORNEY EYES ONLY**  
Subject to Protective Order

**UPSHER-SMITH LABORATORIES**  
**EXHIBIT USX 121**

**[REDACTED: *IN CAMERA***  
**TREATMENT REQUESTED.]**

Subject to Protec  
FTC Order



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

\_\_\_\_\_  
In the Matter of )  
)  
Schering-Plough Corporation, )  
a corporation, )  
)  
Upsher-Smith Laboratories, )  
a corporation, )  
)  
and )  
)  
American Home Products Corporation, )  
a corporation. )  
\_\_\_\_\_

DOCKET NO. 9297

DECLARATION OF BRIAN GRIFFIN

Brian Griffin hereby declares as follows:

1. I am the Senior Vice President of Sales for March Medical, Montreal, Que., J.L.C.

maintenance organizations, Blue Cross/Blue Shield plans, insurance carriers, local and state employee programs as well as a federal employees program. Merck-Medco's services are designed to help control total health costs, improve quality of care and increase member satisfaction.

3. Merck-Medco competes with other pharmacy benefit managers ("PBMs") providing similar services, including, but not limited to, Advance PCS, Express Scripts, Caremark, NPA, Anthem, Wellpoint, and Prime Therapeutics. Merck-Medco strives to distinguish itself from its competitors by, among other things, providing innovative and highly customized services and programs, many of which are unique to Merck-Medco. The Proposed Trial Exhibit contains detailed descriptions of many of these

management and education, customer-specific services and benefits, formulary management programs, and pricing practices, generally.

5. Because the information contained in the Proposed Trial Exhibit is competitively sensitive and because its disclosure to a competing PBM would cause serious and substantial competitive injury to Merck-Medco, our sales force takes numerous precautions to ensure the confidentiality of its client proposals and contracts so that this information is not conveyed to any competitors or other third parties. For example, at the beginning of every Presentation Day Program, Present is a sensitive

acquiring party to the disclosing party upon the termination of this Agreement or upon prior written request by the disclosing party."

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. The Proposed Trial Exhibit, for example, describes proprietary programs and services Merck-Medco has developed in the coverage management context. Similarly, the Proposed Trial Exhibit describes proprietary patient and provider education programs developed by Merck-Medco as well as

and customized services outlined therein. It is my belief that public disclosure of this document will

result in clearly defined serious injury to March Media in the form of substantial loss of business and

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[REDACTED]



NY-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Griffin Decl. ¶¶ 5, 7.) This information is not distributed to any other persons outside the company and it is not accessible to any Merck-Medco competitors. (*Id.*)

Merck-Medco provided a copy of USX 121 in response to subpoenas served by Upsher-Smith and Schering-Plough in this proceeding. Due to the sensitive nature of the information contained in USX 121, Merck-Medco designated it as "Restricted Confidential, Attorney Eyes Only" pursuant to the May 10, 2001 Protective Order. The premise of confidentiality upon

which Merck-Medco provided USX 121 should be preserved. Indeed, no party has objected to

to apply with respect to disclosure of this type of information, *id* § 57b-2(d)(2), the clear intent of

the statute is to protect the confidentiality of the information.

Page 13

[REDACTED]

[REDACTED]

from developing or providing such detailed and informative marketing materials for fear that the materials could be obtained by a competitor. (Griffin Decl. ¶ 8.) Thus, public disclosure would

[REDACTED]

Rule 3.45. *Hoecsh Marion Russel, Inc.*, 2000 F.T.C. LEXIS 138 (2000). These factors plainly are present here (see, e.g., Griffin Decl. 14) and have been found in other cases to warrant in

Further, the risk of substantial competitive harm to Merck-Medco that could be caused by public disclosure of this Exhibit potentially could persist for years to come. Griffin Decl. at ¶15. For this reason, Merck-Medco requests that this document be held *in camera* for a period of not less than ten years. The information contained in the document reveals Merck-Medco's business and sales and marketing strategies with respect to PBM programs and services that could be used, adopted, or incorporated into future Merck-Medco innovations and marketing plans. Accordingly, although certain operational aspects of the specific programs and services described in the document may eventually become known in the industry as some of these