

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

IN RE: CARDIZEM CD ANTITRUST LITIGATION	:	MDL DOCKET NO. 1278
	:	
	:	
LOUISIANA WHOLESALE DRUG COMPANY, INC. and DUANE READE, INC., individually and on behalf of all others similarly situated,	:	This document relates to:
	:	
	:	INDIVIDUAL FILE NOS.
	:	99-CV-73870
	:	99-CV-73259
Plaintiffs,	:	
	:	
v.	:	Class Action
	:	
HOECHST MARION ROUSSEL, INC. and ANDRX PHARMACEUTICALS, INC.,	:	Honorable Nancy G. Edmunds
	:	
Defendants.	:	
	:	
	:	

**SHERMAN ACT CLASS PLAINTIFFS' MOTION AND BRIEF FOR
APPROVAL OF PLAN OF ALLOCATION**

In accordance with the Notice of Proposed Class Settlement and Hearing Regarding Settlement, Louisiana Wholesale Drug Company, Inc. and Duane Reade, Inc., as representatives of the Sherman Act Class Plaintiffs ("Plaintiffs"), hereby respectfully move the Court for an Order approving the Plan of Allocation and state as follows:

1. As set forth more fully in the Plan of Allocation filed on this date, Plaintiffs propose to allocate the settlement funds in the above-captioned case, net of Court approved attorneys' fees, incentive awards, and expenses ("Net Settlement Fund"), in proportion to the overcharge damages incurred by each Class Member due to defendants' alleged anti-competitive conduct.

2. The Plan of Allocation provides a fair and reasonable method of calculating Class

Member overcharge damages based on each Class Member's actual purchases of generic Cardizem CD and/or any increased discounts on Cardizem CD that the Class Members actually received, in conformance with Plaintiffs' experts' damage calculation methodology.

3. The Plan of Allocation provides a fair and reasonable method for determining each Class Member's pro-rata share of the Net Settlement Fund.

4. The Plan of Allocation describes: 1) the method of calculating each Class Member's overcharge damages and pro-rata share of the Net Settlement Fund; 2) the contents and method of disseminating a Claims Notice form; 3) the manner in which claims will be initially reviewed and processed; 4) the method of notifying Class Members of the amount that each Class Member will receive from the Net Settlement Fund ("Notice of Class Member Distribution Amount"); and, 5) the process for handling and resolving challenged claims.

5. The Plan of Allocation also includes the deadlines for completing the following tasks related to distributing each Class Member's pro-rata share of the Net Settlement Fund: 1) preparation and dissemination of the Claims Notice form; 2) receipt by Settlement Administrator of completed Claims Notice form and supporting documentation; 3) curing deficiencies in any Claims Notice form or supporting documentation submitted by Class members; 4) disseminating the Notice of Class Member Distribution Amount; and, 5) challenging and resolving disputes over the Settlement Administrator's determination of each Class Member's distribution amount.

6. Wherefore Sherman Act Class Plaintiffs respectfully move the Court to approve the Plan of Allocation.

Dated: November 4, 1999

Respectfully submitted,

By: Richard B. Drubel

Richard B. Drubel
David Boies
BOIES & SCHILLER, LLP
26 South Main Street
Hanover, New Hampshire 03766
Tel: (603) 643-9090
Fax: (603) 643-9010

*Co-Lead Counsel for the Sherman
Act Class Cases*

Daniel Berger
Eric L. Cramer
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Tel: (215) 875-3000
Fax: (215) 875-4671

Aubrey B. Calvin
THE CALVIN LAW FIRM, P.C.
808 Travis St., Suite 2300
Houston, TX 77002
Tel: (713) 224-5771
Fax: (713) 225-0038

By: Bruce E. Gerstein

Bruce E. Gerstein
Barry S. Taus
GARWIN, BRONZAFT,
GERSTEIN & FISHER, L.L.P.
1501 Broadway, Suite 1416
New York, NY 10036
Tel: (212) 398-0055
Fax: (212) 764-6620

*Co-Lead Counsel for the Sherman
Act Class Cases*

John Gregory Odom
Stuart E. Des Roches
ODOM & DES ROCHES
650 Poydras Street, Suite 2020
Poydras Center
New Orleans, LA 70130
Tel: 504-522-0077
Fax: 504-522-0078

Ed Sloan
NIEWALD WALDEK
& BROWN, P.C.
120 W. 12th Street, Suite 1300
Kansas City, Missouri 64105
Tel: (816) 292-7030
Fax: (816) 474-0872

Robert I. Harwood
Samuel K. Rosen
James G. Flynn
WECHSLER HARWOOD
HALEBIAN & FEFFER, LLP
488 Madison Avenue
New York, NY 10022
Tel: (212) 935-7400
Fax: (212) 753-3630

Jack Staph
JACK STAPH & ASSOCIATES
295225 Chagring Boulevard
Suite 316
Pepper Pike, Ohio 44122
Tel: (216) 378-0140
Fax: (216) 378-0143

David P. Smith
PERCY, SMITH, FOOTE & GADEL
720 Murray Street
P.O. Box 1632
Alexandria, LA 71309
Tel: (318) 445-4480
Fax: (318) 487-1741

Susan LaCava
SUSAN LACAVA, S.C.
23 North Pinckney, Suite 300
Madison, WI 53703
Tel: (608) 258-1335
Fax: (608) 258-1669

R. Scott Palmer
BURT & PUCILLO, LLP
515 N. Flagler Drive
Suite 1701
West Palm Beach, FL 33401
Tel: (561) 835-9400
Fax: (561) 835-0322

Tod Aronovitz
ARONOVITZ & ASSOC., P.A.
Museum Tower, Suite 2700
150 W. Flager Street
Miami, FL 33130
Tel: (305) 372-2772
Fax: (305) 375-0243

Mitchell S. Arons
Marian Solomon
ARONS & SOLOMON
125 State Street, Suite 107
Hackensack, NJ 07601
Tel: (201) 487-1199
Fax: (201) 487-9109

Angela K. Green
LOWTHER JOHNSON, LLC
901 St. Louis St., 20th Floor
Springfield, MO 65806
Tel: (417) 866-7777
Fax: (417) 866-1752

Attorneys for Sherman Act Class Plaintiffs

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

**IN RE: CARDIZEM CD ANTITRUST
LITIGATION**

MDL DOCKET NO. 1278

**LOUISIANA WHOLESALE DRUG
COMPANY, INC. and DUANE
READE, INC., individually and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**HOECHST MARION ROUSSEL, INC.
and ANDRX PHARMACEUTICALS,
INC.,**

Defendants.

This document relates to:

INDIVIDUAL FILE NOS.

99-CV-73870

99-CV-73259

Class Action

Honorable Nancy G. Edmunds

PLAN OF ALLOCATION

I. BACKGROUND RE DAMAGES ANALYSIS

Direct Purchaser Class Plaintiffs (“Plaintiffs”) propose to allocate the settlement funds, net of Court Approved attorneys’ fees, incentive awards, and expenses (“Net Settlement Funds”), using a modified version of the methodology Plaintiffs used to calculate aggregate damages to the Direct Purchaser Class (“the Class”). Damages were calculated based solely on the total “overcharge,” *i.e.*, the difference between the prices that Class Members actually paid for branded and generic Cardizem CD, and the lower prices that Class Members would have paid had generic entry not been delayed, multiplied by the quantities that each purchased or would have purchased. This approach is fully consistent with this Court’s class certification opinion, which favorably quoted the ABA

Section of Antitrust Law, *Proving Antitrust Damages: Legal and Economic Issues*, Ch. 6, “Overcharges” at 172 (1996), as follows: “[t]he typical measure of damages [in a horizontal market allocation or price fixing case brought by direct purchasers] is the difference between the actual price and the presumed competitive price multiplied by the quantity purchased. This was the calculation that the Supreme Court approved in *Chattanooga Foundry & Pipe Works v. Atlanta*, 203 U.S. 390, 396 (1906).”¹

In order to estimate aggregate overcharges to the Class, Plaintiffs engaged Dr. Jeffrey Leitzinger, an economist with specific expertise in calculating damages in large antitrust cases. Working with guidance from Dr. Stephen Schondelmeyer, one of the country’s leading pharmaceutical economists, Dr. Leitzinger performed what is known as a “but for” overcharge calculation. Prices and quantities “but for” the illegal Agreement were estimated using a “before/after” method, in which the market experience before and after the alleged collusive period is used to determine the prices and quantities that would have prevailed during that period “but for” the illegal behavior in question. In this case, the collusive period extended from July 1998 (when Andrx received final FDA approval to sell Cartia XT and began receiving payments under the Agreement) to June 1999 (when Andrx actually began selling Cartia XT). The “after” period began in June 1999. While the alleged collusive period extended eleven months, Plaintiffs’ experts determined that the effects of the collusion on prices charged and quantities purchased continued to be felt in the market place for at least five years after the Agreement terminated.

The market experience during this extended “after” period reflects what would reasonably be expected to have occurred earlier, but for the delay allegedly caused by the Agreement. To derive

¹ *In re Cardizem CD Antitrust Litigation*, 200 F.R.D. 297, 309-10 (E.D. Mich. 2001).

his aggregate Class overcharge results, Dr. Leitzinger shifted the actual, post-generic-entry market experience back to the point in time at which that entry would have occurred but for the anti-competitive Agreement. In this way, Dr. Leitzinger's analysis of the "but for" world directly reflects real world data and experience.

For most Class Members, the overcharge is made up of two components. The first component – referred to by our experts as substitution overcharges – constitutes the difference between the prices that each Class member actually paid for Cardizem CD and the lower prices that the Class Member would have paid for generic(s), multiplied by the additional quantity of generic(s) that it would have purchased instead of Cardizem CD had generic entry not been delayed.

This component of damages is the one partially affected by the so-called "generic by-pass," which occurs because, upon generic entry, certain of the wholesalers' customers for Cardizem CD began purchasing all or a substantial portion of generic Cardizem CD directly from Andrx's generic wholesaler subsidiary or from other generic manufacturers, thereby by-passing Class member wholesalers.² Given this phenomenon, substitution damages were calculated, and will be allocated,

² In its class certification opinion, *In re Cardizem CD Antitrust Litigation*, 200 F.R.D. at 317, the court took note of the bypass, explaining:

Plaintiffs may [not] ignore the effect of the . . . by-pass phenomenon on some wholesaler class members. Plaintiffs' expert testified at the February 8, 2001 hearing that well-established methodologies are available to calculate, with reasonable accuracy, an overcharge damage estimate that considers the by-pass phenomenon Defendants highlight. The damage estimate will do so by considering overcharges only for the quantity of generics that were actually substituted for Cardizem CD purchases after generic entry. The by-pass phenomenon will thus be reflected in the reduced quantity of generic substitutions by some wholesaler class members, and the overcharge damage estimate will not overstate the extent of Plaintiffs' damages.

primarily in proportion to each Class Member's additional purchases of *generic* Cardizem CD. Taking the generic by-pass into account will have the effect of reducing, but by no means eliminating, damages for certain Class Member wholesalers.

The second overcharge component constitutes the difference between the prices that each Class Member actually paid for Cartia XT (Andrx's generic Cardizem CD product) and the lower prices that it would have paid for Cartia XT had generic entry not been delayed, multiplied by the quantity of Cartia XT that it actually purchased. These Cartia XT overcharges arise because the Agreement, by delaying generic entry, also delayed competition between Andrx and other generic Cardizem CD manufacturers that caused Andrx to reduce net Cartia XT prices ("Generic-Generic Overcharge").

There is a third overcharge component for those Class Members who received increased discounts on their branded Cardizem CD purchases after generic entry. This component constitutes the difference between the prices that each of these Class Members actually paid for Cardizem CD and the lower prices that each would have paid for Cardizem CD had generic entry not been delayed, multiplied by the quantity of Cardizem CD that each would have purchased ("Brand-Brand Overcharge"). Due to the nature of the market, and the pricing behavior of the Defendants, this third damages component will apply to only a very small percentage of the Class.

II. PROPOSED PLAN OF ALLOCATION

In accordance with the Notice of Proposed Class Settlement and Hearing Regarding Settlement (the "Settlement Notice"), Section V, Plaintiffs respectfully submit the following plan and procedure for making and paying Class Member claims and allocating the Net Settlement Funds among Class Members (the "Plan of Allocation").

1. **Dissemination of the Settlement Notice to Class Members.**

1.1 On September 27, 2002, the accounting and claims administration firm, Heffler, Radetich & Saitta, L.L.P. (“Heffler”), caused to be mailed by first class mail, postage prepaid, to members of the Class identified from the records of Aventis Pharmaceuticals, Inc. (formerly HMR), a copy of the Settlement Notice. The Settlement Notice informed Class Members of the Settlement, Class Members’ rights to object to the Settlement, Plaintiffs’ request for attorneys’ fees and incentive awards for the named Plaintiffs, and the Plan of Allocation. The Settlement Notice also advised Class Members of a hearing (the “Settlement Hearing”) scheduled for November 20, 2002, at which time the Court will consider whether to approve: (1) the Settlement Agreement as fair, reasonable and adequate for the Class, and to dismiss the claims of the Class with prejudice and to enter a final judgment releasing Class Members’ claims; (2) payment of attorneys’ fees and expenses on behalf of the Class; (3) incentive awards to the named Plaintiffs; and (4) this Plan of Allocation.

1.2 A Summary Notice was published in two widely distributed industry publications, namely The Pink Sheet on October 21, 2002, and Chain Drug Review on October 28, 2002. The Summary Notice, among other things, advises Class Members of the Settlement Hearing and that they may obtain a copy of the full Settlement Notice by accessing the web sites of the Co-Lead Counsel or by contacting Co-Lead Counsel directly.

2. Dissemination of the Claims Notice.

2.1 Class Members are eligible to receive a Claims Notice, provided that they have not timely excluded themselves from the Class.

2.2 Co-Lead Counsel has selected David Beardon and Company, a highly qualified and experienced claims administration firm, to handle the administration of the Settlement (“Settlement Administrator”), including, *inter alia*, dissemination of the Claims Notice.

2.3 The Claims Notice will be pre-printed with information identifying each Class Member by name and address. The Claims Notice will explain that each Class Member that makes a claim will receive a pro rata share of the Net Settlement Fund as determined by a fraction, the numerator of which is the sum of that claimant’s overcharges (as calculated per section 4.2 below), and the denominator of which is the sum of all claimants’ overcharges. The “Net Settlement Fund” is the Settlement Fund less Court approved attorneys’ fees, incentive awards, and expenses. The Settlement Administrator will prepare and mail the Claims Notices no later than **30 days after Final Approval of the Settlement.**

3. Completing the Claims Notice.

3.1 A Claims Notice will be required in order to determine each claimant’s purchases to be taken into account in determining the settlement distribution. Accordingly, in order to make a claim and participate in the Settlement, Class Members must complete and return a Claims Notice to the Settlement

Administrator. In order to be timely, the completed Claims Notice must be mailed to the Settlement Administrator postmarked no later than **90 days after Final Approval of the Settlement.**

3.2 Given the sensitivity of the information to be provided on the Claims Notice, and the purchase and sales data involved in the administration process, all Claims Notices, and their contents, and all sales data and databases utilized for purposes of claims administration, are to be kept strictly confidential, to be disclosed to no one other than Class counsel, Dr. Leitzinger and his staff, and/or the Settlement Administrator without Court approval, and are to be used only for purposes of settlement administration and distribution.

4. **Calculation of the Estimated Overcharge.**

4.1 The Claims Notice will request the following information from each Class Member: (1) the entity's full name, address, and the identity and contact information for the person responsible for overseeing the claims process for the Class Member; (2) information and data regarding its purchases of Cardizem CD and its AB-rated generic equivalents (*i.e.*, Cartia XT, diltiazem CD, diltiazem ER 24 and diltiazem XT) made during the period from July 1998 through and including August 2001.³ The Claims Notice will specifically request monthly data regarding: (1) the number of packages (*i.e.*,

³ As described in Section 4.2 below, Plaintiffs have determined for purposes of allocation to cut-off the damages period at August 2001 (which is the last month for which Plaintiffs have manufacturer sales data available, which data will be used as a check on the purchase data provided on the Claim Forms).

boxes, bottles, or drums) of Cardizem CD and AB-rated generic equivalents purchased and/or returned, and (2) amounts paid or received (*i.e.*, net invoice payments, credits for returns, rebates, charge backs and other price adjustments). The data should be broken out by the National Drug Code (NDC)⁴ of the product and the name of the entity from which it was purchased (*i.e.*, manufacturer, and if generic, manufacturer, wholesaler, repackager or reseller), and should if possible be provided in electronic format (*e.g.*, as a tab-delimited text file, an Excel spreadsheet, or an Access database).

4.2 The distribution that each Class Member derives from the settlement will reflect each Class Member's total estimated overcharges, which, as described in the "Background" section above, may take one or more of three forms: (1) substitution overcharges; (2) generic Cartia XT overcharges (*i.e.*, Generic-Generic Overcharges); and/or (3) Brand-Brand overcharges. For purposes of allocation, what is important is each Class Member's relative claim to the Net Settlement Fund. Thus, the fact that damages continue to accrue for each Class Member, and for the Class as a whole, several years after actual generic entry is not directly pertinent to the allocation process. Accordingly, to

⁴ The National Drug Code is a number that uniquely identifies each product sold. It comprises three segments: (1) the labeler code, assigned by the FDA and specifying the "firm that manufactures, repacks or distributes a drug product;" (2) the product code, assigned by the firm, and specifying the active ingredient(s) as well as the "specific strength, dosage form, and formulation;" and (3) the package code, assigned by the firm and specifying the package size (*e.g.*, the number of capsules or tablets) and package type (*e.g.*, bottle of capsules or box of unit-dose-packaged capsules). See <<http://www.fda.gov/cder/ndc/index.htm>>.

reduce the complexity of the calculations, and the burden on the Class Members in terms of the scope of the purchase data required, overcharges for each claimant for purposes of distribution of the Net Settlement Fund will be estimated through August 2001 (the last full month for which Plaintiffs have relatively comprehensive computerized manufacturer sales data).

- 4.3 Based on the information provided, the same basic approach Plaintiffs used for calculation of damages in the aggregate will be employed to estimate each claimant's individual total overcharges. The actual volumes purchased and prices paid on a monthly basis from July 1998 through and including August 2001 for each claimant will be shifted back 11 months to create the "but for" world.⁵ The prices paid for brand and generic Cardizem CD, and quantities purchased of each amount (the substitution rate), will be estimated for the actual and but-for worlds, and then compared and multiplied to arrive at estimates for each of the three forms of damages (*i.e.*, Brand-Brand, Substitution, and Generic-Generic). Results for each of the three forms of damages will be summed to arrive at the total estimated overcharge for each claimant. Each claimant's total estimated overcharge will then be divided by the sum of all claimants' total estimated overcharges to obtain each claimant's share of the Net Settlement Fund. This method is not only consistent with Plaintiffs' damages analysis, but fair to all Class Members

⁵As was done with the aggregate analysis, adjustments may be made to correct for changes and price and volume that may have occurred over time unrelated to the collusive conduct.

because it allocates the net settlement funds in proportion to each Class Member's overcharges.

- 4.4 As a check on the accuracy of the purchase data provided by the Class Members in their returned Claims Notices and/or to fill-in gaps of missing data, the Settlement Administrator may refer to, and utilize where appropriate, the sales databases produced by the Defendants, and non-party manufacturers, in discovery.

5. Initial Processing of Claims.

- 5.1 All Claims will be reviewed and processed by the Settlement Administrator.
- 5.2 Acceptance and Rejection. The Settlement Administrator shall first determine whether a Claims Notice received is timely, properly completed and signed. If a Claims Notice is incomplete, the Settlement Administrator shall send a notification to the claimant describing the deficiency. Class Members will have **25 days** from the date of the notification to cure any deficiency. If any Class Member fails to correct the deficiency within this time, the claim may be rejected and the claimant shall be notified of such rejection by letter stating the reason for rejection.
- 5.3 All timely Claims Notices submitted by Class Members that are properly completed and supported by the required documentation shall be deemed approved by the Settlement Administrator (the "Approved Claims"). All late Claims Notices that are otherwise complete will be processed by the Settlement Administrator, but segregated as "Late Approved Claims." Co-

Lead Counsel may decide to accept Late Approved Claims, in which case they will be treated as any other Approved Claim. The Court will determine ultimately whether to accept any Late Approved Claims which are rejected.

5.4 Timeliness. The submission of the Claims Notice to the Settlement Administrator (with any and all supporting documentation) will be deemed timely if it is received or postmarked with **90 days of the Final Approval of the Settlement.** At Co-Lead Counsel's discretion this deadline may be extended another 30 days without approval of, but with notice to, the Court. Co-Lead counsel may also seek further extensions of the deadline by order of the Court after any initial extension.

6. **Notification of Class Member Distribution Amount.**

6.1 The Pro Rata Distribution Calculation. The Settlement Administrator will be responsible for determining what each claimant will receive from the Net Settlement Fund. Once the Settlement Administrator has determined the number of Approved Claims and the applicable overcharge for each claimant, it will distribute the Net Settlement Funds to each claimant with Approved Claims as determined by a fraction, the numerator of which is the amount of that claimant's overcharge, and the denominator of which is the sum of all claimants' overcharges.

6.2 No later than **150 days** after Final Approval of the Settlement, the Settlement Administrator shall prepare and mail to each Class Member who submits a timely Claims Notice, a Notice of Class Member Distribution Amount,

setting out the total distribution amount each Class Member is entitled to and a brief description of the basis for the calculation.

- 6.3 Any Claimant who disagrees with the Settlement Administrator's calculation of its total distribution amount may submit, in writing, a challenge to the Settlement Administrator's determinations. The written challenge must be accompanied by supporting documentation and must be mailed to the Settlement Administrator by first class mail, postmarked no later than **30 days after mailing of the Notice of Class Member Distribution Amount.**

7. Processing Challenged Claims.

- 7.1 The Settlement Administrator shall perform an extensive review of any and all written challenges by Class Members to the determinations of the Settlement Administrator. If upon review of a challenge and supporting documentation the Settlement Administrator decides to amend or modify its determination of the distribution amounts to Class Members,⁶ it will advise all Class Members in writing and provide Class Members with a revised Notice of Class Member Distribution Amounts ("Revised Notice") containing the new distribution amounts. The Class Members must then properly execute the Revised Notice, and return the Revised Claims Notices to the Settlement Administrator within **30 days** of the date of the Revised

⁶Because a change in one Class Member's allocation will affect all other Class Member allocations, if the Settlement Administrator determines that one or more challenge is valid, all Class Member Distributions will need to be amended.

Notice. The determinations contained in the Revised Notice will be final, subject to the appeals process described in Section 8 below.

7.2 Where the Settlement Administrator determines that a challenge requires additional information or documentation, it will so advise the Class Member and provide that Class Member an opportunity to cure the deficiency within **25 days**. If that Class Member fails to cure the deficient condition within that time, the claim will be rejected and the Class Member will be notified of the rejection by mail.

7.3 If the Settlement Administrator concludes that it has enough information to properly evaluate a challenge and maintains that its initial determinations were correct, it will so inform the Class Member in writing. Class Members will then have **25 days** to decide whether to communicate in writing to the Settlement Administrator acceptance of the Settlement Administrator's determination of the distribution amount. If the Class Member fails to do so, the claim will be deemed rejected and a rejection letter will follow.

8. **Report to Court Regarding Distribution of Net Settlement Fund.** After the Settlement Administrator determines how much each claimant is entitled to receive from the Net Settlement Fund, it will prepare a final report and affidavit for confidential submission under seal to the Court for the Court's final review and approval of the Settlement Administrator's determinations. The affidavit will explain the tasks and methodologies employed by the Settlement Administrator in processing the claims and administering the settlement. It will also contain a list of the

overcharges of each Class Member and each member's pro rata share of the Net Settlement Fund, as well as a list of Class Members who filed claim forms which were rejected and the reasons their claims were rejected.

9. Payment to the Claimants.

9.1 Upon Court approval of the final report and affidavit of the Settlement Administrator, the Settlement Administrator shall issue a check payable to each claimant in the amount approved by the Court.

10. Resolution of Disputes.

10.1 In the event of any disputes between claimants and the Settlement Administrator on any subject (*e.g.*, timeliness, or required completeness or documentation of a claims, or the calculation of any amounts payable), the decision of the Settlement Administrator shall be final, subject to the claimant's right to seek review by the Court. In notifying a claimant of the final rejection of a Claim, the Settlement Administrator shall notify the claimant of its right to seek such review, on notice to the Settlement Administrator and Co-Lead counsel.

10.2 Any such appeal by a claimant must be submitted in writing to the Court, with copies to the Settlement Administrator and Co-Lead Counsel, within **15 days** of the receipt of the final rejection notification letter.

10.3 If the volume or complexity of any disputes warrants, the parties may request that the Court appoint a Special Master or Examiner, as appropriate, to resolve any disputes.

357923

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

**IN RE: CARDIZEM CD ANTITRUST
LITIGATION**

MDL DOCKET NO. 1278

**LOUISIANA WHOLESALE DRUG
COMPANY, INC. and DUANE
READE, INC., individually and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**HOECHST MARION ROUSSEL, INC.
and ANDRX PHARMACEUTICALS,
INC.,**

Defendants.

This document relates to:

INDIVIDUAL FILE NOS.

99-CV-73870

99-CV-73259

Class Action

Honorable Nancy G. Edmunds

(PROPOSED) ORDER APPROVING PLAN OF ALLOCATION

This Court, having considered the Plan of Allocation submitted by Sherman Act Class Plaintiffs dated November 4, 2002, and having considered all of the submissions and arguments relevant thereto, HEREBY ORDERS, ADJUDGES AND DECREES that:

1. The Plan of Allocation is fair and reasonable to all members of the Sherman Act Class, including absent Class Members.

2. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1337(a), and has jurisdiction over all parties to the Class Action, including all Class Members.

3. The Court retains exclusive jurisdiction over the settlement and the Settlement Agreement, including the administration and consummation of the settlement and the Plan of Allocation.

SO ORDERED.

Dated: _____

The Honorable Nancy Edmunds
United States District Judge