UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of NORTH TEXAS SPECIALTY PHYSICIANS, a corporation.	Docket No. 9312

NON-PARTY ALCON LABORATORIES, INC.'S UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE

Alcon Laboratories, Inc. ("Alcon"), which is not a party to the above-captioned action, respectfully requests that this Court grant *in camera* treatment of several documents that North Texas Specialty Physicians ("NTSP") has designated for possible introduction in the administrative trial in this matter. By letter dated March 16, 2004, NTSP notified Alcon that it intends to introduce into evidence documents produced by Alcon in response to a subpoena issued by NTSP and requests from the FTC in this matter. Alcon notified NTSP of its objection to the disclosure of such information by its letter dated March 22, 2004. Exhibit "1". Alcon and NTSP have discussed the documents which form the basis of the motion and NTSP is unopposed to the *in camera* treatment of these documents. In their discussions, Alcon understands that if such *in camera* treatment is not afforded to the documents attached hereto as Exhibits "A" through "C", NTSP will seek to use these documents at trial by way of its own motion of which it shall give Alcon notice. Among others, the Alcon documents designated for introduction into evidence by NTSP were marked by Alcon as "Restricted Confidential-Attorney Eyes Only – FTC Docket No. 9312" and entitled

context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *Hood,* 58 F.T.C. at 1188. Under this standard, *in camera* treatment of the documents in question is warranted.

A. Alcon has Preserved the Confidentiality of the Documents and Information

Alcon has taken significant steps to protect the confidential nature of these documents which were produced in response to a subpoena issued by NTSP and requests from the FTC. (Snyder Decl., at ¶ 4) These documents were produced under compulsory process and pursuant to the Protective Order Governing Discovery Material issued in this matter on October 16, 2003 (the “*Protective Order”*). (*Id.*) The purpose of the Protective Order was to expedite discovery while ensuring that materials produced would receive sufficient protection from disclosure to competitors, to other medical benefits service networks, and the public.

In croc8dd7Tro o(reque)feare gud,]TJ402.3 29TD0.00081Tw(tre pusecce)yf the Prformatior

B. Disclosure of the Information in Exhibits "A" Through "C" Would Result in Serious Competitive Injury to Alcon

Exhibits "A" through "B" contain an analysis/comparison of three separate medical benefits service networks' pricing, costs, benefits and capabilities related to proposed/negotiated benefit services for Alcon and internal Alcon data and analysis related to historical medical benefits service networks' pricing, costs, benefits and capabilities. (Snyder Decl., at ¶ 3) Portions of this information were obtained by Alcon through its business dealings and negotiations with medical benefits service networks and were disclosed to Alcon as highly confidential and considerably sensitive business information. (*Id.*) Other portions of this information were developed by Alcon through its internal analysis and development. (*Id.*) Indeed, disclosure of these documents would reveal how Alcon analyzes and values the various medical benefits service networks' services and coverage and the rates it pays for such benefit services. (*Id.*) Alcon's efforts in this regard have allowed it to gain a competitive advantage in the marketplace in acquiring medical benefits and services and providing the best possible benefits/coverage to its employees. (*Id*) If Exhibits "A" through "B" were disclosed, Alcon could potentially lose its competitive advantage in acquiring such services in the marketplace to the detriment of it, its employees and retirees. (*Id.)*

Exhibit "C" contains a discount and disruption analysis in regards to patient-physician records from its contracted medical benefits service network in order to identify and rank the anticipated and expected costs from three identified medical benefits service networks and includes an analysis of administrative costs, quality of

administration, reporting capabilities and performance guarantees. (Snyder Decl., at

its' employees and retirees. (*Id.*) The lack of comparable information would result in decreased services and corresponding increased costs to Alcon, its employees and retirees. (*Id.*) In today's ever increasing competitive medical benefits service network market, the disclosure of this information would harm the members to whom Alcon owes its fiduciary responsibility. (*Id.*) Such harm includes the loss of being able to attract and retain Alcon's most important and necessary resource, its people. (*Id.*) Alcon's inability to attract the best employees by providing the best medical benefits services would greatly harm Alcon's position as the world's leading eye care company. (*Id.*)

If Exhibits "A" through "C" are made public, Alcon's inability to obtain medical benefits service network information in the future will result in Alcon's inability to attract future candidates for hire, as well as retain existing employees, to its detriment. (Snyder Decl., at ¶ 3.) The information contained in Exhibits "A" through "C" is central to Alcon's employee benefits plan and its goal of acquiring and retaining its highly skilled workforce which consistently outperforms its competitors'. (*Id*.) Disclosure of Exhibits "A" and "C" would violate the business practice and spirit in which the highly confidential and considerably sensitive business information was provided by medical benefits service networks, affecting interstate commerce and have a detrimental affect on Alcon's future business relationships with medical benefits service networks. (*Id.*) Disclosure of Exhibits "A" through "C" would result in a disservice to Alcon's employees and retirees, the exact individuals to which Alcon owes its fiduciary responsibility. (*Id.*)

C. The Public Interest in Disclosure of Exhibits "A" Through "C" is Outweighed by the Likelihood of Serious Competitive Harm to Alcon

Alcon deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corporation,* 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for sales statistics over five years old). Reasonable periods of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. Alcon has cooperated with the discovery demands in this case. Conversely, disclosing documents containing Alcon's highly confidential information will not materially promote the resolution of this matter, nor will these documents lend measurable public understanding of these proceedings. The balance of interests clearly favors *in camera* protection for Exhibits "A" through Exhibit "C". *See In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality).

D. Protection should Extend for Five Years

The nature of the highly confidential information contained in Exhibits "A" through "C" warrants lasting protection. The rates paid by Alcon to the various medical benefits service networks and corresponding discounts are vital to Alcon's competitive position in the medical benefits service network marketplace. Accordingly, Alcon respectfully requests that Exhibits "A" through "C" be afforded *in camera* protection for a period of five years.

CONCLUSION

Exhibits "A" through "C" satisfy the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC precedent. Accordingly, this Court should extend *in camera* protection to these confidential documents.

DATED: April 23, 2004

Respectfully submitted,

ALCON LABORATORIES, INC.

By: [Original Signed /s]
Steven B. Midgley, Esq.
SBOT #00797077
6201 South Freeway
Fort Worth, Texas
817.551.6847
817.568.7267 – Fax
steve.midgley@alconlabs.com

Attorney for Non-Party
Alcon Laboratories, Inc.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the foregoing instrument was served on the following on April 23, 2004

Via Federal Express and E-mail
(secretary@ftc.gov***)***

Donald S. Clark, Secretary
FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVENUE, NW
Washington, DC 20580

___[Original Signed /s]_____

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of NORTH TEXAS SPECIALTY PHYSICIANS, a corporation.	Docket No. 9312

PROPOSED ORDER

On April 23, 2004, Non-Party Alcon Laboratories, Inc. ("Alcon") filed a motion for *in camera* treatment of confidential business information contained in various documents that have been identified by North Texas Specialty Physicians ("NTSP") as potential trial exhibits.

IT IS HEREBY ORDERED that Alcon's Motion is GRANTED. The information set forth in the Alcon documents numbered as follows will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for a period of five (5) years.

Alcon Laboratories Carrier Comparison Summary, Medical Benefits Administrative Services (Exhibit "A")

Alcon Laboratories, Network Effectiveness Comparison, Dallas/Fort Worth and Southern California (Exhibit "B")

Alcon Discount & Disruption Analyses (Exhibit "C")

IT IS FURTHER ORDERED that only authorized Federal Trade Commission ("Commission") personnel, and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED:

D. Michael Chappell
Administrative Law Judge

DATED: _____