

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

In the Matter of

Altria Group, Inc.
a corporation;

and

JUUL Labs, Inc.
a corporation.

DOCKET NO. 9393

**COMPLAINT COUNSEL’S OPPOSITION TO ALTRIA GROUP, INC.’S MOTION FOR
IN CAMERA TREATMENT OF CERTAIN TRIAL EXHIBITS**

Respondent Altria Group, Inc. (“Altria”) has moved for *in camera* treatment of 515 exhibits, claiming that disclosure would result in “serious injury.” Altria fails to meet its burden of demonstrating that clearly defined, serious injury would result from disclosure of the majority of these exhibits. Even a brief review of the proposed *in camera* exhibits makes clear that the scope of Altria’s motion far exceeds the protections contemplated by FTC Rule 3.45. Providing *in camera* treatment to this broad array of evidence would undermine the clearly stated goals of the Commission to encourage public access to adjudicative proceedings, and would result in undue disruption and delay at the evidentiary hearing. Complaint Counsel respectfully requests that the Court deny Altria’s Motion for *In Camera* Treatment as to the documents listed in Exhibit A.

LEGAL STANDARD

There is a strong presumption in favor of open access to Commission adjudicative proceedings. Exhibit B, *In re Axon Enterprise, Inc.*, D-9389 at 2 (Oct. 2, 2020); *In re Polypore Int'l, Inc.*, D-9327, 2009 FTC LEXIS 256, at *3 (April 27, 2009); *see also In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1186 (1961) (“To foreclose [FTC] hearings and the evidence adduced therein from the scrutiny of . . . interested persons would serve in large measure to defeat the very reason for our existence.”); *In re Impax Labs, Inc.*, D-9373, 2017 FTC LEXIS 121, at *2 (Oct. 16, 2017). Open proceedings permit the public to evaluate the “fairness of the Commission’s work,” and “provide guidance to persons affected by [the Commission’s] actions.” *In re Intel Corp.*, D-9288, 1999 FTC LEXIS 227, at *1 (Feb. 23, 1999) (citing *The Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1714-15 (1961) and *H.P. Hood*, 58 F.T.C. at 1196).

Under Rule 3.45, Altria must demonstrate that it will likely suffer “a clearly defined, serious injury” as a result of disclosure. 16 C.F.R. § 3.45(b). The standard for determining “a clearly defined, serious injury” is “based on the standard articulated in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).” 16 C.F.R. § 3.45(b) (also citing *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977) and *General Foods Corp.*, 95 F.T.C. 352, 355 (1980)). *H.P. Hood* explained that *in camera* requests for ordinary business documents “should be looked upon with disfavor and only granted in exceptional circumstances upon a clear showing that an irreparable injury will result from disclosure.” *H.P. Hood*, 58 F.T.C. 1184, at *14. The Commission found that “the mere fact that respondent prefers to keep them confidential” is not evidence of injury. *H.P. Hood*, 58 F.T.C. 1184, at *13. The potential for embarrassment or the desire to protect business information that competitors may be “desirous to possess” are not sufficient bases for obscuring material from the public. *H.P. Hood*, 58 F.T.C. 1184, at *14. The motion must also be

“narrowly tailored to request *in camera* treatment for only that information that is sufficiently secret and material.” *Polypore*, D-9327, 2009 FTC LEXIS 256, at *4.

ARGUMENT

“The burden rests on Respondent to demonstrate that the evidence sought to be withheld from the public record is sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury.” *In re ProMedica Health Sys.*, D-9346, 2011 FTC Lexis 70, at *5-6 (May 13, 2011). Altria has not met its burden. Altria’s motion fails to satisfy Rule 3.45, is overbroad, and makes conclusory claims about competitive injury.

Altria failed to show why public disclosure of stale information relating to its consummated acquisition of a 35% ownership stake in JLI (the “Transaction”), or why products that were taken off the market in 2018, could cause Altria competitive harm today. Altria further brazenly sought indefinite *in camera* protection for *entire documents* where only a tiny fraction of each document even arguably contains sensitive personal information. In addition, Altria failed to support its claims that documents more than three years old should defeat the presumption that those documents should be made public.

Even for documents created less than three years ago, Altria bears the burden to demonstrate it will suffer “a clearly defined, serious injury” as a result of disclosure. 16 C.F.R. §3.45(b). In the scheduling conference, Respondent JLI argued that the competitive landscape remains “dynamic,” yet Altria is claiming hundreds of documents less than three years old contain competitively sensitive information. *See* Scheduling Conference Tr. at 23:6-14. Altria failed to acknowledge or address this inconsistency.

Altria also frequently sought to entirely withhold documents rather than narrowly tailor its *in camera* requests, even though many documents contain public and other non-sensitive

information. *See, e.g.*, Exhibit C (PX0007, PX0008, PX0015, PX0017, PX0018). In addition, Altria's deposition designations are overbroad and include references to documents that are not even on its *in camera* list. *See, e.g.*, Mot. Exhibit 1 (PX7001, PX7003, PX7005, PX7011, PX7024, PX7031).

It is clear that Altria's proposed list of documents for *in camera* treatment seeks to shield a significant volume of relevant evidence that is appropriate for disclosure. Without this information in the public record, the matter's ultimate resolution is less useful as a guide to practitioners and the public, and would result in undue disruption and delay at the evidentiary hearing. Accordingly, for the following reasons, Complaint Counsel requests that the Court deny Altria's *in camera* requests as described below and identified in Exhibit A.

I. BLANKET CLAIMS RELATED TO THE TRANSACTION, WHICH CLOSED YEARS AGO, SHOULD BE DENIED

Altria has the burden to show that documents containing historical information and events that already transpired are still competitively sensitive today. Exhibit B, *In re Axon*, D-9389 at 2 (Oct. 2, 2020). Altria has not provided any reason why documents relating to the Transaction, which was signed in December 2018, are competitively sensitive today. In fact, in certain documents, Altria acknowledged that discussions regarding the Transaction in 2018 should not be *in camera*. *See* Mot. Exhibit 1 (PX0007, PX1344, PX1345). There is no justification for Altria to request *in camera* treatment in other documents related to the consummated Transaction with JLI. *See* Exhibit D:

- **PX1074:** [REDACTED]
- **PX1164:** [REDACTED]

- **PX1195:** [REDACTED]
- **PX1268:** [REDACTED]
- **PX1470:** [REDACTED]
- **PX1697:** [REDACTED]
- **PX4168:** [REDACTED]

II. CLAIMS RELATED TO LONG-DISCONTINUED E-CIGARETTE PRODUCTS SHOULD BE DENIED

Altria seeks *in camera* treatment for documents related to e-cigarette products that Altria pulled from the market in 2018, and future innovative products that Altria stopped developing when it entered into a non-compete agreement with JLI. Altria failed to establish that these documents satisfy the standard for *in camera* treatment under Rule 3.45. In fact, Altria acknowledged in certain documents that discussions about NuMark’s discontinued e-cigarettes should not be *in camera*. See Mot. Exhibit 1 (PX0007, PX1433, PX1606). However, on many other occasions, Altria inappropriately sought broad *in camera* treatment for documents discussing its e-cigarette products, which Altria is no longer allowed to market, sell, or develop. See Exhibit E:

- **PX1010:** [REDACTED]
- **PX1035:** [REDACTED]
- **PX1118:** [REDACTED]
- **PX1142:** [REDACTED]
- **PX1227:** [REDACTED]
- **PX1679:** [REDACTED]
- **PX1715:** [REDACTED]

Given the length of time that has passed since Altria was allowed to compete in the closed system e-cigarette market, Altria has not shown and cannot show why it would suffer “serious injury” if such documents were disclosed.

III. CLAIMS RELATING TO REGULATORY COMPLIANCE AND DISCONTINUED SERVICES AGREEMENTS SHOULD BE DENIED

Altria further claims that documents relating to regulatory compliance and its service agreements with JLI should remain confidential. Altria neglects to note that all of its service agreements with JLI were discontinued in January 2020, with the exception of certain regulatory services. There is no reason why long-discontinued service agreements with JLI require *in camera* treatment today. With respect to regulatory issues in general, in certain documents,

Altria acknowledged that *in camera* treatment was unwarranted. See Mot. Exhibit 1 (PX0007, PX1346). Moreover, many of the documents discussing regulatory issues are several years old and may no longer contain competitively sensitive information. See Exhibit F.

- **PX1201:** [REDACTED]
- **PX1412:** [REDACTED]
- **PX1413:** [REDACTED]

Altria has not met its burden with regard to these documents.

IV. REQUESTS FOR INDEFINITE *IN CAMERA* TREATMENT FOR “SENSITIVE PERSONAL INFORMATION” (“SPI”) SHOULD BE DENIED


Altria seeks permanent *in camera* treatment for 12 documents that purportedly contain “Sensitive personal identifying information.”¹ Altria provided no explanation regarding the nature of the SPI in each of these documents. Upon review, phone numbers appear to be the only basis for most of Altria’s SPI claims, but that alone does not qualify as SPI under the FTC Rules. Rule 3.45(b) explicitly defines the contours of SPI, and notably, phone numbers are not among the categories identified as SPI. Rule 3.45(b) further notes that indefinite *in camera* protection is warranted only “in unusual circumstances.” Altria should not be entitled to indefinite *in camera* treatment for the documents identified in Exhibit A without explaining the “unusual circumstances” and the “clearly defined, serious injury” that would result from public disclosure.

Altria’s requests for indefinite *in camera* treatment warrant particular scrutiny since most such documents relate to the lengthy timeline of communications between the parties about the

¹ Complaint Counsel does not object to the indefinite *in camera* protection for one document, PX1664.

Transaction, which is a key issue for the Section 1 claims arising in this litigation. Altria should not be entitled to cloak relevant facts from the public as a result of opting to message or use some other platform for business purposes, or by using cell phones instead of desk phones.

A summary of the documents for which Altria requested indefinite *in camera* treatment demonstrates that they are unlikely to contain SPI. See Exhibit G.

- **PX4168, PX4172, PX4268, PX4271, RX1265**: Contain text messages from key Altria custodians to other Altria and JLI custodians from 2018.
- **PX4373, PX4374, PX4375, PX4376**: Contain limited and targeted phone logs from 2018 between Altria and JLI executives who were responsible for negotiating the Transaction.
- **PX1773** is a series of emails from March 2017 for which Altria seeks full *in camera* protection because it contains two phone numbers.
- **PX4372**  } PX4372 already contains redactions for “Personal Confidential” information, and Altria has provided no basis for why the remainder of the document contains any SPI.

Notwithstanding the foregoing, should these documents be deemed to contain SPI, the appropriate remedy is to grant *in camera* protection only to the SPI rather than the documents in full. See *In re LabMD, Inc.*, 2014 FTC LEXIS 127, at *2 (May 6, 2014); *In re McWane, Inc.*, 2012 FTC LEXIS 156 (Sept. 17, 2012); *In re Basic Research, LLC*, 2006 FTC LEXIS 14, at *5-6 (Jan. 25, 2006). For nearly all such documents, SPI was the only basis that Altria identified for requesting *in camera* treatment, so it would be plainly inappropriate to protect such documents permanently and in their entirety.

V. BLANKET CLAIMS FOR HISTORICAL DOCUMENTS SHOULD BE DENIED

Altria included nearly 100 documents that are older than three years.² “[T]here is a presumption that *in camera* treatment will not be accorded to information that is more than three years old,” and to overcome that presumption, Altria must “demonstrate, by affidavit or declaration, that such material remains competitively sensitive.” Exhibit B, *In re Axon*, D-9389 at 2 (Oct. 2, 2020). *See also Impax Labs.*, D-9373, 2017 FTC LEXIS 121, at *3-4. Altria has not explained why these older documents should qualify for an exception to the presumption.

It is clear from even a brief review of these older documents that they no longer contain competitively sensitive information. *See* Exhibit H.

- **PX1216:** [REDACTED]
- **PX1433:** [REDACTED]

Altria’s arguments do not overcome the presumption that documents older than three years should not be afforded *in camera* treatment.

CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully requests that the Court deny Respondent’s Motion for *In Camera* Treatment of Trial Exhibits as provided in Exhibit A.

² Altria also included approximately 10 undated documents. It is not obvious from the description of the documents when these were created. Altria bears the burden to prove *in camera* treatment is warranted, and therefore must provide sufficient information to the Court regarding the age of the documents. *See Impax Labs.*, D-9373, 2017 FTC LEXIS 121, at *1.

Dated: May 17, 2021

Respectfully Submitted,

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EXHIBIT A

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT B

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

_____)	
In the Matter of)	
)	
Axon Enterprise, Inc.)	
a corporation,)	Docket No. 9389
)	
and)	
)	
Safariland, LLC,)	
a partnership,)	
)	
Respondents.)	
_____)	

**ORDER ON RESPONDENT’S
MOTION FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission (“FTC” or “Commission”) and the Scheduling Order entered in this matter, Respondent Axon Enterprise, Inc. (“Respondent” or “Axon”) filed a motion for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter (“Motion”). Complaint Counsel filed an opposition to the motion (“Opposition”). For the reasons set forth below, Respondent’s motion is GRANTED in part and DENIED WITHOUT PREJUDICE in part.

II.

Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence “be placed *in camera* only [a] after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment or [b] after finding that the material constitutes sensitive personal information.” 16 C.F.R. § 3.45(b).

A. Clearly defined, serious injury

“[R]equests for *in camera* treatment must show ‘that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved.’” *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984), quoting *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1961 FTC LEXIS 368 (Mar. 14, 1961). Applicants must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 1980 FTC LEXIS 99, at *10 (Mar. 10, 1980). If the applicants for *in camera* treatment make this showing, the importance of the information in explaining the rationale of FTC decisions is “the principal countervailing consideration weighing in favor of disclosure.” *Id.*

The Federal Trade Commission recognizes the “substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *Hood*, 1961 FTC LEXIS 368, at *5-6. A full and open record of the adjudicative proceedings promotes public understanding of decisions at the Commission. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977). A full and open record also provides guidance to persons affected by its actions and helps to deter potential violators of the laws the Commission enforces. *Hood*, 58 F.T.C. at 1186. The burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Id.* at 1188. Moreover, there is a presumption that *in camera* treatment will not be accorded to information that is more than three years old. *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at *15 (June 26, 1996) (citing *General Foods*, 95 F.T.C. at 353; *Crown Cork*, 71 F.T.C. at 1715).

In order to sustain the burden for withholding documents from the public record, an affidavit or declaration is always required, demonstrating that a document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). To overcome the presumption that *in camera* treatment will not be granted for information that is more than three years old, applicants seeking *in camera* treatment for such documents must also demonstrate, by affidavit or declaration, that such material remains competitively sensitive. In addition, to properly evaluate requests for *in camera* treatment, applicants must provide a copy of the documents at issue to the Administrative Law Judge for review. Where *in camera* treatment is sought for transcripts of investigational hearings or depositions, the requests shall be made only for those specific pages and line numbers of transcripts that contain information that meets the *in camera* standard. *In re Unocal*, 2004 FTC LEXIS 197, *4-5 (Oct. 7, 2004).

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only “in unusual circumstances,” including circumstances in which “the need for confidentiality of the material . . . is not likely to decrease over time. . . .” 16 C.F.R. § 3.45(b)(3). “Applicants seeking indefinite *in camera* treatment must further demonstrate ‘at the outset that the need for confidentiality of the material is not likely to decrease over time’ 54 Fed. Reg. 49,279 (1989) . . .

[and] that the circumstances which presently give rise to this injury are likely to be forever present so as to warrant the issuance of an indefinite *in camera* order rather than one of more limited duration.” *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at *2-3 (Apr. 25, 1990). In *DuPont*, the Commission rejected the respondent’s request for indefinite *in camera* treatment. However, based on “the highly unusual level of detailed cost data contained in these specific trial exhibit pages, the existence of extrapolation techniques of known precision in an environment of relative economic stability, and the limited amount of technological innovation occurring in the . . . industry,” the Commission extended the duration of the *in camera* treatment for a period of ten years. *Id.* at *5-6.

In determining the length of time for which *in camera* treatment is appropriate, the distinction between trade secrets and ordinary business records is important because ordinary business records are granted less protection than trade secrets. *Hood*, 58 F.T.C. at 1189. Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged. *Hood*, 58 F.T.C. at 1189; *General Foods*, 95 F.T.C. at 352; *In re Textron, Inc.*, 1991 FTC LEXIS 135, at *1 (Apr. 26, 1991).

In contrast to trade secrets, ordinary business records include information such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents. *See Hood*, 1961 FTC LEXIS 368, at *13; *In re McWane, Inc.*, 2012 FTC LEXIS 143 (Aug. 17, 2012); *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14. When *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years. *E.g., McWane, Inc.*, 2012 FTC LEXIS 143; *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101 (May 25, 2011).

In addition, Respondent’s motion is evaluated by the standards applied in *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602, at *1 (July 2, 2018).

B. Sensitive personal information

Under Rule 3.45(b) of the Rules of Practice, after finding that material constitutes “sensitive personal information,” the Administrative Law Judge shall order that such material be placed *in camera*. 16 C.F.R. § 3.45(b). “Sensitive personal information” is defined as including, but not limited to, “an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” 16 C.F.R. § 3.45(b). In addition to these listed categories of information, in some circumstances, individuals’ names and addresses, and witness telephone numbers have been found to be “sensitive personal information” and accorded *in camera* treatment. *In re LabMD, Inc.*, 2014 FTC LEXIS 127 (May 6, 2014); *In re McWane, Inc.*, 2012 FTC LEXIS 156 (Sept. 17, 2012). *See also In re Basic Research, LLC*, 2006 FTC LEXIS 14, at *5-6 (Jan. 25, 2006) (permitting the redaction of information concerning particular consumers’ names or other personal data when it

was not relevant). “[S]ensitive personal information . . . shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law.” 16 C.F.R. § 3.45(b)(3).

III.

Respondent’s motion seeks *in camera* treatment for 659 identified trial exhibits, which include documents and testimony that, according to Respondent, fall into five categories: (1) internal pricing information, (2) internal financial and business planning, (3) business strategy information, (4) product security information, and (5) personal information. The large number of documents that Respondent seeks to protect exceeds that which would reasonably be expected to be entitled to the protection contemplated by Rule 3.45. This casts doubt on the claim that all the documents are in fact entitled to such protection. Furthermore, the declaration from Axon’s general counsel offered by Respondent to support its claim provides only general and conclusory justifications.

A review of a sampling of documents reveals that, for many documents, Respondent’s assertion that it would suffer serious competitive harm if the documents were publicly disclosed is unsupported and unpersuasive. For example, Respondent seeks *in camera* treatment for exhibits consisting of board meetings and updates from 2016 that detail plans for 2016 and into 2017, but do not appear to involve plans beyond 2017. Respondent fails to explain why this information is still competitively sensitive. Several pages of one of these exhibits involve details about Axon’s name change, which has already taken place. Some of the information contained therein is already public, such as lists of police departments that are using body worn camera systems. As another example, Respondent seeks *in camera* treatment for a chat transcript from 2015 that discusses an acquisition made by Axon in 2015. It is unclear why this information remains competitively sensitive.

Furthermore, many of the documents for which Respondent seeks *in camera* treatment are over three years old. There is a presumption that *in camera* treatment will not be accorded to information that is more than three years old unless the movant’s supporting declaration shows that such material remains competitively sensitive. Respondent’s supporting declaration fails to provide the necessary justification for granting *in camera* treatment to these documents.

In addition, Respondent seeks *in camera* treatment for a period of ten years for all of the documents at issue. Respondent has made no representations that the documents reveal trade secrets or highly detailed cost data, and are thus the types of documents that warrant ten-year protection, nor otherwise justified its request for an extended duration of *in camera* treatment for all of the documents. Documents reflecting business plans and strategies, contracts and negotiations with customers, customer specific information, market and competitive analyses, and sales and financial information are ordinary business records and generally are not entitled to an extended period of *in camera* treatment.

The following documents are less than one year old and appear to be competitively sensitive. Therefore, *in camera* treatment, for a period of five years, to expire October 1, 2025, is GRANTED for the documents identified as: RX000290, RX000291, RX000300, RX000305,

RX000432, RX000444, RX000464/PX11457, PX10141, PX10402, PX10404, PX10450, PX10459, PX10492, PX10502, PX10511, PX10617, PX10638, PX10642, PX10652, PX10654, PX10666, PX10667, PX10668, PX10670, PX10687, PX10690, PX10823, PX10825, PX10841, PX10847, PX10855, PX10858, PX10889, PX10900, PX10905, PX10908, PX10909, PX10910, PX10926, PX10939, PX10979, PX10981, PX11138, PX11181, PX11354, PX11389, RX000464/PX11457, PX11458, PX11524, PX11533, PX11682, PX11720, PX11721, PX11722, PX11723, PX11724, PX11745, PX11779, PX11791, PX11792, PX11796, PX11797, PX11798, and PX20311.

With respect to transcripts of investigational hearings and deposition testimony, requests for *in camera* treatment shall be made only for those specific pages and line numbers of transcripts that contain information that meets the *in camera* standard. *In re Unocal*, 2004 FTC LEXIS 197, *4-5 (Oct. 7, 2004). Respondent has properly tailored its request to cover only those portions of the transcripts that contain competitively sensitive information. *In camera* treatment, for a period of five years, to expire October 1, 2025, is GRANTED for the following:

RX000433: 67:6-21; 69:18-70:12; 88:23-93:8; 96:6-19; 104:8-22; 109:3-110:7; 111:9-20; 129:20-130:9; 132:11-133:24; 136:2-141:6; 184:3-186:7;
RX000434: 46:14-48:14; 72:10-22; 87:19-94:6; 94:21-97:20; 112:9-12; 123:16-124:4; 129:1-23; 140:7-141:14; 151:5-153:15; 162:8-163:2; 173:13-14; 181:13-184:13; 188:4-191:12;
RX000849/PX80001: 34:5-35:4; 42:20-23; 142:15-143:16; 144:2-146:7; 151:20-158:12;
RX000850/PX80002: 37:2-5; 68:13-74:13; 79:4-7; 79:25; 154:2-156:19; 158:2-12;
RX000851/PX80003: 67:6-21; 69:18-70:12; 88:23-93:8; 96:6-19; 104:8-22; 109:3-110:7; 111:9-111:20; 129:20-130:9; 132:11-133:24; 136:2-141:6; 184:3-186:7;
RX000852/PX80004: 46:14-48:14; 72:10-72:22; 87:19-94:6; 94:21-97:20; 112:9-12; 123:16-124:4; 129:1-23; 140:7-141:14; 151:5-153:15; 162:8-163:2; 173:13-14; 181:13-184:13; 188:4-191:12;
RX000862/PX81007: 30:2-31:19; 94:22-95:19; 140:9-143:11; 148:13-149:7; 193:7-195:22; 197:3-198:12; 222:20-226:5;
RX000863/PX81008: 13:13-14:19; 48:18-51:3; 23:16-24:15; 29:17-31:21; 51:12-52:11;
RX000866/PX81011: 180:7-184:17; 205:5; 207:1;
RX000879/PX81024: 26:15-29:11;
RX000883/PX81028: 23:20-27:4; 224:20-238:19;
RX000888/PX81033: 52:10-54:14;
RX000890/PX81035: 120:12-16; 137:5-138:9; 140:5-25; 141:15-25; 142:1-4; 143:22-25; 144:1-25; 158:2; 179:3-6, 19; 180:9; 187:19-25; 188:9-12; 189:5-15; 190:1-191:10; 196:9-14; 197:16-199:18;
RX000891/PX81036: 35:1-36:8; 39:15-42:18;
RX000895/PX81040: 104:24-25; 199:24-200:9; 216:10-231:2; 231:19-240:23; 247:3-8;
RX000899/PX81044: 114:20-23; 115:19-25; 116:1-9; 160:16-25; 168:1-21; 214:16-18;
RX000903/PX81048: 155:9-159:12; 162:12-164:9; 245:24-251:24; 257:6-262:4;
RX000906/PX81051: 16:24-17:21; 27:1-29:2; 73:11-75:9; 81:11-84:21; 184:22-185:13;
RX000910/PX81060: 82:22-83:8; 87:5-90:3; 100:10-16; 153:7-13; 154:14-163:11; 164:13-169:6; 177:17-178:24; 190:17-191:5.

One of the categories for which Respondent seeks *in camera* treatment is “personal information.” In support of Respondent’s request for *in camera* treatment for documents in this category, the declaration states: “certain documents reflect compensation, including bonus metrics, salaries, and stock options Other documents in this category include personal performance evaluations” Sensitive personal information includes personal financial information and employment arrangements. *In re Otto Bock Healthcare N. Am., Inc.*, 2018 FTC LEXIS 111, *16-17 (F.T.C. July 6, 2018). “[S]ensitive personal information . . . shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law.” 16 C.F.R. § 3.45(b)(3).

Therefore, permanent *in camera* treatment is GRANTED for the following documents containing sensitive personal information: PX10052, PX10084, PX10128, PX10140, PX10187, PX10196, PX10730, PX10915, PX11125, PX11172, PX11229, PX11385, PX11444, PX11466, PX11506, PX11518, PX11529, PX11733, PX11744, and PX20167.

IV.

For all other documents, Respondent’s Motion is DENIED WITHOUT PREJUDICE, and it is hereby ORDERED that Respondent shall have until October 9, 2020 to refile a motion for *in camera* treatment. In advance of filing any such motion, Respondent shall carefully and thoroughly review all documents for which it seeks *in camera* treatment and narrow its requests to only those documents that comply with the Commission’s strict standards for *in camera* treatment and provide a declaration or affidavit that provides sufficient support for any requests. Complaint Counsel shall have until October 14, 2020 to file any opposition. In the event that either party wishes to introduce any document at trial that is the subject of a then-pending motion for *in camera* treatment, provisional *in camera* treatment may be granted until such time as a subsequent order is issued. *See* 16 C.F.R. § 3.45(g).

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: October 2, 2020

EXHIBIT C

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT D

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT E

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT F

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT G

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT H

CONFIDENTIAL – REDACTED IN ENTIRETY

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to:

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By: s/ Michael Lovinger
Michael Lovinger, Attorney

Counsel Supporting the Complaint

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

May 17, 2021

By: s/ Michael Lovinger
Michael Lovinger, Attorney