

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



\_\_\_\_\_)  
In the Matter of )  
 )  
 )  
McWANE, INC., )  
Respondent. )  
\_\_\_\_\_)

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AND CONCLUSIONS OF LAW

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**PROPOSED CONCLUSIONS OF LAW**

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- C. MONOPOLY AND MARKET POWER**
- D. COUNT ONE: MCWANE ORCHESTRATED A CONSPIRACY WITH ITS COMPETITORS TO RESTRAIN PRICE COMPETITION BY LIMITING PROJECT PRICING**
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**ATTACHMENT A – SUMMARY OF TELEPHONE RECORD EVIDENCE**

**ATTACHMENT B – JANUARY 22, 2010 FTC LETTER TO McWANE**

**COMPLAINT COUNSEL’S EXHIBIT INDEX**

**COMPLAINT COUNSEL’S WITNESS INDEX**

**RECORD REFERENCES**

References to the record are made using the following citation forms and abbreviations:

JX - Joint Exhibit

CX - Complaint Counsel Exhibit (CX 1234 at 001).

RX-- Respondent Exhibit (RX-123 at 0001).

Tr. 0000 - Citations to Trial Testimony (Witness, Tr. 1234).

(CX 0000 (Witness, Dep. at xx)) - Citations to Deposition Testimony

(CX 0000 (Witness, Dep. at xx), *in camera*) - Citations to *in camera* Deposition Testimony

(CX 0000 (Witness, IHT at xx)) - Citations to Investigational Hearing Testimony

(CX 0000 (Witness, IHT at xx), *in camera*) - Citations to *in camera* Investigational Hearing Testimony

Joint Stipulations of Law and Fact, JX 0001 ¶ - Citation to Joint Stipulations of Law and Fact

Commission Complaint - Administrative Complaint filed January 4, 2012

Response to RFA at ¶ - Citation to Respondent's Response to Complaint Counsel's Requests for Admission, dated June 8, 2012

Supp. Response to RFA at ¶ - Citation to Respondent's Supplemental Response to Complaint Counsel's Requests for Admission, dated July 16, 2012

Response to IROG at ¶ - Citation to Respondent's Response to Complaint Counsel's Interrogatories, dated February 21, 2012

Answer at ¶ - Citation to Respondent's Answer, dated February 2, 2012

**TABLE OF KEY DEFINED TERMS**

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## PROPOSED FINDINGS OF FACT

### 1 Executive Summary

- a. McWane is the dominant supplier of ductile iron pipe fittings (“Fittings”<sup>1</sup>) in the United States. Its primary competitors are Sigma and Star. Fittings are a small, but necessary part of any waterworks project: they connect pipes, hydrants, and valves and allow water flow to change directions. They are a commodity product sold to end users through Distributors who package them with pipe and other products necessary to complete a waterworks project. (*See infra* § 4).
- b. Fittings are a relevant product market. No other product is used as a substitute and other types of fittings do not constrain Fittings prices. Domestically produced Fittings, which are required for certain projects and are sold at substantially higher prices than imported Fittings, represent a separate price-discrimination market. The relevant geographic market is the United States. (*See infra* § 5).
- c. The Fittings market is conducive to collusion. The market is concentrated: the three major suppliers – McWane, Sigma and Star – sell over { }% of all Fittings. And, until 2009, McWane had a monopoly in the market for Domestic Fittings. Fittings are sold using transparent published prices, and Fittings suppliers announce price changes through widely circulated letters well in advance of their effective dates. Key executives from all three suppliers have frequent communications through in-person meetings, telephone calls and emails, and they are not shy about discussing Fittings prices and market conditions. Finally, all three suppliers, and McWane in particular, had compelling motives to conspire. (*See infra* § 6).
- d. Prior to 2008, McWane’s competitors, Sigma and Star, used their lower cost structure, and their larger and more nimble sales forces, to compete aggressively with McWane by offering negotiated discounts on individual waterworks projects. This Project Pricing made prices less stable and less transparent. As a result, McWane’s profit margins and market share were slowly shrinking. In late 2007, McWane conceived a plan to “drive stability and rational pricing” in the Fittings market. McWane explained its Plan by sending a tailored “Message to the Market & Competitors.” McWane made known that it would support price increases in stepped or staged increments, but only if Star and Sigma agreed to curtail discounts known as Project Pricing and to maintain prices that were reasonably stable and transparent. The plan, which was communicated by McWane using a customer letter and other means, required the three suppliers to curtail Project Pricing offered to the distributors of their products. Each of McWane, Sigma and Star made efforts to curtail Project Pricing. Pricing authority was centralized, and distributors were informed that Project Pricing would no longer be available. (*See infra* § 7).

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<sup>1</sup> Except where otherwise noted or where the context otherwise requires, the term “Fittings” will refer herein to ductile iron pipe fittings of 24” or less in diameter.

- e. McWane, Sigma, and Star also agreed to establish a trade association, the “Ductile Iron Pipe Fittings Association.” Through DIFRA the three Fittings suppliers implemented an ongoing exchange of sales information that allowed each firm to monitor whether any future reductions in its own sales resulted from a declining overall market or from discounting below the consensus published prices, referred to as “cheating,” by the other suppliers. All three suppliers joined DIFRA. Once McWane, Sigma and Star had agreed on a format and schedule to exchange data through DIFRA, Sigma and Star announced Fittings price increases. McWane, announced through a coded letter to the market that it would not be announcing new prices until after the date on which it expected to receive the actual DIFRA report. Sigma and Star received McWane’s message, suspended their price increases, and submitted their data to DIFRA. On the very day DIFRA shared its first report with its members, McWane announced a price increase. Sigma and Star quickly followed suit. (*See infra* § 7).
- f. In February 2009, the American Recovery and Reinvestment Act became law. ARRA changed the Fittings market dynamics. It had a “Buy American” provision that required the \$6 billion in funds it allocated to waterworks projects to be built with American-made goods. As the only Domestic Fittings manufacturer, McWane was in a unique position to reap the benefits. Star and Sigma worried they would be frozen out. They wanted to enter the Domestic market and compete for ARRA-funded projects. They were also concerned that general Buy American sentiment would further hurt their import business. So Star announced a plan to enter the Domestic market at an industry conference in June 2009, and Sigma likewise began to pursue entry. (*See infra* § 8).
- g. From at least 2006 until Star’s entry in late 2009, McWane was the only supplier of Domestic Fittings 24” and under. McWane was able to impose less favorable terms on Distributors and charge higher prices for Domestic Fittings than for otherwise identical imported Fittings. With the exception of Star and Sigma, there were no other potential entrants into the Domestic Fittings market. (*See infra* § 9).
- h. At a trade show in June 2009, Star announced it was entering the Domestic Fittings market. McWane feared that its higher priced and more profitable Domestic Fittings prices would get “creamed” by Star’s aggressive pricing. So McWane adopted an exclusive dealing policy with the specific intent to eliminate Star as a competitor in the Domestic Fittings market. McWane communicated its all-or-nothing policy to its customers and enforced it by cutting off Hajoca’s domestic supply when Hajoca’s Tulsa branch opted to buy domestic from Star. Many other Distributors – including the largest ones – feared losing access to McWane’s Domestic Fittings, and thus refused to purchase from Star, causing Star to lose sales and preventing it from growing and investing in its Domestic business. (*See infra* § 10).
- i. Sigma also announced it would enter the domestic market, but it pursued a two-pronged approach: develop a network of virtual manufacturers, or negotiate a private-label deal with McWane. Sigma’s domestic production was “Priority One” and it poured significant resources into developing Domestic Fittings sources. Sigma



had the motive, means and ability to enter the Domestic Fittings market. Instead, McWane entered into an anticompetitive agreement with Sigma to keep it out of the business of Domestic Fittings – and to source its supply of Domestic Fittings exclusively from McWane. Among other things, the agreement protected McWane’s published prices by largely preventing Sigma from discounting. At the same time, the agreement further hindered Star’s entry by requiring Sigma to jointly enforce the exclusive dealing policy that was preventing Distributors from buying Domestic Fittings from Star. (*See infra* § 11).

- j. McWane’s exclusive dealing policy and its MDA with Sigma allowed it to maintain monopoly power in the Domestic Fittings market. McWane sidelined Sigma and prevented Star from becoming a competitive threat. Having secured its monopoly position, McWane was then able to implement a price increase and reduce the rebates it offers on its Domestic Fittings. (*See infra* § 12).

## 2 Jurisdiction

- 2. At all times relevant herein, McWane has been, and is now, a corporation as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44. (Joint Stipulations of Law, JX0001 ¶ 1).
- 3. McWane’s acts and practices, including the acts and practices alleged herein, are in or affect commerce in the United States, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44. (Answer at ¶ 10 (McWane sells Fittings in interstate commerce)).

## 3 Fittings Industry Participants

- 4. Sigma, McWane, and Star are competitors in the supply of Fittings in the United States. (Rybacki, Tr. 1087, 1098-1099; CX 2531 (Rybacki, Dep. at 278); *infra* § 4.4.1).

### 3.1 McWane, Inc.

#### 3.1.1 Company Basics

- 5. Respondent McWane, Inc. (“McWane”) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 2900 Highway 280, Suite 300, Birmingham, Alabama 35223. (Answer at ¶ 8).
- 6. McWane manufactures, imports, markets, and sells products for the waterworks industry, including Fittings. (Joint Stipulations of Fact, JX 0001 ¶ 1; Answer at ¶ 8).
- 7. Phillip McWane is the owner of McWane. (Tatman, Tr. 218).
- 8. McWane originally produced Fittings as part of its Tyler Pipe division. In a 2007 corporate reorganization, McWane consolidated its Fittings business into the Tyler/Union

- division. (Tatman, Tr. 209-213). As used herein, the term “McWane” may refer to McWane’s Tyler/Union division.
9. McWane’s 2007 reorganization organized the business along product lines rather than geographic locations, putting all Fittings operations together. Mr. Tatman was made vice president and general manager of McWane’s Tyler/Union division, with responsibility for the Tyler South plant, Union Foundry, and Tyler Xian Xian (“TXX”), including McWane’s Fittings business. (Tatman, Tr. 212-214; CX 2484 (Tatman, Dep. at 10-12)).
  10. McWane produces Fittings at its domestic foundry, Union Foundry, in Anniston, Alabama, and since at least 2005, at its TXX foundry in China. McWane had also produced Fittings at its Tyler South Plant, in Tyler, Texas, until it closed that foundry in November 2008. (Tatman, Tr. 210-212).
  11. Since at least 2007 and until Star’s entry in 2009, McWane was the sole full-line supplier of Domestic Fittings sized 24” and below. (CX 2480 (Napoli, Dep. at 72); Supp. Response to RFA at ¶¶ 10, 11, 12).
  12. In 2009, McWane did not manufacture any Domestic Fittings larger than 30” in diameter at Union Foundry. Clow Water, another division of McWane, Inc., made 36” Fittings, and McWane sourced 42”-48” Fittings externally. (Tatman, Tr. 591-592).
  13. Based on DIFRA data for 2007 and 2008, the Clow Water division of McWane had an average 1.5% market share of United States Fittings sales by volume across all size categories. (CX 0656 at 003; Tatman, Tr. 593).
  14. Based on DIFRA data for 2007 and 2008, Tyler/Union had an average 51.6% market share of United States Fittings sales by volume across all size categories. (CX 0656 at 003; Tatman, Tr. 593).
  15. McWane has tried, with varying degrees of success, to focus on plant work (flanged) Fittings. (Tatman, Tr. 228). Serving plant End Users requires a more involved materials-estimating process (referred to as “takeoffs”) that McWane is not equipped to do internally. (Tatman, Tr. 228).
  16. In 2007 and 2008, McWane’s sales force was half the size of the sales forces of Sigma and Star. (Tatman, Tr. 281-282). McWane’s sales force was not as nimble or as effective as the sales forces of Sigma and Star. (Tatman, Tr. 285-286).
  17. McWane’s gross profit for waterworks was { } for 2007, { } for 2008, { } for 2009, { } through November 2010, and { } for the first three months of 2011. (CX 2397 at 019 (2007), *in camera*; CX 2416 at 040 (2008), *in camera*; RX-721 at 0050 (2009), *in camera*; RX-717 at 0038 (through November 2010), *in camera*; RX-720 at 0036 (through March 2011), *in camera*).

### 3.1.2 Key Employees

#### 3.1.2.1 Richard (Rick) Tatman

18. Mr. Tatman joined McWane in May 2006 as the general manager of McWane's Tyler Pipe division. (Tatman, Tr. 208-209).
19. Following a 2007 reorganization of McWane's Fittings business, Mr. Tatman became vice president and general manager in charge of McWane's Tyler/Union division. (Tatman, Tr. 212-214).
20. Mr. Tatman's office is in Tyler, Texas. His office telephone number is { } His cell phone number is { } (Tatman, Tr. 207, 367; *see also* Rybacki, Tr. 3647, *in camera*). Nobody other than Mr. Tatman answers his cell phone; his secretary sometimes answers his office phone. (Tatman, Tr. 208).
21. In approximately July or August 2007 when the McWane reorganization was complete, Mr. Tatman reported to Mr. Walton and Mr. McCullough. (CX 2484 (Tatman, Dep. at 10); Tatman, Tr. 216-217, 343). Since Mr. Walton's departure from McWane in 2009, Mr. Tatman has reported directly to Mr. McCullough. (CX 2483 (Tatman, IHT at 10)).
22. Since the McWane reorganization, Mr. Tatman has had day-to-day responsibilities for the Fittings division at McWane. (CX 2479 (McCullough, Dep. at 17)).
23. In his new role, Mr. Tatman has been responsible for McWane's Fittings pricing strategy. (Tatman, Tr. 253-254). He had previously not had involvement in Fittings pricing. (Tatman, Tr. 272).
24. In his new role, Mr. Tatman would ordinarily discuss Fittings prices with Mr. McCullough. (Tatman, Tr. 218-219, 254).
25. Because Fittings represent a small portion of McWane's business, Mr. Tatman did not normally discuss Fittings pricing with Mr. Page. (Tatman, Tr. 218-219 (Page has "a lot bigger things to worry about than the fittings business"))).
26. During the 2008-2009 time period, Mr. Tatman was responsible for McWane's Fittings pricing strategy. (Tatman, Tr. 253-254). Mr. Tatman has ultimate responsibility for the pricing of Fittings sold through the Fittings division, including the authority to issue new list prices. McWane's pricing letters were drafted and Reviewed by Mr. Tatman and Mr. Jansen. (CX 2479 (McCullough, Dep. at 21, 23) (noting that Mr. Tatman listens to any feedback on pricing from Mr. McCullough); Tatman, Tr. 218-219, 254, 306 (testifying that he ordinarily discusses Fittings pricing decisions with Mr. McCullough and drafts and reviews pricing letters along with Mr. Jansen)).
27. During the 2008-2009 time period, Mr. Tatman, with input from McWane's national sales manager, Jerry Jansen, also developed the sales strategy at McWane. (CX 2479 (McCullough, Dep. at 18); CX 2477 (Jansen, Dep. at 154-155)).

### 3.1.2.2 Leon McCullough

28. Leon McCullough is an executive vice president of McWane in charge of its valve and hydrant group, as well as the waterworks Fittings division. (CX 2479 (McCullough, Dep. at 8, 15-17); Tatman, Tr. 217).
29. Mr. McCullough has worked for McWane since 1973, and has been in his current position for 12-15 years. Mr. McCullough acquired responsibility for the Fittings division of McWane in 2007. (CX 2479 (McCullough, Dep. at 8, 16)).
30. Mr. McCullough does not have day-to-day responsibilities on the operational side of McWane's Fittings division, but provides strategic direction for the division. (CX 2479 (McCullough, Dep. at 17)).
31. Mr. Tatman reports to Mr. McCullough, who reports directly to Mr. Page. (CX 2479 (McCullough, Dep. at 18-19)).

### 3.1.2.3 Jerry Jansen

32. Jerry Jansen is the national sales manager for Tyler Union. Mr. Jansen has worked for various McWane subsidiaries since 1979, and has been the national sales manager for Tyler/Union since August 2004. (CX 2477 (Jansen, Dep. at 10-11); Tatman, Tr. 219 (describing Mr. Jansen as having a long history in the Fittings industry)).
33. Mr. Jansen reports to Mr. Tatman. (CX 2477 (Jansen, Dep. at 12)).
34. Mr. Jansen's responsibilities include managing the Tyler Union's sales team, as well as providing market reports and recommendations for market actions to his superiors. (CX 2477 (Jansen, Dep. at 11)). Mr. Jansen also provides input on any new sales strategy, and is responsible for implementing those policies. (CX 2477 (Jansen, Dep. at 154-155)).

### 3.1.2.4 Vincent Napoli

35. Vincent Napoli is a pricing coordinator at McWane. He has held that position since it was first created in January 2008. (CX 2480 (Napoli, Dep. at 9-10, 35)).
36. Mr. Napoli has worked for McWane since 1991 in a variety of positions, including as an inside sales manager, a national sales manager, a quality manager, in accounting, and as pricing coordinator. (CX 2480 (Napoli, Dep. at 9-10)).
37. As quality manager, Mr. Napoli was responsible for all aspects of quality control, including internal audits, day-to-day quality supervision, inspection, and shipping inspections. Mr. Napoli continues to use his technical expertise in Fittings to answer field personnel questions relating to interpreting specifications, product usage, product applications, and product quality. (CX 2480 (Napoli, Dep. at 32-33, 50-51)).
38. Mr. Napoli became the pricing coordinator in January 2008, and continues in that position today. (CX 2480 (Napoli, Dep. at 9-10)).

39. As pricing coordinator, Mr. Napoli has responsibility for approving Project Pricing for discounts of up to a couple of percentage points, and keeping track of annual bids and Project Pricing. (CX 2480 (Napoli, Dep. at 44-45, 47, 49-50) (explaining that his financial background allowed him to analyze pricing, and that he would seek approval from Mr. Jansen for any Project Pricing beyond two percentage points)).

#### 3.1.2.5 G. Ruffner Page III

40. G. Ruffner Page III is the president and chief executive officer of McWane. (CX 2482 (Page, Dep. at 12-14); Tatman, Tr. 218).
41. Mr. Page became the president and chief executive officer of McWane in 1999. (CX 2482 (Page, Dep. at 12-14); Tatman, Tr. 218). Previously, Mr. Page worked for McWane's venture fund and bank, beginning in 1986. (CX 2482 (Page, Dep. at 12-14)).
42. Mr. Page's primary responsibilities as the CEO of McWane are to oversee the McWane family's interests, and to provide top-level strategy, such as how to allocate capital, whether to build new plants, or whether to make any acquisitions or diversify any acquisitions. (CX 2482 (Page, Dep. at 14-15)).
43. Generally, Mr. Page is not actively involved with in McWane's day-to-day Fittings business and can go weeks without speaking to Mr. McCullough, and "never" talks to Mr. Tatman except for general manager's meetings. (CX 2482 (Page, Dep. at 44-46); Tatman, Tr. 218-219).

#### 3.1.2.6 David Green (former employee)

44. Until 2007, Mr. Green was in charge of McWane's Fittings business. Mr. Green was the executive vice president of McWane's soil pipe utility division, with responsibility for the Tyler Pipe, Union, Bibby, and AB&I subsidiaries, along with rubber couplings. (Tatman, Tr. 210-211).
45. In 2007, Mr. Page responded to McWane's lagging Fittings performance by firing Mr. Green and restructuring the McWane Fittings business. (Tatman, Tr. 212; CX 2118 at 001; Pais, Tr. 1882-1883, 1892 (describing September 2007 meeting with Page); CX 2528 (Pais, Dep. at 205-210) (Page told Pais that the rationale for the restructuring was that Tyler's volume and profits were down)).

#### 3.1.2.7 Charles F. Nowlin

46. Charles F. Nowlin is the senior vice president and chief financial officer of McWane, and has been at the company since 1980. (CX 2481 (Nowlin, Dep. at 7); Tatman, Tr. 215). Mr. Nowlin oversees all financial reporting for McWane, including "blue books," income statements, balance sheets, and sales and gross profit analyses. (CX 2481 (Nowlin, Dep. at 8-9, 15)).

3.1.2.8 Thomas Walton (former employee)

47. Mr. Walton began working at a division of McWane, Inc. as a management trainee in 1991. Mr. Walton was promoted throughout McWane's valve and hydrants business until becoming vice president and general manager of McWane's M&H and Kennedy Valve divisions in 2001. In late 2007, Mr. Walton was promoted to senior vice president, where he gained responsibilities for McWane's Fittings division for the first time. (CX 2485 (Walton Dep. at 8-9, 17-18)).
48. As senior vice president overseeing the Fittings division, Mr. Walton had ultimate responsibility for operations and sales, and participated in strategic decisions. Mr. Walton reported directly to Mr. McCullough, and Mr. Tatman reported to Mr. Walton. (CX 2485 (Walton Dep. at 18-19)).
49. McWane asked Mr. Walton to leave the company in April 2010. (CX 2485 (Walton, Dep. at 21-23) (explaining that McWane "was good to me. I learned a lot, and I feel fortunate to have had those opportunities, so no I don't harbor any resentments against anybody.")).

3.1.2.9 John Springer

50. In the 2008-2009 time period, John Springer was the controller for Tyler Pipe and Tyler/Union, and was responsible for publishing McWane's "blue books." (Tatman, Tr. 818).
51. {  
  
} (Tatman, Tr. 844-845, *in camera*, 497-498); *see e.g.*, CX 2416, *in camera* {  
  
}.

3.1.2.10 Laura Alvey

52. Laura Alvey is an administrative assistant at McWane. (Tatman, Tr. 208).
53. Ms. Alvey was in McWane's sales department from 1995 to 2001. In 2001, she was promoted to her current position, administrative assistant for the general manager, Mr. Tatman, and Mr. Jansen. (RX-636 (Alvey, Dep. at 7); CX 2476 (Alvey, Dep. at 7-8)).
54. Ms. Alvey's responsibilities include compiling the Tyler Union Monthly Sales Reports, the Weekly Highlight Report, the Weekly Competitive Feedback Report (including the Domestic Activity Report), the DIWF [Fittings] report, and the Nondomestic versus Domestic Report, and the DIWF Nondomestic Pricing by Month for Mr. Tatman or Mr. Jansen. (CX 2476 (Alvey, Dep. at 10-13)).

## 3.2 Sigma

### 3.2.1 Company Basics

55. Since about 1985, Sigma Corporation (“Sigma”) has imported and sold Fittings and other waterworks products in the United States. (Joint Stipulations of Fact, JX 0001 ¶ 2; Pais, Tr. 1722-1723). Sigma’s headquarters are in Cream Ridge, New Jersey. (Rybacki, Tr. 1090).
56. Fittings are Sigma’s main product line, and comprised approximately 40% of Sigma’s business in the 2008-2009 time period. (Rybacki, Tr. 1090-1091; Pais, Tr. 1731 (in 2008 and 2009, Fittings were Sigma’s largest-selling product, accounting for 40-45% of revenues)). Sigma currently sells approximately 3,000 distinct Fittings items (or SKUs). (Pais, Tr. 1723).
57. Sigma’s current sales are approximately \$200-210 million annually. (Pais, Tr. 1722). In 2007, 2008 and 2009, Sigma’s net sales were { } million, respectively. (CX 2026 at 066, *in camera*). Sigma has approximately 250 to 260 employees. (Pais, Tr. 1722).
58. On October 10, 2007, the Frontenac Group purchased a 60% ownership interest of Sigma. (Pais, Tr. 1725; Rybacki, Tr. 1084; CX 2523 (Bhattacharji, Dep. at 8)). Walter Florence is a Frontenac managing director and a member of Sigma’s board of directors. (CX 2523 (Bhattacharji, Dep. at 152, 197-198 (also identifying Hancock Financial as an indirect shareholder of Sigma through Frontenac))).
59. Sigma imports Fittings from China, India, and Mexico. (CX 2524 (Box, Dep. at 16); Pais, Tr. 1731-1732 (all Fittings Sigma sold in 2008 were manufactured by its “virtual manufacturing” partners in China, India and Mexico))).
60. Sigma has used a “virtual manufacturing” model for over twenty years. (CX 2530 (Rona, Dep. at 211-216)). In other words, Sigma is responsible for all the technical know-how that goes into producing its Fittings, but the Fittings are actually made overseas at foundries in China, Mexico and India. Sigma handles administration, engineering, drawings, inspection, testing, quality control, and transportation, and has engineering groups in China and India. (Rybacki, Tr. 1092, 1094; *see also* Pais, Tr. 1732 (“virtual manufacturing” meant that Sigma “did not own any manufacturing facilities ourselves, but then we owned all other responsibilities of design, quality control, supply chain planning, product approval, et cetera”); Rona, Tr. 1466-1467 (“virtual manufacturing” involves “developing relationships with suppliers, partnering, sharing some expense, but not actually owning the foundry on a total basis”))).
61. Sigma also sourced a small portion of its Fittings from McWane. (Pais, Tr. 1731).
62. Sigma’s “OEM” business involves the sale of products to “original equipment manufacturers” (as opposed to Distributors), including pipe, valve, and hydrant manufacturers and other Fittings suppliers. Sigma’s OEM business sells some products unrelated to waterworks, as well as parts used for assembly of waterworks valves and

- hydrants, and both industry standard and proprietary Fittings to companies in the waterworks industry, such as U.S. Pipe. (Rona, Tr. 1440-1441; Rybacki, Tr. 1095; Brakefield, Tr. 1215).
63. Sigma's OEM business in 2008 had approximately \$50 million in sales to customers such as McWane, U.S. Pipe, ACIPCO, Griffin, and Star. (Rona, Tr. 1440-1442) (noting OEM customers included valve, hydrant, pump and agriculture suppliers)). Sigma's OEM business accounted for approximately 10% of its sales of Fittings. (Rona, Tr. 1442; CX 2530 (Rona, Dep. at 24-25)).
  64. Star and McWane were much smaller customers (in terms of sales) of Sigma's OEM business than ACIPCO and U.S. Pipe. (Rona, Tr. 1444-1445).
  65. Sigma has approximately 23 territory sales managers across the United States, and approximately 25 inside customer service personnel supporting the sales force. (Rybacki, Tr. 1089-1090).
  66. Sigma has five regional managers, who manage the outside Fittings sales force: Al Richardson (southwest), Dave Pietryga (midwest), Greg Fox (southeast), Mike Walsh (northeast and Eastern Canada), and Chris King (northwest). (Rybacki, Tr. 1090, 1093).
  67. Beginning in September 2009, Sigma began selling Domestic Fittings that it sourced from McWane. (CX 0803 at 001). In 2010, Sigma sold over { } of Domestic Fittings. (CX 2026 at 029, *in camera*).

### 3.2.2 Key Employees

#### 3.2.2.1 Victor Pais

68. Victor Jerome Pais was one of the founders of Sigma in 1985. (Pais, Tr. 1721-1722; Rybacki, Tr. 1085). Mr. Pais worked for Star before founding Sigma. (Rybacki, Tr. 1117-1118; Pais, Tr. 1860-1862).
69. Mr. Pais currently owns approximately 6% to 7% of Sigma. (Pais, Tr. 1726; Rybacki, Tr. 1085). In 2008 Mr. Pais's ownership share in Sigma was 1-2 percentage points higher. (Pais, Tr. 1726). Prior to Frontenac's purchase of Sigma in 2007, Mr. Pais held an 18% share. (CX 2527 (Pais, IHT at 19)).
70. Mr. Pais is a current member of Sigma's board, and was also a member in 2008 and 2009. (Pais, Tr. 1725).
71. In the 2008-2009 time period, Mr. Pais was the president and CEO of Sigma. (Rybacki, Tr. 1085; Pais, Tr. 1723).
72. Mr. Pais was succeeded as CEO by Jim McGivern, who was selected by Frontenac, first joined Sigma in July 2009, and gradually took over aspects of the business. (Pais, Tr. 1723-1724, 1772-1773).



73. Mr. Pais stepped down as president and CEO of Sigma in January 2010. (Pais, Tr. 1725). Mr. Pais remains an employee of Sigma. (Pais, Tr. 1721).
74. Mr. Pais's responsibilities in 2008 and 2009 included growing Sigma Corporation, monitoring profits and costs, helping the supply chain, and setting strategy relating to growth and profitability, including pricing strategy. (Pais, Tr. 1724-1725; CX 2528 (Pais, Dep. at 192-193)).
75. Mr. Pais was actively involved in Sigma's Fittings pricing strategy and would discuss pricing strategy with Mr. Rybacki and others at Sigma. (CX 2528 (Pais, Dep. at 193-194) ("Q. And one of the ways in which you guided the team to maximize profitability was to discuss price increases with folks like Larry Rybacki; correct? A. Larry and several others on our team.")).
76. Mr. Pais's role at Sigma was as a "visionary" and "idea factory," and he was involved in everything, including product procurement, administration and sales. (Rybacki, Tr. 1086). He was viewed as the head of the company. (Rybacki, Tr. 1086-1087).

#### 3.2.2.2 Siddarth Bhattacharji

77. Siddarth Bhattacharji worked for Star before founding Sigma. (Rybacki, Tr. 1117-1118; Pais, Tr. 1860-1862).
78. Mr. Bhattacharji became executive vice president of Sigma following Frontenac's acquisition of interest in Sigma in 2007. Mr. Bhattacharji had been vice president of Sigma from its founding in 1985. (CX 2523 (Bhattacharji, Dep. at 8-11)).
79. During 2008 and 2009, as executive vice president of Sigma, Mr. Bhattacharji was responsible for engineering and supply chain. (CX 2523 (Bhattacharji, Dep. at 8-9); Rybacki, Tr. 1087 (During the 2008-2009 time period Mr. Bhattacharji was involved in engineering, quality control, product procurement, inventory, and finance)).
80. Mr. Bhattacharji is not an engineer himself. (CX 2523 (Bhattacharji, Dep. at 11-12)).
81. Mr. Bhattacharji is a shareholder of Sigma, owning less than 10% of the company, and the Secretary of the Sigma board of directors. (CX 2523 (Bhattacharji, Dep. at 9-10, 23)).

#### 3.2.2.3 Lawrence (Larry) Rybacki

82. Larry Rybacki is the president of Sigma, and has held that position since approximately August of 2011. (Rybacki, Tr. 1082).
83. Mr. Rybacki owns about 3.5% of Sigma's shares. (Rybacki, Tr. 1085).
84. Mr. Rybacki's office is in Northborough, Massachusetts. (Rybacki, Tr. 1083).



97. In July 2011, Mr. Rona was promoted to Sigma's vice president of operations. (Rona, Tr. 1438). Mr. Rona currently reports to Sigma's CEO, Jim McGivern. (Rona, Tr. 1439). As vice president of operations, Mr. Rona oversees Sigma's engineering and IT departments, manages global supplier relationships, controls inventory and supply chain, and runs Sigma's OEM business. (Rona, Tr. 1438-1439).
98. From about 1999 through July 2011, Mr. Rona was Sigma's OEM business manager, reporting to Mr. Pais. (Rona, Tr. 1439-1440).
99. Mr. Rona worked on the Sigma Domestic Production (SDP) team, along with Stuart Box, Gopi Ramanathan, Victor Pais and Siddarth Bhattacharji. (CX 2530 (Rona, Dep. at 40-41)). A significant amount of Mr. Rona's time was absorbed by Sigma's SDP activities and his negotiation of the MDA with McWane. (Rona, Tr. 1562-1564).
100. Mr. Rona was significantly involved in the MDA negotiations between Sigma and McWane as the Sigma contact point for negotiations. His level of involvement diminished somewhat following execution of a letter of intent for the MDA, but he continued to play a liaison role interacting with McWane, even after the MDA was signed and went into the operation phase. (Rona, Tr. 1562-1571; CX 1436 at 001-002 (Tatman email to Rona establishing "rules of play" for day-to-day execution of the MDA)).
101. Mr. Rona was a Sigma sales representative and regional manager from 1988 to 1998. (Rona, Tr. 1439). Mr. Rona is also a shareholder of Sigma. (CX 2523 (Bhattacharji, Dep. at 9-10)).

#### 3.2.2.5 Jim McGivern

102. Jim McGivern succeeded Mr. Pais as CEO of Sigma. Mr. McGivern was selected by Frontenac, first joined Sigma in July 2009, and gradually took over aspects of the business. (Pais, Tr. 1723-1724, 1772-1773).
103. By June 2010, Mr. McGivern was acting as CEO of Sigma. (Rybacki, Tr. 3490-3491).

#### 3.2.2.6 Tommy Brakefield

104. Tommy Eugene Brakefield is currently a Fittings consultant for McWane's pipe division under Jeff Otterstedt and Dennis Charko of McWane, and the executive director of the National Association of Pipe Fabricators. (Brakefield, Tr. 1212-1213).
105. Mr. Brakefield was the national sales manager at Sigma Corporation from November 2003 through December 2011. (Brakefield, Tr. 1214).
106. Although Mr. Brakefield's title never changed, his responsibilities evolved over time. In 2005, Mr. Brakefield's responsibilities shifted predominantly to consulting for Sigma's OEM business rather than dealing with Sigma's distribution business. From about 2005 to 2008, Mr. Brakefield's role at Sigma was as an "OEM consultant" with Mr. Rona, focused on non-Distributor OEM Fittings customers. (Brakefield, Tr. 1214-1216).

107. From 2008 to December 2011, Mr. Brakefield took on a “special projects” role for Sigma, reporting to Larry Rybacki, the vice president of sales, and taking on projects for Mr. Rybacki, Mr. Pais, Mr. Bhattacharji, or Mr. McGivern. (Brakefield, Tr. 1214, 1216-1217).
108. Mr. Brakefield’s background is in pipe, and he was vice president of sales and marketing at U.S. Pipe before his employment at Sigma. (Brakefield, Tr. 1219-1220; CX 2496 (Brakefield, Dep. (Vol. 2) at 9-10)).
109. In 2005, Mr. Pais approached Mr. Brakefield and asked him if he knew anything about how to start a trade association. This was Mr. Brakefield’s first involvement in conversations about DIFRA. (Brakefield, Tr. 1220).
110. Mr. Brakefield then became involved with organizing DIFRA on Sigma’s behalf. (Brakefield, Tr. 1220-1221).
111. Mr. Brakefield was Sigma’s “point person” on DIFRA. (Rybacki, Tr. 3546-3547). He became DIFRA’s president in January 2007, and was the first and only president of DIFRA. (Brakefield, Tr. 1221-1222, 1227).

#### 3.2.2.7 Stuart Box

112. Stuart Jackson Box was Sigma’s OEM operations manager from May 2007, when he started with the company, until July 2011. (CX 2524 (Box, Dep. at 8)). As OEM operations manager, Mr. Box reported to Mitchell Rona and had responsibility for customizing Fittings for Sigma OEM customers. (CX 2524 (Box, Dep. at 11, 12)). Mr. Box was promoted to Sigma’s director of engineering in July 2011. (CX 2524 (Box, Dep. at 7-8)).
113. Prior to joining Sigma, Mr. Box held positions as plant manager and manufacturing manager at foundries for Mueller Water Company, the parent of U.S. Pipe. (CX 2524 (Box, Dep. at 9-10)).
114. Mr. Box was involved in Sigma’s decision to explore the feasibility of production of Domestic Fittings, and in carrying out that evaluation through Sigma’s “SDP” project. (CX 2524 (Box, Dep. at 20-22)).
115. Mr. Box was not involved in negotiating the MDA, but was aware that MDA negotiations were ongoing while he investigated Sigma Domestic Production. (CX 2524 (Box, Dep. at 62-63)).
116. Mr. Box was responsible for making sure that Fittings Sigma received from McWane met specification. (CX 2524 (Box, Dep. at 67-68)).

#### 3.2.2.8 Other Employees

117. George Liu (Liuguang) is Sigma’s production manager for China. (Pais, Tr. 1853). Yin Baohai is the owner of the Sigma’s primary Fittings supplier in China, which Sigma

refers to as “A1,” and Yin Zhenhao is his son. (Pais, Tr. 1881-1882; CX 2118 at 001). Iona Shenoy is an executive secretary at Sigma Corporation. (Rybacki, Tr. 3494).

### **3.2.3 Sigma Email Distribution Lists**

118. Sigma’s M20 e-mail distribution list was a distribution list for Sigma’s approximately top 20 managers. (Pais, Tr. 1750; Rybacki, Tr. 3490). Mr. Brakefield was a member of the M20 email distribution list. (Brakefield, Tr. 1218).
119. Sigma’s RM6 email distribution list included Sigma’s regional managers and Mr. Rona. (Brakefield, Tr. 1218-1219).
120. Sigma’s M11 email distribution group is comprised of approximately 11 or 12 Sigma managers, including regional managers, and senior managers such as Mr. Pais, Mr. Bhattacharji, Mr. McGivern, Mr. Rybacki, and Mr. Brakefield. (Pais, Tr. 1837-1838; Brakefield, Tr. 1219).
121. Sigma’s M3 e-mail distribution list included Mr. Bhattacharji, Mr. Pais and Mr. Rybacki, and then Mr. McGivern when he joined Sigma. (CX 2527 (Pais, IHT at 14)).
122. Sigma’s OEM5 email distribution list included Mr. Pais, Mr. Bhattacharji, Mr. Rybacki, Mr. Brakefield, and Mr. Rona. (Rona, Tr. 1491).
123. Sigma’s SIGALL email distribution list included the entire Sigma team. (Pais, Tr. 1790).

## **3.3 Star**

### **3.3.1 Company Basics**

124. Star Pipe Products Ltd. (“Star”) imports and sells Fittings and other waterworks products. (Joint Stipulations of Fact, JX 0001 ¶ 3; Answer at ¶ 11; Minamyer, Tr. 3131-3132 (identifying Star’s three divisions to be waterworks, plumbing, and fire protection)).
125. Star was founded in 1981, and it has sold Fittings since approximately 1985. (RX-694 (Bhutada, Dep. at 6, 7)). Star’s current annual revenues are approximately \$135 million. (McCutcheon, Tr. 2250). Star has approximately 300 employees. (McCutcheon, Tr. 2249).
126. In 2007 and 2008, Star’s waterworks division sold Fittings, joint restraints, municipal construction castings, nuts and bolts, flanges, flange packs, and accessories. (Minamyer, Tr. 3129-3131; McCutcheon, Tr. 2249 (noting that Star’s waterworks division also sells manhole rings and covers, and valve boxes)).
127. In 2007 and 2008, Star’s main product was Fittings, and accounted for approximately 50% of Star’s annual revenues. (Minamyer, Tr. 3132-3133; McCutcheon, Tr. 2250).
128. Beginning in 2009, Star has contracted with foundries in the United States to manufacture Domestic Fittings. (Joint Stipulations of Fact, JX 0001 ¶ 4).

129. Star has a controlling interest in Chinese foundries that manufacture Fittings for Star, but does not own, in whole or in part, any of the US foundries that produce Fittings on Star's behalf. (McCutcheon, Tr. 2251-2252).
130. Prior to 2009, Star did not sell Domestic Fittings, and had not considered selling Domestic Fittings. It sold only imported Fittings. (CX 2533 (Bhargava, Dep. at 11); *see also* McCutcheon, Tr. 2267 (Star's Fittings were not bid on Domestic-only Fittings jobs before 2009); Minamy, Tr. 3136 (in 2008, Star could not meet any specification requiring Domestic Fittings)).
131. Star does not have any joint ventures with, or ownership interests in, any foundries in the United States. (McCutcheon, Tr. 2251-2252).
132. Star imports Fittings manufactured at five foundries in China. (RX-694 (Bhutada, Dep. at 8)). Star does not own the foundries in China. (CX 2539 (McCutcheon, Dep. at 8); RX-694 (Bhutada, Dep. at 8) (explaining that Star operates two of the five foundries as joint ventures)).
133. Star is responsible for quality assurance and quality control in Fittings production at both the domestic and foreign foundries from which it obtains Fittings. (Bhargava, Tr. 2924-2926, 2936; CX 2533 (Bhargava, Dep. at 13)). "Quality assurance" involves establishing the production processes at the foundry necessary to assure the quality of the product. (Bhargava, Tr. 2936; CX 2533 (Bhargava, Dep. at 13)). "Quality control" involves conducting routine reviews, after production, to determine that the product meets the specifications. (Bhargava, Tr. 2924; CX 2533 (Bhargava, Dep. at 14)).
134. In the 2007 to 2009 time frame, Star's waterworks division had an outside sales force of approximately 22 sales representatives (territory managers) and approximately six division managers, who supervised the territory managers. (Minamy, Tr. 3129-3132, 3178; McCutcheon, Tr. 2253).
135. In 2008, Star also had an inside sales force of approximately 15 people. (McCutcheon, Tr. 2253-2254; Minamy, Tr. 3132). Star's inside sales force oversees customer service, including checking inventory, fielding inquiries, and arranging shipping. (McCutcheon, Tr. 2253-2254).
136. Star has 12 distribution centers throughout the United States where it stocks product in order to provide faster delivery times to its customers. (McCutcheon, Tr. 2264-2265) (Star stocks Fittings at its headquarters in Houston and 13 other locations in North America); CX 2535 (Bhutada, Dep. at 10) (identifying Star's United States distribution centers in Seattle, Washington; Salt Lake City, Utah; Sacramento, California; Corona, California; Phoenix, Arizona; Indianapolis, Indiana; Kansas City, Missouri; Houston, Texas; Atlanta, Georgia; Orlando, Florida; and Richmond, Virginia)).

### 3.3.2 Key Employees

137. Star Pipe's management team consists of three key people – Mr. Bhutada, Mr. McCutcheon, and Mr. Bhargava. Most of Star's major decisions are made by consensus of those three people. (Bhargava, Tr. 2926-2927).

#### 3.3.2.1 Daniel McCutcheon

138. Daniel Ward McCutcheon has been employed by Star since approximately 1995. (CX 2537 (McCutcheon, IHT (Vol. 1) at 6); McCutcheon, Tr. 2247 (Mr. McCutcheon has been employed by Star for 16 years)).
139. Mr. McCutcheon is currently the president of Star, and has held that position since the beginning of 2012. (McCutcheon, Tr. 2246-2247; CX 2539 (McCutcheon, Dep. at 6)).
140. Before becoming Star's president, Mr. McCutcheon was the vice president of sales and operations at Star for 14 years, reporting to Mr. Bhutada. (McCutcheon, Tr. 2247; CX 2537 (McCutcheon, IHT (Vol. 1) at 6)). In that position, Mr. McCutcheon was responsible for all sales, marketing, sales strategies, operations, and the distribution center operations. (CX 2537 (McCutcheon, IHT (Vol. 1) at 7)). In that position, Mr. McCutcheon also had responsibility for sales of Fittings. (CX 2537 (McCutcheon, IHT (Vol. 1) at 7)). Mr. McCutcheon managed the sales department and Star's distribution centers. Star's outside and inside sales forces reported up to Mr. McCutcheon. (McCutcheon, Tr. 2254).
141. In 2008 and 2009, Mr. McCutcheon and Mr. Bhutada together were responsible for setting Star's pricing strategy. (McCutcheon, Tr. 2252; CX 2538 (McCutcheon, IHT (Vol. 2) at 398)).
142. Mr. McCutcheon's email address at Star Pipe Products is danm@starpipelineproducts.com. Mr. McCutcheon, who uses the email address in the normal course of business, is the only person with access to that email address. (CX 2538 (McCutcheon, IHT (Vol. 2) at 216)).
143. Mr. McCutcheon's office phone numbers are { } and { }. His phone is occasionally answered by his assistant Sue Palmer. (McCutcheon, Tr. 2248, 2467, *in camera*). Calls to Mr. McCutcheon also come through Star's toll-free number, 800-999-3009. (McCutcheon, Tr. 2248). That line is answered by Star's receptionist Janet Garey. Mr. McCutcheon's cell phone for business purposes is { }. (McCutcheon, Tr. 2248, 2438, *in camera*). Nobody but Mr. McCutcheon answers his cell phone. (McCutcheon, Tr. 2249).
144. {  
  
} (McCutcheon, Tr. 2502-2503, *in camera*).

145. In 2003, Mr. McCutcheon testified before the International Trade Commission in a proceeding relating to a McWane “all or nothing” rebate policy in the non-Domestic Fittings market. At the time that the McWane policy at issue in that proceeding came into effect, Star had been supplying Fittings in the United States for about 5 to 10 years. (McCutcheon, Tr. 2579-2580, 2662-2663).

#### 3.3.2.2 Matthew Minamyler (former employee)

146. Matthew Patrick Minamyler is currently the national sales manager for the Piping Products Division of Sigma (which includes Sigma’s Fittings business), and he has held that position since July 2009. (Minamyler, Tr. 3127-3128; CX 2525 (Minamyler, IHT at 5)).
147. From approximately 2004 until he joined Sigma in July 2009, Mr. Minamyler was Star’s national sales manager, with responsibility for managing Star’s sales force, interfacing with customers, and increasing Star’s sales. (McCutcheon, Tr. 2254; Minamyler, Tr. 3128; CX 2525 (Minamyler, IHT at 5)).
148. From approximately 1999 through 2005, Mr. Minamyler was a territory manager (December 1999 through mid-2000) and a division manager (mid-2000 through mid-2004) at Star. (Minamyler, Tr. 3128-3129; CX 2525 (Minamyler, IHT at 6-7); CX 2526 (Minamyler, Dep. at 9-10)).
149. As Star’s national sales manager in 2007 and 2008, Mr. Minamyler reported to Dan McCutcheon. (Minamyler, Tr. 3130; CX 2526 (Minamyler, Dep. at 11-12)). Mr. McCutcheon’s and Mr. Minamyler’s offices were close enough that they could speak to one another in the hallway. (McCutcheon, Tr. 2254-2255).
150. When Mr. Minamyler was the national sales manager for Star’s waterworks division, only the waterworks division sales force reported to him. (Minamyler, Tr. 3131-3132). Mr. Minamyler had six division managers reporting to him, covering five territories within the United States and one in Canada. (Minamyler, Tr. 3130).
151. When Mr. Minamyler was national sales manager at Star, Mr. Minamyler and Mr. McCutcheon were in charge of setting and changing Star’s list prices and multipliers and approving multiplier letters. (Minamyler, Tr. 3139, 3142; CX 2526 (Minamyler, Dep. at 99-100) (Mr. Minamyler and Mr. McCutcheon shared responsibility for changing list prices or published multipliers). Mr. Minamyler typically had the responsibility for approving individual instances of Project Pricing. (CX 2526 (Minamyler, Dep. at 99) (Mr. Minamyler typically had decision-making authority on pricing, but for list price or multiplier changes)).

#### 3.3.2.3 Ramesh Bhutada

152. Ramesh Bhutada was the president and chief executive officer of Star from 1981 until approximately November 2011. Since November 2011, Mr. Bhutada has been chief executive officer of Star. (CX 2534 (Bhutada, IHT at 6); CX 2535 (Bhutada, Dep. at 5)).



153. In 2008 and 2009, Mr. Bhutada was responsible, together with Mr. McCutcheon, for setting Star's pricing strategy. (McCutcheon, Tr. 2252; CX 2538 (McCutcheon, IHT (Vol. 2) at 398)).

#### 3.3.2.4 Navin Bhargava

154. From 2003 to the present, Navin Bhargava has been a vice president, and later an executive vice president, of Star, with responsibility for sourcing, inventory, engineering, quality control, and new product development. (Bhargava, Tr. 2917-2919, 2921; CX 2533 (Bhargava, Dep. at 7-8)).
155. Mr. Bhargava has a Bachelor's degree in Mechanical Engineering and a Master's degree in industrial engineering. (Bhargava, Tr. 2917).
156. Mr. Bhargava began at Star as a product manager in 1994, responsible for inventory planning and sourcing foundries for manufacturing. (Bhargava, Tr. 2918).
157. Mr. Bhargava was Star's purchasing manager from 1996 to 1998. In this role, Mr. Bhargava was also responsible for sourcing and supervising foundries that manufactured Star's products. (Bhargava, Tr. 2918-2919, 2920).
158. Mr. Bhargava was Star's director of manufacturing in 1998 until approximately 2003. His responsibilities in this role related to expanding Star's manufacturing, and Star was manufacturing in South America, Korea, China, and India at that time. (Bhargava, Tr. 2920).
159. Mr. Bhargava became a vice president of Star in approximately 2003. (Bhargava, Tr. 2921). He became executive vice president in approximately 2011. (Bhargava, Tr. 2917, 2921).
160. Mr. Bhargava's responsibilities included supervision of Star's entry into Domestic Fittings manufacturing. (Bhargava, Tr. 2921). Mr. Bhargava was responsible for locating appropriate domestic third-party foundries for Fittings production, developing tooling for those foundries, setting up quality control procedures, and assessing the manufacturing capacities of domestic foundries. (Bhargava, Tr. 2925-2926).
161. Mr. Bhargava's quality control responsibilities involve establishing and conducting testing and reporting at Star's third party foundries. (Bhargava, Tr. 2924).
162. Mr. Bhargava has had responsibilities related to Star's foundry operations in China, including aspects of opening a foundry such as: assessing the capabilities of a third-party foundry, establishing manufacturing processes for foundries, developing and approving product patterns, testing, and troubleshooting inventory and customer service. (Bhargava, Tr. 2921-2923).
163. One of Mr. Bhargava's email addresses is insomniacn@aol.com. (CX 2533 (Bhargava, Dep. at 8)).

3.3.2.5 Leroy H. Leider, Jr.

164. Leroy H. Leider, Jr. is a general sales manager for Star. Mr. Leider has been employed by Star since approximately 2004. (RX-695 (Leider, Dep. at 9-11)).
165. Mr. Leider was a territory manager for Star for approximately four years, from 2004 until 2008. (CX 2536 (Leider, Dep. at 11)).
166. In 2008 and 2009, Mr. Leider was a division manager for the northwestern United States, including Washington, Oregon, Montana, Idaho, Utah, New Mexico, Colorado, Wyoming, North Dakota, South Dakota, Minnesota, and Wisconsin. (CX 2536 (Leider, Dep. at 11, 13)).
167. Mr. Leider became a general sales manager in 2009. (CX 2536 (Leider, Dep. at 13)).
168. As general sales manager, Mr. Leider has responsibility for supervising the division managers in much of the eastern United States. (RX-695 (Leider, Dep. at 13, 16)).
169. As division manager, Mr. Leider reported to Matt Minamy. (RX-695 (Leider, Dep. at 17)).
170. As division manager and as general sales manager, Mr. Leider has not had authority for setting Star's list prices or establishing Star's published multipliers for fittings. (RX-695 (Leider, Dep. at 22)).

3.3.2.6 Michael Berry

171. Michael Berry has been a general sales manager for Star since 2009. (CX 2532 (Berry, Dep. at 12)).
172. Mr. Berry was first employed as a territory manager by Star in approximately 2004. As a territory manager, Berry was a salesman for Star. (CX 2532 (Berry, Dep. at 10)). From approximately 2005 to 2009, Mr. Berry was a division manager for Star, with responsibility for Star's western division, which included portions of the United States including and west of Arizona and Utah. (CX 2532 (Berry, Dep. at 13-15)). As division manager, Mr. Berry had responsibility for supervising the territory managers in the western United States. (CX 2532 (Berry, Dep. at 14)).
173. John Ristine, John Lemoine, and Kris Kadai are territory managers for Star and reported to Mr. Berry in his capacity as division manager. (CX 2532 (Berry, Dep. at 13-14)).
174. As division manager, Mr. Berry did not have responsibility for setting price lists or published multipliers for Star. (RX-691 (Berry, Dep. at 18)).
175. As division manager, Mr. Berry sometimes exercised authority to approve Project Pricing, but that authority was sometimes exercised directly by either Mr. McCutcheon or Mr. Minamy. (RX-691 (Berry, Dep. at 22); CX 2532 (Berry, Dep. at 22)).



### 3.4.2 Backman Foundry

#### 3.4.2.1 Company Basics

184. Backman Foundry, located in Provo, Utah, is a foundry that has been in operation since 1938. Backman Foundry employs 32 people. (RX-648 (Backman, Dep. at 9, 12)).
185. Backman Foundry primarily manufactures products for “the sulfuric acid business,” which are used in “copper mines literally all over the world.” (CX 2488 (Backman, Dep. at 12-13) (“I would say 60 to 70 percent of what we make is sold to chemical manufacturing facilities for mostly for sulfuric acid.”)).
186. Backman also manufactures Fittings, which comprise approximately 20 to 25% of Backman Foundry’s business, or approximately \$3 million in sales annually. (CX 2488 (Backman, Dep. at 14, 18). Specifically, Backman Foundry manufactures customized Fittings, niche products that do not compete with McWane or other large Fittings suppliers who sell “standard off-the-shelf, the bread-and-butter [Fittings].” (CX 2488 (Backman, Dep. at 16-17) (“If you can imagine a pipe fitting that has a hole in it anywhere but standard, that’s what we do.”); CX 2488 (Backman, Dep. at 79-80) (“I can’t compete with McWane Corporation for example, TylerUnion. . . . Good grief. The fittings sitting on the ground in their yard ready to ship cost less than molten metal before I ever put it in a mold.”)).
187. Because Backman Foundry specializes in manufacturing custom-made pipe fittings it does not consider Fittings made with automated systems competing products. (CX 2488 (Backman, Dep. at 78) (“Q. Who are your competitors today in the domestic pipe fittings? A. Um, I don’t know that I actually have a competitor. And I qualify that statement by I believe that I am the only facility left in the United States that specializes and manufactures custom pipe fittings.”)).
188. Due to the high degree of customization of its Fittings, Backman Foundry produces products on a purchase-order-by-purchase-order basis. (CX 2488 (Backman, Dep. at 33)).

#### 3.4.2.2 Key Employees

189. Alan Backman is the president, CEO and primary owner of Backman Foundry. Mr. Backman has had supervisory responsibility for everything that goes on at the foundry for 17 years. (CX 2488 (Backman, Dep. at 11) (“I own 98 percent of the stock of the corporation.”)).
190. Mr. Backman’s responsibilities are to “oversee operations of the entire facility on more of a global, . . . long-term basis.” Mr. Backman also deals with customers and keeps “an eye on day-to-day operations to some degree.” (CX 2488 (Backman, Dep. at 48)).

### 3.4.3 Griffin Pipe

#### 3.4.3.1 Company Basics

191. Griffin Pipe Products Co. is a domestic manufacturer of ductile iron pipes and has been in operation since the 1960s. Griffin also re-sells Fittings as part of packaged sales of pipes and Fittings. (CX 2508 (Kurhts, Dep. at 9-10, 11) (noting that Metalfit manufactures proprietary restraint joints for Griffin)).

192. {

} (CX 2508 (Kurhts, Dep. at 18, 19-20, 48-50, 73-74, *in camera*) ( {

})).

193. {

} (CX 2508 (Kurhts, Dep. at 42-44, *in camera*)).

194. {

} (CX 2508 (Kurhts, Dep. at 20-21, 24-27), *in camera* ( {

})).

#### 3.4.3.2 Key Employees

195. Douglas Kurhts became the national customer service manager at Griffin Pipe, in Council Bluffs, Iowa in 2012. Before that, Mr. Kurhts was the customer service manager for Griffin's west region for ten years. In total, Mr. Kurhts has been with Griffin for 12 years. (CX 2508 (Kurhts, Dep. at 6-7)).

### 3.4.4 Metalfit

#### 3.4.4.1 Company Basics

196. Metalfit is a foundry in Monterrey, Mexico and a manufacturer of flanged Fittings from 3" to 48" in diameter and mechanical joint Fittings from 4" to 48" in diameter. (CX 2518 (Meyer, Dep. at 16-23)). Metalfit supplies Fittings under the Metalfit brand name, and as private label products for ACIPCO, U.S. Pipe, Griffin, and Sigma. (CX 2518 (Meyer, Dep. at 16-23)).

197. In addition to Fittings, Metalfit produces municipal castings for the Mexican market and non-waterworks products including valve bodies, butterfly valves, ball valves, plug valves, and pump parts. (CX 2518 (Meyer, Dep. at 21)).
198. Metalfit exports approximately 98% of its Fittings to the United States. (CX 2518 (Meyer, Dep. at 20-21)).
199. All of the Fittings sold under the Metalfit brand name are sold through Distributors. (CX 2518 (Meyer, Dep. at 23-24)).
200. Metalfit's total annual sales were { } in 2008, { } in 2009, { } in 2010, and { } in 2011. (CX 1777 at 005, *in camera* (Metalfit sales information)).
201. In 2011, approximately 70% of Metalfit's sales were of Fittings. Over the last five years, Fittings sales have generally been less than 70%. (CX 2518 (Meyer, Dep. at 21-22, 108-109)).

#### 3.4.4.2 Key Employees

202. Mark L. Meyer has been an owner and vice president of Metalfit, Inc. since 2004. As vice president of Metalfit, Mr. Meyer is responsible for sales, marketing, customer development, new product development, strategic planning, government affairs and all non-manufacturing aspects of the business. (CX 2518 (Meyer, Dep. at 9-12)).
203. Mr. Meyer and his partners built Metalfit as a greenfield foundry in 1991 and began operations in 1994. (CX 2518 (Meyer, Dep. at 9-11)). In 2000, Mr. Meyer and his partners sold the foundry to Griffin Pipe Products, but they purchased it back in July 2004, and continue to operate the foundry today. (CX 2518 (Meyer, Dep. at 9-11)).

#### 3.4.5 **NAPAC**

204. NAPAC, Inc. is a Fittings supplier with close to a full product line of non-Domestic Fittings. (CX 2500 (Swalley, Dep. at 135); CX 2526 (Minamyler, Dep. at 14); CX 2510 (Groeniger, Dep. at 44)).
205. NAPAC has three distribution centers, in Massachusetts, Jacksonville, and California. (CX 2500 (Swalley, Dep. at 137)).
206. McWane does not consider NAPAC a primary competitor like Star and Sigma. (CX 2484 (Tatman, Dep. at 24-25)).

#### 3.4.6 **NACIP**

##### 3.4.6.1 Company Basics

207. In 2010, North American Cast Iron Products ("NACIP") began selling Fittings in the United States that it imports from India and China. (Saha, Tr. 1152-1153, 1173-1176).



217. SIP began selling Fittings in the United States in 2003 or 2004, and currently sells to approximately { } (CX 2522 (Agarwal, Dep. at 29, 38, *in camera*)). { } (CX 2522 (Agarwal, Dep. at 85), *in camera*).
218. SIP offers a full line of Fittings up to 48” in diameter. (RX-681 (Agarwal, Dep. at 30); CX 2521 (Agarwal, IHT at 64-65)).
219. { } (RX-369, *in camera*).

#### 3.4.7.2 Key Employees

220. Bharat Agarwal has been SIP’s vice president for business development since approximately 2007. In that position, Mr. Agarwal is responsible for finding new business opportunities, including new products and markets, and growing sales. (CX 2522 (Agarwal, Dep. at 6-7); RX-681 (Agarwal, Dep. at 9-10)).

### 3.4.8 U.S. Pipe

#### 3.4.8.1 Company Basics

221. United States Pipe and Foundry (“U.S. Pipe”), headquartered in Birmingham, Alabama, currently manufactures ductile iron pipe. (Morton, Tr. 2809). In the 2005-2012 time period, U.S. Pipe manufactured ductile iron pipe at two plants in Bessemer, Alabama, and a plant in Union City, California. (Morton, Tr. 2809).
222. U.S. Pipe sells complete waterworks systems that include its ductile iron pipe packaged together with related products, including Fittings and accessories. (Morton, Tr. 2809-2812).
223. U.S. Pipe’s main competitors in the sale of ductile iron pipe systems are Griffin, McWane, and ACIPCO. (Morton, Tr. 2811-2812).
224. Until April 2006, U.S. Pipe manufactured Domestic Fittings from 4” to 64” in diameter at its Chattanooga, Tennessee facility. U.S. Pipe stopped manufacturing Fittings in April 2006, and has since sold the Chattanooga facility. (Morton, Tr. 2810).
225. U.S. Pipe currently purchases non-Domestic Fittings primarily from Sigma, with Star as a secondary supplier, and Domestic Fittings from McWane and Star. U.S. Pipe sells the Fittings that it purchases as a part of a bundled package of Fittings and ductile iron pipe. (Morton, Tr. 2810, 2819-2820).
226. In the Spring of 2009, U.S. Pipe decided not to re-enter the Domestic Fittings market. (Morton, Tr. 2866-2867, 2876).





}; CX 2500 (Swalley, Dep. at 221-232), *in camera* {

}

236. {  
       }(CX 2500 (Swalley, Dep. at 185), *in camera*).

#### 3.4.9.2 Key Employees

237. Robert Daniel Swalley has been the business development manager at Electrosteel USA since August 2007 when he first began working for Electrosteel USA. (RX-659 (Swalley, Dep. at 5)).

### **3.5 Domestic Foundries**

#### **3.5.1 EBAA**

##### 3.5.1.1 Company Basics

238. EBAA is a domestic joint restraint manufacturer with two domestic iron foundries in Texas and one in Georgia. (RX-658 (Keffer, Dep. at 7-8)).

239. EBAA Iron does not produce any Fittings. (CX 2499 (Keffer, Dep. at 9)).

##### 3.5.1.2 Key Employees

240. Jim Keffer is the sales division president for EBAA Iron, where he has worked for 35 years. (RX-658 (Keffer, Dep. at 4-6)).

241. Mr. Keffer assisted Distributors, municipalities, and other market participants to understand the meaning of the Buy American provision in ARRA after it passed. (RX-658 (Keffer, Dep. at 70-72)).

#### **3.5.2 EJ**

##### 3.5.2.1 Company Basics

242. EJ is the successor company to East Jordan Ironworks, a domestic foundry that began making gray iron municipal products in the 1920s, including: fire hydrants, gate valves, construction castings, municipal manhole frames and covers, and gray iron water main fittings. (RX-657 (Teske, Dep. at 8)).

243. EJ does not currently make Fittings, and has never made Fittings. (CX 2498 (Teske, Dep. at 12)).

244. However, EJ does currently resell McWane Fittings to a few legacy clients in the Midwest. Those Fittings sales are restricted to Michigan and Northern Illinois, and account for less than 1% of EJ's overall sales. (CX 2498 (Teske, Dep. at 33-34, 39-40)).

245. EJ has made no efforts to expand its Fittings sales beyond its legacy clients because Fittings are a resale product for EJ. Mr. Teske believes that Distributors are uninterested in buying a resale product from EJ because Distributors can purchase the same product from Fittings suppliers at a better margin. (CX 2498 (Teske, Dep. at 41-43)).

#### 3.5.2.2 Key Employees

246. Thomas Michael Teske has been at East Jordan Ironworks, now EJ, since 1976, and is currently the company's vice president and general manager, responsible for EJ Canada, EJ USA, Inc., and EJ America Latina. (RX-657 (Teske, Dep. at 5-6)).

### 3.5.3 **Frazier & Frazier Industries**

#### 3.5.3.1 Company Basics

247. Frazier & Frazier Industries ("Frazier & Frazier") is a domestic foundry that was founded in 1972. Frazier & Frazier produces castings for Domestic Fittings for suppliers like McWane and Star. (RX-664 (Frazier, Dep. at 6-9, 14, 19-20) (noting broad array of products it produces, including gray iron castings, fire hydrants, barbells and boat anchors)).
248. Frazier & Frazier produces unfinished Domestic Fittings; the castings that Frazier & Frazier makes for Fittings still require finishing, such as bolts, fasteners, and paint. (CX 2505 (Frazier, Dep. at 71-72); RX-664 (Frazier, Dep. at 18) (identifying Frazier & Frazier as a castings manufacturer, not a Fittings manufacturer)).
249. The largest diameter Fitting that Frazier & Frazier produces is a 10" diameter Fitting. (CX 2505 (Frazier, Dep. at 20, 34)).
250. Frazier & Frazier typically produces castings for Domestic Fittings through metal patterns that are sometimes provided to Frazier & Frazier by its customers. (CX 2505 (Frazier, Dep. at 24-25) (noting that Frazier & Frazier may still incur expenses to set up the new pattern, including adapting the pattern to the foundry's flask and sampling)).
251. Frazier & Frazier's total castings sales to Star were \$544,349 in 2009, and increased to \$1,235,132 in 2010, with total Fittings sales of \$4,118,869 to date. (RX-706 (Ewing, Dep. at 6-10)).

#### 3.5.3.2 Key Employees

252. Charles W. Frazier, Jr. has been Frazier & Frazier's president and chief operating officer since 2000. Mr. Frazier has been involved in the foundry business all of his life. (RX-664 (Frazier, Dep. at 5-6)).
253. VJ Gupta is the sales manager at Frazier & Frazier. (RX-665 (Gupta, Dep. at 6)).
254. Lee Ann Ewing has been the secretary and treasurer at Frazier & Frazier since approximately 2001, and has been employed by Frazier & Frazier since 1978. Ms.

Ewing oversees Frazier & Frazier's accounting functions, including billing, bill payment, and profit and loss statement preparation. (RX-706 (Ewing, Dep. at 4-5)).

### **3.5.4 Glidewell Foundry**

#### **3.5.4.1 Company Basics**

- 255. Glidewell Foundry ("Glidewell") makes ductile iron castings for a wide variety of industries, including the waterworks industry. (RX-666 (Glidewell, Dep. at 13-14)).
- 256. Approximately 50% of Glidewell's total castings sales are for waterworks industry customers and products, including Star, McWane, ACIPCO, and valve manufacturers. (RX-666 (Glidewell, Dep. at 14-15)).
- 257. Approximately 8% of Glidewell's waterworks sales in 2011 were Domestic Fittings castings. (RX-666 (Glidewell, Dep. at 16)).
- 258. Glidewell began making Domestic Fittings castings in 2009, and sold Domestic Fittings castings to Star in 2010. Typically, Glidewell realizes a 10% margin on its sales of Domestic Fitting castings. (RX-666 (Glidewell, Dep. at 16, 54; CX 2507 (Glidewell, Dep. at 95-96)).
- 259. Since 2009, Glidewell has cast only large-diameter Domestic Fittings of 30" to 48" in diameter. Glidewell has never had the equipment necessary to efficiently make Domestic Fittings castings smaller than 30". (CX 2507 (Glidewell, Dep. at 63)).

#### **3.5.4.2 Key Employees**

- 260. David Glidewell has worked in the foundry business since 1974, and has been the president and CEO of Glidewell Foundry since 1991. (RX-666 (Glidewell, Dep. at 8-10)). Mr. Glidewell oversees Glidewell's operations and handles all quoting and estimating for the company, including reviewing all requests for quotes. (RX-666 (Glidewell, Dep. at 11-12)).

### **3.5.5 Mabry Castings**

#### **3.5.5.1 Company Basics**

- 261. Mabry Castings ("Mabry") manufactures castings for Domestic Fittings. (RX-676 (Hall, Dep. at 18-19) (noting wide variety of products produced by Mabry)).
- 262. Mabry can cast Domestic Fittings with a 12" and smaller outside diameter on its green sand machine, and Domestic Fittings of a 50" diameter and smaller on its Airset machine. (CX 2517 (Hall, Dep. at 26-27)).
- 263. In 2009, Mabry began producing Domestic Fitting castings for Star. (CX 1581; RX-676 (Hall, Tr. 67-68)). Mabry currently makes mechanical joint bend Domestic Fittings that are 8" and larger for Star. (RX-676 (Hall, Dep. at 19)).

### 3.5.5.2 Key Employees

264. Eddie N. Hall, Jr. is the sales manager at Mabry foundry in Beaumont, Texas, where he has worked for over 29 years. As sales manager, Mr. Hall provides quotes to Domestic Fitting casting customers. Before 2011, Mr. Hall was Mabry's plant operations manager. (RX-676 (Hall, Dep. at 5, 7-12, 17, 18)).

## 3.6 **Distributors**

### 3.6.1 **HD Supply**

#### 3.6.1.1 Company Basics

265. HD Supply is the largest waterworks Distributor in terms of sales in the United States. (Joint Stipulations of Fact, JX 0001 ¶ 24). HD Supply sells all waterworks products, including PVC pipe, ductile iron pipe, valves, hydrants, brass items, appurtenances, and Fittings. (Webb, Tr. 2706).
266. HD Supply is a national Distributor with 235 branches in major metropolitan areas in 44 states. Each branch stocks Fittings and other products for HD Supply's customers. (Webb, Tr. 2698-2699 (identifying branches in every state except Maine, Vermont, New Hampshire, Hawaii, Wyoming, and North Dakota)).

#### 3.6.1.2 Key Employees

267. From 2007 through December 2011, Jerry L. Webb was president and CEO of HD Supply's Waterworks Division. (Webb, Tr. 2694-2695).
268. Mr. Webb reports to Joe DeAngelo, who is the CEO for all of HD Supply, and also gives monthly updates to the board on performance, long range forecasting, initiatives and sales. (Webb, Tr. 2695-2696).
269. Mr. Webb's direct reports are the HD Supply waterworks division's CFO, CIO, the vice president of market development, and the strategic business development director. (Webb, Tr. 2695-2696). Prior to December 2011, HD Supply's six waterworks regional vice presidents (including one vice president of fire protection) reported to Mr. Webb. (Webb, Tr. 2696-2697).
270. As CEO of the HD Supply Waterworks division, Mr. Webb is responsible for strategic growth, new markets, market and product initiatives, and vendor relations. (Webb, Tr. 2696-2697; CX 2514 (Webb, Dep. at 9-10)).
271. Mr. Webb exerts final authority over which Fittings suppliers HD Supply selects. (Webb, Tr. 2746).
272. Before March 2007, Mr. Webb was a Southeast regional vice president of HD Supply. All branch managers in Georgia, Florida, Alabama, Mississippi, and Arkansas reported to Mr. Webb. Mr. Webb had profit and loss responsibility for his region. (Webb, Tr. 2697-

2698). Other positions that Mr. Webb has held at HD Supply since he joined the company in 1981 include sales, inside sales, branch management, national sales management. (Webb, Tr. 2698-2699).

273. Rob Hixon and Don Taylor were employees of HD Supply in 2008. (CX 2536 (Leider, Dep. at 83)).

### **3.6.2 Ferguson**

#### **3.6.2.1 Company Basics**

274. Ferguson is the second largest waterworks Distributor in terms of sales in the United States. (Joint Stipulations of Fact, JX 0001 ¶ 25). Ferguson serves the water and wastewater industry, supplying primarily pipe, valves and fittings to contractors and municipalities. (CX 2503 (Thees, IHT at 15)). Ferguson has an approximately 25% market share nationwide. (Tatman, Tr. 952-953; Thees, Tr. 3059 (noting that Ferguson has thousands of waterworks customers)).
275. Ferguson is a national Distributor with approximately 167 branches throughout the country that distribute waterworks products, including Fittings. (Thees, Tr. 3042, 3045-3046 (identifying branch locations in every state except Kansas, Nebraska, and Iowa)).
276. Ferguson employs a sales force of over 300 outside sales people and 250 inside sales people. (Thees, Tr. 3060).
277. Ferguson's executives are involved in Fittings supplier decisions based on the strength of any corporate rebate program with the supplier and the strength of the overall relationship between Ferguson and the supplier. (Thees, Tr. 3083). Ferguson's branches are more involved in selecting a Fittings supplier when the customer specifies a brand or where the local relationship with the End User is significant. (Thees, Tr. 3083-3084).
278. Ferguson and HD are McWane's two largest Fittings customers. (Tatman, Tr. 953; Thees, Tr. 3042) (noting that McWane also supplies soil pipes to Ferguson's Plumbing Division in addition to waterworks products, including Fittings)).

#### **3.6.2.2 Key Employees**

279. Since August 2009, William Taylor Thees, Jr. has been the vice president of waterworks at Ferguson Enterprises, where he has worked for the last 22 years. (Thees, Tr. 3032-3033). Before becoming vice president, Mr. Thees held a series of positions at Ferguson, including branch manager, district manager, and business group owner of Ferguson's waterworks group, with responsibilities similar to his vice-president responsibilities. (Thees, Tr. 3034-3035).
280. As vice president of Ferguson's waterworks division, Mr. Thees has profit and loss and strategy development responsibilities for the waterworks group. These responsibilities include deciding what initiatives to pursue or ways to grow the waterworks group, and deciding whether to acquire or open new Ferguson branches. (Thees, Tr. 3039).

281. Mr. Thees regularly interacts with his district managers, gathering intelligence in order to understand relationships with suppliers, the relative sale volumes of each district, and potential growth areas. (Thees, Tr. 3040-3041).
282. Mr. Thees often has the final authority in the selection of waterworks suppliers, including Fittings suppliers, though he discusses waterworks decisions with other Ferguson divisions when the supplier, like McWane, sells non-waterworks products to Ferguson as well. (Thees, Tr. 3041-3042).
283. Mr. Thees participates in negotiating rebates with Ferguson's waterworks suppliers. The corporate rebate department takes the lead when it is a corporate rebate, and the local or regional office takes the lead on regional rebates. (Thees, Tr. 3041).

### **3.6.3 WinWholesale**

#### **3.6.3.1 Company Basics**

284. WinWholesale, which does business as WinWater Works ("WinWater"), is the third largest waterworks Distributor in the United States with 43 local companies or branches in 22 states. (CX 2162 at 001; CX 2546 (Gibbs, Dep. at 11, 15-16)). WinWater sells waterworks products, including Fittings, to End Users. (CX 2546 (Gibbs, Dep. at 7-8)).
285. In 2008, WinWholesale purchased approximately \$9.5 million in Fittings. (CX 2546 (Gibbs, Dep. at 12)). In 2009, WinWholesale purchased approximately \$8.7 million in Fittings. (CX 2546 (Gibbs, Dep. at 12)). In 2010, WinWholesale purchased approximately \$9.0 million in Fittings. (CX 2546 (Gibbs, Dep. at 12)). In 2011, WinWholesale purchased approximately \$9.0 million in Fittings. (CX 2546 (Gibbs, Dep. at 12)).
286. In 2011, WinWholesale's annual revenue was \$1.78 billion. (CX 2546 (Gibbs, Dep. at 11-12)).

#### **3.6.3.2 Key Employees**

287. Eddie Gibbs has been the vice president of vendor relations for WinWholesale for since 2005. (CX 2546 (Gibbs, Dep. at 7-8)).
288. As the vice president of vendor relations, Mr. Gibb's responsibilities include negotiating programs for all of WinWholesale's products, including Fittings, with vendors, gaining access to vendor lines, and dealing with disputes with local companies (branches) and vendors. (CX 2546 (Gibbs, Dep. at 7)).

### 3.6.4 Hajoca

#### 3.6.4.1 Company Basics

289. Hajoca Corporation distributes plumbing, heating, and industrial products. (Pitts, Tr. 3291-3292). Hajoca sells waterworks products including flanged pipes and fittings, saddles, valves, and Fittings. (Pitts, Tr. 3297).
290. Hajoca has 351 locations, or profit centers. Of those, approximately nine sell waterworks products. Three branches sell waterworks exclusively: Tulsa, Oklahoma; Salt Lake City, Utah; and Olathe, Kansas. Lansdale, Pennsylvania also sells waterworks products. (Pitts, Tr. 3296-3297).
291. Compared to Ferguson and HD Supply, Hajoca's presence in the waterworks distribution business – with three dedicated waterworks locations – is very small. (Pitts, Tr. 3299-3300).

#### 3.6.4.2 Key Employees

292. Roy Lee Pitts has been the director of vendor relations at Hajoca for the last fifteen years. (Pitts, Tr. 3291-3292). Before Mr. Pitts was the director of vendor relations, he was the manager of Hajoca's Fairfax, Virginia branch. Before that, Mr. Pitts was an outside sales person. (Pitts, Tr. 3293).
293. As director of vendor relations, Mr. Pitts negotiates programs with Hajoca's vendors, supervises Hajoca's supplier rebate programs, and represents Hajoca at industry events. Mr. Pitts's responsibilities include waterworks. (Pitts, Tr. 3293-3294).
294. Mr. Pitts regularly communicates with waterworks suppliers about Hajoca's waterworks purchasing goals. In Mr. Pitts's prior role as Hajoca Fairfax's manager, he also picked up waterworks products from suppliers if it was necessary for his customers. (Pitts, Tr. 3294).
295. Mr. Pitts advises individual Hajoca branches about supplier corporate rebate programs, cash discounts, and shipping terms, and the branch managers of those branches make final decisions on which products to purchase. (Pitts, Tr. 3295-3296).

### 3.6.5 The Distribution Group (TDG)

#### 3.6.5.1 Company Basics

296. The Distribution Group, also known as "TDG", is a "group of distributors that pool their buying power together to jointly earn rebates based on group volume, group purchases from vendors." (CX 2494 (R. Fairbanks, Dep. at 10); Minamy, Tr. 3188 (TDG is a group of independent Fittings Distributors that negotiate collectively with vendors)).
297. There are 32 independent Distributors that make up the membership of TDG. (CX 2494 (R. Fairbanks, Dep. at 10); Sheley, Tr. 3380 (TDG currently has 32 members)). TDG



- does not “have any solid written criteria” for membership but looks for “members that have better than \$10 million in annual purchases and that have good [financial] reputation in the industry.” (CX 2494 (R. Fairbanks, Dep. at 12)).
298. The purpose of TDG is to increase the negotiating power of individual Distributors who would otherwise not receive terms as favorable to them as the terms that suppliers extend to larger Distributors like HD Supply. (Sheley, Tr. 3394-3395).
299. TDG collectively negotiates for freight terms, payment terms, rebate programs, and extended purchasing agreements with 68 suppliers, including Fittings. (Sheley, Tr. 3378-3379; CX 2494 (R. Fairbanks, Dep. at 11) (“Our agreements are really only products that our members buy and resale, so they’re wholesale products. So they’re the same products they sell to their customers.”)).
300. { } (CX 2494 (R. Fairbanks, Dep. at 21), *in camera*; Sheley, Tr. 3393, *in camera* ( { })).
301. { } (CX 2494 (R. Fairbanks, Dep. at 21, *in camera*, 57-58); Sheley, Tr. 3379-3380 (TDG distributes TDG supplier rebates to TDG members on a pro-rata basis)).
302. TDG’s Vendor Committee reviews proposals from vendors and selects the vendors with whom TDG will have rebate programs. (CX 2494 (R. Fairbanks, Dep. at 12); Sheley, Tr. 3379-3380 (describing process of Vendors submitting proposals to TDG prior to September Vendor Selection Committee meetings)).
303. The vendor committee consists of nine members, each with an equal vote. (CX 2494 (R. Fairbanks, Dep. at 12-14)). Members of the vendor committee include, Dennis Sheley, Illinois Meter Company; Curtis Porter, Utility Supply Company; Michael Coryn, Utility Equipment Company; Jenks Hayes, Hayes Pipe & Supply; Peter Prescott, E.J. Prescott Company; Wayne Johnson, Dana Kepner Company; Dennis Johnson, Atlas Utility; Hod Fowler, H.D. Fowler Company; and Jeff Konen, Consolidated Supply Company. (CX 2494 (R. Fairbanks, Dep. at 13)).
304. Currently, TDG has contracts with 72 different waterworks suppliers. (Sheley, Tr. 3396-3397). TDG members must purchase certain percentages of their purchases from TDG vendors, but members are not required to purchase products from any specific vendor just because the vendor has a rebate program with TDG. (CX 2494 (R. Fairbanks, Dep. at 33) (“[M]embers can buy from wherever they want.”); Sheley, Tr. 3395-3396).

#### 3.6.5.2 Key Employees

305. Richard Frank Fairbanks II is the president of TDG. (CX 2494 (R. Fairbanks, Dep. at 10)). His primary responsibilities are to “manage relationships” between members and vendors or “act as a liaison,” to “facilitate negotiations” between members and vendors, to “manage the numbers of purchases and rebates,” and to “oversee the purchasing goals

and commitments.” (CX 2494 (R. Fairbanks, Dep. at 58-59, 61)). Mr. Fairbanks spends 80% of his time managing relationships or acting as a liaison between members and vendors. (CX 2494 (R. Fairbanks, Dep. at 59)).

306. Mr. Fairbanks was president of WR White, a distribution company, in the early 1990s. (CX 2494 (R. Fairbanks, Dep. at 50)). Mr. Fairbanks sold WR White in 2000. (CX 2494 (R. Fairbanks, Dep. at 55)). WR White’s parent company, Old Castle Precast, is a member of TDG. (CX 2494 (R. Fairbanks, Dep. at 52)).
307. Mr. Fairbanks has relationships with Larry Rybacki at Sigma, Dan McCutcheon at Star, and Rick Tatman and Jerry Jansen at Tyler Union. (CX 2494 (R. Fairbanks, Dep. at 65-66)). Previously Mr. Fairbanks had relationships with Victor Pais at Sigma and Matt Minamy at Star. (CX 2494 (R. Fairbanks, Dep. at 65-66)).

### **3.6.6 EJ Prescott, Inc.**

#### **3.6.6.1 Company Basics**

308. E.J. Prescott, Inc. is a waterworks Distributor headquartered in Gardiner, Maine. (CX 2501 (Prescott, IHT at 7-9)). E.J. Prescott has 27 branches located throughout Maine, New Hampshire, Rhode Island, Vermont, Massachusetts, Connecticut, Indiana, Ohio, and New York. (CX 2502 (Prescott, Dep. at 9); CX 2501 (Prescott, IHT at 8)).
309. Right before the passage of ARRA, 20% of E.J. Prescott customers were “[a] hundred percent domestic.” (CX 2501 (Prescott, IHT at 41)). E.J. Prescott’s fitting inventory in 2012 was 50% domestic and 50% imported. (CX 2502 (Prescott, Dep. at 11)).
310. E.J. Prescott purchases ductile iron pipe fittings from Tyler, Sigma, Star, and SIP. (CX 2502 (Prescott, Dep. at 15, 20)).
311. E.J. Prescott is a member of TDG. (RX-661 (Prescott, Dep. at 40)).
312. E.J. Prescott’s revenue in 2009 was approximately \$145 million and its revenue in 2010 was approximately \$140 million. In 2009, E.J. Prescott’s revenue from Fittings was “two to three million” and in 2010 it was approximately three to three-and-a-half million dollars. (CX 2502 (Prescott, Dep. at 10)).
313. E.J. Prescott competes with Ferguson, Maine Water, HR Prescott & Sons, and TI Sales in Maine. (CX 2502 (Prescott, Dep. at 62)).
314. E.J. Prescott’s market share in Maine is approximately 50%. (CX 2502 (Prescott, Dep. at 61) (“probably approaching 50, maybe even more”)).

#### **3.6.6.2 Key Employees**

315. Peter Prescott has been the CEO of E.J. Prescott for 10 years. (CX 2502 (Prescott, Dep. at 6-7)). From 1978 until he became CEO, Mr. Prescott was the president of E.J. Prescott. (CX 2502 (Prescott, Dep. at 7)).

316. Mr. Prescott started working in the waterworks industry in 1959 in sales, worked his way up to sales manager and then in 1978 purchased E.J. Prescott Company from his father with his two brothers-in-law. (CX 2501 (Prescott, IHT at 6)).

### **3.6.7 Groeniger & Company**

#### **3.6.7.1 Company Basics**

317. Groeniger & Company (“Groeniger”) was a waterworks Distributor that had 14 branches before it had to close five branches due to the economy. (CX 2509 (Groeniger, IHT at 24)). Ferguson purchased Groeniger in 2011. (CX 2510 (Groeniger, Dep. at 125)).
318. Groeniger’s nine California branches serviced the following metropolitan areas: Bakersfield; Fresno; Modesto Stockton; Sacramento; San Francisco Bay area; and Monterey Bay area. Santa Maria branch serviced the southwest coastal area; and the Chico location is now only a stocking yard. (CX 2509 (Groeniger, IHT at 25) (noting that Santa Maria branch services California southwest coastal area, and its Chico location is now only a stocking yard)).
319. Groeniger was a member of TDG. (CX 2510 (Groeniger, Dep. at 58-59)).
320. Groeniger purchased Fittings from McWane, Sigma, and Star. (CX 2510 (Groeniger, Dep. at 44)).
321. Groeniger’s competitors were Ferguson, R&B Supply, Camellia Valley Supply, McGuire & Juvet, Pace Supply, Ed Walsh Company, and Kenko Utility Supply Company. (CX 2510 (Groeniger, Dep. at 49)).
322. In 2010, Groeniger’s annual revenue was approximately \$92 million; \$2.9 million was from Fittings. (CX 2509 (Groeniger, IHT at 39-40)).
323. In 2010, Groeniger’s market share ranged from 25% to 60% in the markets it served in northern California. (CX 2510 (Groeniger, Dep. at 135) (“Hayward market share was probably in the 40 to 50, 40 to 45%.”); CX 2510 (Groeniger, Dep. at 145) (“So I think our market share in that area [Modesto market] was significant. Probably in the 60s, high 60 percentage points.”); CX 2510 (Groeniger, Dep. at 141) (over 50 percent in the Sacramento market); CX 2510 (Groeniger, Dep. at 148 (35% to 40% in the Chico market); CX 2510 (Groeniger, Dep. at 150) (60% in the Fresno market); CX 2510 (Groeniger, Dep. at 150) (50% in the Bakersfield market); CX 2510 (Groeniger, Dep. at 151) (60% in the Santa Maria market); CX 2510 (Groeniger, Dep. at 152) (25% to 30% in the Santa Paula market)).

#### **3.6.7.2 Key Employees**

324. Michael Groeniger was the president of Groeniger & Company from 1984 to 2011 when Groeniger & Company was purchased by Ferguson. (CX 2509 (Groeniger, IHT at 7); CX 2510 (Groeniger, Dep. at 125). Mr. Groeniger became the Chairman of the Board in 1988 or 1989. (CX 2509 (Groeniger, IHT at 7)).



336. {  
  
} (Sheley, Tr. 3431, *in camera*).
337. {  
  
} (Sheley, Tr. 3431-3432, *in camera*).
338. {  
  
} (Sheley, Tr. 3432, *in camera*).
339. {  
  
} (Sheley, Tr. 3432, *in camera*).
340. {  
} (Sheley, Tr. 3433, *in camera*).

3.6.8.2 Key Employees

341. Dennis James Sheley is the president and owner of Illinois Meter, and has been the owner of Illinois Meter for the last 28 years. (Sheley, Tr. 3375-3376).
342. Mr. Sheley’s responsibilities at Illinois Meter include: visiting with customers, overseeing purchasing and sales decisions, and ultimate authority on the selection of waterworks suppliers, including Fittings suppliers. (Sheley, Tr. 3376-3378).
343. Mr. Sheley is the chairman of the board of TDG, and one of nine equal voting members of TDG’s vendor selection committee. (Sheley, Tr. 3379).

**3.6.9 C.I. Thornburg Company, Incorporated**

3.6.9.1 Company Basics

344. C.I. Thornburg Company, Incorporated (“C.I. Thornburg”) is a waterworks Distributor, and is a member of TDG. (CX 2489 (Morrison, IHT at 6-8)).
345. C.I. Thornburg has grown from one branch in 1973 to five branches: two in West Virginia, two in Kentucky and one in Tennessee. (CX 2489 (Morrison, IHT at 19)).
346. C.I. Thornburg’s market share in West Virginia is 75-80%. (CX 2489 (Morrison, IHT at 22)). C.I. Thornburg competes for sales to contractors with Ferguson Enterprises, Inc.

and HD Supply in West Virginia. Ferguson is primarily winning the rest of the West Virginia business. (CX 2489 (Morrison, IHT at 23-24)).

347. In 2010, C.I. Thornburg's total waterworks revenue was approximately \$50 million and its revenue on Fittings was \$1 to \$2 million. (CX 2489 (Morrison, IHT at 24)).
348. C.I. Thornburg purchases 85% of their imported Fittings from Sigma, 10% from Star and 5% from Tyler. (CX 2489 (Morrison, IHT at 60)).
349. C.I. Thornburg is a member of TDG. (CX 1362 at 002).

#### 3.6.9.2 Key Employees

350. Edward Morrison Jr. is the president of C.I. Thornburg and has been since 1991. (CX 2489 (Morrison, IHT at 6)). Mr. Morrison has worked in the waterworks industry for 39 years. (CX 2489 (Morrison, IHT at 6)).
351. Mr. Morrison's role as president includes overseeing administrative functions, serving on various industry boards, vendor relations, helping with pricing and contractor sales, and municipal sales. (CX 2490 (Morrison, Dep. at 15) ("everything that's involved in the day-to-day operation of the business")). Mr. Morrison has personal knowledge of every aspect of the day-to-day operation of running a waterworks distribution business. (CX 2489 (Morrison, IHT at 7)).

### **3.6.10 Utility Equipment Company**

#### 3.6.10.1 Company Basics

352. Utility Equipment Company ("UECO") is a Distributor that sells all materials related to underground water, sewer, and storm water retention and detention systems. (CX 2544 (Coryn, Dep. at 8)).
353. UECO has five Iowa branches located in Bettendorf, Dubuque, Des Moines, Sioux City, and Waterloo; one branch in Omaha, Nebraska; and another branch in Peru, Illinois. (CX 2544 (Coryn, Dep. at 8-9)).
354. UECO is a member of TDG. (CX 1362 at 002; RX-703 (Coryn, Dep. at 47)).
355. Between 2007 and 2011, UECO's annual revenues ranged from approximately \$25 million to approximately \$33 million, and its annual Fittings revenues ranged from approximately \$1 million to approximately \$1.5 million. (CX 2544 (Coryn, Dep. at 11-12)).

#### 3.6.10.2 Key Employees

356. Michael R. Coryn is the president of UEC, which is a family company, and has been for 17 years. (CX 2544 (Coryn, Dep. at 6)). Mr. Coryn's responsibilities as president include making all major business decisions and involvement in purchasing and

inventory decisions and sales. (CX 2543 (Coryn, IHT at 9); CX 2544 (Coryn, Dep. at 7)).

### **3.6.11 Dana Kepner Company**

#### **3.6.11.1 Company Basics**

357. Dana Kepner Company (“Dana Kepner”) is a Distributor that sells waterworks products, including Fittings, to End Users. (CX 2492 (Johnson, Dep. at 9, 39, 79)).
358. Dana Kepner has 15 branches: one in Montana, one in Wyoming, three in Colorado, three in West Texas, six in Arizona, and one in Nevada. (CX 2492 (Johnson, Dep. at 9)).
359. Dana Kepner is a member of TDG. (CX 1362 at 001).
360. Between 2009 and 2011, Dana Kepner’s annual revenue has ranged from approximately \$73 million to approximately \$78 to \$80 million. (CX 2492 (Johnson, Dep. at 10)).
361. From 2009 to 2011, 4.0% to 4.5% of Dana Kepner’s revenue has come from Fittings. (CX 2492 (Johnson, Dep. at 10)).

#### **3.6.11.2 Key Employees**

362. Wayne Edward Johnson is president and part owner of Dana Kepner. Mr. Johnson has been President since 1994 and has worked for the company since 1991. (CX 2492 (Johnson, Dep. at 6)). Mr. Johnson’s responsibility as president of Dana Kepner is “[t]he overall supervision of the company,” including overseeing the purchasing of Fittings. (CX 2492 (Johnson, Dep. at 7-8)).

### **3.7 DIFRA**

363. The Ductile Iron Fittings Research Association (“DIFRA”) is an Alabama nonprofit corporation incorporated on January 12, 2007. (CX 1480 at 007; Brakefield, Tr. 1220, 1227).
364. DIFRA’s members are McWane; Sigma; Star; and U.S. Pipe. (Joint Stipulations of Fact, JX 0001 ¶ 17 (four members); Brakefield, Tr. 1227-1228 (DIFRA remains in existence today)).
365. In 2008, Mr. Pais, Mr. Rybacki, and Mr. Brakefield were involved with DIFRA on Sigma’s behalf, Mr. McCutcheon was involved with DIFRA on Star’s behalf, Mr. Tatman was involved with DIFRA on McWane’s behalf, and Mr. Crawford was involved with DIFRA on behalf of U.S. Pipe. (Brakefield, Tr. 1220-1221 (Mr. Bhattacharji’s involvement was “low-key”), 1270-1271; Tatman, Tr. 475; McCutcheon, Tr. 2416; CX 2541 (Crawford, Dep. at 9-10)).

### 3.7.1 Bradley Arant

366. Thad G. Long, K. Wood Herren, and Michael D. McKibben of the Birmingham, Alabama law firm Bradley Arant Rose & White (“Bradley Arant”) served as DIFRA’s attorneys, and helped to structure the information exchange operated by DIFRA. (CX 2497 (Long, Dep. at 8-9) (describing initial involvement in DIFRA formation); CX 1083 at 002 (Thad Long email describing Bradley Arant as counsel to DIFRA); CX 1473 at 001 (first DIFRA meeting minutes); CX 0048 at 001 (third DIFRA meeting minutes); Tatman, Tr. 485).

### 3.7.2 Sellers Richardson

367. DIFRA engaged the accounting firm of Sellers, Richardson, Watson, Haley & Logan, LLP (now known as Sellers, Richardson, Holman & West LLP) (“SRHW”) of Birmingham, Alabama to compile members’ Fittings shipment data and to report aggregated monthly data to each member. (CX 1333 at 003, 005 (January 2007 engagement letter describing data aggregation function); Brakefield, Tr. 1236 (DIFRA retained the accounting firm in January 2007); CX 0160 at 002 (Long providing members with instructions for reporting data to SRHW in April 2008)).
368. Richard Wallace Haley is an audit partner at SRHW, and was the senior person at SRHW responsible for providing services to DIFRA. (RX-679 (Haley, Dep. at 7, 9)). Margaret Powell, a manager in SRHW’s audit department, and Bree Holland, a senior auditor at SRHW, were the primary contacts with DIFRA members. (CX 2520 (Haley, Dep. at 49-50)).

### 3.8 AWWA

369. The American Water Works Association is a waterworks industry trade association (CX 2537 (McCutcheon, IHT (Vol. 1) at 30)). The AWWA establishes certain standards for the production of Fittings for use in the United States; all fittings have to comply with AWWA standards. (Minamyer, Tr. 3137; Tatman, Tr. 878; CX 2522 (Agarwal, Dep. at 37); CX 2508 (Kuhrts Dep. at 30-31), *in camera* ( {
- }).
370. AWWA hosts an annual convention and trade show that is widely attended by suppliers, Distributors, municipalities, contractors, and engineers. (Pais, Tr. 1899-1901). The annual AWWA event is both socially- and business-oriented. Industry participants (almost 500 exhibitors) exhibit their products at booths, and there are technical sessions as well. (Pais, Tr. 1899-1901).



## 4 Industry Background

### 4.1 Fitting Basics

#### 4.1.1 Applications

371. Fittings are used in pressurized water distribution and treatment systems to join pipes, valves and hydrants, and to change, divide or direct the flow of water. (Joint Stipulations of Fact, JX 0001 ¶ 6; Tatman, Tr. 219-220; CX 2494 (R. Fairbanks, Dep. at 79); CX 2502 (Prescott, Dep. at 51); CX 2489 (Morrison, IHT at 40); Thees, Tr. 3052-3053).
372. Pressurized pipe applications, which include all potable water lines and some sewer lines, almost always use Fittings. (Webb, Tr. 2710-2711). Pressurized applications are those applications where the flow is not caused by gravity, and include pressurized water, pressurized reclaimed water, pump stations, treatment plants, and pressurized force main sewers. (Thees, Tr. 3053). All water lines are pressurized and some sewer lines are pressurized. (Thees, Tr. 3053).
373. Fittings are relatively rarely used in gravity pipe lines; plastic fittings are more prevalent in those applications. (Webb, Tr. 2711-2712; CX 2489 (Morrison, IHT at 40) (Fittings are typically not used if the pipeline is not pressurized, as “[i]t would be overkill”).
374. Fittings are used for both “line” (*i.e.*, underground) and “plant” projects. (Webb, Tr. 2710).
375. “Plant” work refers to waterworks projects for water treatment plants, pumping stations, or wastewater treatment plants, which process water so that it can be consumed and process sewage so that it is clean when it is dumped. (CX 2502 (Prescott, Dep. at 48-49); Webb, Tr. 2710; Tatman, Tr. 227-228)). Plant work often involves the use of Fittings in systems that are indoors. (CX 2480 (Napoli, Dep. at 19-20)).
376. Plant work generally uses the largest size fittings; uses many different, uncommonly used configurations; and has special coating and painting requirements. (Pais, Tr. 1913-1914).
377. “Line” work refers to waterworks projects related to pipes that are located under the street in order to move water from water supply facilities to neighborhoods, or from neighborhoods to sewage facilities. (CX 2502 (Prescott, Dep. at 48); Webb, Tr. 2710). In comparison to plant work, “underground” distribution network waterworks projects use more predictable configurations and numbers of Fittings. (Pais, Tr. 1913; CX 2480 (Napoli, Dep. at 19-20) (describing line work as conveying water to and from neighborhoods, and as simpler and more straightforward than plant work)).

#### 4.1.2 Shapes, Sizes, and Configurations

378. There are several thousand unique configurations of Fittings in different shapes, sizes and coatings. (Joint Stipulations of Fact, JX 0001 ¶ 8). Each unique configuration has its own identifier and is a unique item or stock-keeping unit (SKU). (Tatman, Tr. 463; CX 2500 (Swalley, Dep. at 104-105) (explaining that an SKU is a unique item). McWane

estimates that it carries approximately 2,000 Fittings SKUs (RX-637 (Jansen, Dep. at 87)).

#### 4.1.2.1 Shape and Size

379. Fittings come in several shapes, including elbows, reducers and “T’s.” (Tatman, Tr. 220-221).
380. Typically, ductile iron pipe fittings range in size from two or three inches to 48 inches. (CX 2521 (Agarwal, IHT at 64-65); CX 2491 (Johnson, IHT at 19-20) (“[W]hat we sell is basically 3 inch through 48 inch. . . . When you get into huge plants and huge transmission lines, you go up to 108 inches and that type. We don’t really get involved in that.”); CX 2525 (Minamyer, IHT at 95-96) (“three through 60”); CX 2483 (Tatman, IHT at 23) (“[W]ithin Union Foundry, we produced from three inches to 30 inches. . . . We do not manufacture currently any 36 through 48.”)).
381. Two to twelve inch Fittings, or “small-diameter” Fittings, are predominately used for housing subdivisions and private contracting work. (Brakefield, Tr. 1279-1280; CX 1479; CX 2477 (Jansen, Dep. at 89) (describing 2” to 12” fittings as small-diameter)).
382. End Users of Fittings in the 14” through 24” range are generally municipalities or plants with long transmission lines funded by State Revolving Fund or EPA money. (Brakefield, Tr. 1281; CX 1479).
383. Fittings 24” in diameter and below make up approximately { } of the overall market for ductile iron pipe fittings. (See CX 1895 at 001, 005, *in camera* (ACIPCO data showing 2008 ACIPCO sales of { } tons of diameter 24” and below and { } tons of over 24”); CX 2486 (Burns, Dep. at 159-160) (describing CX 1895); RX-127 at 002 (DIFRA data showing other suppliers’ combined 2008 sales of { } tons of diameter 24” and below and { } tons of over 24”) (using the total tons shipped in calendar year 2008 from these documents, { } are of diameter 24” and below); CX 2502 (Prescott, Dep. at 76-77) (85-95% of fittings sales are below 24”); CX 2510 (Groeniger, Dep. at 160-161) (explaining that Fittings below 24” “encompasses almost the whole band of fittings . . . almost a hundred percent”); CX 2492 (Johnson, Dep. at 71) (“The vast majority of them [Fittings] are under 24 [inches].”); CX 2504 (Thees, Dep. at 135) (Fittings below 24” “should cover the vast majority of what we sell”); CX 2538 (McCutcheon, IHT (Vol. 2) at 322) (fittings over 24” in diameter are generally considered to be a large diameter and an unusual size for the industry)).
384. Historically, the industry has always differentiated Fittings of 3” to 24” in diameter from Fittings of 30” or more in diameter. (CX 2533 (Bhargava, Dep. at 43) (“Q. . . . why does Star divide the utility fittings into the two categories, the three-inch to 24-inch and the 30-inch and up? A. That is industry practice also.”)).
385. Fittings above 24” in diameter, or “large-diameter” fittings, are predominately for public works jobs for large treatment plants or for moving water through large transmission lines. (Brakefield, Tr. 1281; CX 1479; CX 2477 (Jansen, Dep. at 90) (describing fittings over 24” in diameter as large-diameter)).

#### 4.1.2.2 End Configuration

386. There are several different types of Fittings “end configurations,” including “flanged,” “mechanical joint,” and “push-on.” (Webb, Tr. 2712-2713; Thees, Tr. 3052-3055)).
387. “Flanged” Fittings are flat faced Fittings that connect to a flanged ductile iron pipe with nuts and bolts and a flat gasket sandwiched between the two flanges that provides a sealed joint. (Thees, Tr. 3054; Webb, Tr. 2713 (Flanged Fittings have a flanged end and are joined together with nuts and bolts)). Flanged fittings do not require an external restraint, and bolt directly onto a pipe. (CX 2480 (Napoli, Dep., at 22-23)).
388. Flanged Fittings are typically used in above-ground applications, such as plants and lift stations. (Webb, Tr. 2713; Tatman, Tr. 227-228; Thees, Tr. 3054; CX 2502 (Prescott, Dep. at 18); CX 2480 (Napoli, Dep. at 22-23); CX 2477 (Jansen, Dep. at 78, 80) (flanged Fittings are typically used in plants, and are not recommended for below-ground applications)). State laws often forbid using flanged Fittings underground because their construction with nuts and bolts is prone to corrosion when the Fittings are buried. (Brakefield, Tr. 1280-1281).
389. “Mechanical joint” (or “MJ”) Fittings do not employ nuts and bolts to connect to the ductile iron pipe, but use a gland that compresses the Fitting gasket against the ductile iron pipe as pressure flows through the system and an external restraint that secures the pipe to the fitting. (Tatman, Tr. 228; Webb, Tr. 2713; Thees, Tr. 3054-3055; CX 2480 (Napoli, Dep. at 22-23)).
390. Mechanical joint Fittings are typically used for non-plant, underground applications. (Tatman, Tr. 228; Webb, Tr. 2713; CX 2502 (Prescott, Dep. at 50); CX 2522 (Agarwal, Dep. at 84)).
391. “Push-on” Fittings are Fittings that connect only by being pushed on to the pipe. (Webb, Tr. 2713).
392. Push-on Fittings are used in underground applications. (Webb, Tr. 2713-2714; CX 2522 (Agarwal, Dep. at 84)).

#### 4.1.2.3 Pressure Rating

393. There are “full-body” and “short body” Fittings (Webb, Tr. 2712). Short-body Fittings are smaller and have thinner walls than Full-body Fittings. Full-body Fittings are used less often than short-body Fittings. (Webb, Tr. 2712-2713; CX 2477 (Jansen, Dep. at 83)).
394. Full-body Fittings are commonly referred to as C110 Fittings. (CX 2510 (Groeniger, Dep. at 159-160)). A C110 Fitting is a longer, thicker, and heavier Fitting used in approximately 10% of Fittings jobs. C110 is a type of AWWA specification. (McCutcheon, Tr. 2292; CX 2477 (Jansen, Dep. at 83)).

395. Short-body Fittings are commonly referred to as C153 Fittings. A C153 Fitting is thinner and lighter than a C110. C153 is a type of AWWA specification. (McCutcheon, Tr. 2292; CX 2477 (Jansen, Dep. at 83-84)).

396. C110 and C153 Fittings are pressure rated up to 350 pounds per square inch, or PSI. (Thees, Tr. 3053).

#### 4.1.2.4 Coating and Lining

397. Suppliers generally line flanged Fittings with cement, but can also line them with polyethylene or epoxy to prevent corrosion. (Thees, Tr. 3055); CX 2509 (Groeniger, IHT at 42) (“special districts require epoxy lining”); CX 2491 (Johnson, IHT at 18) (“where they’re running sewer material through it that may be epoxy lined or something like that”).

#### 4.1.2.5 “A”, “B”, and “Oddball” Fittings

398. Of the many configurations of Fittings, a small number of Fittings cover a large percentage of the volume of Fittings sold in the market. (Tatman, Tr. 225).

399. Approximately 80% of the demand for Fittings may be serviced with approximately 100 or fewer commonly used sizes and configurations of Fittings. These Fittings are commonly referred to in the industry as “A” or “B” Fittings. (Joint Stipulations of Fact, JX 0001 ¶ 9; CX 0120 at 10; Tatman, Tr. 225; Bhargava, Tr. 3010-3011 {  
}; CX 2522 (Agarwal,  
 Dep. at 73), *in camera* {  
 }).

400. A and B items are relatively fast-moving Fittings items {  
} (Bhargava, Tr.  
 3010-3011, *in camera* {  
}; CX 2477 (Jansen, Dep. at 91) (A-items are frequently sold  
 items); Webb, Tr. 2720-2722 (testifying that Distributors sell A-items quickly, and B-  
 items are sold quickly, although not as fast as A-items); Thees, Tr. 3057 (A-items are the  
 Fittings customers most commonly use; customers use B-items less than A-items); CX  
 2533 (Bhargava, Dep. at 62); CX 2522 (Agarwal, Dep. at 73), *in camera* (describing A-  
 items as between 4” and 12” in diameter)).

401. “C” and “D” items are very low volume items (*e.g.*, items for which McWane sells fifty or fewer per year), and are relatively expensive to manufacture. (Tatman, Tr. 225-226; *see* McCutcheon, Tr. 2292-2293; CX 2533 (Bhargava, Dep. at 62)).

402. “Oddball” Fittings are Fittings that are not routinely used on every project, and that End Users might request once a year or every five years. Distributors prefer not to stock Oddball Fittings. (Webb, Tr. 2721-2722; CX 2513 (Webb, IHT at 160); Thees, Tr. 3057-3058; Thees, Tr. 3057 (oddball Fittings are used only rarely)).

### 4.1.3 Manufacturing

403. Generally, a Fitting is manufactured through the following steps: melting scrap metal in a cupola; transferring the molten metal to a casting area via a transfer ladle; fitting cores into molds so that the molded fitting is hollow; pouring the molten iron; shaking the casting out of the mold; machining off gates and risers, and creating bolt holes; cleaning; preparing for cement lining; painting; packaging; and shipping. (Brakefield, Tr. 1412-1414; Rona, Tr. 1488 (steps that may need to be performed after the casting of a Fitting include machining, cement lining and painting)).
404. “Patterns” are made of aluminum, stainless steel, or wood. Manufacturers use patterns to make impressions in sand for pouring molten iron that takes the shape of the pattern. (CX 2522 (Agarwal, Dep. at 74)).
405. Disamatic (or “DISA”) molding lines are automated and represent the most efficient and economical manufacturing process for small-diameter Fittings. (Tatman, Tr. 435; Rona, Tr. 1489).
406. McWane’s “DISA” automated molding unit for Fittings castings in Anniston, Alabama cost \$20 million, and can produce fittings up to 8” in diameter. (Tatman, Tr. 435). DISA is a brand of fittings molding equipment. (Tatman, Tr. 447).
407. “Cope and drag” is a type of molding process for Fittings production. Cope and drag patterns are molds where the Fitting casting is produced in halves that are put together. (Rona, Tr. 1509-1510). The foundry pours molten iron into the cope and drag pattern to produce a Fitting. A foundry cannot produce a casting that is larger than the heights of the cope and drag put together. (CX 2505 (Frazier, Dep. at 55-56)).
408. “Lost foam” is another Fittings production method, and involves placing styrofoam replicas of Fittings in casting sand. Molten metal is then poured into the sand, and the metal replaces the styrofoam. (Rona, Tr. 1510).
409. A flask is a steel vessel that holds a Fittings pattern during the manufacture of a Fitting. (Rona, Tr. 1511, 1549-1550; CX 0282 at 008, 011 (showing lost foam flask and two Domestic lost foam Fittings produced by Sigma)).

### 4.1.4 Related Waterworks Products

410. The primary products used in most waterworks projects are ductile iron and PVC pipe. Other waterworks products include the following: high density polyethylene pressurized pipe; drainage pipe; concrete pipe; gate valves; fire hydrants; butterfly valves; service brass; marking tape; water meters; joint restraints; glands; and mechanical joint and flanged Fittings. (Thees, Tr. 3050-3051; *see also* Sheley, Tr. 3386 (primary waterworks products are: pipe, valves, fire hydrants, service material, repair clamps, couplings, and Fittings); CX 2477 (Jansen, Dep. at 63-64) (listing pipes, fittings, valves, glands, meters, restraints, nuts, bolts and accessories as necessary items for waterworks projects)).

411. “Glands” are made of ductile iron, and are used to create a seal between a pipe and a mechanical joint Fitting. (Tatman, Tr. 458-461; CX 1653 at 004; CX 2477 (Jansen, Dep. at 67)).
412. “Joint restraints,” like glands, are made of ductile iron and also create a seal between a pipe and a fitting. In addition, a joint restraint is bolted on to both the pipe and the fitting in order to keep pipes from blowing out of fittings when the pipe is under pressure. (Tatman, Tr. 460-461; CX 2477 (Jansen, Dep. at 66-67)).
413. “Accessories” include various products associated with Fittings, such as bolts, nuts, gaskets, and flanges. (McCutcheon, Tr. 2255). Glands are considered to be a Fitting accessory. (Tatman, Tr. 461). McWane sometimes sells Fittings with accessories. Fittings alone and Fittings with accessories have different price points and SKUs associated with them. (Tatman, Tr. 462-463).
414. “Municipal castings” is a category that consists of products such as manhole covers and drainage grates. (CX 2539 (McCutcheon, Dep. at 8); CX 2543 (Coryn, IHT at 21-22)).

## **4.2 Fitting Sales Basics**

### **4.2.1 Fittings Are a Commodity Product Produced Pursuant to Industry Wide Standards**

415. Fittings are homogeneous commodity products produced to American Water Works Association (“AWWA”) standards and specifications. (Joint Stipulations of Fact, JX 0001 ¶ 7; Answer at ¶ 27(a); Rybacki, Tr. 1114 (“We’re selling a commodity. Our products are commodity driven.”); CX 2477 (Jansen, Dep. at 18) (referring to Fittings as a commodity product)).
416. Any Fitting that meets an AWWA specification is functionally interchangeable with any other Fitting that meets the same specification. (Tatman, Tr. 878-879 (Tatman referring to Domestic versus imported Fittings: “They’re exact one for one. . . . It’s corn. One kernel of corn, another kernel of corn. . . . There’s no difference in how you apply or use the product.”); Pais, Tr. 1922-1923 (“[T]he product is interchangeable. It’s a common product. Yes, we like to believe our quality is better, our service is better, but at the end of the day, that really doesn’t translate into a premium.”); CX 2477 (Jansen, Dep. 141) (Fittings are commodity products); Rybacki, Tr. 3572 (“our products are commodities, pretty much all work the same”)).
417. Fittings produced by Sigma, McWane and Star that meet the same AWWA specifications are interchangeable with each other. (CX 2477 (Jansen, Dep. at 86)).
418. Imported Fittings are equal in quality to Domestic Fittings. (CX 2535 (Bhutada, Dep. at 13-14) (noting only difference between imported and Domestic Fittings is place of origin)). Specifically, there is no difference in form or functionality of Domestic and imported Fittings. (RX-694 (Bhutada, Dep. at 14); Webb, Tr. 2730-2731 (there is no functional difference between Domestic and imported Fittings)).

#### 4.2.2 Demand Inelasticity

419. Demand for Fittings is largely driven by housing-related infrastructure construction and by construction of wastewater treatment plants, which in turn are driven by such factors as the rate of housing growth, and the age and condition of existing systems. (Joint Stipulations of Fact (JX 0001) ¶ 11; CX 2480 (Napoli, Dep. at 20-21) (demand for Fittings related to housing demand)).
420. Fittings are a small sub-segment of the overall waterworks market, generally comprising 5% or less of the total cost of a typical waterworks project. (Joint Stipulations of Fact, JX 0001 ¶ 10; Tatman, Tr. 220-221); (CX 2538 (McCutcheon, IHT (Vol. 2) at 344) (A 10% increase in price of Fittings would not prompt an End User to forego the purchase of Fittings because the Fittings are a small portion of the total cost of the project to the End User); CX 2477 (Jansen, Dep. at 61) (estimating that Fittings comprise approximately 3% to 5% of materials used in waterworks projects)). Fittings account for only 1.5% to 2% of the cost of the materials in a typical line job. (CX 2538 (McCutcheon, IHT (Vol. 2) at 344-345)).
421. Because Fittings represent a small portion of a Distributor's overall bid for a waterworks project, the price of Fittings is not a major factor in determining whether a Distributor wins the bid. (CX 2489 (Morrison, IHT at 37-38) ("So you're not going to get away with a big price discrepancy on anything, including fittings, but fittings at the time of the bid is not the driving factor.")). The price of the pipe (PVC or ductile) is the primary factor when pricing a bundle of goods. (CX 2489 (Morrison, IHT at 37) ("the thing that [contractors] gauge that they're most interested in is the pipe price. . . . that's what everybody's maneuvering and manipulating on the day of the bid"))).
422. Demand for Fittings is inelastic; End User demand is not dependent on the price of the Fitting. In other words, a decrease in Fittings prices has not caused an increase in demand, nor has an increase in Fittings prices caused a decrease in demand. (CX 2477 (Jansen, Dep. at 81-82 (testifying that he has not observed the demand of Fittings being affected by the price of Fittings); *see also* Webb, Tr. 2723 (testifying that he has "never seen a correlation with any of our product lines up or down that impacted the demand side."); Thees, Tr. 3058 ("Q. When the price of fittings go down, do your sales of fittings go up? A. No. Q. And when the price of fittings go up, do your sales of fittings go down? A. No."); CX 2538 (McCutcheon, IHT (Vol. 2) at 344) (demand for Fittings is inelastic, because there is no natural substitute for Fittings that is within the price range of Fittings)).
423. Engineers that write specifications for Fittings are usually not concerned about price. (CX 2523 (Bhattacharji, Dep. at 134)).
424. In a September 2008 marketing strategy memorandum, Mr. Pais explained that price elasticity for Fittings is low, and "lower prices don't necessarily translate into proportionately higher volume." (CX 1155 at 003 (stressing the need for "a certain amount of discipline and a selectively aggressive sales strategy" because of low demand elasticity)).

### 4.2.3 Bidding Process

425. Some municipalities stock inventory and when they buy inventory they put out a list and buy by line items. (CX 2502 (Prescott, Dep. at 16)).
426. Some municipalities put up for bid an annual contract for specific items, for example, Fittings, hydrants, valves, PVC pipe or ductile iron pipe. (CX 2480 (Napoli, Dep. at 37-41) (describing the annual contract bidding process for some municipal governments and municipal water authorities)). Whoever is the low bidder on the contract holds the price for that item and supplies the item to the municipality for the year. (CX 2509 (Groeniger, IHT at 46)). Most waterworks projects are individual projects subject to a bidding process. (CX 2516 (Sheley, Dep. at 108-109); CX 2504 (Thees, Dep. at 139)).

#### 4.2.3.1 Specifications

427. The Fittings bidding process on an individual waterworks project begins with an End User completing a specification and publicly or privately requesting bids from contractors. (Thees, Tr. 3065-3066).
428. When a municipality or regional water authority undertakes a waterworks project, it will generally issue specifications for all of the pipes, valves, hydrants, Fittings and related waterworks equipment needed for the project, and seek bids from contractors for its completion. (CX 2546 (Gibbs, Dep. at 61-62) (“A particular project you’re asked to give a bid on includes everything on the project.”); CX 2504 (Thees, Dep. at 138-140) (Once a project is “put on a bid list” the contractor begins “soliciting bids from suppliers for the various components that make up that project.”)).
429. Project consulting engineers or municipal water districts (or both) write Fittings specifications. (Minamyer, Tr. 3136).
430. To become an approved supplier for a particular water district End User, a supplier may need to call the district, give them a sales pitch and ask them to be included in their specifications. (Minamyer, Tr. 3137).
431. If a particular brand of a waterworks item (*e.g.*, hydrants, valves, or meters) is listed in a specification, it is difficult to change the specification. (CX 2502 (Prescott, Dep. at 75) (specification is “very, very hard to break”)). A specification for Fittings may, but does not typically, specify a particular brand or supplier of Fittings. (CX 2510 (Groeniger, Dep. at 170) (“Q. So what was the language used to specify a domestic fitting prior to the ARRA period? A. Well, they would use an AWWA standard, not list a manufacturer[.]”); CX 2492 (Johnson, Dep. at 82) (“Q. Do they ever specify a supplier of a fitting? A. Occasionally on very – if it’s a specialized valve or a fire hydrant or something like this, yes. Q. Do you ever see a supplier’s name for the fittings? A. Very seldom if at all.”); Thees, Tr. 3068 (explaining that specifications “state whatever AWWA conforming” standard is required, which determines whether the “fitting is acceptable” on a project)).
432. Some End Users are willing to accept Fittings from different suppliers on the same project. (CX 2501 (Prescott, IHT at 69) (explaining that in the New England markets it is



“very, very rare” to have an engineer that wants “all of the fittings to be the same name”); CX 2489 (Morrison, IHT at 38) (“Q. Are your customers willing to accept the ductile iron pipe fittings of several different suppliers on a particular project? A. Yes.”); CX 2527 (Pais, IHT at 47) (“As long as they [Fittings] meet the appropriate standards, which in most cases is AWWA, sure. They’re meant as interchangeable standards.”)).

433. If a specification allows multiple brands of Fittings, it is the Distributor that decides which Fittings to use for the waterworks project. (CX 2477 (Jansen, Dep. at 139)).
434. Once contractors receive the specification, they solicit bids and other assistance from Distributors that can supply the various products for that project. (CX 2504 (Thees, Dep. at 139)).
435. Distributors provide the price for each product individually when responding to a project bid. (CX 2502 (Prescott, Dep. at 16)).

#### 4.2.3.2 Material Takeoffs

436. A contractor may request a “material takeoff” from a Distributor when the contractor wants to submit a bid for the project. (CX 2502 (Prescott, Dep. at 96 (“we’ll do a takeoff to the material that’s required for that project”))).
437. A “material takeoff” is a process whereby a Distributor’s sales personnel look at a project’s blueprints and gather a list of materials that the End User will need to build the project. (Thees, Tr. 3037, 3066). After performing a material takeoff, the Distributor provides the bidding contractor with a quotation for all of the waterworks products needed to complete the project. (Thees, Tr. 3066-3067).
438. Distributors typically do not specify the manufacturer of the Fittings when providing a material take off. (Thees, Tr. 3048 (“it’s not out of the realm of possibility that fittings may be specified by brand, but that is not as common as what you would see on . . . valves, hydrants and service brass.”); CX 2502 (Prescott, Dep. at 97-98) (“So we don’t even say that, we just say this is a six by six mechanical joint ductile iron cement line T.”); CX 2492 (Johnson, Dep. at 82) (“Q. Do you ever see a supplier’s name for fittings? A. Very seldom if at all.”)).

#### 4.2.3.3 Submittals

439. A “submittal” is a packet of information provided by a Distributor to an End User after the Distributor has been selected that identifies the types of products and brands that are being supplied. The End User will review the submittal to make sure it conforms to the specifications. (Thees, Tr. 3066-3069; CX 2489 (Morrison, IHT at 38) (Distributors provide a submittal after the contractor wins the bid and places a purchase order with the Distributor)). Distributors supply whatever brand was listed on the submittal documents. (CX 2489 (Morrison, IHT at 38) (providing example of a submittal as stating, “These fittings are going to be from Tyler or SIGMA or Star.”))).

#### 4.2.3.4 Purchase Orders

440. After a contractor wins its bid, it contacts the Distributor to discuss scheduling, and to submit either a verbal or written purchase order. (Thees, Tr. 3069-3070). After it places the purchase order, the contractor will call to request that the Distributor release product, and the Distributor will supply product to the waterworks project either from its stock, or via a direct purchase order from the Distributor to a supplier who will deliver the product to the project site. (Thees, Tr. 3069-3070).

#### 4.2.4 **Lowest Price Fittings Typically Win the Sale**

441. Because Fittings are a commodity, price and relationship are the dispositive factors in making a Fittings sale. (Minamyer, Tr. 3135 (“[W]e were selling a commodity, and pretty much everybody’s fitting was the same, so it was -- they would buy from who had the best price and who they liked the best.”)).
442. Fittings suppliers believed that price was increasingly becoming the most important factor when selling Fittings to Distributors. (CX 2477 (Jansen, Dep. at 143)).
443. Typically, the Fittings supplier with the lower price wins the job. (CX 2480 (Napoli, Dep. at 60)).
444. From 2005 through 2009, Star believed that it needed to be the lowest priced competitor to win Fittings business. (Minamyer, Tr. 3146). If a customer provided Star with a competitor’s lower prices, Star would react to that pricing by lowering its own price. (Minamyer, Tr. 3148-3150). The Fittings offered by McWane, Sigma, and Star are basically identical in terms of function or quality and therefore Star could not charge a higher price than that charged by McWane and Sigma except in limited situations in filling certain specific orders. (CX 2525 (Minamyer, IHT at 48)). Star could rarely justify charging a higher price for Fittings on the basis of providing better service than McWane or Sigma. (CX 2525 (Minamyer, IHT at 48)).

#### 4.2.5 **Lag Between Sale and Shipping**

445. The amount of time from the initial Fittings bid or order to final delivery is not systematic, but is generally inconsistent and varies from market to market, ranging from immediate delivery to 30, 60, or 90 days. (CX 2502 (Prescott, Dep. at 16) (“from zero to it could be as much as two months. That would be very uncommon, but I – the average probably two to three weeks”); CX 2504 (Thees, Dep. at 93) (explaining that Fittings can be shipped “next-day air”); CX 2522 (Agarwal, Dep. at 89), *in camera* { })).
446. Fittings invoice data typically reflects Fittings purchases by Distributors that occurred 30-60 days prior to the invoice. (CX 1181 at 003 (“Invoice data reflects market pricing of 30-60 days prior.”)).

### 4.3 Domestic and Open Specifications

447. End Users writing the specifications determine whether a job requires Fittings that are manufactured in the United States (“Domestic Fittings”).<sup>2</sup> (Answer at ¶ 19; Webb, Tr. 2732-2733).
448. A “Domestic” or “Domestic-only” specification or project requires Domestic Fittings to be used for that waterworks project, either because of End User preference or because it is required by municipal, state, or Federal law. (Joint Stipulations of Fact, JX 0001 ¶ 13; Tatman, Tr. 236, 273; McCutcheon, Tr. 2265-2266). Such specifications (“Domestic-only Specifications”) have been increasing for a variety of reasons, including patriotism, a concern for the unemployment rate in the United States, and other reasons. (CX 2537 (McCutcheon, IHT (Vol. 1) at 91)).
449. The entire Commonwealth of Pennsylvania, federal government projects, air force bases, and some municipalities around the country require Domestic Fittings, even without the Buy American provisions in ARRA. (McCutcheon, Tr. 2267-2268; CX 2523 (Bhattacharji, Dep. at 127) (Pennsylvania has a Buy American law); CX 2531 (Rybacki, Dep. at 270-272) (discussing CX 1151) (“Pennsylvania is almost all domestic. It’s a Steel Procurement Act, so it’s Tyler’s state. So they have their own multiplier; and, you know, nobody else really participates in Pennsylvania.”); Rona, Tr. 1520-1521; Webb, Tr. 2732-2733 (testifying that some projects had Domestic-only Specifications before ARRA was enacted, and some do today); RX-637 (Jansen, Dep. at 99-100) (attributing Pennsylvania’s Domestic Fittings requirements to the Pennsylvania Steel Act)).
450. Projects that do not require that Domestic Fittings be used – *i.e.*, that allow Fittings manufactured anywhere in the world – are referred to as “Open Specification” projects. (Tatman, Tr. 274; McCutcheon, Tr. 2266).
451. Domestically manufactured Fittings can be used in Open Specification projects, but imported Fittings cannot be used in Domestic-only projects. (CX 2516 (Sheley, Dep. at 155-156) (“Q. Can you put a domestic in an import job? A. Yes. Q. Can you put an import in a domestic job? A. Domestic only, no.”); CX 2501 (Prescott, IHT at 41) (“you can’t supply foreign for domestic, but you can do vice versa”); Thees, Tr. 3056, 3078 (not aware of any instance where he supplied non-Domestic Fittings to a Domestic-only job); Webb, Tr. 2717-2718 (cannot supply imported Fittings when Domestic Fittings are specified because “[t]hat would not meet the specification.”); Thees, Tr. 3056; CX 2510 (Groeniger, Dep. at 171) (explaining that a wide open specification allows import Fittings to be used)).
452. At various times, McWane has referred to the mix of imported and domestically manufactured Fittings that it supplies to Open Specification projects as “blended” or “non-Domestic” Fittings. (Tatman, Tr. 273-274 (discussing RX-410, 2008 blended and

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<sup>2</sup> Except where otherwise noted or where the context otherwise requires, the term “Domestic Fittings” will refer herein to Domestic Fittings sold into Domestic-only Specifications.

domestic multiplier maps); CX 2440 at 002 (“Non Domestic” multiplier map); Tatman, Tr. 320-321 (discussing CX 2440)).

- 453. Waterworks jobs that require Domestic Fittings also require domestically manufactured restraints, glands, and other accessories. (Tatman, Tr. 463).

**4.4 Market Structure**

**4.4.1 Suppliers**

- 454. Star, Sigma and McWane all sell Fittings, joint restraints, castings, and accessories. (McCutcheon, Tr. 2254-2255; CX 2528 (Pais, Dep. at 7-8); CX 2442-A at 001; Tatman, Tr. 319, 1009-1010).

- 455. In 2008 and 2009, and “historically for a number of years,” McWane’s primary competitors in the Fittings market were Sigma and Star. (Tatman, Tr. 245; CX 2480 (Napoli, Dep. at 59) (McWane’s two primary competitors are Sigma and Star); CX 2477 (Jansen, Dep. at 70) (considers the other suppliers of Fittings as his competitors); (CX 2480 (Napoli, Dep. at 59-60) (McWane’s primary competitors in the sale of Fittings are Star and Sigma); Pais, Tr. 1904 (in late 2007 Sigma’s primary Fittings competitors were McWane and Star); Pais, Tr. 2006 (McWane, Sigma, and Star are “the three primary suppliers” of Fittings); CX 2536 (Leider, Dep. at 18) (Star’s major competitors in 2008 and 2009 for the sale of Fittings were Sigma and McWane)).

- 456. As a group, McWane, Sigma, and Star, account for more than { } of Fittings (including both Domestic and imported) sold in the United States. (CX 2260 (Schumann Rep. at 17 - 18 tbl. 1), *in camera* (“McWane, Sigma, and Star’s market shares total { } of U.S. shipments of ductile iron pipe fitting of 24 inches or less.”); Schumann, Tr. 3795; *see also* Tatman, Tr. 241-242, 559-560 (estimating 2008-2009 combined market share of 90% to 92%, including Fittings above 24” in diameter); Pais, Tr. 1981-1982 (estimating combined market share of 91% or 92%); McCutcheon, Tr. 2256 (estimating combined market share between 90% and 95%); CX 2500 (Swalley, Dep. at 32-33, 134) (Electrosteel USA considers McWane, Star and Sigma the primary Fittings competitors, since they collectively represent 90% of the overall Fittings market share nationwide); CX 1709 at 001, *in camera* (Star estimated its market share for fittings at between { } and { } in 2007 and first quarter 2008)).

- 457. McWane, Sigma, and Star had the following shares of United States Fittings sales, by tonnage, for the years 2007 through 2011:

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
McWane	{ }	{ }	{ }	{ }	{ }
Sigma	{ }	{ }	{ }	{ }	{ }
Star	{ }	{ }	{ }	{ }	{ }

(CX 2260 (Schumann Rep. at 18 tbl. 1), *in camera*; see also CX 1163 at 006 (August 4, 2008 Pais email describing McWane, Sigma, and Star as the three suppliers of AWWA fittings, with McWane holding a 45% market share, Sigma holding about 30% and Star holding about 20%)).

458. McWane and Star had the following shares of United States Domestic Fittings sales, by tonnage, for the years 2010 and 2011:

	<b>2010</b>	<b>2011</b>
McWane	{        }	{        }
Star	{        }	{        }

(CX 2260 (Schumann Rep. at 19 tbl. 2), *in camera*)).

459. A small group of fringe suppliers (such as Metalfit, SIP, NAPAC, NACIP, Electrosteel and ACIPCO) constitute the balance of the market. (CX 2260-A (Schumann Rep. at 18) (“A small group of fringe suppliers import Fittings into the United States.”); McCutcheon, Tr. 2255-2256 (estimating combined market share of these companies at 5% to 10% of Fittings sales (in tons))).
460. As described in a 2009 McWane budget planning document, McWane’s “primary competitors” in Fittings are Sigma and Star, with SIP and NAPAC as “Second tier” competitors. (RX-618 at 004 (noting that Electrosteel was a potential entrant in 2009).
461. Pricing decisions of companies such as ACIPCO, NAPAC, and Metalfit do not affect the ability of Star, McWane, and Sigma to implement a price increase. (CX 2538 (McCutcheon, IHT (Vol. 2) at 394)).
462. Sigma and Star have larger shares in the market for large fittings, in which McWane is not as significant a competitor. (Schumann, Tr. at 4111 (“I found in my analysis of the data that only about 5 percent of the large fittings were produced by McWane in 2008 . . . .”); CX 2531 (Rybacki, Dep. at 198) (large fittings “was [Sigma’s] strong point and Star’s Strong point as well . . . .”); (Tatman, Tr. 229 (Sigma and Star are better at plant work than McWane); Pais, Tr. 1915 (McWane “never had a plant work specialty” and “[f]or a long time they did not even produce most of the fittings used in plant work, such as the larger ones”)).

#### **4.4.2 Foundries**

463. Ductile iron foundries are high-fixed-cost businesses that produce castings pursuant to purchase orders for producers of Fittings and other iron products. (CX 2505 (Frazier, Dep. at 23, 26-27); CX 2507 (Glidewell, Dep. at 21, 138); RX-658 (Keffer, Dep. at 14); RX-657 (Teske, Dep. at 22).
464. Fittings castings are unfinished, and may require the drilling of holes, turning and boring after shipment. (CX 2505 (Frazier, Dep. at 64)).

465. Foundries sell to (or are owned by) Fittings suppliers, not Distributors or End Users. (CX 2505 (Frazier, Dep. at 68-69); CX 2507 (Glidewell, Dep. at 122-123); CX 2517 (Hall, Dep. at 148-150)).

#### 4.4.3 End Users

466. The typical end users of Fittings are municipalities, regional water authorities, and the contractors they engage to construct waterworks projects (collectively, “End Users”). (Joint Stipulations of Fact, JX 0001 ¶ 12; Saha, Tr. 1156; CX 2502 (Prescott, Dep. at 14); CX 2489 (Morrison, IHT at 29); McCutcheon, Tr. 2257 (End Users are generally contractors and municipalities); Sheley, Tr. 3386 (Illinois Meter’s customers include utility contractors, municipalities, rural water districts, public water supply companies, and water and sewer service plumbers); Rybacki, Tr. 3487 (Fittings End Users are cities, towns, major water authorities, and contractors)).
467. Contractors have a specialized set of skills, and typically do either plant work or line work, but not both. (CX 2489 (Morrison, IHT at 30) (“Some [contractors] are good at laying water lines, but they wouldn’t build a water plant if their life depended on it. But then somebody that just does water plant work probably isn’t going to bid a bunch of water line work.”); CX 2489 (Morrison, IHT at 14) (“An underground contractor that is laying water line to the building or to the house, he couldn’t buil[d] the house and the guy in the house couldn’t lay the water line.”)).
468. Municipalities typically outsource large waterworks projects to contractors. (CX 2489 (Morrison, IHT at 31) (“Typically a municipality is not going to have enough people on the payroll to be able to do a major project.”)).
469. The relationship between Distributors and contractors is very important, with contractors tending to use specific Distributors more than others. Contractors typically deal with a limited number of waterworks Distributors. (CX 2477 (Jansen, Dep. at 18-19) (describing relationship between contractors and Distributors as a “lifeline” for Distributors); CX 2480 (Napoli, Dep. at 15) (contractors tend to have relationships with specific Distributors, although this has deteriorated due to the economic decline and pricing pressure); CX 2489 (Morrison, IHT at 23) (explaining that 75-80% of C.I. Thornburg’s contractor customers are giving 80-90% of their business to them); CX 2501 (Prescott, IHT at 30, 32 (some contractor customers give all of their business to one Distributor)).
470. Contractors typically look to work with Distributors that they are close to geographically and have relationships with. (CX 2489 (Morrison, IHT at 10). CX 2477 (Jansen, Dep. at 18-19) (describing relationship between contractors and Distributors as a “lifeline” for Distributors); CX 2480 (Napoli, Dep. at 13-15) (contractors tend to have relationships with specific Distributors, although this has deteriorated due to the economic decline and pricing pressure)).
471. End Users may shift their business to a different Distributor if a Distributor fails to provide the entire bundle of goods. (CX 2501 (Prescott, IHT at 58) (“The scary part is

not losing them just once for the one job we couldn't supply, why would he come back to us if the other guy took care of him. And the guy has been trying to get his business for whatever, take a number, 20 or 30 years. So the minute you give up on it and let the competition in the door, you could be saying bye-bye for a long period of time."); CX 2489 (Morrison, IHT at 29) ("as your service level decreased, the contractor would quit doing business with you"); CX 2489 (Morrison, IHT at 74-75) ("[I]f there's a project going on . . . that requires domestic fittings and I can't get them fittings, one, I'm going to lose that order, and I'm probably going to lose future orders because they're going to say: Well, hey, you –and, plus, word amongst contractors is going to be, 'C.I. Thornburg reneged, failed, couldn't supply fittings on this project. You better be careful on your project.'"); CX 2489 (Morrison, IHT at 75) (It would be "devastating" to a Distributor if it could not supply Fittings on a project: "I'm choosing the word 'devastating.' I mean, it would not be good to not be able to supply fittings.")).

#### 4.4.4 Distributors – General

472. Wholesale waterworks distributors ("Distributors") purchase Fittings from suppliers and resell them to End Users. (Webb, Tr. 2707, 2726-2727; Thees, Tr. 3051, 3082).
473. McWane does not sell to all Distributors, and would not be interested in selling Fittings through Distributors that are not historically in the waterworks industry. (CX 2477 (Jansen, Dep. at 151-152) (reasoning that such Distributors would not be committed to the Fittings industry, would be unlikely to have the necessary relationships with contractors to be successful at selling Fittings, and that dealing with such Distributors could cause friction with McWane's existing distribution relationships)).
474. Waterworks Distributors typically do not service the plumbing market or sell plumbing materials. (CX 2489 (Morrison, IHT at 13) (explaining that plumbing is a "market we don't know, understand, have any customer base with."); *see also* CX 2480 (Napoli, Dep. at 34-35) (explaining that plumbing market is different)).

##### 4.4.4.1 Virtually All Fittings Are Sold Through Distributors

475. McWane, Sigma, Star, and others sell Fittings directly to Distributors, which then re-sell the Fittings to End Users. (Joint Stipulations of Fact, JX 0001 ¶ 14; Tatman, Tr. 251-252 (99% of McWane's sales of ductile iron pipe fittings are through Distributors, rather than direct to contractors); McCutcheon, Tr. 2256-2257 (Star sells Fittings to water and wastewater industry wholesale Distributors); CX 2500 (Swalley, Dep. at 14-15) (Electrosteel USA tries to sell its Fittings exclusively through Distributors)).
476. All or virtually all of McWane's sales of Fittings are to Distributors. (Joint Stipulations of Fact, JX 0001 ¶ 15; Tatman, Tr. 252; CX 2477 (Jansen, Dep. at 17 ("The only customers are distributors. We don't sell direct or very seldom would."))).
477. Sigma and Star also sell almost all of their Fittings to Distributors. (Rybacki, Tr. 1094-1095 (Sigma only sells Fittings through wholesale Distributors. It does not sell to End Users); CX 2531 (Rybacki, Dep. at 290) (Sigma does not sell direct to contractors); CX 2527 (Pais, IHT at 38-39); CX 2534 (Bhutada, IHT at 9) (direct sales from suppliers to

End Users are virtually non-existent); McCutcheon, Tr. 2256-2257, 2260, 2263 (Star generally does not sell directly to End Users, and instead directs them to purchase Star's Fittings through Distributors); (CX 2537 (McCutcheon, IHT (Vol. 1) at 9) (less than 3% of Star's sales are direct to municipalities); Minamyler, Tr. 3134 (Star's primary Fittings customers in 2007 and 2008 were Distributors); CX 2526 (Minamyler, Dep. at 110) (Star does not sell directly to contractors)).

478. The relationship between Fittings suppliers and Distributors is important to success in selling Fittings because Fittings are a commodity product. (CX 2477 (Jansen, Dep. at 18-19); CX 2480 (Napoli, Dep. at 13-15)).
479. Distributors are less inclined to do business with a Fittings supplier that sells directly to End Users. (CX 2489 (Morrison, IHT at 56) ("I don't care what product line or manufacturer you want to talk about, any time a manufacturer wants to sell direct, that doesn't bode well, it doesn't sit well with a distributor because we want a hundred percent of things to go through distribution, and no distributor is going to be happy or understand anything that has to go direct."); *see also* CX 0500 at 001, *in camera* {  
}; CX 2503  
 (Thees, IHT at 79-80) (describing CX 0500 and noting that McWane direct sale of Fittings to an End User was "an infrequent or unusual occurrence" and Ferguson wasn't happy to see it happen); CX 2477 (Jansen, Dep. at 148-149 (explaining that one reason not to sell product directly to customers is to avoid competing with Distributors who are also selling McWane's product)).

#### 4.4.4.2 Numbers and Market Share of Distributors

480. McWane, Sigma and Star sell Fittings to over 630 distinct customers (not branches), primarily Distributors. Most of these Distributor customers are small, local companies with just one or a few distribution yards. Then there are a handful of regional waterworks Distributors with multiple branches. Finally, there are two national waterworks Distributors. Collectively, all of these customers make up thousands of branch locations throughout the United States. (CX 2564 (McWane sales data); CX 2504 (Thees, Dep. at 14-15) ("HD Supplies are the only national competitor we have. And then when you get down below that you're looking at regional players. Main Line Supply, EJ Prescott in the northeast. Dana Kepner out west, ACT in Texas. . . . [L]et me throw in Winn Wholesale. Then a slew of independents that are either in a state or one or two markets."); Saha, Tr. 1170 (noting 3,000 to 4,000 branches nationwide); *see also infra* § 4.4.5.5)).
481. HD Supply and Ferguson are the two largest Fittings Distributors, and each has a national presence. (McCutcheon, Tr. 2261; Thees, Tr. 3045 ("We have one national competitor in HD Supply and a host of regional and local competitors of a much smaller scale"))).
482. HD Supply's Fittings distribution market share is approximately 28% to 30%. (McCutcheon, Tr. 2261; Webb, Tr. 2703-2704 (HD Supply estimates that it has an approximately 28% to 30% market share in the distribution of waterworks industry



products); CX 2513 (Webb, IHT at 43) (same); *see also* McCutcheon, Tr. 2257; CX 2537 (McCutcheon, IHT (Vol. 1) at 56) (HD Supply is Star’s largest imported Fittings customer)).

483. Ferguson’s Fittings distribution market share is about 15% to 25%. (McCutcheon, Tr. 2261-2262 (15% to 20%); Thees, Tr. 3045-3046 (Ferguson estimates that it has a 25% market share in the overall waterworks distribution market, and a similar share in Fittings)).
484. There are a number of regional waterworks Distributors with multiple branches that service specific regional areas in the country. For example, EJ Prescott has 27 branches in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Ohio, and Indiana. (CX 2502 (Prescott, Dep. at 9)). Between 2005 and 2011, Groeniger & Company has had between 9 and 17 branches, located throughout California . (CX 2510 (Groeniger, Dep. at 9-10, 125)). C.I. Thornburg Company has 5 branches in West Virginia, Kentucky, and Tennessee. (CX 2490 (Morrison, Dep. at 20)). Illinois Meter Company has 5 branches in Illinois and Missouri. (CX 2516 (Sheley, Dep. at 11-12)).
485. McWane sells to 250-300 Distributors that have approximately 1200 total branches. (CX 2477 (Jansen, Dep. at 139-140)).

#### 4.4.4.3 Relationships with End Users

486. End Users reap various benefits from purchasing waterworks products from Distributors rather than directly from suppliers. Distributors bundle waterworks products together, provide a single point of contact for all products, find alternate supply sources when needed, and have local relationships and local specification knowledge. (Thees, Tr. 3059; CX 2510 (Groeniger, Dep. at 202) (describing the benefits End Users gain by purchasing from Distributors rather than directly from suppliers as “certainly service, knowledge of the local specifications, local inventory to pull the ones and twosies from, credit applications”); CX 2504 (Thees, Dep. at 145-146) (“Well, one is supplying a bundle of products, not just a component of a job. We’ve got many more feet on the street to blanket the local market than any one manufacturer would have. So we can provide bundle. We can provide it timely, and we can provide it in small quantities and have a knowledgeable base about the product and the value. The contractors don’t know what they need. They rely on us to tell them in lot of cases. Two, we provide credit. A lot of times credit that we extend to these guys goes out a lot longer than what a manufacturer would be comfortable extending.”) ; CX 2537 (McCutcheon, IHT (Vol. 1) at 72-75) (it is a “nationwide norm” for contractors to source all of their waterworks needs for a particular job from a single Distributor because of efficiencies; “the bid almost never is split” among Distributors); CX 2480 (Napoli, Dep. at 30-31 (citing local knowledge of specifications and bids as a benefit of Distributors)).
487. End Users typically source all of their waterworks needs as a one-stop shop for a particular project from a single Distributor because doing so allows them to access service, payment and delivery from a single source, rather than duplicating administrative

effort with various sources. (Webb, Tr. 2723; Thees, Tr., 3060; CX 2489 (Morrison, IHT at 31-32) (explaining that contractors source all the waterworks products they need for a specific project from a single Distributor because contractors “want to hand you the order . . . and turn all the problems over to you. That way they only have one person they have to go yell at when something’s not going right. . . . it’s just a matter of service and reliability and comfort.”); CX 2501 (Prescott, IHT at 25) (“[H]e only needs to make one phone call to scream when – because all that’s got to be missing is one item and he can’t move.”); Webb, Tr. 2707 (Distributors are convenient for End Users, because End Users can purchase all of their waterworks supplies from a single source, rather than having to negotiate with each individual product manufacturer); Sheley, Tr. 3388 (customers benefit from buying a waterworks bundle because they get a better overall price, and correcting mistakes requires contacting a single company, rather than each supplier); CX 2537 (McCutcheon, IHT (Vol. 1) at 73-74) (it is the “absolute norm” in the industry that all the business of an End User for a project will go to a single Distributor, unless the Distributor cannot provide the contractor all products the Distributor needs for the project); CX 2544 (Coryn, Dep. at 102); CX 2510 (Groeniger, Dep. at 202); CX 2516 (Sheley, Dep. at 127-128); CX 2513 (Webb, IHT at 135-136); CX 2502 (Prescott, Dep. at 81); CX 2480 (Napoli, Dep. at 30) (explaining that Distributors provide end users with a “one-stop shop”)).

488. Most waterworks distribution business is conducted on a bid-by-bid basis. Infrequently, Distributors will sometimes enter into contracts for up to one year with a municipality. (Thees, Tr. 3052). These annual contracts require Distributors to supply specific items at an agreed upon price for a customer, primarily municipalities. (CX 2509 (Groeniger, IHT at 46)).
489. Most End Users deal primarily with two or three Distributors, rather than fielding bids from a broader array of Distributors, in order to receive the best service and price. (Webb, Tr. 2725-2726; Sheley, Tr. 3392 (a typical contractor deals with two waterworks Distributors)). For example, the vast majority of Ferguson’s customers are repeat customers. (Thees, Tr. 3064-3065; Webb, Tr. 2726 (approximately 80% of HD Supply’s business was repeat business the last time it generated statistics, in 2005)).
490. Distributors compete with each other on the basis of price, service and relationship with the End User. (Sheley, Tr. 3390-3391 (End Users select waterworks Distributors based on service levels, product availability, delivery levels, fill rates, price, and relationships with sales personnel); Thees, Tr., 3062 (testifying that End Users select the lowest cost bid, factoring in price for each individual product, as well as delivery efficiency and accuracy); CX 2502 (Prescott, Dep. at 12-13) (“price gets involved, but if it was just price a small company like this we would have a hard time surviving”); CX 2489 (Morrison, IHT at 37) (along with price, “there’s no doubt service is a factor and your personal relationship”)).
491. End Users demand a high level of service. Therefore, for example, Ferguson’s value proposition to its customers includes a high level of service, including timely delivery, trouble-shooting during the job, and competitive pricing. (Thees, Tr. 3061; Webb, Tr. 2723-2726 (Distributor’s ability to “provide on time deliveries, 95% order fill rates, zero

errors” is the most important factor to End User Fittings customers in selecting a Distributor, followed by price and relationship); CX 2502 (Prescott, Dep. at 12) (“our whole business is service”).

#### 4.4.4.4 Local Nature of Distribution Business

492. Distributors have multiple branches in order to service specific local geographic areas. (Sheley, Tr. 3382; Webb, Tr. 2700; CX 2489 (Morrison, IHT at 9) (“Well, most of what you sell you have to deliver, so you need to be within two or three hours of your customer just to make the delivery and get back in the same day. So, from a service standpoint, you need to have a location in the market area that you’re trying to service.”); CX 2502 (Prescott, Dep. at 9) (“Each location has its region . . . so that they can serve the area because of the service that’s required today in the industry.”); CX 2480 (Napoli, Dep. at 13) (explaining that Distributors sell Fittings to local markets of 20 minutes to an hour in driving distance)).
493. A Distributor’s service area is generally 50 to 200 miles from its branch location, depending on population, geography and driving patterns. Branch service areas tend to be smaller in more densely populated areas. (CX 2502 (Prescott, Dep. at 58); Webb, Tr. 2701-2702 (an HD Supply branch will service a 50- to 70-mile radius in a state like Florida, and a 150- to 200-mile radius in a Midwestern state); Thees, Tr. 3044 (Ferguson services areas extend from less than 60 miles to over 200 miles, depending on region); Sheley, Tr. 3382 (branch service areas no larger than 90 miles); CX 2501 (Prescott, IHT at 9-10) (“we push between 75 and a hundred and that . . . changes when we get to the midwest . . . that kind of service you’ve got to be less than 200 miles to give the kind of service that needs to be done.”); CX 2489 (Morrison, IHT at 9) (describing the radius of effective service from a branch to be 150 to 200 miles); CX 2509 (Groeniger, IHT at 28-31) (describing the effective radius for its branches to be 50 miles to 300 miles)).
494. Distributors primarily service waterworks projects in their own service area. (CX 2489 (Morrison, IHT at 10) (describing the problems servicing projects outside a service area to be “one, you don’t know the customer base because you don’t know any of the [] contractors, and number two would just be distance to deliver to a job site.”)). Distributors, however, will occasionally service loyal customers who are doing a project in an adjacent market. (CX 2502 (Prescott, Dep. at 59); Sheley, Tr. 3383 (over the last five years, a branch has serviced a project outside of its service area about two or three times per year, when the customer has a project outside the service area)).
495. Generally speaking, it is difficult for an out-of-area Distributor to compete with the logistics and service of a local branch, local sales people, and locally stocked product. (Webb, Tr. 2700-2701 (HD Supply is unable to compete effectively in areas such as Vermont, where it has no local branch)). Delivery is also more expensive for out-of-area Distributors. Sheley, Tr. 3382 (Illinois Meter has multiple branches to service its customers because delivery is less expensive with local delivery)).

4.4.4.5 Distributors Use Multiple Fittings Suppliers, and Benefit from Competition Among Fittings Suppliers

496. Distributors consider price, service, relationship, financial stability, warranty, and product quality when selecting a Fittings supplier. (Thees, Tr. 3082-3084 (Ferguson deals with multiple Fittings suppliers because its relationships with suppliers, and suppliers' sales and support, vary in different areas of the country); CX 2489 (Morrison, IHT at 61)).
497. Fittings Distributors generally purchase Fittings from at least three suppliers. (McCutcheon, Tr. 2258-2259; Webb, Tr. 2746 (HD Supply purchases imported Fittings from McWane, Sigma, and Star); Thees, Tr. 3082 (Ferguson purchases imported Fittings from McWane, Sigma, and Star); Sheley, Tr. 3398 (TDG has rebate programs for Fittings with SIP, McWane, Star, and Sigma); Sheley, Tr. 3406 (Illinois Meter's purchases of imported Fittings are split about evenly between McWane and Star)).
498. Distributors generally can obtain better pricing on Fittings when they have the option of purchasing Fittings from multiple suppliers. (Sheley, Tr. 3444-3445 ("Q. In 2008, Mr. Sheley, were you playing suppliers off one another to try and get a better price? A. Yes."); CX 2489 (Morrison, IHT at 61-63 (noting that Distributors also have greater access to a full line of imported Fittings buying from multiple Fittings suppliers); CX 2513 (Webb, IHT at 172) ("Q. What about price? Are you able to leverage better price because you have three suppliers rather than two, more options? A. The more options is – is definitely there.")).
499. For Domestic Fittings, Distributors can only purchase Fittings from two manufacturers, Star and McWane, since they are the only Domestic Fittings suppliers. (McCutcheon, Tr. 2259; Webb, Tr. 2748-2749 (HD Supply purchases Domestic Fittings primarily from McWane, and only from Sigma when Sigma was selling McWane Fittings); Thees, Tr. 3118-3119, 3084-3085 (Ferguson currently purchases approximately 95% of its Domestic Fittings from McWane, and a "little bit" from Star, and only purchased McWane-manufactured Domestic Fittings from Sigma when Sigma was selling McWane Fittings); Sheley, Tr. 3406 (Illinois Meter purchases Domestic Fittings from McWane only)).
500. A Distributor generally will purchase Fittings from its Distributor competitors only as a last resort when it is required to service a customer. Purchasing from competitors is more expensive and not routine. (Webb, Tr. 2726-2727; Thees, Tr. 3065 (Ferguson occasionally purchases Fittings from its competitors to complete a specific order, Ferguson prefers not to purchase Fittings from its competitors because it pays a premium on those Fittings compared to what it would pay a manufacturer)).

4.4.4.6 Fittings Suppliers Use Multiple Distributors

501. Fittings suppliers do not generally work with a single Distributor, but instead sell their Fittings to multiple Distributors in a given territory. (Thees, Tr. 3047-3049).
502. Greater access to Distributor branches means more potential sales for Fittings suppliers. (Saha, Tr. 1173).

503. McWane sells Fittings through multiple Distributors in the same local area because it increases the likelihood of McWane making the sale. (CX 2477 (Jansen, Dep. at 141-142) (explaining that Distributors' sales force extends the effectiveness of McWane's own sales force, and that dealing with multiple Distributors increases McWane's chances of dealing with the Distributor that has a special relationship with the winning contractor)).
504. Star sells to as many Distributors as it can in a given region, since increasing the number of Distributors who carry Star's products increases the overall likelihood that Star will ultimately make a sale. (CX 2537 (McCutcheon, IHT (Vol. 1) at 59, 63) ("It's just math. . . . [F]ewer Distributors . . . cuts down on our ability to get more products - more projects."); McCutcheon, Tr. 2257 (selling to multiple Distributors in a particular geographic area improves Star's chances of selling Fittings)).
505. Selling to only one Distributor in a market does not allow a Fittings supplier to reach all End Users in that market. (Saha, Tr. 1165). Selling to more Distributors enables a supplier to reach more End Users. (Saha, Tr. 1166).

#### 4.4.4.7 Distributor Pricing

506. Some Distributors may prefer higher market prices for Fittings because changes in Fittings prices can affect the value of their inventory. (Rybacki, Tr. 1110-1111) ("[I]f the marketplace becomes overaggressive and the prices fall, the distributor, the wholesaler, inventory gets devalued, and that's not a help to his or her business and certainly not a help to ours.")).
507. A Distributor generally marks up a product by at least 20%, but suppliers like Star estimate that it would cost significantly more than that for a supplier to assume the responsibilities of a Distributor. (CX 2534 (Bhutada, IHT at 22)).
508. Distributors pass along increases and reductions in wholesale prices of Fittings to End Users. (CX 2489 (Morrison, IHT at 98-99) ("[I]f prices go up you pass that along and if they go down the market demands that you pass that along."); CX 2513 (Webb, IHT at 144-145) (explaining that when Fitting prices are high and rising HD Supply "would pass them on" to their customers and conversely when Fitting prices are falling HD Supply would pass them on to their customers as well because "competitive forces dictate"))).
509. Distributors make higher profit margins on sales of valves, hydrants and Fittings, than on sales of pipe. (Sheley, Tr. 3387; CX 2503 (Thees, IHT at 22) ("Q. Your margins on fittings, how do they compare to your margins on ductile iron pipe for example? A. They're higher. . . . Q. Your margins on valves and hydrants are pretty close to your margins on the ductile iron pipe fittings? A. Yes. Q. What do you attribute the difference in your margin on fittings to your margin on ductile iron pipe? A. Well, pipe is a bigger portion of the job. Typically when you look at a job that has ductile iron pipe, that may make up 60 to 70 percent of all the products being sold for the waterworks portion of that construction project; so because it's the product driving the job, it's a lower margin."); CX 2489 (Morrison, IHT at 32) ("typically the pipe is a lot of dollars at low margins"))).

#### 4.4.5 Distributors Provide Important Benefits to Fittings Suppliers and End Users

510. In addition to providing important benefits to End Users, (*see supra* ¶¶ 486-491), Distributors provide important benefits to Fittings suppliers and End Users. (CX 2537 (McCutcheon, IHT (Vol. 1) at 41-46) (listing efficiencies Distributors provide to suppliers and describing the cost to replicate these efficiencies as “astronomical”); CX 2534 (Bhutada, IHT at 9-15), *in camera* {
- }.
511. McWane recognizes that Distributors provide McWane with the following benefits: Distributors offer better sales coverage than McWane would have with its sales alone; Distributors have more local influence and more local knowledge of projects in their market area; Distributors carry local inventory; Distributors offer one-stop shopping for all needed waterworks products for the end user; Distributors help McWane’s products be included in specifications; and Distributors streamline McWane’s account receivables by taking the risk of non-payment from contractors. (CX 2477 (Jansen, Dep. at 139-141, 144-145); CX 2480 (Napoli, Dep. at 29-30)).
512. McWane views Distributors as being “critical to [its] success.” (CX 2477 (Jansen, Dep. at 150) (explaining reasoning because of the benefits provided by Distributors that are listed above); CX 0169 at 003 (January 2010 McWane Sales Managers Conference Call Agenda reflecting consensus that “distribution is critical to our success.”)).

##### 4.4.5.1 Distributors Bundle Goods and Provide One-Stop Shopping

513. Because Distributors provide End Users with one-stop shopping for the full spectrum of waterworks products required for a particular project (*i.e.*, pipe, valves, Fittings, restraints, castings, *etc.*) (*see supra* ¶¶ 486-487), Fittings suppliers can compete for sales to Distributors without entering all of the adjacent waterworks product markets. (McCutcheon, Tr. 2260-2261; Webb, Tr. 2708-2709 (When HD Supply wins a bid, the contract typically covers a variety of products, including Fittings); Webb, Tr. 2729 (HD Supply provides one-stop shopping to its customers); Thees, Tr. 3051 (Ferguson sells all of the various waterworks products to its customers in bundles); Sheley, Tr. 3386 (Illinois Meter typically sells Fittings as a part of a bundle including pipes, valves, fire hydrants and Fittings); CX 2509 (Groeniger, IHT at 39) (pipe, valves, fire hydrants, Fittings and service material make up the entire bundle of products that Distributors provide to contractors to service a waterworks project); CX 2480 (Napoli, Dep. at 30) (explaining that Distributors provide end users with a “one-stop” shop)).

##### 4.4.5.2 Distributors Carry Inventory

514. Suppliers also benefit from Distributors carrying Fittings inventory because this frees up the suppliers’ working capital; and it provides much faster delivery service from the Distributors’ local branches to End Users than a Fittings supplier could achieve by selling directly to End Users. (Webb, Tr. 2728-2730 (HD Supply keeps local inventory of Fittings and other waterworks products such as pipe, valves, hydrants, and service

material); Thees, Tr. 3059-3060 (Ferguson positions its product within a trading area to have ready access to deliver it to End Users); CX 2534 (Bhutada, IHT at 10, 19-20) (Distributors carry local inventory of Fittings and other products that are immediately available for delivery to contractors at job sites); CX 2510 (Groeniger, Dep. at 202); CX 2516 (Sheley, Dep. at 127-128); CX 2504 (Thees, Dep. at 145-146); CX 2489 (Morrison, IHT at 29) (“[T]he customer expects you to have [product] available in a reasonable amount of time . . . tomorrow . . . a couple days from now. They’re not looking for it in a week or ten days.”); CX 2494 (R. Fairbanks, Dep. at 95-96) (“Distributors are stocking distributors, and so there’s just a wide variety of fittings that can be on a project. And so the advantage is, is that, one is it could be in stock, and two is it can be almost immediate deliveries due to stock. And also deliveries, because there might be other products going out on the job site.”); CX 2502 (Prescott, Dep. at 11) (explaining stocking inventory provides a “great advantage because . . . the service that’s required today” ); CX 2502 (Prescott, Dep. at 80); Sheley, Tr. 3398 (“A manufacturer can’t reasonably service a small municipality or a small contractor. There has to be local inventory, local delivery, a local contact person, if you will. It would be . . . uneconomical for every party involved . . . .”); CX 2477 (Jansen, Dep. at 145) (explaining that Distributors house local inventory for McWane)).

515. Providing inventory within a close proximity to the waterworks projects that the Distributor is servicing can help prevent expensive work delays if a Fitting is missing or malfunctioning. Distributors therefore typically provide product and services 24 hours a day, seven days a week. (CX 2502 (Prescott, Dep. at 79) (“no matter how big or how small you are, when you got an emergency and the water is running down the street and you got to fix it.”); CX 2489 (Morrison, IHT at 55) (explaining that Distributors provide service capabilities to contractors); CX 2509 (Groeniger, IHT at 27-28) (“[N]o job goes in the way it was laid out. There is always an obstacle in the way or going around the tree or they can’t get the easements so they had to move the pipeline over to here but that usually happens after the job is in progress. So they are stopping and starting and these guys, the crews are very very expensive. The machinery they have out there digging these trenches, there’s big equipment and, you know, it’s costing them thousands and thousands of dollars an hour and so they have to have the material and if they – if it was, you know, in Southern California where they’re working and they call up and say we’re not going to be able to get your material for a day and-a-half or two days, you know, they can just walk in and pick it you off much better. So, you have that ability being local to take care of their needs and they will always have needs and if we do that efficiently, that’s big because in most cases, the people doing the work or the contractor there, foremen, are being paid piece work for their profit there that they’re making on the job. They designed it to put in 400 feet a day and, if he is doing 600 feet a day, he is making a bonus. So, having somebody that keeps that machinery going is very very important and so you really have to have something that’s relatively close by.”)).
516. Distributors maintain an inventory and aggregate small orders and shipments from contractors, which typically purchase small numbers of Fittings for individual projects. (CX 2502 (Prescott, Dep. at 81) (“manufacturers ship in quantity and the Distributors ship in pieces”); CX 2489 (Morrison, IHT at 55) (explaining that Distributors have “small trucks”); Sheley, Tr. 3387 (Illinois Meter benefits from bundling of waterworks products

because it can make a single direct shipment of all waterworks products for a given project at once); CX 2534 (Bhutada, IHT at 19)).

517. Distributors absorb the cost of freight for deliveries from the Distributor's warehouse to the contractor's job site. (CX 2534 (Bhutada, IHT at 10)).

#### 4.4.5.3 Distributors Provide Credit to End Users

518. Contractors often purchase on credit, and Distributors carry the credit risk of dealing with thousands of End Users. Suppliers avoid these credit costs by dealing through Distributors. (CX 2534 (Bhutada, IHT at 12-13); Webb, Tr. 2729 (HD Supply provides assumption of credit risk); (CX 2502 (Prescott, Dep. at 81) ("I think that's [assuming credit risk] one of the biggest things, and I have always laughed about that because then the vendor don't [*sic*] have to have a credit department . . ."); McCutcheon, Tr. 2260 (Distributors also provide suppliers with a credit cushion, by paying themselves, rather than requiring the contractor to do so); CX 2537 (McCutcheon, IHT (Vol. 1) at 41-42) (same); CX 0169 at 003 (January 2010 McWane Sales Managers Conference Call minutes noting benefits of distribution to include Distributors "carry[ing] the paper and inventory and once in a great while do spec work"); CX 2521 (Agarwal, IHT at 81-82), *in camera* {  
 })).

#### 4.4.5.4 Distributors Expand Supplier Sales and Service Capabilities

519. Distributors employ sales personnel dedicated to identifying business opportunities and servicing End Users, saving suppliers from having to employ their own large, nationwide sales forces. (CX 2480 (Napoli, Dep. at 31) (McWane would "have to have a daily, hourly presence in - in each area in order to - to absorb [the] role" of the Distributor in monitoring potential bid opportunities in the local markets); McCutcheon, Tr. 2260-2261 (Distributors magnify the reach of a supplier's sales force); Webb, Tr. 2728 (HD Supply provides a sales force in excess of 400 people); CX 2534 (Bhutada, IHT at 12-13, 19-20), *in camera* {

} CX

2544 (Coryn, Dep. at 103) (identifying the sales force as an efficiency Distributors provide); CX 2546 (Gibbs, Dep. at 65-66) (describing WinWater's sales force as benefit it provides to the supply chain); CX 2510 (Groeniger, Dep. at 202) (explaining that "normally speaking" Distributors have larger sales forces than suppliers); CX 2502 (Prescott, Dep. at 82) ; CX 2489 (Morrison, IHT at 11) (describing C.I. Thornburg sales force to include 20 outside salespeople and 18 inside salespeople); CX 2501 (Prescott, IHT at 10-11) (explaining that E.J. Prescott's outside sales force of 60 individuals "[s]ervice the customer with what he is looking for"); CX 2501 (Prescott, IHT at 17) ("national manufacturing in this country would need 5,000 salesman at a minimum and then they would always be on the wrong corner."); CX 2502 (Prescott, Dep. at 78); CX 2502 (Prescott, Dep. at 46) (describing E.J. Prescott's sales force as including 60 outside sales individuals and 75 inside sales individuals); CX 2516 (Sheley, Dep. at 127-128)



- (including Distributors' sales forces as one of many efficiencies Distributors provide to the market); CX 2504 (Thees, Dep. at 145-146) (describing the "many more feet on the street" as an efficiency)).
520. Distributors support End Users through technical assistance and training regarding waterworks jobs, and by packaging up the discrete waterworks components and making sure that all pieces that the customer needs have the correct characteristics and arrive on time. In addition, End Users pay Distributors directly, rather than paying individual suppliers, and provide a higher level of service than a supplier would, including small-volume deliveries and 24-hour service. (Sheley, Tr. 3399-3401).
521. Distributors handle returns of products from the contractor, {  
} (CX 2534 (Bhutada, IHT at 12, 20)  
*in camera*; Webb, Tr. 2729-2730 (HD Supply provides processing of returns)).
522. Distributors provide a single point of contact for invoicing and collection, saving suppliers the transaction costs of managing relationships with multiple End Users, and lessening suppliers' exposure to End User credit risk. (CX 2544 (Coryn, Dep. at 102-103) (explaining that Distributors "daily" assume a credit risk in dealing with the End Users); CX 2510 (Groeniger, Dep. at 202) ("Q. Do distributors handle the billing and collections from their customers? A. Yes, that's the credit scenario. Some people will allow a looser credit format with their customer than a manufacturer would. And that's probably one of the main underlying reasons why manufacturers would rather go through distribution because they can guarantee their money quicker than if they were selling to the contractor directly."); CX 2516 (Sheley, Dep. at 127-128) (including the following in a summary of efficiencies Distributors provide: "assume credit risk, have robust billing, invoice and collection system in place"); CX 2504 (Thees, Dep. at 145-146) ("[W]e provide credit. A lot of times credit that we extend to these guys goes out a lot longer than what a manufacturer would be comfortable extending."); CX 2494 (R. Fairbanks, Dep. at 96) ("[I]f you're a distributor it sort of means you're local and you know the people in your marketplace and you know how to manage credit. It's very difficult to manage credit from long distance, sometimes, as to what's going on in the local marketplace. So distributors carry the credit on – with the contractors on these projects."); CX 2502 (Prescott, Dep. at 81) (agreeing that Distributors "bill and invoice and collect" from End Users)).
523. Distributors have local knowledge of what is required in each specific market they are servicing. (CX 2489 (Morrison, IHT at 55); CX 2480 (Napoli, Dep. at 30 (describing how Distributors can use knowledge of local municipalities to guide contractors)).
524. Fittings suppliers are not able to service End Users. (CX 2489 (Morrison, IHT at 55) ("[Suppliers] have no way to service the customer or the job because they're so far away. I mean, I just can't imagine a scenario where they could sell a project direct to the contractor because they don't have the service capabilities to do that.")).

#### 4.4.5.5 Benefits of National Distributors

525. Suppliers obtain benefits from dealing through major national Distributors like HD Supply and Ferguson, due to the large number of branch locations operated by these Distributors. They purchase larger volumes, which is inherently more efficient than individual sales to smaller Distributors. (CX 2534 (Bhutada, IHT at 27); Webb, Tr. 2728-2729 (HD Supply's branch footprint is a benefit to Fittings suppliers)).
526. Advantages of a Distributor having multiple branches include local market presence, expedient delivery, quick access to a broad array of products, and the ability to bundle different product types together. (Thees, Tr. 3042-3043).
527. Sales to larger Distributors like HD Supply and Ferguson also result in "commercial validation," *i.e.*, recognition by other, smaller Distributors that the products purchased by larger Distributors are technically sound and commercially viable. (CX 2534 (Bhutada, IHT at 27)).
528. Star finds selling to HD Supply and Ferguson advantageous, because they lend credibility to Star's Fittings. For example, Winwater, another Distributor, indicated to Star that it chose Star Fittings because HD Supply and Ferguson were also purchasing Star's Fittings. (McCutcheon, Tr. 2262-2263; CX 2537 (McCutcheon, IHT (Vol. 1) at 51)).
529. In any given region, there are likely to be fringe Distributors that may carry some but not all waterworks products or brands, or have less well developed sales and distribution networks and End User relationships. These small fringe players do not provide as much value to suppliers as more established Distributors. (CX 2510 (Groeniger, Dep. at 153) ("Between all three of us [Groeniger, HD Supply and Ferguson] we were the vast majority of the business but there were probably two or three independents that were at the outer fringes of their service capability, but they would enter into it also."); CX 2504 (Thees, Dep. at 14-15) (describing fringe Distributors as "a slew of independents that are either in a state or one or two markets."); RX-637 (Jansen, Dep. at 150-151) (explaining that McWane does not sell to additional Distributors in markets where "we have what we feel is enough existing coverage"))).
530. Suppliers with access to only smaller Distributors lack market access, and are inhibited in their ability to grow their business. (Saha, Tr. 1171-1172; CX 2500 (Swalley, Dep. at 263) (to really break into the U.S. Fittings market, Electrosteel USA would need to be able to sell into the 90% of the market that is the big Distributors); CX 2500 (Swalley, Dep. at 131-132) (Electrosteel USA does not expect that its Fittings business will continue to grow unless and until one of the major four Distributors in the Southeast agrees to sell its Fittings products)).

#### 4.4.6 **Barriers to Distributor Entry**

531. There are high barriers to entry into the waterworks distribution business. (*Infra* ¶¶ 532-542).

#### 4.4.6.1 Start-Up Costs

532. Firms may enter new markets as Distributors by either building a new branch from scratch, referred to as “greenfielding,” or by acquisition of an existing branch. (Webb, Tr. 2704). Acquiring or opening a new branch involves costs associated with inventory, personnel, and licensing. (Webb, Tr. 2705).

#### 4.4.6.2 Access to Full Range of Waterworks Products

533. In order to service customers, Distributors need access to a full range of product lines, including pipe, Fittings, valves, hydrants, meters, and brass. (CX 2501 (Prescott, IHT at 14)).
534. It is not easy for a Distributor looking to establish a new branch to establish all the required products lines to service local requirements. (CX 2489 (Morrison, IHT at 16) (“That’s probably the biggest obstacle is who are you going to buy from.”); CX 2501 (Prescott, IHT at 15) (explaining that Distributors “work for a long time to get the best lines you can get and then the loyalty between both ways is a big factor”)).
535. Unlike Fittings suppliers, suppliers of hydrants, valves and meters often enter into exclusive relationships with Distributors in certain service areas. (CX 2489 (Morrison, IHT at 17 (“Valve and hydrant manufacturers tend to just have a single distributor in an area.”); CX 2502 (Prescott, Dep. at 75) (a new entrant’s “biggest problem is the lines. . . . most of the lines are tied up by [other Distributors]”); CX 2501 (Prescott, IHT at 16)).

#### 4.4.6.3 Establishing Local Personnel and Relationships

536. A major challenge to entering waterworks distribution is the education of personnel on local products and specifications, local market conditions, and the products they are selling. (CX 2502 (Prescott, Dep. at 72)).
537. With respect to sales personnel, local hires are better due to their customer relationships and knowledge of local specifications and geography. (Webb, Tr. 2705-2706; CX 2489 (Morrison, IHT at 19) (Distributors need to “have a personal relationship with the people [to whom they are] trying to sell”)).
538. It can take years for a new Distributor to develop the right relationships with local contractors to get any sales. (CX 2489 (Morrison, IHT at 20) (“[I]f you send someone that’s not familiar with the contractors . . . you could be five years before you get your first order because they don’t know anybody and they’re not known and it goes both ways.”)).
539. Greenfield entry by a Distributor into a new locality without people that have established local relationships is much slower than entry through acquisition because waterworks is a local, relationship business. (Thees, Tr. 3050 (“[W]e view that as something that will take a significant amount of time in order to develop, thus turn into sales and turn into profits.”)).

#### 4.4.6.4 Plumbing Distributors Cannot Easily Enter Waterworks Distribution

540. Waterworks Distributors typically do not regard plumbing distributors as competitors. (CX 2489 (Morrison, IHT at 14-15)).
541. Plumbing distributors do not make good waterworks Distributors. (Sheley, Tr. 3384-3385) (explaining that plumbing distributors are “used to selling copper fittings at a half a cent profit or less, and they sell toilets and showers, and we don’t sell any of that,” that “there’s a lot of difference between a fire hydrant and a toilet,” and that plumbing distributors have a “real hard time making money in the waterworks business when they do it out of a plumbing supply house” because plumbers “don’t understand the service levels” or “what it takes to be profitable” in waterworks)).
542. Plumbing distributors lack the industry knowledge, expertise, and relationships to effectively serve waterworks contractors. (CX 2489 (Morrison, IHT at 15-16) (explaining that plumbing distributors do not handle the same materials as waterworks Distributors and they lack the product knowledge needed for waterworks products); CX 2509 (Groeniger, IHT at 14 (waterworks Distributors often deal with unique sets of specifications for each specific project, whereas plumbing distributors typically deal with one set of specifications, “what they call the universal plumbing code.” If plumbing distributors have the materials that comply with that code they can use the material anywhere they want); CX 2509 (Groeniger, IHT at 18) (plumbing distributors do not have relationships with waterworks contractors)).

### **4.5 How Prices Are Set**

#### **4.5.1 Published List Prices and Price Multipliers**

543. Published Fittings prices have two components: a nationwide list (or catalog) price, and a regional “multiplier” that reduces the list price. The net published price for a given Fittings item in a given state is the list price multiplied by the then-applicable multiplier for that state. For example, if a Fitting has a \$1,000 list price, and the Texas multiplier is .28, the published price for that individual Fitting in Texas will be \$1,000 x .28, or \$280. (Tatman, Tr. 277; Rybacki, Tr. 1096-1097; CX 2535 (Bhutada, Dep. at 102); Webb, Tr. 2770-2771 (Fittings suppliers communicate prices to Distributors like HD Supply through published list prices and multipliers)).
544. Multipliers vary from state to state based upon the prevailing competitive environment in each state. (Tatman, Tr. 277; CX 2526 (Minamyer, Dep. at 102) (Star generally had a multiplier for each state but in some instances, for states like Texas, there were two or more trading areas to which Star would assign different published multipliers)).
545. This list-price-times-multiplier price is referred to as a Fitting’s “published price” or “standard price.” (Tatman, Tr. 258-259 (list price and published multiplier for a geographic region establish “published pricing”); Rybacki, Tr. 1097, 1103 (“standard price”); Rybacki, Tr. 1126 (referring to “published multipliers”); CX 1018 at 001 (Pais

referring to “publishing” of multipliers by sending to customers); Answer ¶ 27(e) (McWane periodically “publishes” price lists and state-by-state multipliers)).

546. The published price is generally the highest price at which a Fitting can be sold. (Tatman, Tr. 258 (“[Y]our published list price and your published multipliers, what that establishes is the absolute highest price you could ever sell something for.”)).
547. The primary factor driving McWane’s pricing decisions is the competitive price level in the marketplace. A secondary factor is that the pricing level must be above a minimum margin that allows McWane to make money. (Tatman, Tr. 289-290).
548. McWane typically announces increases in published prices four weeks before the increase goes into effect. (Tatman, Tr. 325). Customers normally want four weeks’ notice, three weeks is “on the verge” of acceptable notice, and two weeks is too little notice. (Tatman, Tr. 519).

#### 4.5.2 Project Pricing

549. Fittings suppliers compete with one another by offering Distributors discounts off of published prices called Project Pricing. Day-to-day competition among Fittings suppliers occurs principally through Project Pricing. Project Pricing tends to create Fittings price instability and deterioration, while reductions in Project Pricing can lead to higher and more stable prices. (*Infra* ¶¶ 550-561).
550. At times, Fittings suppliers will provide Distributors with discounts from their published price on Fittings sales for individual waterworks projects, a practice known as “Project Pricing.” Minamyer, Tr. 3144 (“project price” and “special price” are used interchangeably); Tatman, Tr. 325-326; Rybacki, Tr. 1101 (describing job pricing as “anything that deviates from the standard list price and discount.”); McCutcheon, Tr. 2271-2272 (“special pricing” means a discount off of the published multiplier); Thees, Tr. 3098 (Project Pricing is pricing that is different than the market price, and can be affected by the size and scope of a given project); CX 2535 (Bhutada, Dep. at 105-106 (Project Pricing generally reflects a lower multiplier than the published price); CX 2538 (McCutcheon, IHT (Vol. 2) at 369) (Star sometimes offers a special project price, which is a multiplier lower than the published multiplier); CX 2522 (Agarwal, Dep. at 45-46), *in camera* ({ })).
551. Project Pricing, which may be negotiated for an entire project or job, or on a one-time basis for a single order, generally takes the form of a price multiplier that is lower than the published multiplier. (CX 2535 (Bhutada, Dep. at 105-106)).
552. Project Pricing does not normally result in Fittings being sold at prices above the published prices (list price times published multiplier). (McCutcheon, Tr. 2270 (published price is generally the highest price that a Distributor in a given geographic area will pay for Fittings); Rybacki, Tr. 1105 (“Q. If you had a preference, would you prefer to sell at a job price or at standard pricing? A. Standard pricing every day.”)).

553. Suppliers offer Project Pricing in order to compete, and gain sales volume from competitors. (Tatman, Tr. 326).
554. A significant portion of the price competition among suppliers for Fittings business occurs through Project Pricing, as Distributor purchasing decisions typically do not take rebates into account. (Minamyer, Tr. 3143-3144 (price multiplier was the chief aspect of pricing that customers negotiated with Star, since other aspects of pricing such as rebates and payment terms were typically not a job-by-job negotiation); RX-644 (Tatman, Dep. at 27) (describing Project Pricing as a “reaction to the competitive environment”))Webb, Tr. 2774 (“We look at the two differently. I mean, pricing in the field is based on the competitive nature of the project, and rebates are negotiated on an annual basis.”); Tatman, Tr. 1020-1022, *in camera* {
- }.

555. Project Pricing lowers the prevailing transactional price in a given area, and can lead to price “instability.” This happens when one supplier offers a Project Price and the other suppliers seek to match or beat it; as other Distributors in the region learn of the new price, they demand the same discount in order to be competitive on bids for the same job. (Rybacki, Tr. 1107-1108 (once customers get a taste of a lower number from Project Pricing, they want the lower number); CX 2484 (Tatman, Dep. at 27) (job pricing is a response to customer requests for lower prices on the basis of competitor prices); CX 2480 (Napoli, Dep. at 84-85) (Distributor awareness of suppliers’ prices to other Distributors drive down supplier prices); CX 0525 (Michael Berry of Star instructs territory managers, “We have to be flexible enough to play this game but not so soft that our customers think that they can get a price at any time.”)).
556. Project Pricing can cause prices to “deteriorate” market-wide because a supplier’s low prices are usually offered to more than one Distributor. As McWane’s Pricing Coordinator, Vince Napoli, explained:

They’ll go into one distributor and say I’m - we’re selling our products to your competition down the street at a .42. Would you like to buy the -- at the .42 to keep up with your competition? Well, sure they’re going to say yes. Then they go across the street to the other guy and said I was just in, made a sale to your competition down the street at a .42. You’re buying at a .44. Don’t you want to keep up with him? So that’s a method to -- and -- and what happens is their buy price goes down, but their sell price goes down with it. If they were the only ones to have a lower price, they’d be in a good position, but that’s never what happens.

(CX 2480 (Napoli, Dep. at 83-85) (describing how Project Pricing causes prices to deteriorate market wide); CX 2191 (Napoli email characterizing Sigma, Star and HD Supply as “Idiots” for engaging in Project Pricing that reduced prices by 12.5%).

557. Mr. Tatman defines pricing “instability” as occurring when Project Pricing in a region results in average invoice prices 10% or more below published pricing (Tatman, Tr. 284, 332-333).
558. Project Pricing can bring down the market price because if a supplier offers a special price to one Distributor, then the supplier needs to be prepared to offer it to all Distributors bidding on that project. Those Distributors then expect that lower price in later projects, and the spiral of declining prices can lead to zero gross margin. (CX 2480 (Napoli, Dep. at 46-47)).
559. Reducing Project Pricing can lead to stable, higher prices. Utah, which had a non-domestic published multiplier of .48 in 2008, which is almost double that of its neighboring states, provides an example of the price-increasing effect of a reduction in Project Pricing. (CX 1677 at 003; RX-613 at 001). As Mr. Jansen explained, Utah “is a unique situation where distributors as a whole want a stable market, and that’s . . . what they communicate to us. They’d like to have stable pricing and not a lot of job pricing because they keep inventories, and so yes, so they’d rather keep the market stable and keep the market up.” (CX 2477 (Jansen, Dep. at 220); RX 613 at 001)).
560. McWane admits that it would prefer not to engage in Project Pricing. (CX 2477 (Jansen, Dep. 248-249)).
561. Suppliers view Project Pricing as a drag on their profitability. (Rybacki, Tr. 1105 (“Q. And if you could find a way to put an end to job pricing in the industry, would you? A. Yes.”); Rybacki, Tr. 1107-1108 (“Q. Is job pricing good for Sigma’s long-term health? A. No. Q. Does job pricing create confusion with your customers or competitors? A. It does.”); CX 2531 (Rybacki, Dep. at 221) (“Q. And if you could find a way to have the entire industry rein in project pricing, that would be your preference, wouldn’t it, sir? A. I would say yes.”); CX 2531 (Rybacki, Dep. at 224) (describing Project Pricing as “not good for our -- the long-term health of this company or its shareholders”); *see also* CX 2480 (Napoli, Dep. at 46) (one of the risks of decentralized Project Pricing authority is that the market price can get dragged down); (CX 2485 (Walton, Dep. at 31-34) (observing that sales representatives with pricing authority could produce “instability and lower prices in the market.”); CX 2480 (Napoli, Dep. at 83-85) (discounting results in “price erosion,” or a lower bottom line and cash flow); CX 2191 (Napoli calling Star and others “idiots” for causing price deterioration through discounting)).

### 4.5.3 Rebates and Other Payment Terms

562. At times, McWane, Sigma, and Star have provided additional discounts and price concessions to Distributors in the form of rebates, reductions in freight charges, and/or extensions of credit or payment terms. (Joint Stipulations of Fact (JX 0001) ¶ 16).

#### 4.5.3.1 Rebates

563. A “rebate” is a percentage discount on all purchases by a Distributor from a supplier during a specific time period, typically for a year. (Minamyer, Tr. 3143 (Rebates are typically an annually negotiated percentage discount that Star provided its customers);

RX-655 (Brakefield, Dep. (Vol. 2) at 28-29) (describing Sigma periodic rebates to “volume customers”); Tatman, Tr. 297-298 (Rebates are written policies for a set period of time that may cover Fittings alone, or Fittings and other products); CX 2480 (Napoli, Dep. at 102-103) (rebates are corporate wide)).

564. {  
} (CX 2535 (Bhutada, Dep.  
 at 107-108), *in camera*). {  
} (CX 2535 (Bhutada, Dep. at  
 109), *in camera*; Tatman, Tr. 298-299 {  
}  
 }
565. {  
} (CX  
 2535 (Bhutada, Dep. at 110), *in camera*; RX-066 at 001-002 (Minamyer June 2008 email informing Star division managers that Star would exclude sales at Project Prices from rebate calculations)).
566. Rebates are often important to Distributors because their earnings from Fittings rebates can be greater than the Distributors’ net profits from the sale of Fittings. (CX 2534 (Bhutada, IHT at 58)).
567. Functionally, Distributors look at rebates differently than Project Pricing, because rebates do not apply to a specific job that a Distributor is bidding, and are instead applied on an annual basis. (Webb, Tr. 2774).
568. McWane offers one- to three-year corporate rebate agreements to its largest Distributor customers that are based on the Distributors’ total purchases of Fittings and other products manufactured by McWane, Inc., such as ductile iron pipes, hydrants and valves. (Tatman, Tr. 297-298).
569. Sales data in McWane’s financial reports are reduced to exclude rebates; gross sales have rebates netted out of them. (CX 2481 (Nowlin, Dep. at 22-23)). The actual amount of rebates paid by McWane is not shown in any of McWane’s regularly prepared financial reports. (CX 2481 (Nowlin, Dep. at 112)).

#### 4.5.3.2 Freight Terms

570. Each supplier has standard freight terms pursuant to which it will pay for shipping of Fittings to Distributors, and may also negotiate separate agreements with Distributors whereby the supplier will pay for freight outside of the standard terms for a specific project. (Tatman, Tr. 303-304; CX 2531 (Rybacki, Dep. at 24); CX 2535 (Bhutada, Dep. at 110)).
571. McWane’s standard freight term is “full freight allowed,” or free shipping, for all purchases of at least 5,000 pounds of McWane products, including Fittings. (Tatman, Tr.



303-304). McWane sometimes offers shipping “discounts” to customers, by providing free shipping for quantities less than 5,000 pounds. (Tatman, Tr. 304).

#### 4.5.3.3 Payment Terms

572. Payment terms are discounts that suppliers provide to Distributors for payment within a fixed amount of time. (Minamyer, Tr. 3143; Tatman, Tr. 304-305).

573. {

}

(CX 2535 (Bhutada, Dep. at 109), *in camera*).

574. The majority of McWane’s customers are subject to McWane’s standard payment terms, which provide a 2% discount for payment by the 15th of the month following the order. (Tatman, Tr. 304-305). {

} (CX 2535 (Bhutada, Dep. at 109-110), *in camera*).

575. Most Distributor customers pay within terms to take advantage of any rebates that would be available to the Distributor for doing so. (CX 2479 (McCullough, Dep. at 174-175)).

576. McWane has offered longer payment terms – up to 90 days – to some customers, as well as discounts of up to 6% for on time payments. (Tatman, Tr. 305).

## 5 Relevant Product Markets

### 5.1 Fittings Is a Relevant Product Market

577. Ductile iron pipe fittings of 24” or less in diameter for use in Open Specification applications, whether manufactured within or outside the United States, for use in projects within the United States constitute a relevant product market (the “Fittings market”). (CX 2260 (Schumann Rep. at 13-14, 16); Schumann, Tr. 3769-3770, 3788-3789; *infra* ¶¶ 579-616).

#### 5.1.1 No Other Product Is a Substitute

578. Other products are not functional substitutes for Fittings, and prices of other products do not constrain Fittings prices. (*See infra* §§ 5.1.1.1, 5.1.1.2).

##### 5.1.1.1 Other Products Are Not Interchangeable with Fittings

579. There are no widely used substitutes for Fittings. (Answer ¶ 23; Saha, Tr. 1177-1178 (other types of fittings are not interchangeable with ductile iron Fittings)).

580. The principal potential substitutes for Fittings are polyvinyl chloride (PVC) or high-density polyethylene (HDPE) fittings, but Fittings do not generally compete against PVC or HDPE fittings for use with ductile iron pipe. (CX 2501 (Prescott, IHT at 36) (pressure

- rated PVC fittings are not used with ductile iron pipe); CX 2538 (McCutcheon, IHT (Vol. 2) at 343) (PVC fittings are rarely used on ductile iron pipe); CX 2480 (Napoli, Dep. at 27 (PVC not a substitute for Fittings)).
581. PVC fittings are not a substitute for Fittings because they are more expensive. (CX 2538 (McCutcheon, IHT (Vol. 2) at 340) (explaining that due to the cost of oil and the cost of resins, PVC fittings are more expensive than ductile iron pipe fittings); Webb, Tr. 2715 (“Historically, I think [the price of PVC fittings has] been high. I don’t know if they’re higher than ductile, but I think all-inclusive with the restraining, the price of the fitting itself, that may be another reason why they’re not widely used.”)).
582. PVC fittings are not a substitute for Fittings because PVC fittings do not have as high of a pressure rating as Fittings. (CX 2521 (Agarwal, IHT at 54-55) (“[T]hey [PVC fittings] do not hold up the pressure”); CX 2489 (Morrison, IHT at 41) (“The pressure rating on the plastic water fitting is a little less. It’s a 200-pound max rating, whereas a ductile waterworks fitting is 250-pound max. So, depending on the pressure, it’s going to exclude the PVC fitting.”)).
583. PVC fittings are not a substitute for Fittings because engineers do not like the PVC or HDPE fitting’s susceptibility to fracture. (CX 2480 (Napoli, Dep. 27 (“No one, to my knowledge, has come up with a good plastic substitute for the strength of ductile iron.”); CX 2480 (Napoli, Dep. 28 (testifying that he has not heard of PVC fittings as being “even touted as being equal to or close to” a Fitting)).
584. PVC fittings are not a substitute for Fittings because PVC fittings are limited in size to 12” and below. (Webb, Tr. 2714-2715 (PVC fittings are “just not made in the sizes and configurations that mechanical joint fittings are.”); CX 2491 (Johnson, IHT at 45) (“[P]lastic water fittings or pressure fittings are generally limited to 12 inch on down.”); CX 2525 (Minamyer, IHT at 95-96) (“Q. Any substitute for those products [ductile iron pipe fittings], outside that group? A. Not really, no. Q. What about plastic fittings? A. Not particularly. In the size ranges, I don’t -- I haven’t really seen that. Q. When you say in the size ranges, what do you mean? A. In the size range of ductile fittings, three through 60 or something like that, and the plastic fittings don’t do that size range.”); CX 2489 (Morrison, IHT at 42) (PVC pressure-rated fittings are only a potential substitute for small diameter applications: “2-inch, maybe 3-inch, but anything above that, 99 percent would be a ductile iron waterworks fitting over a PVC fitting.”)).
585. PVC fittings are not a substitute for Fittings because certain markets do not allow PVC fittings to be used. (CX 2501 (Prescott, IHT at 33-34) (explaining that in those areas where ductile iron pipe is favored “there is no substitute for any of those ductile items [including Fittings]”); CX 2515 (Sheley, IHT at 65) (“Q. Any substitutes for those ductile iron pipe fittings? A. Not in this market. There are some markets that allow you to use some PVC product but not anywhere I do business.”)).
586. PVC fittings are not a substitute for Fittings because PVC fittings are harder to restrain and install. (CX 2543 (Coryn, IHT at 53) (“[T]hey’re [PVC fittings] probably harder to

- install because they're slippery."); Webb, Tr. 2715 (PVC fittings "have different restraining requirements than a mechanical joint fitting would.")).
587. Even where ductile iron pipe is not used, End Users only rarely specify pressure-rated high-density polyethylene (HDPE) and PVC fittings (rather than Fittings) for pressurized waterworks applications. (Tatman, Tr. 249 (in general, End Users do not use PVC fittings on ductile iron pipes, but End Users can use ductile iron Fittings on PVC pipes); Thees, Tr. 3054-3055; Minamyer, Tr. 3133 (use of plastic fittings is "extremely rare"); CX 2501 (Prescott, IHT at 34) ("HDPE is making some inroads, but not to any extent."); CX 2502 (Prescott, Dep. at 48) (describing use of PVC fitting business as "[v]ery little"); CX 2480 (Napoli, Dep. at 28-29) ("I don't recall ever seeing a PVC fitting even attempt to be used by an engineer.")).
588. Other than the limited, rare use of PVC pressure-rated fittings, there are no other products that are substitutes for Fittings in pressurized applications. (CX 2489 (Morrison, IHT at 41-42); CX 2538 (McCutcheon, IHT (Vol. 2) at 342-343) ("Q. Beyond PVC pressure fittings, are there any other products that you can point me to that are substitutes or possible substitutes for ductile iron pipe fittings? A. No, sir."); CX 2525 (Minamyer, IHT at 95) ("Q. Within the universe of ductile iron pipe fittings, if we take these different types of fittings and take them as a whole, proprietary joint fittings, flange fittings, push-on fittings, mechanical joint fittings, let's just talk about that as the universe of ductile iron pipe fittings. Any substitute for those products, outside that group? A. Not really, no. Q. What about plastic fittings? A. Not particularly.")).
589. Brass Fittings are typically threaded and do not come larger than 2" in diameter. They are not substitutes for Fittings. (Thees, Tr. 3057- 3058; Webb, Tr. 2720 (brass fittings are threaded, and thus not compatible with underground pipes)).
590. Steel Fittings are not used underground because the steel fitting would rust, and are not common substitutes for Fittings. (Thees, Tr. 3057, 3058). Steel pipe fittings are not used underground because the steel fitting would rust. (CX 2538 (McCutcheon, IHT (Vol. 2) at 343)).
591. Cast iron or gray iron fittings are an older fittings technology. Distributors receive only a negligible demand for these products from End Users. (Webb, Tr. 2719; CX 2513 (Webb, IHT at 59-60) ("I haven't seen cast or grey iron fittings in ten, 15 years."); CX 2498 (Teske, Dep. at 68-69) (gray iron fittings do not meet specifications); CX 2501 (Prescott, IHT at 37) (Full-body cast iron fittings are rarely used any more: "every once in awhile we find one . . . some old engineer that just won't change")).

#### 5.1.1.2 Other Types of Fittings Do Not Constrain Fittings Prices

592. Fittings suppliers do not track prices of PVC fittings or take them into account when setting prices of Fittings. (Tatman, Tr. 250-251 (when setting the price of Fittings, McWane does not consider the price of PVC fittings); Tatman, Tr. 251 (McWane does not track the prices of PVC fittings); CX 2477 (Jansen, Dep. at 69-70, 77) (testifying that Mr. Jansen has never taken into account the price of PVC fittings when setting Fittings

prices); Minamyer, Tr. 3134 (does not recall tracking pricing for any Fittings substitutes, including plastic fittings); CX 2538 (McCutcheon, IHT (Vol. 2) at 341) (Star does not track the price of PVC fittings because the prices of ductile iron fittings and the price of PVC pressure fittings do not move together, and because the price of PVC pressure fittings does not have a big influence on the Fittings business); Saha, Tr. 1177 (the price of Fittings is not constrained by the price of PVC fittings); *see also* CX 2477 (Jansen, Dep. at 94) (McWane does not take into account the price of cast iron fittings when setting the price of Fittings)).

593. Distributors do not seek to use prices of PVC fittings to negotiate prices of Fittings. (Webb, Tr. 2718; CX 2480 (Napoli, Dep. at 28) (does not remember ever being asked by a Distributor to lower the price of McWane's Fittings because of the price of a PVC fitting); Saha, Tr. 1177 (he has never been asked by a customer to lower the price of a ductile iron pipe fitting because of the price of a PVC fitting)).
594. Fittings suppliers do not track the price of cast iron fittings when setting Fittings prices. (CX 2477 (Jansen, Dep. at 94)).

### **5.1.2 Fittings of 24 Inches or Less in Diameter May Be Treated as a Cluster Market**

595. Fittings of 24" or less in diameter may be treated as a cluster market because the market conditions and analysis applicable to this cluster are identical, larger Fittings are subject to different market conditions, and the industry typically groups Fittings by sizes. (*See infra* ¶¶ 596-616).
596. Individual Fittings of differing shapes and sizes are not substitutes for each other, because a Fitting must have a diameter appropriate for the pipe to which it is attached and a shape or design appropriate for its intended function (for example, changing the direction of flow by 90 degrees versus 22.5 degrees). (*See generally* Tatman, Tr. 220-221 (describing how Fittings are used in waterworks projects and identifying different types of Fittings including elbows, Ts, bends, coated Fittings, and reducers)). Each discrete size and shape of Fitting satisfies the requirements of a relevant market. (CX 2260-A (Schumann Rep. at 12)).

#### **5.1.2.1 Market Analysis for Each Size and Shape of Fitting of 24 Inches or Less Is Identical**

597. Fittings of 24" or less in diameter may be treated as a cluster market because the market analysis for each size and shape of Fitting is identical. (*See infra* ¶¶ 598-600).
598. It is not necessary to analyze each size and shape of ductile iron pipe fitting in the range of 24" and below as a separate market. (CX 2260-A (Schumann Rep. at 13); Schumann, Tr. 3791-3792).
599. The market analyses of each of these Fittings items would be essentially identical because the primary suppliers, customers, and Distributors are the same and the materials and other inputs used to produce the products are the same. (CX 2260-A (Schumann

Rep. at 13); Schumann, Tr. 3791-3792). A determination that McWane's conduct with respect to the aggregate market is anticompetitive is analytically identical to a determination that the same conduct is anticompetitive as to each Fitting size and type within the cluster. (CX 2260-A (Schumann Rep. at 15); Schumann, Tr. 3790-3791).

600. Thus, ductile iron pipe fittings with a diameter of 24" or less can be analyzed as if they were part of a single product market. (CX 2260-A (Schumann Rep. at 13)).

5.1.2.2 Fittings of 24 Inches or Less in Diameter Are Manufactured and Marketed Together and by Similar Methods

601. Each size and shape of Fitting of 24" or less in diameter is made of the same material, by the same methods, and sold and marketed together by the same suppliers, through the same distribution channels, to the same customers, for use in the same or similar projects. (*See infra* ¶¶ 602-609).
602. Different sizes and shapes of Fittings are made out of the same material and produced by the same methods. (*See supra* § 4.1.3). All Fittings must comply with AWWA standards. (CX 2522 (Agarwal, Dep. at 37); McCutcheon, Tr. 2292 (describing various AWWA specifications that customers use)). Compliance with AWWA specifications determines the interchangeability of Fittings. (CX 2477 (Jansen, Dep. at 86)).
603. McWane, Sigma, and Star each supply a full line of Fittings of 24" or less in diameter. (Rybacki, Tr. 3572-3573; Tatman, Tr. 589; JX 0001, ¶¶ 1-3).
604. Fittings prices are set as a package, through the announcement of price multipliers and the negotiation of Project Pricing multipliers and other pricing terms that apply across all of the different Fittings included in a given purchase. (CX 2535 (Bhutada, Dep. at 106 (Q. And when a project pricing request is made "is it applicable only to one individual construction project? A. Typically, yes."); Tatman, Tr. 258-259, 277 (describing national published list price the standard price component of Fittings pricing); Rybacki, Tr. 1103-1104, 1096-1097 (same); CX 2535 (Bhutada, Dep. at 102) (same); Webb, Tr. 2770-2771 (explaining that HD received price communications from suppliers through national price lists and regional multipliers based on the national price); CX 1147 at 001 (describing the price list culture of the Fittings industry)). Multipliers vary from state to state. (Tatman, Tr. 277 (describing state multipliers as the second component of Fittings pricing)).
605. Distributors purchase Fittings from suppliers, and then further incorporate the Fittings into a bundle with other waterworks products for resale to End Users. (CX 2502 (Prescott, Dep. at 15) ("Q. What manufacturers do you buy fittings from right now? A. Tyler, Sigma, Star . . . Those are ductile iron fittings."); CX 2490 (Morrison, Dep. at 66) (identifying Fittings suppliers that sell to Distributors); CX 2504 (Thees, Dep. at 114) ("We supply bundle of goods to the contractor, and they [End Users] need fittings to put together the pipe."); CX 2504 (Thees, Dep. at 149) (Fitting suppliers are "selling a component as opposed to a bundle."); CX 2503 (Thees, IHT at 71) (agreeing that

Distributors carry the entire bundle of products used in a waterworks project and a Fittings supplier might not have the other products in the bundle)).

606. Virtually all Fittings are sold through waterworks Distributors. (*See supra* § 4.4.4.1).
607. The typical End Users of Fittings are municipalities, regional water authorities, and the contractors they engage to construct waterworks projects. (*See supra* § 4.4.3).
608. Functionally, Fittings up to 12” in diameter are typically used for residential work, and 14” to 24” Fittings are typically used by municipalities or plants with long transmission lines. (Brakefield, Tr. 1279-1281; CX 1479 (describing categories in CX 1479, and explaining that 2” to 12” Fittings are predominately used for housing subdivisions and private contracting work); (Brakefield, Tr. 1281; CX 1479) (describing categories in CX 1479 and explaining that End Users of Fittings in the 14” through 24” range are generally municipalities or plants with long transmission lines funded by State Revolving Fund or EPA money).
609. In contrast, Fittings over 24” in diameter are considered to be a large diameter and are a more unusual size for the industry. (CX 2538 (McCutcheon, IHT (Vol. 2) at 322)). They are used for large treatment plants or large transmission lines. (Brakefield, Tr. 1281; CX 1479). (85% to 95% of Fittings sales are Fittings below 24”). (CX 2502 (Prescott, Dep. at 76-77)).

5.1.2.3 Market Conditions for Fittings of 24 Inches or Less in Diameter Are Distinct from Those for Fittings of 30 Inches or Greater in Diameter

610. The market conditions for Fittings of 24” or less in diameter differ from those for Fittings of 30” or greater. (*See infra* ¶¶ 611-614).
611. Fittings with diameters of 30” and greater (large diameter fittings) are not in the Fittings relevant product market. (CX 2260-A (Schumann Rep. at 14)). The competitive analysis of large fittings differs from that of small and medium fittings (those with diameters of 24” and below), because ACIPCO, a significant producer of large diameter fittings is not a producer of Fittings with diameters of 24” and below. (CX 2260-A (Schumann Rep. at 14); *see supra* § 3.4.1.1).
612. ACIPCO currently manufactures only Domestic Fittings ranging from 30” to 64” in diameter. ACIPCO exited the manufacture of Fittings under 30” in diameter in 2006. (CX 1897 at 003; CX 2486 (Burns, Dep. at 15, 23-28)). ACIPCO does not have any interest in extending its product scope to include small and medium diameter Fittings. (CX 2486 (Burns, Dep. at 15, 30)).
613. For 2008, in the market consisting of ductile iron pipe fittings with diameters greater than 24” (*i.e.*, 30” and above), ACIPCO’s share of United States sales was approximately {  
     }. (*See* CX 1895 at 001, 005, *in camera* (ACIPCO data showing 2008 sales of {  
     } tons); CX 2486 (Burns, Dep. at 159-160) (describing CX 1895); RX-127 at 002

(DIFRA data showing the other suppliers' combined 2008 sales of fittings greater than 24" in diameter to be { } tons).

614. In 2009, before Star's entry into domestic manufacture, ACIPCO was the dominant domestic producer of ductile iron pipe fittings with diameters of 30" and above. (CX 2222 (identifying "only one domestic manufacturer for 30" and larger fittings - American Cast Iron Pipe Company (ACIPCO)," but noting that McWane does make a minimum number of large fittings but not enough to service the market)).

#### 5.1.2.4 Grouping Fittings of 24 Inches or Less in Diameter is Consistent with Industry Practice

615. Grouping Fittings of 24" or less in diameter is consistent with industry practice. (RX-632 at 028-029 (Tyler Union Waterworks Fittings Financial Statements containing fittings sales and gross profit analysis by three size ranges: 3"-12", 14"-24", and 30" and up); CX 1339 at 003 (January 2009 DIFRA report showing shipment analysis by three size ranges: 2"-12", 14"-24", and over 24"); CX 0622 at 008-010 (Tyler Union 2009 Sales Meeting presentation, separating out market share by size categories of 3"-12" diameter, 14"-24" diameter, and >24" diameter)).
616. Historically, the waterworks industry has differentiated Fittings of 3" to 24" in diameter from Fittings of 30" or greater diameter. (CX 2533 (Bhargava, Dep. at 43) ("Q. . . . why does Star divide the utility fittings into the two categories, the three-inch to 24-inch and the 30-inch and up? A. That is industry practice also.")).

## 5.2 Domestic Fittings Is a Relevant Product Market

617. Ductile iron pipe fittings of 24" or less in diameter for use in projects in the United States that have a Domestic-only Specification constitute a second relevant product market (the "Domestic Fittings market"). (CX 2260-A (Schumann Rep. at 15-16); Schumann, Tr. 3769-3770, 3789-3791; *infra* ¶¶ 618-633).

### 5.2.1 Imported Fittings Are Not Substitutes for Domestic Fittings for Domestic-Only Specifications

618. Imported Fittings are not substitutes for Domestic Fittings for projects with Domestic-only Specifications. (*Infra* ¶¶ 619-627).
619. Some municipalities and Federal, State and local government agencies require the use of domestically-manufactured product as a matter of preference and as a matter of law. If a law requires a municipality to use Domestic Fittings, or if a municipality prefers Domestic Fittings, the specification will state that the Fittings need to be "domestic only." (CX 2537 (McCutcheon, IHT (Vol. 1) at 61, 90); Thees, Tr. 3068; CX 2477 (Jansen, Dep. at 20) (defining a specification for Domestic Fittings as one requiring products manufactured in the United States); *see supra* § 4.3).
620. A Distributor will not purchase an imported Fitting if the End User's specification calls for a Domestic Fitting, and suppliers do not sell imported Fittings into Domestic-only

Specifications. (Webb, Tr. 2716-2718; Thees, Tr. 3056 (“Q. If the final spec says ‘domestic fitting,’ can you substitute an imported fitting? A. Only if it allowed the use of import fitting. If it was domestic only . . . if that was the final spec must be domestic, no.”); (CX 2516 (Sheley, Dep. at 156) (“Q. Can you put an import [Fitting] in a domestic job? A. Domestic only, no.”); McCutcheon, Tr. 2283 (Mr. McCutcheon recalls no instances of Star selling an imported Fitting into a Domestic-only Specification during ARRA); Saha, Tr. 1173-1174 (Saha has never tried to sell imported Fittings into a Domestic-only Specification, either at NACIP or at PCI)).

#### 5.2.1.1 ARRA-Funded Projects

621. Domestic Fittings were required and used on ARRA-funded projects. (CX 2513 (Webb, IHT at 95) (HD Supply was generally unable to use imported Fittings on ARRA-funded projects); CX 2501 (Prescott, IHT at 66-67) (explaining that domestic fittings were required and ‘[n]obody had a choice’’)).
622. Under ARRA, End Users were particularly concerned about purchasing imported Fittings for projects funded by ARRA because of potentially severe penalties for using non-Domestic products. (CX 2537 (McCutcheon, IHT (Vol. 1) at 99)).
623. Immediately after the passage of ARRA, there was some hope among suppliers of non-Domestic Fittings that certain waivers and exemptions under ARRA, or the applicability of NAFTA, would allow them to supply non-Domestic Fittings into ARRA projects. (*See infra* § 8.1.3).
624. However, with few exceptions, such methods of enabling the supply of non-Domestic Fittings into ARRA projects were not successful, and non-Domestic Fittings were not used on ARRA-funded projects. (CX 2501 (Prescott, IHT at 66) (“Q. Did you ever get a waiver or try to get a waiver to allow the use of imported fittings on stimulus projects? A. To my knowledge, no.”); CX 2510 (Groeniger, Dep. at 173) (“Q. So you never used a *de minimis* waiver for fittings? A. Not that I can recall.”); CX 2489 (Morrison, IHT at 51) (there were no waivers or exemptions that allowed the use of imported Fittings on Domestic-only ARRA-funded projects); CX 2489 (Morrison, IHT at 51) (ARRA-funded projects serviced by C.I. Thornburg “were all served with domestic fittings.”); *see also infra* § 8.1.3).

#### 5.2.1.2 Other Domestic-Only Projects

625. Without regard to ARRA, some government entities, including the State of Pennsylvania, United States military and federal facilities, and some jurisdictions in the northeastern United States require domestic products to be used in any projects they fund. (CX 2537 (McCutcheon, IHT (Vol. 1) at 83-84); *see supra* § 4.3).
626. Some municipalities, in states like Pennsylvania, Illinois, and Maryland, show a strong preference for Domestic Fittings despite the pricing differentials because of the influence of labor unions. (CX 2534 (Bhutada, IHT at 31-32)).



627. End users who specify Domestic Fittings because of preference are aware of, but not sensitive to, the price differential between Domestic Fittings and import Fittings. (CX 2489 (Morrison, IHT at 46) (“Well, they’re aware of [the price differential], but in the overall cost of a project, the cost of your fittings is minimal. Now, they may be twice as much, but if you’re doing a million-dollar project and you’re paying \$10,000 more for the fittings, that’s negligible in some people’s eyes.”); CX 2527 (Pais, IHT at 36-37) (engineers deciding whether to have a Domestic-only specification are not sensitive to prices of Fittings)).

### **5.2.2 Domestic Fittings Are Sold at Substantially Higher Prices Than Those Sold into Open-Specification Jobs**

628. Domestic Fittings are sold at substantially higher prices than non-Domestic Fittings. (Answer at ¶ 20 (admitting that McWane’s Domestic Fittings sold into Domestic-only Specifications are generally sold at higher prices than non-Domestic Fittings); CX 2535 (Bhutada, Dep. at 13); Webb, Tr. 2733 (there is a price differential between Domestic and imported Fittings, with Domestic Fittings being higher than imported Fittings); CX 2513 (Webb, IHT at 77) (Domestic Fittings have always been more expensive than imports, both before and after ARRA); Sheley, Tr. 3402-3404 (both before and after passage of ARRA, the price of Domestic Fittings was higher than the price of imported Fittings); Thees, Tr. 3074 (the price of Domestic Fittings is higher than the price of non-Domestic Fittings by approximately 30 to 40 percent); CX 2502 (Prescott, Dep. at 30) (imported Fittings cheaper than Domestic Fittings); CX 2500 (Swalley, Dep. at 65-67) (Domestic Fittings are dramatically more expensive than non-Domestic Fittings though they are of similar quality to non-Domestic Fittings)).
629. McWane’s February 2008 price multipliers for Domestic Fittings (*i.e.*, domestically manufactured fittings sold into Domestic-only Specifications) were substantially higher than its February 2008 “blended” multipliers (for Fittings sold into Open Specification projects). For example, whereas a given non-Domestic Fitting might sell in Texas for \$280, the corresponding Domestic Fitting would sell for \$440, an approximately 57% higher price. (RX-410 at 0001, 0002 (Domestic and blended multiplier maps)). McWane offers Domestic Fittings at the same (higher) price, whether the Domestic-only Specification in question is a result of legal requirements or End User preference. (*See* RX-410 at 0002 Domestic multiplier map, not distinguishing legally required Domestic-only Specifications from End User preference)). Further examples of the price differences between Domestic and non-Domestic Fittings according to McWane’s February 2008 price multiplier maps include the following:

State	Non-Domestic Multiplier	Domestic Multiplier	Percentage Difference
California	.33	.44	33.3%
Colorado	.33	.49	48.5%
Florida	.25	.49	96.0%
Michigan	.33	.45	36.4%
Minnesota	.28	.45	60.7%
New York	.31	.44	41.9%
Ohio	.25	.45	80.0%
Oregon	.42	.51	21.4%

(RX-410 at 0001, 0002; *see also* CX 2534 (Bhutada IHT at 31) (estimating that before ARRA, there was a price differential of approximately 20% to 30% between domestic and imported Fittings); CX 1562 at 002 (for 2007 and the first half of 2008, the average gross invoice price per ton of McWane’s Domestic Fittings exceeded the gross invoice price per ton of McWane’s blended Fittings by between 30% and 37%); CX 1564 at 002 (showing delta between domestic and blended fittings for 2007 and first quarter of 2008); McCutcheon, Tr. 2277-2278 (at the time ARRA’s enactment in early 2009, prices for Domestic Fittings were higher than the prices for imported Fittings)).

630. Similarly, in December 2009 McWane’s Domestic Fittings multipliers were substantially higher than its blended Fittings multipliers (CX 1852 at 002 (in December 2009 Sigma announced Fittings multipliers of .46, .58, and .70 for Domestic Fittings, and .27 for the same Fittings if imported)).
631. Due to the price differential between Fittings sold into open and domestic specifications, McWane does not provide quotes for Domestic Fittings to be used for Open Specification. (CX 2477 (Jansen, Dep. at 96)).
632. The prices of Domestic and non-Domestic Fittings do not move in tandem; when McWane raises prices on Domestic Fittings, it does not necessarily raise the price of non-Domestic Fittings the same amount (if at all), and when McWane raises prices of non-Domestic Fittings it does not necessarily raise prices of Domestic Fittings the same amount (if at all). (*E.g.*, CX 1397 at 002 (McWane June 2010 price letter “implementing a price increase on all Non Domestic [Fittings]” but not “implementing any price action, at this time, for our Domestic products”); CX 1660 (January 5, 2010 McWane email stating “That is correct. Domestic increases. Non-Domestic does not.”)).
633. In 2008, McWane did not typically offer Project Pricing for Domestic Fittings because the less competitive Domestic market did not require it. (Tatman, Tr. 334-335; CX 2199 at 001 (McWane’s Pricing Coordinator email refusing a sales person’s request for Project Pricing for Domestic Fittings because “We are the only one who makes the full line of

24” and down. No need to drop the price unless Star is an issue.”); CX 2480 (Napoli, Dep. at 73) (job pricing is less frequent on Domestic Fittings jobs)).

### **5.3 The Relevant Geographic Market for Fittings and Domestic Fittings Consists of All Relevant Products Sold for Use in the United States**

634. The relevant geographic market for both Fittings and Domestic Fittings consists of all relevant products sold for use in the United States. (CX 2260-A (Schumann Rep. at 17); Schumann, Tr. 3794; *infra* ¶¶ 635-639).
635. The relevant geographic market does not extend to products sold for use outside the United States, because Fittings manufactured for use in the United States are measured in inches, and cannot be used outside the United States, where fittings specifications are metric. (Pais, Tr. 1887).
636. The relevant geographic market extends to the entire United States because Fittings suppliers ship their products nationally from multiple locations. (CX 2260-A (Schumann Rep. at 17); Rybacki, Tr. at 1089-1092 (Sigma has five main warehouses, some satellite warehouses, and distribution centers in Florida, California, Washington, and Arizona); McCutcheon, Tr. at 2264 (Star has 13 distribution centers in North America in order to “stock product closer to [customers] for better delivery times”); RX-637 (Jansen, Dep. at 144-145) (McWane has distribution centers in Texas, Alabama, California, Oregon, and Illinois, enabling one-to-two day delivery to 95 percent of the country)).
637. From the perspective of a local Distributor, the Fittings of one manufacturer/supplier are interchangeable with those of another manufacturer/supplier located elsewhere in the United States. (CX 2477 (Jansen, Dep. at 86) (Fittings produced by Sigma, McWane and Star that meet the same AWWA specifications are interchangeable with each other); CX 2483 (Tatman, IHT at 87) (“[Fittings] haven’t changed in 20 years. Quite frankly, yours are the same as everybody else’s”)).
638. Distributors do not purchase Fittings from manufacturers/suppliers outside of the United States. (Webb, Tr. 2746 (listing McWane, Sigma, and Star as HD Supply’s suppliers of imported ductile iron pipe fittings); Thees, Tr. 3082 (stating that Ferguson buys imported fittings from McWane, Star, and Sigma); Sheley, Tr. 3398 (TDG has programs with four fittings suppliers: SIP-Serampore, Tyler/Union, Star and Sigma)).
639. There may be smaller, local relevant geographic markets, but a finding of smaller markets does not impact the analysis of the conduct at issue in this case. (Schumann, Tr. 3794-3795).

### **5.4 McWane, Sigma, and Star Collectively Have Market Power in the Fittings Market**

640. McWane, Sigma, and Star collectively have market power in the United States Fittings market. (*Infra* ¶¶ 641-650).

#### 5.4.1 Collectively, McWane, Sigma, and Star Account for a Very High Share of the Fittings Market

641. McWane, Sigma, and Star collectively account for more than { } of Fittings (including both domestic and imported) sold in the United States. (*Supra* ¶ 456).

#### 5.4.2 There Are High Barriers to Entry into the Fittings Market

642. There are high barriers to entry into the Fittings market. (*Infra* ¶¶ 643-650).
643. In a market with barriers to entry, an incumbent does not face the disruption of price caused by an entrant and the enhanced competition that an entrant would provide. (Schumann, Tr. 3948).
644. Barriers to entry into the Fittings market are high. (Pais, Tr. 2118 (Fittings industry was “very difficult to enter”; “The barrier for entry in our business is very high”); CX 1003 at 004 (Pais memo observing that “one of the reasons Sigma succeeded in this product range is due to the prohibitive barrier to entry with the high cost of tooling etc.”); CX 2525 (Minamyer, IHT at 99, 100) (there have been few examples of entry into the market for Fittings)).
645. Because Fittings are commodity products, Distributors base their purchasing decisions in part on relationships, and so developing relationships with Distributors is an important part of the business of Fittings suppliers. (Minamyer, Tr. 3135; CX 2538 (McCutcheon, IHT (Vol. 2) at 348)). A new entrant must overcome existing relationships between existing manufacturers and the Distributors and End Users. (CX 2525 (Minamyer, IHT at 99, 102, 103-104)). When SIP began offering Fittings, SIP had existing relationships with waterworks suppliers due to its sale of municipal castings. (RX-681 (Agarwal, Dep. at 77)).
646. A new entrant must make a significant capital investment to enter the Fittings market. (CX 2530 (Rona, Dep. at 256-257); CX 2500 (Swalley, Dep. at 102-107 (describing costs of obtaining certifications and develop molds)). For example, a new entrant must build its own foundry or develop a supply chain of foundries that can produce its Fittings. (Saha, Tr. 1166-1167 (to begin selling Fittings, NACIP needed to source foundries that produced Fittings); *see also infra* ¶¶ 1721-1724 (describing Star’s alternatives for using foundries to produce Domestic Fittings)). An entrant must also develop expertise in design engineering. (Rybacki, Tr. 1092, 1094 (even as a “virtual manufacturer,” Sigma’s engineering staff produces the drawings to make Fittings patterns, and Sigma maintains engineering groups in China and India to oversee the production process); *see also supra* ¶ 60 (describing Sigma engineering expertise); *infra* ¶ 1666 (Star’s engineering expertise needed to operate in the imported Fittings business was available to its Domestic Fittings business)).
647. It takes time to develop a reputation for quality service and quality product as a validated supplier of Fittings. (CX 2525 (Minamyer, IHT at 99)). A new entrant must meet the requirements for specification, *i.e.*, the End User’s approval of the supplier’s product for use in individual projects. (CX 2525 (Minamyer, IHT at 99, 100)). A market entrant

must secure the testing and approval of its Fittings by the municipalities or other End Users. (CX 2538 (McCutcheon, IHT (Vol. 2) at 348)). An End User that has already tested and approved Fittings from established companies has little incentive to expedite the testing and approval process for a new manufacturer. (CX 2538 (McCutcheon, IHT (Vol. 2) at 348); *see also* Saha, Tr. 1166-1167, 1163 (to begin selling Fittings, NACIP needed to obtain warehouses, obtain AWWA Underwriters Laboratories (UL) certification and National Sanitation Foundation (NSF) approvals, acquire patterns or molds, source foundries that produced Fittings, and establish Distributors through which to sell); CX 2522 (Agarwal, Dep. at 77-78) (to sell Fittings, SIP first needed to obtain UL and NSF certification, and FM approval; SIP also received municipality approvals and placement on engineers' approved lists before supplying Domestic Fittings)).

648. A new entrant into the Fittings market would need to develop hundreds of patterns and moldings. (CX 2533 (Bhargava, Dep. at 88-89) (describing need to assemble hundreds of fitting patterns); CX 1395 at 003 (Pais describing work involved in developing a full range of Fittings production); Saha, Tr. 1166-1167 (to begin selling Fittings, NACIP needed to acquire patterns or molds); CX 2500 (Swalley, Dep. at 102-107) (describing costs of obtaining certifications and developing molds)). A new entrant also must incur a significant cost of inventory. (CX 2525 (Minamy, IHT at 99)).
649. A new entrant into the Fittings market would need about three to five years to enter the market. (CX 2538 (McCutcheon, IHT (Vol. 2) at 348)). SIP took approximately three years to offer a full line of 3500 unique Fittings up to 48" in diameter. (RX-681 (Agarwal, Dep. at 30); CX 2521 (Agarwal, IHT at 64-65)).
650. In a market with inelastic demand such as the Fittings market, lowering price will not cause the market to expand as much as in a market with elastic demand. Thus, it is difficult for an entrant to take sales away from the market incumbent in a market with inelastic demand. (Schumann, Tr. 3948; *see also supra* § 4.2.2 (demand for Fittings is inelastic)). Inelastic demand for Fittings indicates that the rewards from price cutting are likely to be small and the rewards from collusion are likely to be large. (CX 2260-A (Schumann Rep. at 36)).

## **6 The Fittings Market Is Conducive to Collusion**

### **6.1 Oligopoly Theory Describes How Firms in a Market Can Obtain Higher Profits Through Coordination and Accommodation**

651. The market for the sale of Fittings in the United States is a highly concentrated oligopoly of three firms, McWane, Sigma, and Star. (CX 2260-A (Schumann Rep. at 25); Schumann, Tr. 3795; *supra* ¶¶ 454-461).
652. Oligopolies are markets characterized by a few large firms selling all or most of the market's output. Because there are few firms in an oligopoly, each firm's profit maximizing price and output decisions depend on the price, output, and strategic behavior of the other firms in the market. (CX 2260-A at 25) {

- } (CX 2260 (Schumann Rep. at 25), *in camera*; Schumann, Tr. 3796; *infra* ¶¶  
666-669 { } }
653. To maximize its profits, an oligopolist must account, in its strategic decision-making, for the likely strategic reactions of other oligopolists. (CX 2260-A (Schumann Rep. at 25)).
654. By { } firms in an oligopoly may be able to develop strategies through observations associated with their ongoing interactions in the market that tend to promote cooperative behavior and diminish competitive behavior. (CX 2260 (Schumann Rep. at 25), *in camera*; Schumann, Tr. 3797). This sort of strategic behavior by firms in an oligopoly may allow them to jointly obtain prices and profits that exceed competitive levels. (CX 2260-A (Schumann Rep. at 25); Schumann, Tr. 3799-3800).
655. Jointly, the firms in a market can obtain higher profits through coordination and accommodation. (CX 2260-A (Schumann Rep. at 26)).
656. Pricing and margin gains can be made through a proactive pricing strategy where there are few players leading and controlling a market niche. Sigma’s Mr. Pais recognized this strategy in a September 2008 marketing strategy memorandum where he explained that price elasticity for Fittings is low, and “lower prices don’t necessarily translate into proportionately higher volume.” (CX 1155 at 003 (stressing the need for “a certain amount of discipline and a selectively aggressive sales strategy” because of low demand elasticity)).
657. Reaching and sustaining coordinated interaction requires that several challenges be overcome, including selecting and coordinating the behavior of cartel participants on mutually consistent, collusive strategies; monitoring the behavior of cartel participants to detect and deter defections from these collusive strategies; and preventing entry (or expansion) by non-cartel firms. (CX 2260-A (Schumann Rep. at 26-27)).
658. The ability to enforce consensus is critical to successful coordination. (CX 2260-A (Schumann Rep. at 28)).
659. Uncertainty regarding the behavior of rivals can lead to price cutting by encouraging firms to cheat on their rivals before their rivals can cheat on them. (CX 2260-A (Schumann Rep. at 31)). The lack of trust in rivals creates or enhances the uncertainty that each firm in an oligopoly faces with respect to the likelihood that a rival will cheat. (CX 2260-A (Schumann Rep. at 31)). Cheating or secret price cutting by firms in an oligopoly causes market prices to fall. (CX 2260-A (Schumann Rep. at 26-27, 47)). Price transparency is conducive to coordination; transparency is one way of providing a means for rivals to detect cheating on a consensus price, which increases the risk of punishment and thereby creates a disincentive for such cheating in the first instance. (CX 2260-A (Schumann Rep. at 36)).
660. By promoting trust through personal relationships that casual social interactions and casual communications encourage, informal communication reduces uncertainty with

respect to rivals' willingness to secretly cut prices, which acts to maintain high prices and lowers consumer welfare. (CX 2260-A (Schumann Rep. at 31)).

661. Participation in trade association activities may facilitate coordination, including collusion. (CX 2260-A (Schumann Rep. at 31)). Trade associations may facilitate the exchange of competitively sensitive information and general communications and social interactions between rival executives in an oligopoly. (CX 2260-A (Schumann Rep. at 31)).
662. If interactions in an oligopoly are altered to reduce the level of uncertainty and promote the detection of cheating, cheating is less likely to take place and cartel agreement is more likely to be sustained. (Schumann, Tr. 3801-3803).

## **6.2 Factors Indicating That a Market is Highly Susceptible to Collusion Are Present in the Fittings Market**

663. Characteristics indicating that a market is likely to be susceptible to coordinated interaction, including collusion, include (1) high concentration; (2) few rivals; (3) product homogeneity; (4) inelastic demand; (5) price transparency; (6) trade association; (7) information exchange; (8) unconcentrated buyers; (9) barriers to entry; and (10) industry social structure. (CX 2260-A (Schumann Rep. at 27-28); Schumann, Tr. 3809-3820). Not all of these characteristics are necessary for successful coordination to occur. (CX 2260 (Schumann Rep. at 28)).
664. In the 2007-2008 time period, the Fittings market exhibited many of the characteristics that indicate a market is conducive to coordination. (CX 2260-A (Schumann Rep. at 34); Schumann, Tr. 3823-3838). In sum:
- a. The Fittings market is characterized by very high concentration. (CX 2260 (Schumann Rep. at 34)).{  

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(CX 2260 (Schumann Rep. at 18 tbl. 1), *in camera*). HHIs are the standard measure of market concentration. (CX 2260-A (Schumann Rep. at 17)). An HHI above 2500 is classified by federal antitrust enforcement agencies as reflecting a highly concentrated market. (US DOJ and FTC Horizontal Merger Guidelines at 18-19).
  - b. The Fittings market is characterized by few rivals: as a group, McWane, Sigma, and Star, account for more than { } of the Fittings (including both domestic and imported) sold in the United States. (CX 2260 (Schumann Rep. at 17 & 18 tbl. 1), *in camera*; *supra* ¶ 456).
  - c. Fittings of any particular size or shape are homogeneous commodity products manufactured to meet industry-wide standards. (*Supra* ¶¶ 415-417).
  - d. The demand for Fittings is highly inelastic over the range of prices germane to Fittings transactions. (CX 2260-A (Schumann Rep. at 35; Schumann, Tr. 3830); *see also* RX-712A (Normann Rep. at 24) (industry demand for Fittings is likely inelastic); *supra* ¶¶ 419-424 (describing inelastic nature of Fittings market)).

- e. The published pricing structure of the Fittings industry is highly transparent. (*Infra* ¶¶ 670-678) . However, it is difficult to observe project pricing, although the firms do track instances of project pricing by their competitors. (*Infra* ¶¶ 679-683). A key objective of the suppliers’ coordinated conduct over the course of 2008 was to enhance price transparency by curtailing Project Pricing. (*Infra* ¶¶ 914-919 (describing Tatman plan goal of transparency)).
- f. The suppliers’ formation of the DIFRA trade association and exchange sales information in 2007 and 2008 made the Fittings market even more transparent and susceptible to collusion, in part by providing a mechanism by which suppliers’ could monitor competitors’ compliance and detect and deter defections from the collusive strategies. (CX 2260-A (Schumann Rep. at 47); *infra* ¶¶ 1261-1337 (describing purpose and use of DIFRA information exchange)).
- g. The buyers of Fittings (Distributors and End Users) are unconcentrated at the national level. (CX 2260-A (Schumann Rep. at 35); Schumann, Tr. 3827-3829); *supra* §§ 4.4.3, 4.4.4).
- h. There are high barriers to the entry of new suppliers into the Fittings market. (*Supra* ¶¶ 642-650).
- i. The social structure of the Fittings industry is conducive to collusion. There is regular interaction and communication among suppliers’ senior executives, and certain senior executives at McWane, Sigma, and Star have known each other for many years. (CX 2260-A (Schumann Rep. at 37-38); *infra* ¶¶ 700-827).
665. McWane, Sigma, and Star took advantage of the characteristics of Fittings and the Fittings market to embark on a course of action that allowed them to collude explicitly. (CX 2260-A (Schumann Rep. at 38); *infra* § 7).

### 6.3 Fittings Market Pricing Dynamics Are Conducive to Collusion

#### 6.3.1 Pricing Interdependence

666. { }  
(*Infra* ¶¶ 667-669; CX 2260 (Schumann Rep. at 25), *in camera*).
667. When McWane announces an increase in its list prices or published multipliers, Sigma and Star typically follow the increase with identical published price increases of their own. McWane is aware of this market practice. (Tatman, Tr. 257, 377-378 (“[W]hat historically happened is McWane will put out a new list price and historically our competitors match our list price . . . .”); Pais, Tr. 1920 (“McWane is an industry leader. Most of the time they set pricing and others try and follow as well as we can.”); Pais, Tr. 1923-1924 (“[McWane] call[s] the shots in most of the pricing trends, you know, not on a day-to-day basis but overall in the long term.”); CX 2538 (McCutcheon, IHT (Vol. 2) at 421) (“I’ve followed every increase [McWane has] ever taken.”); CX 2535 (Bhutada, Dep. at 100, 103) (Star usually monitors the list price and multipliers announced by McWane and, when McWane announces a new published price, Star typically announces



- identical prices); Minamyer, Tr. 3138-3142 (Star's standard practice, including in 2008, was to match McWane's and Sigma's Fittings multipliers in each trading area); CX 2539 (McCutcheon, Dep. at 21) ("we would follow what McWane would publish and we would use the multipliers that they used"); McCutcheon, Tr. 2270 (Star sets its published Fittings multipliers to match McWane's published Fittings multipliers, for imported Fittings, Domestic Fittings, and for all geographic regions in the United States); McCutcheon, Tr. 2269 (Star's Fittings list prices are almost identical to McWane's Fittings list prices); Rybacki, Tr. 1098 (Sigma list prices largely match McWane, and try to match multipliers in a "ballpark" sense); Rybacki, Tr. 3574 (referring to July 2008 McWane price increase: "If they were going up, we needed a price increase at that time, and I wanted to make sure that we were locked step."); Rybacki, Tr. 3576-3577 (Sigma is "[a]lways trying" to keep Sigma's multipliers the same as the competition's); Tatman, Tr. 336-337 (Sigma has historically maintained the same list price as McWane); CX 2500 (Swalley, Dep. at 35) (Electrosteel USA uses the same Fittings price lists as those published by McWane, Star, and Sigma to price its Fittings)).
668. Suppliers cannot sustain a price increase unless the other suppliers follow suit and increase their prices. (Rybacki, Tr. 1113, 1114 ("Q. Can you go up [in price] if your competitors don't follow you? A. No."); Pais, Tr. 1936-1937 ("[U]p to a point we need the market to support a price that we wish to charge," and any price change that was not followed by the other suppliers "naturally it would not last"); CX 1189 at 002 (Sigma canceling issuance of new price list in January 2008 after McWane did not follow); CX 0824 (Star putting previously announced price increase on hold following McWane's announcement that it was not raising price); McCutcheon, Tr. 2425 (explaining withdrawal of price increase: "I was unhappy about it, but if -- if you're the highest-priced fitting in a commodity market, you're not going to sell a lot of fittings."); CX 1702 at 001 (email from Rick Tatman explaining the interdependence of supplier pricing: "I don't believe with our silence and Star's push announcement that Sigma will hold to their Jan 2nd effective date so we have some time to get it right.")).
669. The Fittings suppliers are aware that their pricing policies are interdependent. If one supplier competes aggressively with Project Pricing, the other suppliers know that they must meet that supplier's price or risk losing business. (*supra* §§ 4.2.4, 4.5.2; Rybacki, Tr. 1113; Pais, Tr. 1931-1932 (explaining that "everyone realizes" that for suppliers to be more profitable that the "only way that can happen is if the market bears as a whole a certain level of pricing."); CX 2528 (Pais, Dep. at 252-253) (if Sigma raises multipliers and McWane does not, Sigma "can sell some product, some volume at the higher prices, but [Sigma's] volume will be lower"); RX-017 at 0001 (Sigma regional sales manager writing that a list price increase "would be a futile exercise unless everybody is on board"); CX 2535 (Bhutada, Dep. at 105-106) (project pricing is necessary to "meet competition for us to get that project"); RX-698 (McCutcheon, Dep. at 23) ("We start with the list price and then the published multiplier, but the project ends up selling at a price that we think we need to sell it to get the order."); CX 2539 (McCutcheon, Dep. at 23) ("Q. Is it your understanding, Mr. McCutcheon, that there are times when a distributor in a given region will say, "Hey, Sigma or Tyler is offering me this price. What are you guys at Star going to do?" Is that a common occurrence? A. Yes, sir."); Tatman, Tr. 1022, *in camera* {(

}; CX 2260 (Schumann Rep. at 25), *in camera*).

### 6.3.2 Published Prices Are Transparent

670. Published prices for Fittings are transparent. All major suppliers publish their list prices in price books or catalogues that are widely disseminated to all of their customers. Suppliers also post their list prices on their public websites. (Tatman, Tr. 255-256; Rybacki, Tr. 1097, 1099; Minamyer, Tr. 3137-3138; CX 2535 (Bhutada, Dep. at 100)).
671. Any changes in published multipliers are also widely disseminated through letters that are transmitted via fax or email to Distributors, either on an individual state or region basis, or, in the case of the large national Distributors, via “multiplier maps” that identify local multipliers for each state across the United States. (Tatman, Tr. 262-263, 305, 322; CX 2440; RX-410 (sample McWane multiplier map); Rybacki, Tr. 1100 (changes in multipliers are communicated by letters to customers); McCutcheon, Tr. 2270 (Star communicates its published multipliers to its customers through letters)).
672. Fittings suppliers routinely obtain and read copies of their competitors’ list price and multiplier announcements. Suppliers commonly receive a copy of their competitors’ price announcements from their Distributor customers. (CX 2450 at 002 (HD supply faxing McWane price increase letter to Sigma within one day); Tatman, Tr. 306-307 (Tatman receives competitors’ letters from his customers “sometimes ... in a day, [s]ometimes it’s two weeks,” and assumes that McWane’s competitors receive his letters from customers); Rybacki, Tr. 3487 (Sigma obtains and reads competitor price announcements); CX 2526 (Minamyer, Dep. at 125-126) (Star would try to get copies of its competitors’ letters). Copies of each supplier’s price change announcements are found in the other suppliers’ files. (*See infra* ¶¶ 685.a-685.cc)).
673. In 2008, Star regularly sent its price announcements directly to Craig Schapiro of Sigma, who was on Star’s price announcement mailing list and received Star price multiplier letters addressed “To Our Valued Customers.” (CX 0893 at 001; Minamyer, Tr. 3194-3195; CX 2252 at 001). Upon receipt, Mr. Schapiro regularly circulated Star price announcements to Sigma’s sales team and to Sigma executives in charge of setting Sigma’s Fittings prices. (*E.g.*, CX 1402 (October 22, 2007); CX 2252 (June 27, 2008: “Looks like STAR is sending their version of the [McWane] letters”); CX 1738 (June 1, 2010)).
674. Fittings suppliers consider their competitors’ price announcements when making their own pricing decisions. (Tatman, Tr. 287; CX 2483 (Tatman, IHT at 43-44) (Tatman considers the competitive price level when setting prices); Minamyer, Tr. 3148-3149 (Star makes a conscious effort to gather and read its competitors’ pricing letters, and bases its sales strategy in part on what it reads in those letters); CX 2526 (Minamyer, Dep. at 126-127) (Star would review and discuss competitors’ letters when considering Star’s own pricing decisions); Rybacki, Tr. 1108-1109 (Sigma pays attention to its competitors’ pricing “every day,” including by obtaining, reviewing and considering competitors’ pricing letters); Rybacki, Tr. 3559 (“I use all the information I get my hands

- on.”); CX 2531 (Rybacki, Dep. 205-206) (he would read competitor letters carefully, looking for information about competitors’ intentions); CX 1018 at 001 (Pais explaining that McWane “publishes” its multipliers by way of customer letters)).
675. Mr. Rybacki, who set Sigma’s Fittings prices, considered competitors’ price letters to be reliable. CX 2531 (Rybacki, Dep. at 56-57) (“For the most part I thought they were trustworthy.”); Rybacki, Tr. 1109 (Rybacki would review competitor letters and try to determine if they were serious or not, and found them to be serious for the most part)).
676. The Fittings market’s transparent published pricing structure is conducive to pricing stability and creates an environment that is conducive to collusion. (CX 2260-A (Schumann Rep. at 36-37)).
677. For example, in an October 17, 2008 email addressing pricing in a different product area (municipal construction castings), Mr. Pais explained that introducing “a PRICE LIST/Discount culture to the market [tends] to stabilize, standardize, and improve the overall market pricing and margins.” (CX 1147 at 001).
678. Similarly, on January 18, 2010, Mr. Pais explained to Sigma’s top managers that Sigma “had long hoped to streamline the FAB pricing along the lines of our success in Fittings where a List/Multiplier format helps to minimize the price fluctuations and it also makes price revisions (increases) easier.” (CX 1104 at 001).

### 6.3.3 Project Prices Are Not Transparent

679. Project Pricing, on the other hand, is not published and is therefore less transparent than the published list prices and multipliers. (Tatman, Tr. 927 (describing responding to Project Pricing as “shooting in the dark”); *see also* Minamyer, Tr. 3145 (“Q. If Star was offering a project price for a particular project, would you want your competitors to know what project price you were offering? A. No, sir. Q. Why not? A. For the fear that they would price lower than us to try to take the project.”); RX-698 (McCutcheon, Dep. at 57 (“The stated procedure is to get hard documentation [of project pricing by a competitor]. It almost never happens. It’s verbal.”); Tatman, Tr. 267-268 (explaining that with project pricing McWane “essentially los[es]. . . visibility to where is the true competitive price level.”); CX 1439 at 002 (Pais describing plant work/project pricing: “THIS PRACTICE WREAKED HAVOC”)).
680. For a specific project, Distributors commonly seek bids from multiple Fittings suppliers, and the suppliers can lose “visibility” as to the true competitive price level. (Tatman, Tr. 265-268 (“[W]hat we’ve essentially lost in this environment is visibility to where is the true competitive price level.”); Tatman, Tr. 927 (describing McWane as “shooting [in] the dark” on Fittings pricing); (RX-650 (Morrison, Dep. at 68) (“Q. Okay. When you bid out a project, do you get multiple, do you get, do you actively seek different quotes from the different suppliers of waterworks fittings? A. Typically.”); RX-703 (Coryn, Dep. at 36) (describing the Distributor practice of requesting quotations from suppliers)).
681. McWane prefers to have price transparency in the Fittings market in order to know what the true competitive prices are. (Tatman, Tr. 332 (“[W]e would like to have greater

visibility into where the true competitive market level is. That's self-serving for us."); Tatman, Tr. 376 (the terms "transparency" and "visibility" are interchangeable)).

682. In 2007 and 2008, McWane's sales force was about half the size of each of Sigma's and Star's sales forces, making it even harder for McWane to obtain visibility or otherwise determine the Project Prices being offered by its competitors. (Tatman, Tr. 281-283).
683. In 2008, McWane tracked competitive information through narrative market intelligence reports from its sales force that were submitted to, and reviewed by, Mr. Jansen and Mr. Tatman. (Tatman, Tr. 333-334, 915-916, 919-920 (describing market intelligence reports as being based solely on weekly narratives from each of McWane's eight to ten sales representatives); RX-598 (competitive feedback report); CX 2477 (Jansen, Dep. at 37-39) (describing review of weekly highlight reports from sales personnel and the preparation of the competitive feedback report at Mr. Jansen's direction)).

#### **6.3.4 Fittings Suppliers Routinely Receive Each Other's Pricing Letters**

684. Fittings suppliers routinely receive each other's pricing letters soon after they are issued. (*Infra* ¶ 685).
685. Examples of list price and multiplier announcements issued and/or received by the suppliers during the relevant time period include the following:
- a. On or about October 5, 2007, McWane issued a letter to its customers announcing a Fittings multiplier increase of one or two multiplier points, effective November 5, 2007, and stating that "it is our intention to address future price actions with adjustments to invoice multiplier levels rather than by publishing List Price changes." (RX-401). Star had received a copy of this letter by October 10, 2007. (CX 0833).
  - b. On or about October 11, 2007, Star announced that it would increase Fittings multipliers by 2 multiplier points, effective November 5, 2007. (CX 0837; RX-402). This letter was faxed to Craig Schapiro of Sigma on October 17, 2007. (CX 1402 at 002).
  - c. On or about October 23, 2007, Sigma issued a letter to its customers announcing a price increase of two to three multiplier points on all Fittings, effective November 5, 2007, and a list price increase to be effective January 2, 2008 of a minimum of 6%. (RX-015). McWane obtained possession of this letter. (CX 2457 (October 19 version of letter); RX-015 (same letter dated October 23 and edited to include accessories)). Star had received Sigma's October 23, 2008 letter by October 26, 2007. (CX 0840 at 001).
  - d. On or about November 30, 2007, Star issued a letter to its customers announcing that it would be publishing new Fittings list prices to be effective January 1, 2008. (CX 0627 at 013; RX-406). As of December 12, 2007, Sigma was aware that Star had announced a new price book (CX 1528 at 001).

- e. On or about December 20, 2007, Sigma issued a letter to its customers delaying the implementation of its recently announced new Fittings list prices with respect to Fittings. (CX 0627 at 012).
- f. On or about December 22, 2007, Star announced that it would be postponing the effective date of its previously announced Fittings list price increase until February 4, 2008. (CX 1702).
- g. On or about January 11, 2008, McWane issued a letter to its customers announcing that on January 18, 2008 it would announce new Fittings price multipliers, to be effective February 18, 2008, while retaining existing list prices. Blended Fittings multipliers would increase by 10%-12%, Domestic Fittings would increase by 3%-5%, and McWane's intention going forward would be to sell all products only off the newly published multipliers. (CX 2172 at 002). Star and Sigma each had received a copy of McWane's letter by January 14, 2008. (CX 0038 at 001; CX 1291; CX 1114).
- h. On or about January 18, 2008, McWane issued letters to its customers specifying the Fittings multiplier increases first announced in its January 11, 2008 letter, effective February 18, 2008. (CX 1672; RX-608). By January 18, 2008, Star's National Sales Manager Mr. Minamyer had received copies of McWane's national price multiplier maps for these increases. (CX 0035). As of January 22, 2008, Mr. Minamyer was alerting his sales force that the McWane letters were "hitting the streets" (CX 0752). Sigma obtained this letter (CX 0896), and by January 24, 2008, Victor Pais was aware of McWane's "NEW multipliers" (CX 1145 at 001).
- i. On or about January 29, 2008, Sigma issued a letter to its customers rescinding its previously announced new Fittings list prices and "follow[ing] suit" after McWane's multiplier increase, effective February 25, 2008. The letter further stated that "[i]t is our intent to raise prices in 2008 . . . ." (CX 1189; RX-610 (Letter appears in McWane's files)).
- j. On or about January 31, 2008, Star informed its customers that it would be following McWane's announced Fittings multiplier increases effective February 18, 2008, and that there would be "NO UTILITY PROJECT PRICING NATION WIDE." (CX 1566).
- k. On or about February 1, 2008, Sigma issued letters to its customers announcing region-specific multipliers pursuant to its January 29 letter. (CX 1401 at 002; CX 0848 at 002). Star received copies of those letters as early as February 7, 2008. (CX 0848 at 001).
- l. On or about February 6, 2008, Star issued letters to its customers specifying multiplier increases that it would implement effective February 18, 2008. (CX 2336). On February 7, 2008, Craig Schapiro, of Sigma, received such a letter from Star (CX 0893).

- m. On or about April 25, 2008, Sigma announced to its customers that it would be raising Fittings multipliers by up to ten multiplier points effective May 19, 2008. (CX 1858). Star obtained the announcement on the same day (CX 0862), while McWane appeared to possess an earlier draft of the announcement (CX 0176).
- n. On or about May 7, 2008, McWane issued a letter to its customers stating that it expected to issue a further pricing policy announcement by the end of May. McWane anticipated that multipliers would increase in the range of 6% to 16%. (CX 0138). Star received a copy of the letter the same day. (CX 0863 at 001). Sigma had received a copy of McWane's May 7, 2008 letter by May 8, 2008. (CX 1128).
- o. On or about May 7, 2008, Star issued letters to its customers announcing an increase in Fittings multipliers effective May 19, 2008, (CX 0816; CX 0817; CX 0818; CX 0819; CX 0820; CX 0821; CX 0822; CX 0823), and on May 12, 2008 Star put this increase on hold as a result of McWane's May 7, 2008 letter. (RX-060; CX 0527; McCutcheon, Tr. 2425). McWane had received a copy of the May 7, 2008 letter by May 13, 2008. (CX 0431).
- p. On or about June 17, 2008, McWane issued a letter to its customers announcing an increase in Fittings multipliers effective July 14, 2008, and stating that the weighted average increase on blended Fittings and accessories would be "approximately 8%," while the increase on Domestic Fittings would be "significantly less." (CX 1576; CX 1191). Star came into possession of this letter (CX 0047 (letter in Star's files)).
- q. On or about June 27, 2008, Star issued letters to its customers specifying multiplier increases that it would implement effective July 14, 2008. (CX 1668; CX 2255; CX 2430; CX 2431; CX 2432; CX 2433). Sigma had received a copy of this letter by June 27, 2008 (CX 2252). McWane also obtained a copy (CX 2456 (letter in McWane's files)).
- r. On or about July 7, 2008, Sigma issued letters to its customers specifying Fittings price multiplier increases that it would implement effective July 14, 2008. (CX 2253). By July 8, Star had received a copy of Sigma's July 7 multiplier increase letter. (CX 0865).
- s. On or about January 19, 2009, Sigma issued letters to its customers announcing Fittings multiplier increases effective February 9, 2009. (CX 0878 at 002). Star was in possession of this letter by January 20, 2009 (CX 0878).
- t. On or about January 23, 2009, Star issued letters to its customers announcing Fittings multiplier increases effective February 9, 2009. (CX 2452 at 002). As of January 26, 2009, Sigma had received this announcement. (CX 2452 at 001).
- u. On or about April 13, 2009, McWane issued a letter to its customers announcing that, effective May 1, 2009, it would begin using a new price list with higher prices for small diameter Fittings and lower prices for medium and large diameter Fittings. (CX 0569; CX 1669).

- v. On or about April 22, 2009, Star issued an email to its customers announcing that it would be updating its Fittings price list effective May 19, 2009. (CX 2349 (letter in McWane's files)).
- w. On or about April 27, 2009, Sigma issued a letter to its customers announcing that it planned to continue to use its existing price list for Fittings (CX 0212 at 004; CX 1454). McWane obtained that letter on April 27, 2009 (CX 0575), and Star obtained the letter by April 29, 2009. (CX 0889).
- x. On or about May 4, 2009, Star issued letters to its customers specifying the Fittings price multiplier changes that it would implement to follow McWane (except with respect to PA), effective May 12, 2009. (RX-620 (letter as produced from McWane's files)).
- y. On or about May 11, 2009, Sigma sent a letter to its customers announcing adoption by Sigma of McWane's new Fittings list prices and announcing new Fittings price multipliers, effective May 12, 2009. (CX 0965; CX 1060).
- z. On or about June 10, 2010, Sigma sent a letter to its customers announcing that "[t]he multipliers for non-Domestic Fittings will be revised." (CX 2453 at 002). McWane had received this letter by June 11, 2010. (CX 2438 at 001).
- aa. On or about June 17, 2010, McWane sent letters to its customers announcing that, effective July 1, 2010, it would raise non-Domestic Fittings multipliers in 45 of 50 States. (CX 2440). Sigma had received this letter by June 18, 2010. (CX 2450).
- bb. On or about June 18, 2010, Star sent letters to its customers announcing multiplier price increases matching McWane's. (CX 1406 at 001). Sigma received this letter directly from Star on June 18, 2010. (CX 1406 at 001). McWane had received this letter by June 19, 2010. (CX 2441 at 001).
- cc. On or about June 24, 2010, Sigma sent letters to its customers announcing multiplier price increases matching Star's and McWane's. (CX 1396 at 002).

### **6.3.5 Fittings Suppliers Use Pricing Letters to Communicate with Competitors**

- 686. Suppliers know that their competitors receive their price announcement letters. (Tatman, Tr. 377 ("I believe when we put out a letter, they're going to grab it"); Tatman, Tr. 1067 ("My competitors are going to pick up this letter through normal competitive channels"); CX 2531 (Rybacki, Dep. at 216-217) (following issuance of price increase announcement, "everybody in the market would understand that Sigma needs and would like a price increase"); *supra* ¶ 673 (Star regularly sent its price announcements directly to Craig Schapiro of Sigma).
- 687. Suppliers include "messages" or "signals" intended for "competitors" or "the market" in their customer letters. (Tatman, Tr. 1065-1067 (so-called "head fake" message in January 11, 2008 customer letter was directed at competitors, not customers); CX 2531

(Rybacki, Dep. at 208) (“Q. Has [Mr. Pais] ever suggested that you send a letter that would be a heads-up to your customers and to the market? A. Two or three times a day.”); (Pais, Tr. 2038 (agreeing that June 2010 pricing letter to customers was also directed at competitors); CX 2525 (Minamy, IHT at 77) (when reading competitors’ pricing letters, the suppliers consider whether the letters contained signals to them)).

688. For example, Mr. Rybacki reads McWane and Star letters carefully to determine their intentions, and he expects his competitors to do the same with Sigma letters. (CX 2531 (Rybacki, Dep. at 205-206)).

689. This practice of using letters ostensibly addressed to customers to communicate with their competitors began in at least 2008 and continued into at least 2009 and 2010. (*See infra* §§ 6.3.5.1, 6.3.5.2, 6.3.5.3).

#### 6.3.5.1 Fittings Suppliers Used Customer Pricing Letters to Signal Messages to Their Competitors in 2008

690. Fittings suppliers used customer pricing letters to signal messages to their competitors in 2008. For example, in Mr. Tatman’s presentation regarding a proposed January 2008 price announcement, he described a “Desired Message to the Market & Competitors” (CX 0627 at 004), and included two different forms of draft customer letter by which that “message” might be delivered. (CX 0627 at 006, 007; *see infra* § 7.2.1).

691. Similarly on April 18, 2008, Mr. Pais wrote that Sigma’s April 2008 price increase letter should “include one line to signal SIGMA’s strong commitment to ‘clean up’ our pricing” and that “WE WILL HAVE TO INFLUENCE [MCWANE] THRU OUR SINCERITY AND CLARITY OF OUR PLANS AND ACTIONS!” (CX 1134 at 001-002).

692. And again in July 2008, Steve Goodwyn, a member of Sigma’s sales team, sent an email to Sigma’s management team regarding a proposed letter to customers, which he referred to as a letter to the “industry”: “We plan to send a letter to the industry stating we intend to follow the current published multiplier for all fittings especially on fittings 30” and above. The intent is to send the message to Star and others to do the same. If we are able to increase our average multiplier for 30”+ just a few points, it will prove to increase the bottom line significantly.” (CX 1151 at 001; RX-690 (Rybacki, Dep. at 207-208) (noting that Mr. Goodwyn drafted the letter after a discussion with Mr. Pais)).

693. In an email to HD Supply dated January 30, 2008, which McWane Senior officials receive a copy of, Star communicates that “Star is raising or matching all fitting numbers to match Tyler effective Feb 18th . . . NO UTILITY PROJECT PRICING NATION WIDE.” (CX 0178 (McWane’s copy of the Star email to HD Supply)).

#### 6.3.5.2 Fittings Suppliers Used Customer Pricing Letters to Signal Messages to Their Competitors in 2009

694. Fittings suppliers used customer pricing letters to signal messages to their competitors in 2009. For example, in discussing Sigma’s response to a McWane April 13, 2009 pricing



announcement, Greg Fox of Sigma sent an email to his colleagues Craig Schapiro and Mr. Pais that “it’s imperative for Sigma to circulate (sooner rather than later) our letter and price list on MJ Accessories to the marketplace. [McWane] may receive Sigma’s intentions from the letter and incorporate into their plans.” (CX 0989 at 002).

695. Mr. Tatman later tried to interpret the message to McWane contained within Sigma’s April 2009 pricing letter: “I may be reading too much into Larry’s [Rybacki] words but his message to [McWane] may be that I’ll control my pricing and I want you [to] pull back your list price restructuring?????” (CX 0651 at 001; Tatman, Tr. 599; CX 0171 at 001 (describing one of the goals of McWane’s price restructuring as putting a list price structure in place that is “easily understood and therefore easily followed by our competitors . . . The code is easy to break.”)).

### 6.3.5.3 Fittings Suppliers Used Customer Pricing Letters to Signal Messages to Their Competitors in 2010

696. Fittings suppliers used customer pricing letters to signal messages to their competitors in 2010. For example, in a June 2010 email within Sigma, Mr. Pais, described a pricing letter to customers as “largely a ‘heads up’ to the customers and the market about our intention to follow suit when Star or others take a definitive action on price increases.” (CX 1413; *see also infra* § 7.10 (describing events surrounding “heads-up” letter in more detail)).
697. In response to Sigma’s June 2010 “heads up” letter, Mr. Tatman considered one of McWane’s options to be to “[s]end out communication supporting the need for a price increase, wait for Sigma or Star to publish new multipliers and then follow.” This was a reference to sending out a McWane customer letter “to let Sigma and Star know that McWane supports the need for a price increase.” (CX 2442-A at 001; Tatman, Tr. 311-312; *see also infra* § 7.10).
698. After receiving the June 2010 “heads up” announcement from Sigma described above, Mr. Tatman wrote an email considering what McWane’s “response” to this “communication from Star and Sigma” should be, and stating that “I believe Sigma is waiting for either a supporting communication from us or an announcement on specific price actions.” (CX 2442-A at 001; Tatman, Tr. 311-312, 316-319; *see also infra* § 7.10).

## 6.4 Fittings Market Social Structure

699. The three main Fittings suppliers know each other well, and have a history of close relationships and extensive communications. (*Infra* ¶¶ 700-827).

### 6.4.1 The Fittings Suppliers Often Met and Spoke with Each Other

700. From 2007 through 2011, senior executives of McWane, Sigma, and Star had regular contact with each other by telephone, by email, or at in-person meetings. (*Infra* ¶¶ 701-827).

6.4.1.1 History of Competitor Communications

701. The top McWane, Sigma and Star executives have known each other for many years, and over that time have developed a practice of regularly discussing, coordinating, and debating events in the Fittings market. (*Infra* ¶¶ 702-712).
702. Mr. McCutcheon and Mr. Pais have a history of price-related communications dating back to the late 1990s and continuing throughout the 2000s and up to at least 2009. (McCutcheon, Tr. 2359-2362<sup>3</sup>) (explaining that he handled calls with Mr. Pais because Mr. Pais used to berate Star’s President, Mr. Bhutada); Pais, Tr. 1960 (admitting to communications “from time to time” with Mr. McCutcheon and on “occasion” with Mr. Bhutada)). Mr. Pais typically called Mr. McCutcheon to complain about the way Star was running its business, and in particular, Star’s pricing behavior. (McCutcheon, Tr. 2362, 2367 (“Q. Did [Pais] complain about your behavior that was price-driven? A. Yes, sir.”)).
703. Specifically, Mr. Pais complained to Mr. McCutcheon on more than one occasion that Star was offering discounts that were bringing down prices. (McCutcheon, Tr. 2367<sup>4</sup>). As Mr. McCutcheon testified:

Generally, it was a -- he would call, or he would stop me at a trade show and tell me how bad Star Pipe was. And how we’re destroying the market and we don’t know how to run our company and we’re just bad. And Ramesh is bad, and it was generally a very condescending, beatdown conversation. That was his -- that was the reason, I guess, he wanted to talk to us -- talk to me.

(CX 2538 (McCutcheon, IHT (Vol. 2) at 226-227); *see also* CX 2538 (McCutcheon, IHT (Vol. 2) at 229-230 (recounting a breakfast meeting with Mr. Pais at which Mr. Pais claimed that Star was “doing a poor job, that Star Pipe is destroying the market, and we were bad and that was the general purpose of the meeting”)).

704. When Mr. McCutcheon and Mr. Pais spoke, Mr. Pais typically suggested that he had close relations with McWane, and that McWane was on board with whatever plan Mr. Pais was proposing. As Mr. McCutcheon further testified:

[T]hat was a normal comment of [Mr. Pais’s], that he implied that if we [Sigma and Star] do this, he’ll get, you know, he’ll talk to his

<sup>3</sup> Mr. McCutcheon’s trial testimony regarding Mr. Pais’ out of court statement is cited only to prove that Mr. Pais called Star to complain, and not cited to prove the truth of the complaints in the referenced statement. (*See* McCutcheon, Tr. 2360).

<sup>4</sup> At trial, the cited testimony was admitted for the truth of the matter asserted in Mr. Pais’s out of court statements in furtherance of the DIFRA information exchange under the co-conspirator hearsay exception. (*See* McCutcheon, Tr. 2363-2366). The cited testimony regarding the out of court statements of Mr. Pais is also cited to prove the fact of the statements.

friends at McWane. He was considered to be very friendly with the people at McWane. I'm not sure who the people were, probably Ruffner Page, but he was working really hard in several different levels to try to be considered part of the Birmingham gang.

(CX 2538 (McCutcheon, IHT (Vol. 2) at 229)).

705. Mr. McCutcheon was motivated to meet with Mr. Pais because he provided Mr. McCutcheon with market share estimates of Fittings tonnage sold by Sigma, Star and McWane. (McCutcheon, Tr. 2356-2358; CX 0046; CX 2538 (McCutcheon, IHT (Vol. 2) at 266) (“[H]e would tell me all kinds of things I didn’t know.”); RX-697 (McCutcheon, IHT (Vol. 2) at 277-278 (describing July 13, 2007 meeting with Mr. Pais where Mr. Pais shared market share estimates of Sigma, Star and McWane)). Based on the information that Mr. Pais provided him, Mr. McCutcheon made estimates of the relative sales of fittings of McWane, Sigma, and Star. (CX 2538 (McCutcheon, IHT (Vol. 2) at 277-278); *see* CX 0532 at 002).
706. Mr. Pais admitted to price-related conversations with Star, although he testified that it was Star that complained about Sigma (rather than Sigma complaining about Star), that Sigma was “spoiling the market,” “not being responsible,” and using “aggressive tactics.” (Pais, Tr. 1961-1963 (describing Star’s criticisms of Sigma in conversations “[t]hree to four years back”)).
707. At the end of 2008, Mr. Pais contacted Mr. McCutcheon of Star regarding the formation of a lobbying organization called WASMA, whose purpose was to effectuate changes in ARRA. (Pais, Tr. 1728).
708. Mr. McCutcheon also has a history of price-related communications with Mr. Rybacki. On more than one occasion, Mr. McCutcheon has communicated with Mr. Rybacki prior to the announcement of list price changes regarding “mostly list price changes, timing on list price changes and things like that.” (CX 2525 (Minamyler, IHT at 56-58)).
709. Mr. McCutcheon told Mr. Minamyler that he talked to Mr. Rybacki on at least one occasion while Mr. Minamyler was the National Sales Manager at Star. During that conversation, Mr. McCutcheon told Mr. Minamyler that he had convinced Mr. Rybacki to announce a list price increase. (Minamyler, Tr. 3234-3237).
710. {  

}(Rybacki, Tr. 3608-3609, *in camera*).

711. In late 2006, Mr. McCutcheon met with Mr. Page and Mr. Green of McWane. Mr. Page and Mr. Green told Mr. McCutcheon that it had been a mistake for McWane to allow Star to expand its business into the Fittings market. (McCutcheon, Tr. 2351-2356; CX 2538 (McCutcheon, IHT (Vol. 2) at 254-255)).



717. Mr. Rybacki testified at his deposition that he only spoke to Mr. Tatman once or twice in his entire career: “I think I’ve talked to Rick [Tatman] on the phone maybe once, once or twice maximum my whole career. . . . I think it was when David Green left, and I think Joe might have said that was ‘06 or ‘07, ‘07, so it was probably when he took the job to maybe say hi and welcome him to the job. That might have been the only time. I know I only talked to him once or twice max.” (CX 2531 (Rybacki, Dep. at 190-191); Rybacki, Tr. 1088-1089 (repeating claim that Mr. Rybacki had only “probably” spoken with Mr. Tatman twice, with the first occasion being to welcome Mr. Tatman to the waterworks industry after Mr. Tatman replaced David Green at McWane). Mr. Tatman gave similar testimony, stating that “I’ve talked to Mr. Rybacki two, three, a couple of times. I don’t know when and I don’t know what the topics were.” (Tatman Tr. 364).
718. {  
} (Rybacki, Tr. 3610,  
 3617, *in camera*, {  
}
719. Mr. Rybacki testified that there was “[n]obody” at Star with whom he communicated regularly. (CX 2531 (Rybacki, Dep. at 192)). (“How about at Star, are there people at Star that you communicate with regularly? A. Nobody.”). Mr. Rybacki does not have a social relationship with Mr. McCutcheon. (Rybacki, Tr. 1088).
720. Mr. Rybacki testified that over the years he would have occasional calls with Mr. McCutcheon or {  
} relating to Sigma wanting to acquire Star, or Star wanting to acquire Sigma. (Rybacki, Tr. 1087-1088, 3609, *in camera*).
721. Mr. Rybacki described the frequency of his past contacts with Mr. McCutcheon as “relatively infrequently, but, you know, once in a great while.” (CX 2531 (Rybacki, Dep. at 192-193)).
722. Mr. McCutcheon testified that he spoke to Mr. Rybacki three to four times per year in the 2008-2009 timeframe. (McCutcheon, Tr. 2379; CX 2539 (McCutcheon, Dep. at 190); CX 2538 (McCutcheon, IHT (Vol. 2) at 221) (“I would speak to Tom Brakefield once a year at a trade show, we would say hello. . . . I would speak to Victor historically one to three times a year. And I would speak to Larry Rybacki two to four times a year”); CX 2538 (McCutcheon, IHT (Vol. 2) at 235-237 (McCutcheon would speak with Rybacki “[p]robably two to four times a year,” and they “would talk about how bad the market is, how bad the economy is, not price specifically, but we would talk about, in general, how bad it was, or how good it was”)).

#### 6.4.1.3 Specific Contacts Reflected in Telephone Records

723. Telephone records reflect numerous specific communications between executives at Sigma, McWane, and/or Star. (*See, e.g., infra* ¶¶ 724-786).
724. {  
} (CX 1621-A at 126, *in camera*;  
 Rybacki, Tr. 3606-3607, *in camera*; *see also infra* ¶ 884 (describing context of call)).

725. {  
} (CX 1621-A at 127, *in camera*;  
Rybacki, Tr. 3606, *in camera*; *see also infra* ¶ 884 (describing context of call)).
726. {  
} (CX 1621-A at 128, *in camera*; Rybacki,  
Tr. 3608-3609, *in camera*; *see also infra* ¶ 884 (describing context of call)).
727. {  
} (CX 1621-A at 129, *in camera*; Rybacki,  
Tr. 3611-3612, *in camera*; *see also infra* ¶ 884 (describing context of call)).
728. {  
} (CX 1621-A at 130, *in camera*; Rybacki,  
Tr. 3612, *in camera*; *see also infra* ¶ 884 (describing context of call)).
729. {  
} (CX 1621-A at 130, *in camera*;  
Rybacki, Tr. 3612-3613, *in camera*; *see also infra* ¶ 884 (describing context of call)).
730. {  
} (CX 1621-A at 130, *in camera*;  
Rybacki, Tr. 3612-3613, *in camera*; *see also infra* ¶ 884 (describing context of call)).
731. {  
} (CX 1621-A at 118, *in camera*;  
Rybacki, Tr. 3613-3614, *in camera*; *see also infra* ¶ 884 (describing context of call)).
732. {  
} (CX 1621-A at 118, *in camera*;  
Rybacki, Tr. 3613-3614, *in camera*; *see also infra* ¶ 884 (describing context of call)).
733. {  
} (CX 1621-A at 119, *in camera*;  
Rybacki, Tr. 3614, *in camera*; *see also infra* ¶ 884 (describing context of call)).
734. {  
} (CX 1621-A at 123, *in camera*;  
McCutcheon, Tr. 2473, *in camera*; Rybacki, Tr. 3614-3616, *in camera*; *see also infra*  
¶ 894 (describing context of call)).
735. {  
} (CX 1621-A at 124, *in camera*; Rybacki,  
Tr. 3617, *in camera*; *see also infra* ¶ 895 (describing context of call)).
736. {

- } (CX 1621-A at 124, *in camera*; McCutcheon, Tr. 2474, *in camera*; Rybacki, Tr. 3616-3618, *in camera*; *see also infra* ¶ 894 (describing context of calls)).
737. {  
} (CX 1621-A at 125, *in camera*;  
 Rybacki, Tr. 3622-3623, *in camera*; *see also infra* ¶ 895 (describing context of call)).
738. {  
} (CX 1621-A at 112, *in camera*;  
 McCutcheon, Tr. 2476, *in camera*; *see also infra* ¶ 894 (describing context of call)).
739. {  
} (CX 1621-A at 113, *in camera*;  
 Tatman, Tr. 367; Rybacki, Tr. 3624-3626, *in camera*; *see also infra* ¶ 923 (describing context of call)).
740. {  
} (CX 1621-A at 113, *in camera*;  
 Tatman, Tr. 367-368; Rybacki, Tr. 3626, *in camera*; *see also infra* ¶ 923 (describing context of call)).
741. {  
} (CX 1621-A at 114, *in camera*;  
 Tatman, Tr. 369-370; Rybacki, Tr. 3627, *in camera*; *see also infra* ¶ 923 (describing context of call)).
742. {  
} (CX 1621-A at 115, *in camera*;  
 Tatman, Tr. 370, *in camera*; Rybacki, Tr. 3627-3628, *in camera*; *see also infra* ¶ 923 (describing context of call)).
743. {  
} (CX 1621-A at 116, *in camera*; Rybacki,  
 Tr. 3628, *in camera*).
744. {  
} (CX 1621-A at 116, *in camera*;  
 Rybacki, Tr. 3628-3629, *in camera*).
745. {  
} (CX 1621-A at 117, *in camera*;  
 McCutcheon, Tr. 2475-2476, *in camera*; Rybacki, Tr. 3629, *in camera*; *see also infra* ¶ 952 (describing context of call)).

746. {  
} (CX 1621-A at 117, *in camera*;  
McCutcheon, Tr. 2475-2476, *in camera*; Rybacki, Tr. 3629-3630, *in camera*; *see also*  
*infra* ¶ 952 (describing context of call)).
747. {  
} (CX 1621-A at 108, *in camera*; Rybacki,  
Tr. 3631-3632, *in camera*; *see also infra* ¶ 952 (describing context of call)).
748. {  
} (CX 1621-A at 109, *in camera*; Rybacki,  
Tr. 3632, *in camera*; *see also infra* ¶ 1110 (describing context of call)).
749. {  
} (CX 1621-A at 109, *in camera*;  
Rybacki, Tr. 3632, *in camera*; *see also infra* ¶ 1110 (describing context of call)).
750. {  
} (CX 1621-A at 110, *in camera*;  
Rybacki, Tr. 3632, *in camera*; *see also infra* ¶ 1110 (describing context of call)).
751. {  
} (CX 1621-A at 107, *in camera*;  
Rybacki, Tr. 3633-3634, *in camera*; *see also infra* ¶ 1033 (describing context of call)).
752. {  
} (CX 1621-A at 096, *in camera*;  
Rybacki, Tr. 3634, *in camera*; *see also infra* ¶ 1034 (describing context of call)).
753. {  
} (CX 1621-A at 097, *in camera*;  
Rybacki, Tr. 3634, *in camera*).
754. {  
} (CX 1621-A at 097, *in camera*;  
Rybacki, Tr. 3635, *in camera*).
755. {  
} (CX 1621-A at 098, *in camera*; McCutcheon, Tr. 2469, *in*  
*camera*; Rybacki, Tr. 3635, *in camera*; *see also infra* ¶ 1040 (describing context of call)).
756. {  
} (CX 1621-A at 098, *in camera*; McCutcheon, Tr. 2469, *in camera*;  
Rybacki, Tr. 3635, *in camera*; *see also infra* ¶ 1040 (describing context of call)).



757. {  
} (CX 1621-A at 099, *in camera*;  
McCutcheon, Tr. 2470, *in camera*; Rybacki, Tr. 3635, *in camera*; *see also infra* ¶ 1040  
(describing context of call)).
758. {  
} (CX 1621-A at 099, *in camera*; Rybacki, Tr. 3635-3636, *in*  
*camera*; Rybacki, Tr. 3610, 3617, *in camera* {  
}; *see also infra* ¶ 1162 (describing  
context of call)).
759. {  
} (CX 1621-A at 099, *in camera*; Rybacki, Tr.  
3635-3636, *in camera*; Rybacki, Tr. 3610, 3617, *in camera* {  
}; *see also infra* ¶ 1162  
(describing context of call)).
760. {  
} (CX 1621-A at 100, *in camera*; Rybacki, Tr.  
3636, *in camera*; *see also infra* ¶ 1162 (describing context of call)).
761. {  
} (CX 1621-A at 101, *in camera*;  
Rybacki, Tr. 3636, *in camera*; *see also infra* ¶ 1163 (describing context of call)).
762. {  
} (CX 1621-A at 102, *in camera*;  
Rybacki, Tr. 3636, *in camera*; *see also infra* ¶ 1163 (describing context of call)).
763. {  
} (CX 1621-A at 103, *in camera*;  
Rybacki, Tr. 3636-3638, *in camera*; *see also infra* ¶ 1163 (describing context of call)).
764. {  
} (CX 1621-A at 104, *in camera*; Rybacki,  
Tr. 3638, *in camera*; Rybacki, Tr. 3610, 3617, *in camera* {  
}; *see also infra* ¶ 1164  
(describing context of call)).
765. {  
} (CX 1621-A at 105, *in camera*; Rybacki, Tr.  
3638, *in camera*; *see also infra* ¶ 1164 (describing context of call)).
766. {  
} (CX 1621-A at 090, *in camera*;  
Rybacki, Tr. 3638-3639, *in camera*).

767. { } (CX 1621-A at 091, *in camera*; Rybacki, Tr. 3639, *in camera*).
768. { } (CX 1621-A at 092, *in camera*; Rybacki, Tr. 3640, *in camera*).
769. { } (CX 1621-A at 092, *in camera*; Rybacki, Tr. 3640, *in camera*).
770. { } (CX 1621-A at 092, *in camera*; Rybacki, Tr. 3640-3641, *in camera*).
771. { } (CX 1621-A at 093, *in camera*; McCutcheon, Tr. 2438, *in camera*; Rybacki, Tr. 3641, *in camera*; *see also infra* ¶ 1206 (describing context of calls)).
772. { } (CX 1621-A at 094, *in camera*; McCutcheon, Tr. 2438-2439, *in camera*; Rybacki, Tr. 3641-3642, *in camera*; *see also infra* ¶ 1206 (describing context of calls)).
773. { } (CX 1621-A at 095, *in camera*; Rybacki, Tr. 3642-3643, *in camera*; Rybacki, Tr. 3610, 3617, *in camera* { }; *see also infra* ¶ 1210 (describing context of call)).
774. { } (CX 1621-A at 084, *in camera*; McCutcheon, Tr. 2439, *in camera*; Rybacki, Tr. 3643-3644, *in camera*; *see also infra* ¶ 1216 (describing context of calls)).
775. { } (CX 1621-A at 084, *in camera*; Rybacki, Tr. 3644, *in camera*; Rybacki, Tr. 3610, 3617, *in camera* { }; *see also infra* ¶ 1216 (describing context of call)).

776. {  
 } (CX 1621-A at 085, *in camera*; McCutcheon, Tr. 2440, *in camera*; Rybacki, Tr. 3644, *in camera*; *see also infra* ¶ 1221 (describing context of calls)).
777. {  
 } (CX 1621-A at 086, *in camera*; McCutcheon, Tr. 2441, *in camera*; Rybacki, Tr. 3644-3645, *in camera*; *see also infra* ¶ 1221 (describing context of call)).
778. {  
 } (CX 1621-A at 086, *in camera*; McCutcheon, Tr. 2442, *in camera*; Rybacki, Tr. 3644-3645, *in camera*; *see also infra* ¶ 1221 (describing context of call)).
779. {  
 } (CX 1621-A at 087, *in camera*; Rybacki, Tr. 3645, *in camera*; Rybacki, Tr. 3610, 3617, *in camera* {  
 }.
780. {  
 } (CX 1621-A at 087, *in camera*; Rybacki, Tr. 3645, *in camera*; Rybacki, Tr. 3610, 3617, *in camera* {  
 }.
781. {  
 } (CX 1621-A at 088, *in camera*; McCutcheon, Tr. 2447, *in camera*; Rybacki, Tr. 3645, *in camera*; *see also infra* ¶ 1246 (describing context of call)).
782. {  
 } (CX 1621-A at 089, *in camera*; McCutcheon, Tr. 2447-2448, *in camera*; Rybacki, Tr. 3646, *in camera*; *see also infra* ¶ 1246 (describing context of calls)).
783. {  
 } (CX 1621-A at 74, *in camera*; McCutcheon, Tr. 2471-2473, *in camera*; *see also infra* ¶ 1088 (describing context of call)).
784. {  
 } (CX 1860-A at 004, 006, *in camera*; Rybacki, Tr. 3647-3648, *in camera*; *see also infra* ¶ 1504 (describing context of call)).

785. {  
 } (CX 1621-A at 034, *in camera*; McCutcheon, Tr. 2467, *in camera*; see also *infra* ¶ 1532 (describing context of call)).

786. {  
 } (CX 1621-A at 035, *in camera*; McCutcheon, Tr. 2468, *in camera*; see also *infra* ¶ 1532 (describing context of calls)).

#### 6.4.1.4 Specific Meetings and Calls Reflected in the Suppliers' Documents

787. Contemporaneous documents in the files of McWane, Sigma and Star reflect numerous specific communications between key executives of McWane, Sigma, and Star. (*See, e.g., infra* ¶¶ 788-806).
788. On or about August 13, 2007, there was a meeting between Messrs. Pais and Page. (CX 2030 at 001).
789. On or about September 13, 2007, there was a meeting between Messrs. Pais and Page. (CX 2032 at 001).
790. On or about December 3, 2007, there was a meeting between Messrs. Pais and Page. (CX 2037; CX 2038; Pais, Tr. 1886-1887; CX 2528 (Pais, Dep. at 222-223)).
791. On or about February 7, 2008, there was a telephone call between Messrs. Tatman and Rybacki. (CX 0179; CX 1142).
792. On or about February 19, 2008, there was a meeting between Messrs. Pais and McCutcheon at the Nit Noi Thai restaurant in Houston. (CX 1122 (scheduling meeting); CX 1143 (same); McCutcheon, Tr. 2367-2372; CX 0041 (McCutcheon February 22, 2008 email reporting on information regarding Electrosteel obtained from Pais)).
793. On or about March 10, 2008, there was a telephone call between Messrs. Tatman and Rona. (CX 1124 at 002).
794. On or about March 27, 2008, there was a DIFRA organizational meeting among McWane, Star, Sigma, U.S. Pipe executives. (CX 1486 at 001, 002 (agenda to attendees); CX 2272 (planning email to attendees); CX 1084 at 001 (planning email to attendees); Brakefield, Tr. 1270-1271 (listing attendees); CX 1080; CX 2496 (Brakefield, Dep. (Vol. 2) at 136-137)).
795. On or about March 28, 2008, Messrs. Tatman and McCutcheon had a dinner meeting. (CX 2484 (Tatman, Dep. at 105)).

796. On or about April 25, 2008, there was a DIFRA organizational call among McWane, Star, Sigma executives. (CX 0160 at 001-002).
797. On or about May 7, 2008, there was a meeting between Messrs. Page and Pais. (CX 1257).
798. On or about June 12, 2008, there was a meeting between Messrs. Page and Pais at Mr. Page's office. (CX 2482 (Page, Dep. 189-190); CX 2066 (email reflecting meeting)).
799. On or about August 22, 2008, there was a telephone call between Messrs. Tatman and Rona. (CX 1149).
800. On or about March 17, 2009, there was a meeting between Messrs. Page and Pais. (CX 2061; CX 1269).
801. On or about April 2, 2009, there was a meeting between Messrs. Page and Pais. (CX 2093).
802. On or about April 28, 2009, there was a meeting between Messrs. Pais and McCullough. (CX 0728).
803. On or about May 1, 2009, there was a meeting between Messrs. Pais, Rybacki and Page. (CX 0214 at 004, CX 0314 at 001, CX 2098; CX 0317 (describing meeting)).
804. On or about May 20-21, 2009, there were meetings between Messrs. Page and Pais. (CX 2100; *see also* CX 1271 (scheduling 2-day meeting); CX 1076 at 004 (describing meeting "last week"); CX 2101 (Mr. Page telling Mr. McCullough "I need to report to you about my meeting today when you have a chance"))).
805. On or about December 14, 2009, there was a call between Messrs. Tatman and Rona. (CX 1801 at 001).
806. On or about April 28, 2009, there was a phone call between Messrs. McCutcheon and Tatman. (CX 2538 (McCutcheon, IHT (Vol. 2) at 257-258); CX 1180 at 001).

#### 6.4.1.5 OEM Sales Between Suppliers

807. Fittings suppliers have buy-sell relationships with each other that provide opportunities for communication regarding market conditions. (*Infra* ¶¶ 808-814).
808. Suppliers on occasion speak with each other about purchasing individual Fittings from each other on a spot basis. (Tatman, Tr. 434).
809. "Short sales" of Fittings occur when a supplier who has won a bid does not have all of the Fittings for the project in stock. In those cases, the bid-winning supplier will contact the other suppliers to source the fittings that it lacks. These short sales likely occur on a daily basis. (McCutcheon, Tr. 2268-2269; Rona, Tr. 1446 (Sigma will buy Fittings from McWane and Star usually to fill a gap in an order that Sigma is trying to fill); CX 2524



820. On February 17, 2009, Mr. Pais and Mr. McCutcheon met to discuss ARRA “Buy American” issues, and Mr. Pais again initiated discussion of a potential merger between Sigma and Star. (CX 1076 at 002). Mr. Pais later reported to Frontenac in a May 26, 2009 email that Mr. McCutcheon had agreed that the merger would make sense, but that the transaction would be difficult because of cultural and personal issues between the companies. (CX 1076 at 001-002 (Pais May 26, 2009 email to Florence); Pais, Tr. 1860-1861). Mr. Pais expected Star to get back to him on the merger topic, but they did not contact him directly. (Pais, Tr. 1861-1862).
821. In or about March 2009, Mr. Rybacki invited Star to “take a shot” at making a bid for Sigma, which resulted in an invitation from Star to Mr. Rybacki for a discussion in mid-May 2009. Mr. Pais and Mr. Bhattacharji accepted this invitation. (CX 1076 at 001-003; Pais, Tr. 1861-1862; *see also* Rybacki, Tr. 3596 (discussions about Sigma acquiring Star became more serious in 2009, and Mr. Rybacki traveled to Houston to discuss it in person with Mr. McCutcheon)).
822. In May 2009, Mr. Pais drafted a letter to Mr. Rybacki to provide guidance to Mr. Rybacki in advance of Mr. Rybacki’s upcoming meetings with Star, which Mr. Pais referred to as “HTN” (for “Houston”) in the letter. (CX 0915 at 001; Pais, Tr. 1865-1866 (explaining that the purpose of his letter was “to guide [Mr. Rybacki] . . . because he was not involved with our discussion previously . . .”); Rybacki, Tr. 3592-3595).
823. Sigma believed that a merger or joint venture between Sigma and Star would have helped solve an oversupply problem that “wasn’t healthy” for the Fittings market. (Rybacki, Tr. 3596-3597 (“We always thought . . . there was just an overcapacity that wasn’t healthy and that instead of beating each other’s brains in every day that we should either have a joint venture or one buy the other . . .”)).
824. In or about March or April of 2009, Mr. Rybacki held discussions with Mr. Bhutada and Mr. McCutcheon of Star, and invited them to meet with Frontenac to discuss a “suitable merger.” (CX 1076 at 001-003 (May 26, 2009 Pais email describing Mr. Rybacki’s discussions with Star “a couple of months back”); Pais, Tr. 1861-1862 (discussing CX 1076)).
825. Mr. McGivern, Sigma’s incoming CEO, and Mr. Florence of Frontenac subsequently had an introductory meeting with Star. (Pais, Tr. 1868).

#### 6.4.1.7 Policies on Competitor Contacts

826. McWane’s policies and guidelines relating to contacts with competitors called for Mr. Tatman to speak only with Mr. Rona, who, as Sigma’s OEM Manager, handled the buy-sell relationship between McWane and Sigma. (Tatman, Tr. 455-456; *see also, e.g.*, CX 1575 (email between Tatman and Rona regarding sale of glands)). These policies and protocols included a prohibition on any pricing discussions with a competitor. (Tatman, Tr. 456).

827. There is no situation under McWane's policies and protocols regarding contact with competitors in which it would be appropriate for Mr. Tatman to speak with Mr. Rybacki. (Tatman, Tr. 456 (unaware of any such situation)).

**6.4.2 Mr. Page (McWane) and Mr. Pais (Sigma) Have Developed a Close and Trusting Relationship, and Discuss Competitive Dynamics and Pricing Practices in the Fittings Market**

828. Mr. Page of McWane and Mr. Pais of Sigma have developed a close and trusting relationship, and often discuss competitive dynamics and pricing practices in the Fittings market. (*Infra* ¶¶ 829-841).
829. Mr. Pais and Mr. Page have built a mutually respectful and trusting relationship over time. (Pais, Tr. 1871-1872) (“mutually respectful” relationship); CX 0317 at 001 (Pais, email May 13, 2009: “close and trusting relationship”); CX 0915 at 004 (Pais writing in 2009 with respect to McWane that “RELATIONSHIP & TRUST are key [for] future ‘co-existence’ and prosperity . . . SIGMA has it”); CX 1164 at 004 (2009 Pais Memo to Sigma Board (describing a “strategic relationship with McWane back in 2003” and a “mutually trusting and mutually respectful relationship with Mr. Page, their CEO”)).
830. As Mr. Pais explained in an October 4, 2009 email to a member of Sigma's Boards of Directors (Mr. Fang Gang), Mr. Pais has a “strong personal relationship with Mr. Page . . . . RP values loyal and trusting friendships – and since I have continued our contact over the years without any disruptive or unhealthy practices, we have remained close despite being direct competitors.” (CX 1023 at 005; *see also* CX 2118 at 003 (October 22, 2007 email where Mr. Pais states, “I have a strong personal relationship with Mr. Page as we have helped each other in many ways, as he is a person, who if he trusts someone, will be open for not only discussion but any business opportunity if it is in the interest of both McWane and the industry)).
831. The genesis of Mr. Pais's “very trusting relationship” with Mr. Page began in 2003 when Sigma helped McWane establish a manufacturing plant in China in a manner that “discouraged the creation of new capacity.” (CX 1163 at 007; Pais, Tr. 1868-1870 (explaining that his relationship with Mr. Page began in 2003 in the midst of the anti-dumping proceeding for Fittings before the International Trade Commission when Mr. Pais offered to supply McWane with private-label Fittings made in China)).
832. Mr. Pais traveled with Mr. Page to India and China. Mr. Page was interested in building a foundry overseas, and Mr. Pais introduced Mr. Page to his contacts in China who helped McWane to build its foundry in China. (CX 2482 (Page, Dep. at 28-29); Pais, Tr. 1871; CX 2528 (Pais, Dep. at 199)).
833. Mr. Pais tried to dissuade Mr. Page from creating the additional “unwanted capacity that would hurt the industry in the long term.” (CX 1986 at 002; Pais, Tr. 1875).
834. Before McWane's foundry in China became operational, Sigma supplied private label Fittings made in China to McWane. (Pais, Tr. 1870-1871 (describing meeting with



Messrs. Page and Green in China to check Sigma's supply chain and quality assurance standards)).

835. Mr. Pais initiated a "strategic relationship" with Mr. Page in order to help stabilize the Fittings market. For example, in a letter to business partners, Mr. Pais contrasted Sigma's earlier, competitive relationship with McWane with its more recent, "trusting" phase:

While we were head to head competitors throughout our first 20 years, with hardly any contact at all, I instinctively felt if a relationship could be developed, it would only add to the stability of the industry by removing the mistrust that existed, which was reflected in the unhealthy competitive pricing that prevailed till 2003.

(CX 1163 at 007; *see also* CX 1164 at 004 (2009 Pais memo to Sigma Board describing "strategic" and "mutually trusting and mutually respectful relationship with Mr. Page" because Mr. Pais had "instinctively felt that a positive relationship can only be good for SIG and our industry, to at least have an opportunity to prevent the reactive decisions which can harm us all . . . ."); Pais, Tr. 2024 (being "reactive" is associated with lowering prices)).

836. In particular, Mr. Pais wanted to give McWane "confidence" in Sigma's "commitment for market responsible discipline." (CX 1069 at 001 (in February 2009, Mr. Pais wrote that in 2004 "we managed to buoy the market after our strategic relationship with McWane, which gave them some confidence about our commitment for a market responsible discipline."); CX 2528 (Pais, Dep. at 359-361 ("Discipline" means sticking to the list price and published multiplier rather than job pricing)).
837. As part of this "very trusting relationship," Mr. Pais and Mr. Page exchanged competitively sensitive and strategic information about their companies. For example, in September 2007, Mr. Pais and Mr. Page had a long meeting at which Mr. Page shared McWane's market analysis, competitive pricing strategy, and its plans for structural and managerial changes in McWane's Fittings business. (CX 2118 at 001-002 (recounting meeting with Mr. Page in which Mr. Pais "was surprised to hear from [RP] directly, several major changes that he has initiated to respond to the weak market conditions."); Pais, Tr. 1882-1883; CX 2528 (Pais, Dep. at 208-210) (describing meeting with Page)).
838. At the September 2007 meeting between Mr. Page and Mr. Pais, Mr. Page expressed to Mr. Pais that he was "disappointed in our failure to get a better landscape." (CX 2119 at 001; Pais, Tr. 1894-1895 (offering no explanation of this remark); Pais, Tr. 1896 ("[Mr. Page] obviously seemed to have been unhappy with the way their business had done or gone . . . ."))).
839. On one occasion on which Mr. Page and Mr. Pais met, one of their agenda topics was to discuss Star, although Mr. Page could not recall what they spoke about in relation to Star. (CX 2091; CX 2482 (Page, Dep. at 240-241) (testifying to meeting in New York City)).

840. Over the years, Mr. Pais frequently traveled to Birmingham, Alabama, and would meet there with Mr. Page if there was a specific issue, opportunity, or need for it. (Pais, Tr. 1886; *see also* Pais, Tr. 1727 (in 2008 and 2009, Mr. Pais communicated with David Green and Ruffner Page of McWane)).
841. Over time, this “trusting” relationship between Sigma and McWane resulted in having “generated an all round goodwill, which in turn led to tangible benefits such as higher market pricing and profits for all including Sigma.” (CX 1163 at 007; *see also* CX 1986 at 002 (draft letter discussing early development of the relationship between Messrs. Pais and Page and how they “did not press hard to reap substantial short term benefits – rather, we took an amenable view on the commercial issues in order to develop a respectable partnership. We felt it was in our interest as much as yours to work together to make our industry a better place with stable players.”); CX 1225 at 002-003 (final version of memorandum as emailed to Page on August 24)).

## **6.5 Fittings Suppliers Had a Motive to Conspire**

842. In late 2007, economic and market conditions, and the competitive dynamics of the Fittings industry, provided each of McWane, Sigma and Star with powerful motives to conspire with the others to reduce competition and stabilize and raise Fittings prices. (*Infra* ¶¶ 843-906).
843. During 2007, as the economic downturn began, the Fittings industry experienced a period of declining demand, declining prices, and increased costs. (CX 2457 (Sigma October 19 letter referring to recent “decline in multipliers in the fittings market”); Rybacki, Tr. 1111 (prices had been falling prior to October 2007); RX-690 (Rybacki, Dep. at 66-67) (the Fittings market had gotten very competitive, and prices eroded); Tatman Tr. 263-265 (Fittings market became more price competitive with more pressure for Project Pricing as the economy began to decline); Tatman, Tr. 268-269 (Fittings market volume declined by 50% between 2006 and 2010); Tatman, Tr. 347 (describing prices “not keeping pace with inflation”); CX 2397 at 019 (McWane financial statements for December 2007 showing year-to-date per-ton costs for Domestic Fittings up 14.1% over 2006, and per-ton costs for non-Domestic Fittings up 10.1% over 2006)).
844. The Fittings market became more price competitive, with more pressure for Project Pricing, as the economy began to decline. (Tatman, Tr. 263-265).

### **6.5.1 McWane’s Motive to Conspire**

#### **6.5.1.1 McWane Faced Excess Inventory, Overcapacity, and High Production Costs**

845. In late 2007, McWane faced excess inventory, overcapacity, and high production costs. (*Infra* ¶¶ 846-852).
846. {

} (Tatman, Tr. 1036-1037, 1040, *in camera*).

847. {

} (Tatman, Tr. 210-211, 840, 1037, *in camera*; CX 2416 at 015); *see supra* 3.1.2.6 (describing Mr. Green's employment at McWane).

848. As a result of the excess domestic inventory, Mr. Tatman began running inventory down in 2007, in part, by substituting U.S.-manufactured Fittings for jobs with Open Specification. Today, lower substitution rates of U.S.-manufactured Fittings for Open Specification jobs are part of what has driven McWane's gross margins up. (Tatman, Tr. 840).

849. "Idle plant" costs are the fixed overhead costs associated with running a Fittings manufacturing facility when the plant is not running on all days of the week. McWane reports this cost as a separate line item on its income statements called "idle plant." (Tatman, Tr. 432-433).

850. In 2007 and 2008, McWane's Tyler and Union Foundries, together, were contributing approximately \$7 million to the idle plant costs line item. (Tatman, Tr. 433-434).

851. In response to reduced demand in 2008, Mr. Tatman first reduced shifts, and ultimately idled McWane's Tyler South Plant in September 2008. (RX-644 (Tatman, Dep. at 52-53)). Running reduced shifts at that plant resulted in substantial "idle plant" costs that brought down McWane's overall profitability until McWane shut down the plant. (Tatman, Tr. 432-434).

852. Historically, McWane's two U.S. plants had a higher cost of production than its Chinese plant and the overseas plants of its competitors. (Tatman, Tr. 431-432 (stating with respect to manufacturing costs that the "manufacturing basis point in China is much lower" than at McWane's U.S. plants)).

6.5.1.2 McWane Was Losing Volume and Market Share Because It Could Not Compete Effectively Against Project Pricing Offered by Sigma and Star

853. In late 2007, McWane was losing volume and market share because it could not compete effectively against the Project Pricing offered by Sigma and Star. (*Infra* ¶¶ 854-859).

854. In 2007, in an effort to maintain sales volume, Star competed vigorously, expanding its use of Project Pricing, which had previously been reserved primarily for wastewater treatment plant projects. (RX-687 (Pais, Dep. at 79-83) (previously, project pricing was primarily for wastewater treatment plants); *see also* Rybacki, Tr. 1136-1137 (Star's pricing for most of 2007 was "overly aggressive," took prices to "a new depressed level, and it was hard to compete with.")).

855. Mr. Green of McWane responded aggressively to Star's low pricing with equally low pricing, and McWane's Fittings profits and volume both fell. (CX 2118 at 002 (Pais recounting Page statements that "In [Fittings], largely due to Star's low pricing and [David Green's] decision to respond aggressively with equally low pricing as the import pricing, Tyler's profits and volume went down."); Pais, Tr. 1882-1883 (describing meeting with Page)).
856. The price erosion in the Fittings market occurred not in published list prices or multipliers, but in the effective or "actual" multipliers that resulted from the use of Project Pricing. (CX 1138 at 001 (Pais April 2008 email noting that effective Fittings multipliers had declined almost 20% in past two years); Pais, Tr. 2079 (explaining that decline was in "actual multipliers," not "published multipliers"); CX 2477 (Jansen, Dep. at 248-249) (the use of Project Pricing increased in or around August 2006 as the market started to decline)).
857. Even though McWane was chasing the prices offered by Sigma and Star, it was still losing Fittings market share year over year, because McWane was still "getting beat at the pricing game." (Tatman, Tr. 262). McWane's sales force was not as effective, nimble, or large as the sales teams for Star and Sigma. (Tatman, Tr. 285-286 ("We felt that their – quite frankly, I think the quality of their salespeople was better than ours....I think they had more boots on the ground. I think they had better people at that point in time. And it is my understanding that their people were on an incentive-based, which made them more aggressive probably than our salespeople, who were on fixed salaries.")).
858. Mr. Tatman believed that McWane had been losing share in the Fittings market because of increased Project Pricing, and because McWane's relatively small sales force was not able to track changes in competitive price levels as well as those of Sigma and Star. (Tatman, Tr. 285-286).
859. Mr. Tatman therefore wanted to increase pricing transparency and stability – *i.e.*, compress the gap in the marketplace between published prices and actual invoice prices that resulted from Project Pricing, thereby giving McWane greater visibility into competitive pricing levels. (Tatman, Tr. 338-339).

**6.5.2 McWane and Sigma Had a Motive to Conspire with Star, Which Regularly Engaged in Competitive Project Pricing and Which McWane and Sigma Saw as Detrimental to the Industry**

860. In late 2007, McWane and Sigma each had a motive to conspire with Star, which regularly engaged in aggressive Project Pricing in the Fittings market. (*Infra* ¶¶ 861-869).
861. Both before and after the conspiracy, it was widely known in the business "that Star was most aggressive in their pricing under this special pricing or job or whatever it's called." (Pais, Tr. 1937).

862. Project Pricing was a significant part of Star’s competitive strategy, because it was the smallest competitor in the market and it needed to Project Price to remain competitively viable. (McCutcheon, Tr. 2387).
863. Star successfully increased its Fittings business in 2007 by implementing a general sales strategy of offering customers Project Pricing. Star used Project Pricing as a way to establish relationships with customers and prove itself with the hope of gaining more business in the future. (Minamyer, Tr. 3145-3146; CX 2526 (Minamyer, Dep. 115-116)).
864. Mr. Tatman views Star’s historical pricing practices as “very aggressive and sometimes irrational.” (CX 2483 (Tatman, IHT at 232-234)).
865. In a February 2009 email, Mr. Pais described Star as “undisciplined about pricing at the present chasing the shrunken market with reckless pricing.” (CX 1069 at 001; *see also* Rybacki, Tr. 1106 (describing Star as the most aggressive of his competitors in terms of pricing); CX 2531 (Rybacki, Dep. at 231) (describing Star as most likely to initiate Project Pricing)).
866. In a May 2009 memorandum to the Sigma Board, Mr. Pais described Star’s pricing practices as “confusing and disruptive” and “unpredictable and unhealthy.” (CX 0214 at 006).
867. In a May 2009 email to Walter Florence, Mr. Pais stated that “Star has been singularly unhealthy to our entire industry over the past 20-some years, with their reckless, irresponsible and undisciplined tactics to resort to whatever it takes to grab some business and grow.” (CX 1076 at 003; Pais, Tr. 1862-1863 (Star has “done whatever they could to do hurt us to take business away from us,” both through pricing and other tactics)).
868. In an October 2009 letter, Mr. Pais compared Sigma’s and Star’s approaches to pricing: “Sigma has remained responsible and professional – like . . . being responsible in pricing our [Fittings] business etc while Star has been an irresponsible, disruptive and unreliable competitor, constantly attacking McWane’s business with low pricing and other tactics.” (CX 1023 at 005).
869. In a 2010 domestic market strategy document, Mr. Tatman stated that “Star has historically shown that they will just continue incremental discounting down to the point when they’re selling near breakeven.” (CX 0105 at 001).

### **6.5.3 Sigma and Star Had a Motive to Conspire Because Inflationary Costs in China Were Rising Faster Than McWane’s U.S. Costs**

870. In late 2007, Sigma and Star each had a motive to conspire with McWane because inflationary costs in China were rising faster than McWane’s U.S. costs. (*Infra* ¶¶ 871-877).
871. Sigma’s and Star’s margins were facing additional pressure from the declining market because their manufacturing costs in China were increasing. (RX-687 (Pais, Dep. at 39-40); McCutcheon, Tr. 2515-2516 (describing cost increases); RX-697 (McCutcheon, IHT

- (Vol. 2) at 402-404); Tatman, Tr. 870-875 (costs of manufacturing Fittings in China were increasing in early 2008, because of currency exchange rates, rising labor costs, and increases in the cost of pig iron); Pais, Tr. 1896 (“Our costs from China and India had begun to rise from late ‘07, which everyone was aware, including [Page].”).
872. Specifically, the costs of producing Fittings in China was increasing dramatically due to increases in the cost of scrap iron in China used in the production of Fittings, labor costs to make the Fittings, and freight charges of transporting the Fittings to the United States. (Rybacki, Tr. 1113 (“Raw material prices were going up. Labor was going up, insurance, ocean freight. It was all going up.”); RX-697 (McCutcheon, IHT (Vol. 2) at 402 (cost increases were “at a very rapid and erratic pace.”)).
873. McWane’s CFO, Mr. Nowlin, prepared a sensitivity analysis that analyzed costs “heating” up in China. (CX 2481 (Nowlin, Dep. at 107-109); CX 2143). Mr. Nowlin concluded that the rising costs related to China’s strengthening currency, increased Chinese Value Added Tax, and Chinese inflation “hurts [the importers] a lot worse than it hurts us.” (CX 2481 (Nowlin, Dep. at 107-109); CX 2143). Mr. Nowlin shared this sensitivity analysis with Mr. Walton on or about November 29, 2007 for “education” purposes. (CX 2481 (Nowlin, Dep. at 107-109); CX 2143).
874. In a December 22, 2007 email to Mr. McCullough and Mr. Walton, Mr. Tatman described “accelerated inflation in China compared to Domestic cost,” (CX 1702 at 001), and in an email three days later to Mr. McCullough, Mr. Jansen, and Mr. Walton, Mr. Tatman again stated that “China inflation [is] out pacing domestic costs.” CX 2327 at 001).
875. A presentation prepared by Mr. Tatman in early 2008 likewise noted that “[c]ontinued inflation out of China is increasing pressure.” (CX 0627 at 001).
876. Because U.S. costs were not rising as much as overseas prices, McWane’s cost of domestic production was not going up at the same rate, giving it a cost advantage. In a January 29, 2008 email, Mr. Page noted that rising costs for Chinese manufacturers made McWane’s domestic production competitive with imports. (CX 1183 at 001 (“The Chinese importers in water works fittings are seeking price increases [and] we are now in a position to resist. In fact I have offered to make ‘A’ items for an importer at the same price they can bring in it in.”)).
877. Sigma was aware of McWane’s cost advantage. (Pais, Tr. 1910-1911 (McWane was “beginning to get a cost advantage on a variable cost basis, not total cost basis. And when they have idle capacity, they can leverage that advantage into getting some of the share back”). Mr. Pais expressed concern that perhaps McWane had “now done a thorough competitive review and decided that an aggressive offensive strategy is the best form of defense,” and that in seeking to strengthen its position McWane might “keep[] [Fittings] price down during our rise in costs etc.” (CX 2119 at 001; Pais, Tr. 1895-1897).

#### 6.5.4 Sigma and Star Sought to Raise Prices in Late 2007; McWane Did Not Follow

878. Sigma and Star each had a motive to conspire with McWane because they announced a price increase in late 2007, but McWane did not follow their lead, despite direct and indirect appeals from Sigma to do so. (*Infra* ¶¶ 879-906).
879. On October 5, 2007 McWane had announced a 2% to 3% multiplier increase effective November 5, 2007. Star followed with its own increase on October 11, 2007, and Sigma followed on October 23, 2007. (RX-401 (McWane October 5 letter); RX-402 (Star October 11 letter); RX-015 (Sigma October 23 letter); CX 2457 (Sigma October 19 letter)).
880. Despite this price increase announcement, the market was unstable, and actual prices after Project Pricing in 2007 were not keeping up with cost inflation. (CX 0627 at 001 (“Net pricing in 2007 lagged inflation due to pressure on volume.”); *see also* Tatman, Tr. 346 (in 2007, McWane was unable to raise prices enough to offset inflation because of pressure on volume)).
881. In its October 23, 2007 letter following McWane’s announced price increase, Sigma also announced that it would further increase its list prices by a minimum of 6%, to be effective January 2, 2008. (CX 2457 (version of letter dated October 19); RX-015 (same letter as received by Star, dated October 23 and edited to include accessories); Rybacki, Tr. 1109-1110 (describing letter as conveying that Sigma “need[s] a price increase because of our cost structure has gone up”); CX 2531 (Rybacki, Dep. at 216-217) (letter was telling customers Sigma needed a price increase, and everybody in the market would understand that Sigma needed and wanted a price increase)).
882. On November 30, 2007, Star followed with its own announcement that it would be putting a new price list into effect in January 2008. (RX-406 (“Star Pipe Products will be publishing a new Price List for Utility Fittings, Accessories and Fabricator Products (UPL.08.01) to be effective January 1st, 2008.”); Minamyer, Tr. 3153).
883. Star’s announcement stated that it would issue new list prices in 2008, but the letter did not say whether prices would increase or what the magnitude of any increase would be. (RX-406 (“Star Pipe Products will be publishing a new Price List for Utility Fittings, Accessories and Fabricator Products (UPL.08.01) to be effective January 1st, 2008.”); Minamyer, Tr. 3154).
884. {

- at 118-119, 126-130, *in camera* { }; (CX 1621-A  
 (detailing telephone records). }; *supra* ¶¶ 713-733
885. Because of his concern about McWane’s cost advantage, and the importance to Sigma of a successful list price increase, Mr. Pais lobbied Mr. Page for McWane’s support. He actively sought opportunities to stay in contact with Mr. Page. (CX 1163 at 007, 008 (August 2008 Pais email describing the recent decline in Sigma’s cost advantage as “part of my motivation to revive our strategic relationship with RP/McWane and find credible opportunities to stay engaged with them!”); CX 0317 at 001 (Pais May 13, 2009 email describing relationship with Pais and stating that by using “non-conflicting ‘strategic’ opportunities, I have been able to get [Page’s] attention and agreement on some important market issues.”)).
886. On or about December 3, 2007, Mr. Page and Mr. Pais met in person in Birmingham, Alabama. (Pais, Tr. 1886-1887; CX 2482 (Page, Dep. 107-108) (Mr. Page likely met with Mr. Pais on December 3, 2007, although he does not recall what they spoke about); *see also* CX 2037 (email setting up meeting); CX 2038 (Page calendar entry reflecting meeting between Mr. Page and Mr. Pais on December 3, 2007)).
887. Later that month, when Mr. Page initially declined a further meeting request from Mr. Pais, (CX 2119 at 001 (Mr. Page informing Mr. Pais that he does not think a meeting between them would be worthwhile or wise); Pais, Tr. 1894), Mr. Pais declared that he would “go[] all out to arrange a meeting with RP before closing down the direct access as he suggested.” (CX 2120 at 001; Pais, Tr. 1890). Viewing Mr. Page’s refusal as an invitation to meet for a pretextual purpose (a “clue to meet thru transparent grounds”), Mr. Pais prepared a memo to Mr. Page proposing to meet regarding an opportunity for McWane in India, which, he noted, “incidentally is for real as well.” (CX 2120 at 001; Pais, Tr. 1891; *see also* CX 1113 at 001-002 (final version of Pais memo as sent to Page on December 14, 2007)).
888. Mr. Tatman analyzed the new Sigma list prices based on McWane’s product mix and concluded that they represented an approximately 25% weighted average price increase. (Tatman, Tr. 348-349).
889. Mr. Tatman believed that such a large price increase would lead to increased Project Pricing, greater instability, and less transparency in the Fittings market. (Tatman, Tr. 348-349).
890. McWane knew that Sigma was attempting to learn from the market whether McWane intended to follow its January 2008 price increase, and believed that Star was waiting for an announcement from McWane as well. (CX 1702 at 001 (Tatman writing to McCullough and Thomas on December 22, 2007: “Sigma recently posted a new List





896. McWane did not announce that it would follow its competitors' list price changes. On December 20, 2007, Sigma issued a letter to its customers delaying implementation of Sigma's Fittings list price increase (previously scheduled for Jan 2, 2008), explaining in part:

Unfortunately for you and us one of our competitors in the Fitting Industry has not announced a New List Price increase for 2008 despite the fact that they are subject to the same cost pressures as the rest of us. As a result the New List Price Sheet as it pertains to Fittings only will be delayed for the time being. It is our sincere hope that the delay will be short term and that this Price Increase which is healthy for all of us will be implemented in the very near future.

(CX 2455 at 001 (emphasis in original); Rybacki, Tr. 1114-1116; RX-690 (Rybacki, Dep. at 83) (phrase "one of our competitors" was referring to McWane); Rybacki, Tr. 1114-1115) (same)).

897. Mr. Tatman received a copy of Sigma's December 20, 2007 letter, which he described as "a strange letter," and as "bashing" McWane. (Tatman, Tr. 351-352; CX 0627 at 001, 012).
898. Sigma was upset by McWane's failure to follow Sigma's price increase announcement. (Rybacki, Tr. 1115).
899. In late December, Star also issued an updated version of its November 30 list price announcement, postponing the effective date of its new Fittings list prices from January 2, 2008 to February 4, 2008. (CX 0627 at 001, 014; Minamy, Tr. 3155-3156).
900. On December 26, 2007, Mr. Pais sent a pricing strategy email to Sigma's management group, in which he stated that he was confident that McWane would eventually follow Sigma's price increase announcement, and explained that McWane was trying to send a message to Sigma and Star regarding discounting (*i.e.*, "net" pricing and "effective" multipliers) in the Fittings market:

As McWane chose not to follow our lead in increasing the PRICE LIST as of 1/2/07, LR's letter to customers advising a 'temporary delay' in the PL-108 is the logical first step. However, despite being very clear LR's letter may be misconstrued as 'rescinding' the 08 PL increase. We should all be aware and alert that it's NOT SO. From all indications, ***I am still confident McWane will follow our lead – as they too were trying to make a statement that we, the NMG (the non-McWane Supplier Group), need to get a wake-up call and are prepared to be more responsible and truly committed to raise the overall NET, NET PRICE;*** including the Multiplier + VRs. They are finally trying to leverage their current relative costing/pricing advantage to send a message to the NMG --

that while we can take the market price down on our own, we need THEM to take it up!

...

We have to do all we can to raise the effective Multipliers from the current dismal .22 to .25 range. McWane may be right in their skepticism about our inability to sustain, let alone boost the multipliers and instead try to raise the List to perhaps create additional 'head room' for multiplier slides!

(CX 1439 at 001 (emphasis added); Pais, Tr. 1902-1917).

901. Mr. Pais believed that due to “costs, which were going up a lot more faster overseas as compared to domestic, it is fair to say that they [McWane] had a temporary advantage.” (CX 2528 (Pais, Dep. at 255-258) (discussing CX 1439)).
902. When Mr. Pais wrote that, McWane was making a statement that Star and Sigma needed to “be more responsible and truly committed to raise the overall NET, NET PRICE,” Mr. Pais was referring to the need, in the face of declining demand, for the suppliers to start looking for ways to increase prices. (Pais, Tr. 1904-1905 (“[I]n a year, 2007, when the volume clearly had dropped, we had so many different kind of hits to our overall price. There are discounts and discounts on discounts, rebates and cash discount, that we’re all forced to respond to our competition, whether it’s McWane or Star or SIP. . . . I was trying to set the stage that this is the time of the year we have to look at our bottom line, and let’s find ways to be responsible for ourselves, you know, to run a smart business and start looking at price enhancements.”); CX 1439 at 001).
903. In response to this perceived message from McWane, Mr. Pais asked his team to be more disciplined about the Fittings discounts that they offered to customers. (Pais, Tr. 1905-1906 (“Q. So being more disciplined about the price – are you asking your team to be more disciplined about the prices they’re offering to your customers? A. Yes.”); CX 1439 at 001).
904. Sigma needed McWane to follow Sigma’s price increase because of the “practical reality that if we go alone, we can do it, and at times, we’ve done it, but then we’ll lose the volume.” (CX 2528 (Pais, Dep. at 258); Rybacki, Tr. 1113-1114 (Sigma cannot raise prices if competitors don’t follow because “We’re selling a commodity”)).
905. McWane never increased its list prices in response to Sigma’s October 23, 2007 list price increase announcement. (Tatman, Tr. 352).
906. Sigma’s October 23, 2007 list price increase announcement never went into effect, and was eventually withdrawn by Sigma. (Rybacki, Tr. 1115, 1125-1126; CX 1189 (Sigma January 29, 2008 letter to customers superseding previously announced list price increase)).

## 7 Price-Fixing Conspiracy in the Fittings Market Among McWane, Sigma, and Star

### 7.1 The Tatman Plan

#### 7.1.1 Mr. Tatman Developed a Plan for Achieving Stability and Transparency in the Fittings Market

907. In late December 2007 and early January 2008, Mr. Tatman developed a plan to forge an agreement among the Fittings suppliers whereby McWane would only agree to higher published prices if its competitors committed to curtail their Project Pricing and maintain stable and transparent pricing at published levels. (*Infra* ¶¶ 908-923).
908. In a December 22, 2007 email, Mr. Tatman informed his boss, Mr. McCullough, that he had a “concept” to take advantage of market conditions that put McWane in a “unique position” to “help drive stability and rational pricing” in the Fittings market. (Tatman, Tr. 340-343; CX 1702; CX 2327; CX 0627). Mr. Tatman defined price stability and rational pricing as within 10% of published multipliers. (Tatman, Tr. 283-285, 338-339).
909. Specifically, Mr. Tatman wrote in his December 22, 2007 email to his boss, Mr. McCullough, that:

Given both the change in the Tyler/Union leadership structure and the accelerated inflation in China compared to Domestic cost, ***I believe we’re in a unique position to help drive stability and rational pricing with the proper communication and actions.***

I have a concept that I believe will work if properly executed. . . . I don’t believe with our silence and Star’s push announcement that Sigma will hold to their Jan 2nd effective date so we have some time to get it right.

(CX 1702 at 001 (emphasis added)).

910. Three days later, on December 25, 2007, Mr. Tatman echoed these same points in a cover email to Messrs. McCullough, Jansen and Walton that transmitted a draft presentation of McWane’s pricing strategy for Fittings, titled “Draft Presentation for 1Q 2008 DIWF LP Review.ppt.” In that email, Mr. Tatman wrote:

Our past attempts to ***drive stable pricing*** haven’t been too successful. However, our new leadership structure coupled with China inflation out pacing domestic costs may provide ***a unique opportunity for success*** provided our strategy and execution is correct.

(CX 2327 at 001 (emphasis added)).

911. On or about January 6, 2008, Mr. Tatman outlined the specifics of his “concept” for driving “stability and rational pricing” in the Fittings market in a presentation he drafted and provided to Messrs. Walton and McCullough (the “Tatman Plan”). The presentation

was intended to help McWane decide how to react to market conditions in the Fittings market. (CX 1702; CX 0627; Tatman, Tr. 345-346; Tatman, Tr. 752 (“[E]verything we do is very methodical and very well thought out.”)).

912. In the presentation, Mr. Tatman first reported on the current competitive environment, including Sigma’s December 20, 2007 letter to customers postponing its list price increase, noting that that letter had “bash[ed]” McWane for not following Sigma’s announced list price increase; and Star’s announced list price increase and subsequent postponement of that price increase’s effective date. (CX 0627 at 001; Tatman, Tr. 349-350, 353).
913. Most importantly, the presentation specifically outlined the elements of Tatman Plan in a slide titled, “Desired Message to the Market & Competitors”:

**Desired Message to the Market & Competitors**

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- Tyler/Union will be consistent and follow through with what we’ve formally communicated.**
- T/U will encourage/drive both price stability and transparency.**
- T/U will adjust multipliers as required to remain competitive within any given market area.** (Consistent Job Pricing will be met with general market actions)
- For 2008, we will support net price increases but will do so in stepped or staged increments. A prerequisite for supporting the next increment of price is reasonable stability and transparency at the prior level.**

Due to their now more desperate need for price, I believe that Sigma and Star will mimic and verbally follow any program we publish. However the keys to actual success are:

1. T/U being consistent with what we say for an extended period (> 3 months)
2. Sigma & Star’s mgt pulling price authority away from front line sales and customer service personnel to add discipline to the process
3. Support from our major customers to abandon the current process of branches calling multiple suppliers to auction for price. (We’ll need face to face meetings)
4. The Big 3 not allowing 3<sup>rd</sup> tier suppliers like Serampore to disrupt the process

(CX 0627 at 004).

914. Under the Tatman Plan, McWane would communicate to “the Market & Competitors” that McWane would “encourage” and “drive” “both price stability and transparency” in the Fittings market. (CX 0627 at 004).
915. Under the Tatman Plan, McWane would communicate to “the Market & Competitors” that McWane would support future Fittings price increases in “stepped or staged increments,” but only if there was “reasonable stability and transparency at the prior level.” (CX 0627 at 004; CX 2484 (Tatman, Dep. at 84-85); CX 0375 (draft letter to customers stating that any subsequent price increases would only be announced if “the increase can be supported by stable market conditions”)).

916. The Tatman Plan also called for McWane to communicate to “the Market & Competitors” that any consistent Project Pricing would be met with market-wide action by McWane to lower multipliers for that area. (CX 0627 at 004 (“Consistent Job Pricing will be met with general market actions.”)).
917. Mr. Tatman believed that Sigma and Star would verbally follow McWane’s program because of their “desperate need for price increases.” (CX 0627 at 004 (“Due to their now more desperate need for price, I believe that Sigma and Star will mimic and verbally follow any program we publish.”); Tatman, Tr. 361-362).
918. However, Mr. Tatman noted that one of the “keys to [the] actual success” of his Plan would be for Sigma and Star to centralize price authority away from their front line sales representatives in order to “add discipline to the process.” (CX 0627 at 004; Tatman, Tr. 362, 1071 (“[T]he only way that’s going to work is if your competitors stop doing it.”)).
919. The Tatman Plan’s objective was to stabilize market pricing by compressing the variance between published pricing and actual pricing, so as to achieve greater market pricing transparency. (Tatman, Tr. 1072 (“Q. And did you try to hold pricing and stabilize market pricing in 2008? A. We tried to compress the variance between where we were published and where we were actually having to go. . . . [W]e’re trying to get visibility to what’s going on out there because we can’t see it.”)).
920. At trial, Mr. Tatman initially explained that his presentation (CX 0627) was for a brainstorming session between Mr. Tatman, Mr. Walton, and Mr. McCullough in order to decide how McWane was going to react to the competitive situation. (Tatman, Tr. 354-358).
921. Mr. Tatman attached to the presentation two draft letters to customers that would communicate elements of the Tatman Plan. These letters explained the reason for the price increase as:

We understand the need for this increase and that, in general, higher price levels provide value to the industry. However, we don’t believe the industry’s your *[sic]* best interests are served by publishing increases that are not supported, leading to instability and ultimately erosion of market level pricing.

and

While we acknowledge this increase is significantly lower than what has been communicated by another supplier. We don’t believe your best interests are served by publishing increases that in turn are not supported, leading to instability and ultimately erosion of market level pricing.

(CX 0627 at 006-007).

922. McWane’s January 11, 2008 letter to customers was based on those drafts and was the final result of Mr. Tatman’s “brainstorming session” with Messrs. McCullough and Walton. (Tatman, Tr. 371; *see also infra* ¶¶ 935-938).
923. Mr. Tatman testified that he spoke with Mr. Rybacki “a couple of times” and he did not know what they discussed. Tatman Tr. 364 (“I testified at deposition that I’ve talked to Mr. Rybacki two, three, a couple of times. I don’t know when and I don’t know what the topics were.”). {

}

a. {

} (CX 1621-A at 113, *in camera* (Rybacki telephone records); Tatman, Tr. 367-368; Rybacki, Tr. 3624-3626, *in camera*; *supra* ¶¶ 739-742 (detailing telephone records)).

b. {

} (CX 1621-A at 114, 115, *in camera* (Rybacki telephone records); Tatman, Tr. 369-370, *in camera*; Rybacki, Tr. 3627-3628, *in camera*).

c. Mr. Tatman testified that he was unable to remember those calls, and that he did not know what was discussed. (Tatman, Tr. 367-370 (“Q. But you don’t know what you and Mr. Rybacki might have talked about on December 27? A. I don’t know if he said, ‘Merry Christmas. Welcome to the rat race.’ I have no clue.”)).

d. {

} (Rybacki, Tr. 3627-3628, *in camera* {

} Rybacki, Tr. 1088-1089 {  
}

### 7.1.2 McWane Centralized Its Pricing Authority in 2008

924. In January 2008, McWane centralized its Project Pricing approval authority. (*Infra* ¶¶ 925-929).
925. McWane centralized its pricing authority in January 2008 when it created a new pricing coordinator position for Mr. Napoli, tasking him with gaining control over the contentious and time-consuming process of negotiating Project Pricing with Distributors. (RX-640 (Napoli, Dep. at 35-36, 46-48, 50)).

926. McWane centralized pricing authority by requiring local sales agents to obtain approval before offering job pricing to Distributors. (CX 2480 (Napoli, Dep. at 44-47) (sales agents were instructed to run Project Pricing through Mr. Napoli); CX 2485 (Walton, Dep. at 121-122)).
927. McWane executives were concerned that sales representatives with pricing authority could produce “instability and lower prices in the market.” (CX 2485 (Walton, Dep. at 31-34) (explaining that he was a proponent of making pricing decisions at a centralized location based on what he had observed through the “actions of the competition”); *see also* CX 0111 at 002 (Walton expressing concern in 2009 that “overall pricing in the market place will decline” if McWane were to return pricing authority to the sales field)).
928. By August 2009, after the price-fixing conspiracy had largely collapsed, Mr. McCullough thought it was “imperative” to McWane’s success in the market that McWane give its field sales representatives some latitude to adjust pricing. (CX 2353 at 002; CX 2485 (Walton, Dep. at 38-39)).
929. The change in policy to restore some limited authority to McWane’s sales force to offer Project Pricing was based on a determination that pricing in the marketplace “was very volatile,” and that McWane needed to restore that authority in order to “keep market share.” (CX 2480 (Napoli, Dep. at 53-54, 59) (discussing need for sales force to obtain appropriate verification, such as written proof of a competitor’s price, before offering Project Pricing under new rule)).

## **7.2 In the First Quarter of 2008, Sigma, Star and McWane Agreed to Match Prices and Cut Back Project Pricing**

930. In the first quarter of 2008, Sigma, Star and McWane agreed to match prices and cut back on Project Pricing. (*Infra* ¶¶ 931-1088).

### **7.2.1 McWane’s January 11, 2008 Letter Was an Invitation to Collude**

931. McWane’s January 11, 2008 customer letter was an invitation to collude directed at Sigma and Star, whereby McWane would agree to staged, industry-wide Fittings price increases in exchange for Sigma’s and Star’s agreement to curtail Project Pricing. (*Infra* ¶¶ 932-949).
932. In a January 11, 2008 pricing letter ostensibly addressed to customers, McWane announced that it was keeping its current list prices but would increase its blended Fittings multipliers by 10 to 12 percent, and that it intended to stop Project Pricing by selling products only off the newly published multipliers. (CX 1178). That letter read in pertinent part as follows:

As per our prior letter of October 5, 2007, we will adjust pricing by increasing multipliers while retaining our current List Price, LP-5072. Letters stating the new region specific multipliers will be mailed January 18, 2008. ***The increase will be 10% to 12% above the current prevailing multiplier levels*** on Blended Fittings and



Accessories and 3% to 5% on Domestic Fittings effective February 18, 2008.

To help our distribution customers better manage their Inventory valuations and compete on a more level playing field, ***it is our intention going forward to sell all products only off the newly published multipliers***. We will continue to monitor the competitive environment and adjust regional multipliers as required to provide you with competitive pricing.

All annual municipal bid contracts will be honored per the terms of the contract. Jobs quoted prior to this announcement will be honored through March 1, 2008, with acceptable documentation provided to your local Tyler/Union sales representative.

If the current inflationary trends continue as forecasted, we anticipate the need to announce another multiplier increase within the next six months. However, we will only do so as conditions require.

(CX 1178 (emphasis added); CX 2172 at 002; Tatman, Tr. 870).

933. The January 11, 2008 letter did not provide any actual new price multipliers; McWane communicated those new multipliers, effective February 18, 2008, in price increase letters to customers dated January 18, 2008. (*E.g.*, CX 0896 at 001; Tatman, Tr. 411-412; CX 1672 at 001; RX-608; CX 0035 at 001, 003).
934. The January 11, 2008 letter, even though ostensibly addressed to customers, was the “Message to Competitors” envisioned by the Tatman Plan. (Tatman, Tr. 371 (January 11, 2008 letter was a result of Tatman’s “brainstorming session” with McCullough and Walton for which he prepared the Tatman Plan); Tatman, Tr. 1066-1067 (describing January 2008 letter as a “head fake” to competitors); CX 1178).
935. Mr. Tatman wrote the January 11, 2008 letter. (CX 2477 (Jansen, Dep. at 254-255); Tatman, Tr. 384-385 (Tatman prepared drafts)).
936. Mr. Tatman prepared multiple drafts of the January 11, 2008 pricing letter, both as part of the Tatman Plan and subsequently. Three of these drafts were attached to the Tatman Plan. (CX 0627 at 006 (“Stronger Language” draft letter in Tatman Plan acknowledging that higher price levels “provide value to the industry” but that “the industry’s . . . best interests” are not served by increases “at levels that are not supported”); CX 0627 at 006 (alternate “Stronger Language” draft letter in Tatman Plan stating that although the increase is “significantly lower than what has been communicated by another supplier,” McWane does not “believe your best interests are served by publishing increases that in turn are not supported, leading to instability and ultimately erosion of market level pricing”); CX 0627 at 007 (“Softer Language” draft letter in Tatman Plan)).

937. A subsequent draft, circulated by Mr. Tatman to Mr. McCullough and Mr. Walton on January 8, 2008, contained language stating that McWane would only make future price increases “if conditions require **and the increase can be supported by stable market conditions**” and that “[i]t is not our intention to provide job pricing.” (CX 0375 (emphasis added)).
938. By using the phrase “it is our intention going forward to sell all products only off the newly published multipliers,” McWane was announcing its intention not to offer Project Pricing. (Tatman, Tr. 387-388 (“Q. McWane announced it was not its intention to offer job pricing; isn’t that what you intended by this communication? A. I would say the way that is written, the answer would be yes.”); *see also* CX 2172 at 001 (Tatman email to HD Supply: “Distributors are ultimately better served with adherence to published pricing as instability and the corresponding price erosion only reduces your profitability); CX 0375 at 001 (draft of January 11, 2008 letter stating “It is not our intention to provide job pricing.”); CX 2477 (Jansen, Dep. at 250) (testifying that this language meant that McWane was going to try to reduce the amount of Project Pricing: “Q. Does that mean that Tyler/Union was going to try to reduce the amount of job pricing? . . . THE WITNESS: Yes.”); CX 2538 (McCutcheon, IHT (Vol. 2) at 413-414) (a reasonable interpretation of McWane’s letter by someone with experience in the industry would be that McWane was saying , “I’m done job pricing, if I see my rivals job pricing, I’m going to bring multipliers down in the areas where I observed job pricing.”))).
939. At trial, Mr. Tatman admitted that McWane’s statement in the January 11, 2008 letter (CX 1178) that it intended to sell products “only off newly published multipliers” was directed at competitors, not customers. (Tatman, Tr. 894-895, 1065-1067 (testifying that it was a “head fake” directed at competitors, not customers)).
940. The 10% - 12% increase in multipliers was “significantly lower” than the approximately 25% average increase previously announced (and put on hold) by Sigma. (Tatman, Tr. 382-384; CX 2172 at 001 (Tatman writing to HD Supply that “[t]he % change is significantly lower than the List Price change Sigma posted on their website which appears to be in the range of ~25% on average”)).
941. Sigma understood McWane’s announcement of a 10%-12% increase over “prevailing multipliers” (CX 1178) reflected an increase above then-current effective multipliers in the marketplace, which were at that time lower than published multipliers. (Rybacki, Tr. 3518 (“Q. [W]hen you learned that McWane was increasing multipliers by 10 to 12 percent, what did you mean -- 10 to 12 percent above what? A. Above what multipliers were in the marketplace. Q. Were the multipliers in the marketplace at the end of 2007 lower than the -- lower than they were actually published? A. Yes.”)).
942. The relatively modest size of McWane’s proposed price increase as compared to the increase sought by Sigma reflected the strategy in the Tatman Plan that McWane would only support price increases in “stepped or staged increments.” (CX 0627 at 004).
943. The relatively modest size of McWane’s proposed price increase also reflected McWane’s intent to reduce the other suppliers’ ability and incentive to engage in Project

- Pricing by limiting the headroom between published prices and competitive prices. (CX 2327 (email from Walton to Tatman, stating, “I like your strategy of only giving them half of what they want to try and prevent cheating and fire sales.”); Tatman, Tr. 349 (Sigma’s proposed larger price increase would have given Sigma and Star “more headroom for discounting”); Tatman, Tr. 360-361 (aim of pricing plan was to “get better visibility” and reduce competitors’ “wobble room”); Tatman, Tr. 374-375 (Tatman wanted to narrow the band between published price and competitive level to improve visibility); Tatman, Tr. 882 (McWane moderated the amount of its price increase so as not to “lose visibility on where the true competitive level was.”)).
944. McWane’s letter offered to “announce another multiplier increase within the next six months,” but stated it would “only do so as conditions require.” The conditions required for another increase included achieving greater pricing stability and transparency in the Fittings market by curtailing Project Pricing. (CX 178; Tatman, Tr. 388-390 (price stability and transparency was a McWane objective); CX 2484 (Tatman, Dep. at 94-96) (discussing letter); CX 2484 (Tatman, Dep. at 97-98) (McWane’s letter was alerting the market to the possibility of another price increase); CX 2477 (Jansen, Dep. at 250-251) (Tyler/Union intended to reduce job pricing to bring stability, and would “like to go with no job pricing.”); CX 2172 at 001 (Tatman emphasizing need for stability in an email transmitting the January 11, 2008 letter to HD Supply); CX 2485 (Walton, Dep. 113-114 (“stability in pricing” means that the market has less Project Pricing)).
945. CX 1664 is a worksheet created by Mr. Tatman as part of his effort to establish actual Fittings price multipliers in January 2008. (Tatman, Tr. 885). The multipliers Mr. Tatman proposed in CX 1664 were used in the final multiplier map announced by McWane on January 18, 2008, and CX 1664 contains Mr. Tatman’s analysis the financial impact of those multiplier changes. (Tatman, Tr. 1054-1055; *compare* CX 1664 with CX 0035 at 003)).
946. In determining how to adjust multipliers in January 2008 and evaluating whether a change was an effective increase or a decrease, Mr. Tatman compared the then-current effective multiplier for each region (based on McWane invoice data from September 1, 2007 to December 1, 2007) with the proposed new multiplier. (Tatman, Tr. 1051-1052; Tatman, Tr. 392-396; CX 1664 (“final regional multipliers” worksheet); *see also* CX 2479 (McCullough, Dep. at 187) (describing draft customer letter (CX 0375) as referring to a planned price increase through the increase of multipliers)).
947. The non-Domestic Fittings multipliers announced in McWane’s January 18, 2008 pricing letters were below the then-current effective prices in only eight states: New Hampshire, New Jersey, Delaware, Maryland, Virginia, Arkansas, South Dakota, and Idaho. (Tatman, Tr. 403-404; CX 1664 (“final regional multipliers” worksheet)).
948. The non-Domestic Fittings multipliers announced in McWane’s January 18, 2008 pricing letters were above the then-current effective prices in at least 40 states or territories: Connecticut (3.6% increase), New York (10.5% increase), Rhode Island (10.7% increase), Massachusetts (20.8% increase), Vermont (19.2% increase), Pennsylvania (8.8% increase), West Virginia (11.9% increase), Ohio (16% increase), Indiana (13.3%

increase), Kentucky (3.7% increase), Alabama (7.4% increase), Georgia (15.3% increase), North Carolina (7.7% increase), South Carolina (9.5% increase), Florida (5.5% increase), Tennessee (2.7% increase), Mississippi (6.7% increase), Louisiana (3.0% increase), Oklahoma (16.2% increase), Missouri (7.6% increase), Kansas (13.1% increase), Nebraska (13.4% increase), Michigan (6.5% increase), Minnesota (6.1% increase), North Dakota (11.9% increase), Iowa (5% increase), Illinois (1-80 north) (13.3% increase), Wisconsin (6.9% increase), Arizona (5.8% increase), New Mexico (7.2% increase), Texas (8.2% increase), Utah (33.3% increase), Wyoming (9.9% increase), Colorado (8.6% increase), Montana (8.6% increase), Washington (35.5% increase), Oregon (31% increase), California (10.7% increase), Nevada (9.3% increase); Puerto Rico (12.5% increase). (CX 1664 (“final regional multipliers” worksheet); Tatman, Tr. 405-406 (walking through calculation for 35.5% increase in Washington)).

949. Overall, the non-Domestic Fittings multipliers announced in McWane’s January 18, 2008 pricing letters resulted in a weighted average price increase of approximately 8% over then-current effective prices. (Tatman, Tr. 359-360, 392-393 (weighted average increase was 8%); RX-409 at 0001 (Tatman January 18, 2008 email to McCullough reporting 8.1% increase); CX 1664 at 002 (“final regional multipliers” worksheet reflecting Mr. Tatman’s detailed calculations to determine that the expected impact of the price changes was a 8.13% price increase)).

### **7.2.2 Sigma Followed McWane’s New Fittings Price Multipliers and Accepted McWane’s Invitation to Curtail Project Pricing**

950. Sigma followed McWane’s new Fittings price multipliers and accepted McWane’s invitation to curtail Project Pricing. (*Infra* ¶¶ 951-970).
951. On or about Monday, January 14, 2008, Sigma and Star executives received copies of McWane’s Friday, January 11, 2008 letter. (CX 0038; McCutcheon, Tr. 2505-2507 (testifying that he received McWane price letter from a customer); Rybacki, Tr. 3516-3517, 3557-3558 (testifying that he received a copy of McWane’s January 11, 2008 letter); CX 1178; CX 1291; Minamyer, Tr. 3156).
952. {

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(CX 1621-A at 117, *in camera* (Rybacki telephone records); *supra* ¶¶ 745-747 (detailing telephone records); McCutcheon, Tr. 2475-2476, *in camera* {

})).

953. On January 24, 2008, Mr. Pais communicated to Mr. Rybacki that McWane was upset because of the “overcompetitiveness of the marketplace” and the “downward spiral of

pricing in the marketplace.” (Rybacki, Tr. 1131-1132; CX 1145). Mr. Pais knew that the downward spiral of prices had occurred through Project Pricing, not through decreases in published list prices and multipliers. (Pais, Tr. 2078-2079 (discussing CX 1138 and explaining that the price decline that occurred over the two years leading up to 2008 had been in “actual multipliers,” not “published multipliers”)).

954. Sigma believed that it was important to eliminate Project Pricing, and to communicate Sigma’s intent to do so to the marketplace. (CX 1138; Rybacki, Tr. 3545 (“Mr. Pais always suggested that we . . . firm up or eliminate project pricing.”); Rybacki, Tr. 3545 (“[W]e wanted to do away with project pricing. . . . [W]e wanted to become more consistent with our pricing approach that we always did.”)).
955. Sigma viewed Project Pricing as contrary to consistent and disciplined pricing, and was trying to curtail Project Pricing throughout 2008. (Rybacki, Tr. 3523-3524, 3545 (Sigma wanted to do away with Project Pricing)).
956. Ten days after receiving a copy of McWane’s January 11, 2008 letter announcing McWane’s intent to stop Project Pricing, on January 24, 2008, Mr. Pais sent an email to Sigma’s regional managers that they should minimize Project Pricing:

I HAVE URGED LARRY [Rybacki] TO INITIATE A NEW COMMITTED AND SERIOUS EFFORT ***TO NORMALIZE ALL PRICING*** FOR FITTINGS – AT SAME LEVELS – PW AS WELL AS OTHER ORDERS, ***TO ELIMINATE THE CONFUSION WE ARE CREATING WITH CUSTOMERS AND COMPETITORS***, LEADING TO LOWER OVERALL PRICING LEVELS.

Though Tyler’s NEW multipliers are discouraging, ***this is both a lesson and an opportunity [for] Sigma and Star to develop a patient and disciplined Marketing approach and demonstrate to [McWane] that we are capable of being part of a stable and profitab[ility] conscious industry.*** This is the ‘leadership capital’ we created when we acquired PCI and reduced the supply base to just 3 -- but, so far, we have NOT been astute enough to derive any returns from this capital!

(CX 1145 at 001 (emphasis added); Rybacki, Tr. 1129, 1133-1134; Pais, Tr. 1920-1925).

957. Specifically, Mr. Pais was encouraging his sales force to “not giv[e] into too many requests for discounts.” (Pais, Tr. 1922). Mr. Pais recognized that Sigma might not be able to eliminate Project Pricing, but he wanted to minimize it. (Pais, Tr. 2139-2140 (“[W]e were not trying to eliminate special pricing, we were trying to minimize it . . . .”); Pais, Tr. 1921 (“[E]liminating the practice is wishful thinking. I was just trying to have them minimize it.”)).
958. Mr. Pais’s instruction to Mr. Rybacki applied to all segments of Sigma’s Fittings business. (Pais, Tr. 2068 (“I was trying to prevail on Larry to see how we can reduce the

dispersion in the pricing that we just talked about or whether it is through plant work or whether it is through *more aggressive pricing to some customers*, et cetera.”) (emphasis added); *see also* CX 2528 (Pais, Dep. at 263-267) (Sigma sought to turn back the practice of special pricing, which had spread into stocking orders from traditional plant work segment); RX-687 (Pais, Dep. at 82-83) (“the distributors and everyone alike started stocking less and they started showing these so-called lists, RFQs, request for quotation, on anything and everything . . . . So I initiated to address the problem. We cannot eliminate, of course entirely, let’s minimize it to say, that, look, you don’t have to have a special pricing, you have the pricing already, use the same list price because it is the same fitting.”)).

959. In the same January 24, 2008 email, Mr. Pais stated that:

It’s likely that Tyler did wish to make a definite effort to improve the multiplier levels -- but, may have based their choices for the NEW multipliers on the actual documented competitive pricing that they are known to procure proof for, from the customers. Unfortunately, the illogical pricing approach used by Star -- and hence SIGMA -- for ‘Plant quotes’ with lower ‘special’ multipliers may have biased [McWane’s] decisions in pegging the NEW multipliers at where they are.

(CX 1145 at 001). Mr. Pais’s reference to the “illogical pricing approach used by Star” refers to Star’s pricing as being “overly aggressive in the marketplace, and they had taken project pricing or plant quotes to a new level of -- a new depressed level, and it was hard to compete with.” (Rybacki, Tr. 1136-1137).

960. Mr. Pais wanted to convey to Sigma’s regional managers that Sigma’s practice of offering Project Pricing was causing its competitors to hold down prices and was hurting both Sigma and its competitors, and that Sigma should therefore minimize its use of Project Pricing. (Pais, Tr. 1920-1921 (“So because we were indulging in this practice which was not smart anymore, not relevant, we felt this was forcing our other competitors to keep the price at a depressed level and hurting us and perhaps themselves, too.”)).

961. Mr. Pais’s reference in his January 24, 2008 email to a “stable and profitab[ility] conscious industry” referred to the stability of Fittings pricing, among other things. (CX 1145 at 001; Pais, Tr. 1924 (“as human beings, we all love stability in a lot of ways. . . . And pricing is one, the volume that we get and the predictability of the business . . . we would like to at least expect a certain amount of business from [customers] rather than constantly trying to get every order, every day, every hour.”)).

962. Mr. Pais’s statement in his January 24, 2008 email that “we acquired PCI and reduced the supply base to just 3” referred to Sigma’s acquisition of its former competitor PCI, which had reduced the number of primary Fittings suppliers to Sigma, Star, and McWane. (CX 1145 at 001-002; Pais, Tr. 1924-1925).

963. Mr. Rybacki understood that Mr. Pais was asking him and the Sigma sales team to pull back on Project Pricing. (Rybacki, Tr. 1129; CX 2531 (Rybacki, Dep. at 227-228) (Mr. Pais's January 24, 2008 email (CX 1145) reflects a request by Mr. Pais for Sigma to pull back on Project Pricing); *see also* CX 2531 (Rybacki, Dep. at 224-225) (Sigma sought to reduce the incidence of Project Pricing in 2008 by "hold[ing] the ground" and "hold[ing] it to list and multiplier"))).
964. Mr. Rybacki further testified that Mr. Pais's reason for pulling back on Project Pricing was that it was "upsetting the gorilla in the room," McWane:

Because Star's pricing was ruining the market; and as a result, it was upsetting the gorilla in the room, which was [McWane], because they're the biggest, McWane's the biggest, and it was obviously hurting us as well; and that's the reason why [] he wanted us to normalize or try to standardize on the list and multiplier to create some kind of stability.

(CX 2531 (Rybacki, Dep. at 229)).

965. On or about January 29, 2008, Sigma issued a letter to its customers that rescinded its previously announced new Fittings list price and followed McWane's multiplier increase, effective February 25, 2008. (CX 1189 at 002; Rybacki, Tr. 1125-1127, 3518-3519; CX 2531 (Rybacki, Dep. at 220) ("Q. So ultimately in January of 2008 . . . you retracted the list price increase and went out with some multiplier increases? A. Correct.")).
966. Sigma's January 29, 2008 letter stated that Sigma would "follow suit" and copy McWane's new published prices that would be effective February 25, 2008, except where the new multiplier would be below Sigma's current pricing. The letter noted that "every manufacturer in the Waterworks Industry needs [a price increase]," and that "[w]e apologize for the confusion and lack of discipline our segment of the Industry has shown as we at SIGMA Corporation are committed to make this a more profitable business for all." The letter also stated that "[i]t is our intent to raise prices in 2008." The full text of the letter read as follows:

Dear Valued Customers,

As you are all aware, SIGMA Corporation was intending to put out a new list price sheet on January 2, 2008 which showed a significant increase in all our products due to the increased cost of raw materials, freight, personnel, etc. When one of our competitors chose not to have a list price increase but rather a multiplier increase, we decided to follow suit and on February 25 your new multipliers will be in effect for almost every territory. The key word is "almost" as a few of territory multipliers are below what you currently receive from us and some are in fact well below.

It is our intent to raise prices in 2008, not because we arbitrarily feel like raising them but because every manufacturer in the

Waterworks Industry that has Iron products needs one. Manufacturing needs a price increase, distribution needs a price increase, and with product links such as Ductile Iron Pipe and Valve & Hydrants you've already witnessed significant charges.

We think it's unwise and irresponsible to lower multipliers and devalue your inventory, so your Regional Managers will send you new multipliers in the next few days as long as they exceed your current ones. We apologize for the confusion and lack of discipline our segment of the Industry has shown as we at SIGMA Corporation are committed to make this a more profitable business for all. Thanks for your support and understanding and we wish you success throughout 2008 and beyond.

(CX 1189 at 002; Rybacki, Tr. 1126-1127, 3518-3519).

967. Sigma's January 29, 2008 letter to its customers was a commitment to curtail Project Pricing and to adhere to published pricing levels. In apologizing for Sigma's "lack of discipline," Mr. Rybacki was referring to Sigma's lack of consistency in setting selling prices, and failure to stick to published prices. (Rybacki, Tr. 3520). By sending the letter, Sigma was committing to become more consistent in pricing, including by keeping prices at the published multipliers. (Rybacki, Tr. 3520-3522).
968. On or about February 1, 2008, Sigma issued letters to its customers announcing new region-specific multipliers, effective February 18, 2008, pursuant to its January 29, 2008 letter. The letters noted that "All municipal bids will be honored through the length of the contract," and that "[j]obs quoted prior to this announcement will be honored through March 1, 2008." (CX 0848 at 002; Minamyer, Tr. 3196).
969. Sigma communicated to its customers its desire to clean up Project Pricing in 2008. (Rybacki, Tr. 3546).
970. On April 26, 2008, Sigma's regional managers asked Mr. Rybacki for an update on implementation of the multiplier increase and guidance on Project Pricing in light of the response from competition to Sigma's curtailment of Project Pricing. (CX 1127 at 002 (proposed agenda items for Sigma regional manager meeting included "Fittings Multiplier & Pricing Strategy - How is implementation of multiplier map progressing? Do we refrain from job pricing? Is competition responding?"))).

### **7.2.3 Star Followed McWane's New Fittings Price Multipliers and Accepted McWane's Invitation to Curtail Project Pricing**

971. Star followed McWane's January 2008 Fittings price multipliers and accepted McWane's invitation to curtail Project Pricing. (*Infra* ¶¶ 972-1021).



7.2.3.1 Star Instructed Its Sales Force to Curtail Project Pricing

972. Star instructed its sales force to curtail Project Pricing in response to McWane's January 2008 invitation to collude. (*Infra* ¶¶ 973-990).
973. Star anticipated that McWane would implement the price increase McWane announced on January 22, 2008, and Star planned to match the increase. (CX 0752; Minamyer, Tr. 3242-3243).
974. Mr. McCutcheon of Star understood that McWane's January 11, 2008 letter (CX 1178) announced McWane's intention to stop Project Pricing, and he forwarded it to his regional managers so that the Star sales force would have an understanding of what Star's competitors were doing. (CX 2539 (McCutcheon, Dep. at 154); CX 2538 (McCutcheon, IHT (Vol. 2) at 439)).
975. Mr. Minamyer considered McWane's January 11, 2008 letter (CX 1178) as a possible communication to Sigma and Star to notify them that McWane intended to end Project Pricing. (CX 2525 (Minamyer, IHT at 71, 76)). At his investigational hearing, Mr. Minamyer testified that he considered whether Mr. Jansen's January 11, 2008, letter was a signal to Star when he received it. (CX 2525 (Minamyer, IHT at 77)). However, at his later deposition, Mr. Minamyer changed his testimony and testified that he did not consider Mr. Jansen's January 11, 2008, letter as a possible signal to Star. (CX 2526 (Minamyer, Dep. at 130) (admitting that he was changing the testimony he gave at his investigational hearing)).
976. Before Star was willing to pull back or stop Project Pricing, it wanted some understanding that Sigma and McWane would not undercut Star with Project Pricing of their own. (CX 2526 (Minamyer, Dep. at 119-120)). McWane's letter gave Star that assurance, and Star proceeded to curtail Project Pricing. (CX 2526 (Minamyer, Dep. at 120) ("And that was your plan in 2008 when you announced to your sales force that you were going to stop project pricing; correct? A. That we were going to try to stop project pricing. Q. And you did that with some understanding that Sigma and McWane would also be stopping project pricing . . . is that true? A. We were hoping they would.") (objection omitted)).
977. In a January 22, 2008 email, Mr. Minamyer instructed Star's division managers to curtail Project Pricing, stating that "[o]ur goal is to take a price increase and to stop project pricing." (CX 0752 at 001; McCutcheon, Tr. 2388-2389; Minamyer, Tr. 3160 (e-mail was a plan to react to information from McWane)).
978. Mr. Minamyer also announced to his division managers that Star, like McWane, would honor existing Project Pricing to its customers through March 1, 2008. (CX 0752 at 001; CX 0848; CX 2526 (Minamyer, Dep. at 148); Minamyer, Tr. 3168-3169).
979. Mr. Minamyer's January 22, 2008 email informed Star's division managers that he would require written proof of a competitor's lower price before he would approve a Project Price request. (CX 0752 at 001 ("We will not be project pricing unless we see firm documentation that there is a project price or a buy plan that is off the state multiplier."));

- CX 2526 (Minamyler, Dep. at 147); Minamyler, Tr. 3168; *see also* CX 0815 (Minamyler February 23, 2008 email reiterating that documentation of competition prices would be required for Project Pricing approval)).
980. Mr. Minamyler's January 22, 2008 email was intended to stabilize Fittings prices, because "this is what is best for the industry and that we need to be part of the effort to help our industry. We will not be damaging the industry due to lack of discipline." (CX 0752 at 001; Minamyler, Tr. at 3170 ("Q. So was this plan an effort to stabilize prices? A. It was to stabilize our pricing. Q. To stabilize Star's pricing? A. Yes. Q. And where you say -- where you refer to a lack of discipline, is that a reference to pricing discipline? A. Yes, sir. Q. And is controlling project pricing a form of project -- pricing discipline? A. Yes, sir.")).
981. Mr. Minamyler's intent in sending his January 22, 2008 email to Star's division managers was to minimize Project Pricing by Star's sales force. (CX 0752 at 001; McCutcheon, Tr. 2390 (Mr. McCutcheon understood Mr. Minamyler's intent was to minimize Project Pricing by Star's sales force); CX 2538 (McCutcheon, IHT (Vol. 2) at 425) (the email "looks to me like it is Matt [Minamyler]'s attempt to minimize project pricing"))).
982. Mr. Minamyler's January 22, 2008 email to Star's division managers instructing them to curtail Project Pricing was prompted by the statement in McWane's January 11, 2008 letter that "it is our intention going forward to sell all products only off the newly published multipliers." (CX 1178; CX 0752 at 001; CX 2538 (McCutcheon, IHT (Vol. 2) at 425) ("[M]y guess is that this thought came from reading McWane's letter.")).
983. On or about January 23, 2008, Mr. Minamyler repeated his instruction in an email to Star's division managers and territory managers, including Mr. Leider and Mr. Berry, and instructed them "to make sure they are telling their customers that . . . we can no longer project price." (CX 0034 at 002; McCutcheon, Tr. 2399).
984. Mr. Berry, a Star division manager, received a copy of Mr. Minamyler's January 22 and 23, 2008, emails instructing Star's division managers that "Our goal is to take a price increase and to stop project pricing," and forwarded them to his territory managers, instructing them to "Know these procedures." (RX-691 (Berry, Dep. at 49, 105); RX-027 at 0001-0003).
985. As of June 19, 2008, Mr. Minamyler reiterated his instruction to Star's division and territory managers that "we can no longer project price." (CX 2254 at 001, 003 (Minamyler email to Star's sales force to prepare sales force for another round of price increases)).
986. Mr. Minamyler believed that all of the Fittings competitors would have to eliminate Project Pricing in order for the industry to stabilize Fittings prices. (Minamyler, Tr. 3174; CX 2526 (Minamyler, Dep. at 141-142)).
987. Mr. McCutcheon and Mr. Minamyler were the Star managers with authority to establish Star's new policy regarding Project Pricing. Mr. Minamyler testified that he believed that Mr. McCutcheon, and not himself, set the new policy to curtail Project Pricing.

(Minamyer, Tr. 3166-3167; CX 2525 (Minamyer, IHT at 143-144) (Mr. Minamyer believes the idea came from Mr. McCutcheon)).

988. Mr. McCutcheon, however, denied that he ever instructed Mr. Minamyer to stop Project Pricing, (CX 2539 (McCutcheon, Dep. at 152)), or that he ever told Mr. Minamyer to tell Star's sales force to stop Project Pricing. (CX 2539 (McCutcheon, Dep. at 152); CX 2538 (McCutcheon, IHT (Vol. 2) at 425-426) (that there was "no way" that Mr. McCutcheon would have told Mr. Minamyer to "stop project pricing," and that he didn't "know what Matt was thinking, but it did not come from me.")).
989. Regardless of whose idea it was to adopt a strategy of curtailing Project Pricing, it is undisputed that Mr. McCutcheon took no action to countermand Mr. Minamyer's clear instructions to curtail Project Pricing in emails to Star's sales force on January 22, 2008, January 23, 2008, and June 20, 2008. (CX 0752 at 001 (January 22, 2008 email copied to Mr. McCutcheon); CX 0034 at 001 (January 23, 2008 email copied to Mr. McCutcheon); CX 2254 at 001 (June 19, 2008 email copied to McCutcheon)).
990. In November 2008, Star finally reinstated its practice of aggressively Project Pricing. (CX 0831 (email from Minamyer instructing district managers, "We will take every order we can after exhausting all avenues to document the competitors pricing . . . [W]e will no longer tolerate the competition being irresponsible in the market and being undersold as a result.")).

#### 7.2.3.2 Star Centralized Its Pricing Authority

991. Star centralized its pricing authority in response to McWane's January 2008 invitation to collude. (*Infra* ¶¶ 992-996).
992. Prior to McWane's January 11, 2008 price increase announcement, Star's national sales manager, Mr. Minamyer, had delegated authority for Project Pricing to his division managers. Starting in January 2008, Mr. McCutcheon asked Mr. Minamyer to be personally involved in the approval of Project Pricing. (McCutcheon, Tr. 2393-2394 (stating that it "was really my idea to have him more involved"); McCutcheon, Tr. 2512 (McCutcheon was pressuring Minamyer "to be more involved with special pricing and to be more diligent in the special pricing process"); CX 2539 (McCutcheon, Dep. at 152) ("I told him that he needed to personally get involved."); CX 0752 at 001).
993. Star centralized pricing authority with Mr. Minamyer, and limited the discretion of its sales force to offer discounts through Project Pricing. In his January 22, 2008 email to Star's division managers instructing them to curtail Project Pricing, Mr. Minamyer stated that "All project pricing has to go through me . . . This is an effort to do the right thing for the industry." (CX 0752 at 001; McCutcheon, Tr. 2393-2394). This announcement made Mr. Minamyer the central authority for approving Star's Project Pricing. (CX 0752 at 001; Minamyer, Tr. 3167-3168).
994. In a follow up email the next day, January 23, 2008, Mr. Minamyer reiterated the procedure for project pricing: "Any [multiplier] that the [division manager] wants to be

lower than the state [multiplier] has to be done with a pink and approved by Matt.” (CX 0034 at 001; McCutcheon, Tr. 2398; Minamyser, Tr. 3177).

995. Mr. Minamyser’s approval was also required to extend any prior pricing arrangements past the March 1, 2008 expiration date for old pricing that McWane had announced. (CX 0034 at 002 (“The DM’s will prepare their customers to take this material by March 1st or the pricing will expire. Any exceptions have to go through Matt.”); McCutcheon, Tr. 2398; CX 1178 (McWane January 11, 2008 letter stating that “[j]obs quoted prior to this announcement will be honored through March 1, 2008”)).
996. In an April 29, 2008 presentation to McWane’s General Manager’s Meeting covering the first four months of 2008, Mr. Tatman reported that Star and Sigma removed pricing authority from direct sales personnel. (CX 2047 at 020).

#### 7.2.3.3 Star Announced to Its Customers That It Would Match McWane’s Multiplier Increase and Curtail Project Pricing

997. Star announced to its customers that it would match McWane’s January 2008 announced multiplier increase and curtail Project Pricing. (*Infra* ¶¶ 998-1008).
998. On January 29, 2008, Mr. Minamyser forwarded to Star’s division managers a copy of McWane’s new national blended Fittings multiplier map, effective February 18, 2008. Star’s pricing model was to match McWane’s multipliers. (CX 0035 at 001, 003; Minamyser, Tr. 3184-3185).
999. Beginning January 31, 2008, Star informed its major customers that it would be matching McWane’s announced Fittings multiplier increases effective February 18, 2008, and that it would not offer Project Pricing. (*E.g.*, CX 1566 at 001 (January 31, 2008 email to HD Supply); CX 2300 at 001 (February 2, 2008 email to TDG); *see also* CX 2537 (McCutcheon, IHT (Vol. 1) at 56) (HD Supply is Star’s largest customer)).
1000. In a January 31, 2008 email regarding Fittings pricing to Mr. Hixon and Mr. Taylor, two regional managers for HD Supply, Star division manager Mr. Leider forwarded a copy of McWane’s new multiplier maps and stated that Star would be “raising or matching all fitting numbers to match Tyler effective Feb 18th,” and that there would be “***NO UTILITY PROJECT PRICING NATION WIDE.***” (CX 1566 at 001 (emphasis added); McCutcheon, Tr. 2409-2410; Minamyser, Tr. 3184-3185).
1001. Mr. Leider’s January 31, 2008 email to HD Supply was consistent with Mr. Minamyser’s instruction to the sales force that Star should tell customers that it would no longer offer Project Pricing. (CX 1566 at 001; CX 2525; Minamyser, Tr. 3186-3187 (Leider email was consistent with Minamyser instructions)).
1002. On February 2, 2008, Mr. Minamyser sent an email to Rick Fairbanks, the administrative head of the TDG Distributor group, informing TDG and its member Distributors that, as part of its effort to create an “even playing field on up front pricing with our competitors” and “bring stability to the fitting market,” Star would be eliminating Project Pricing as of March 1, 2008:

Our plan is to adjust multipliers to be on an even playing field on up front pricing with our competitors. We will adjust various multipliers across the country to be effective on 2-18-08, ship all existing special projects before March 1st, and ***have no more project pricing after March 1st. . . .*** We are working extremely hard to bring ***stability*** to the fitting market.”

(CX 2300 at 001 (emphasis added); Minamyer, Tr. 3188-3191; McCutcheon, Tr. 2400; CX 2539 (McCutcheon, Dep. at 162); CX 2526 (Minamyer, Dep. at 154-156)).

1003. “Up-front pricing” in Mr. Minamyer’s February 2, 2008 email referred to the standard list price as adjusted by the published multiplier. (Minamyer, Tr. 3190).
1004. When Mr. Minamyer wrote in his February 2, 2008 email that Star was “working extremely hard to bring stability to the fitting market,” he was referring to price stability. (Minamyer, Tr. 3192-3193).
1005. As they had with HD Supply and TDG, Mr. Minamyer and his sales team communicated the message that Star would no longer offer Project Pricing after March 1, 2008 to all of Star’s customers. (Minamyer, Tr. 3193; CX 2526 (Minamyer, Dep. at 156)).
1006. Star wanted everybody, including McWane and Sigma, to know that Star was increasing its multipliers and curtailing Project Pricing. (CX 2526 (Minamyer, Dep. at 168-169)). Star understood that curtailing Project Pricing to bring pricing stability to the Fittings market would work only if McWane also curtailed Project Pricing; if McWane did not stop Project Pricing, Star would have to “follow [McWane’s] price down.” (CX 2526 (Minamyer, Dep. at 168)).
1007. An exception to Star’s policy curtailing Project Pricing as of March 1, 2008 was any municipal contract, which Star had previously indicated it would honor for a period after March 1, 2008. (CX 2300; Minamyer, Tr. 3191). Municipal contracts (whereby Star would commit to a certain Fittings price to a Distributor for use with a certain municipality) were typically one to three years long. For these contracts, Star used special pricing request forms (“pinks”) to ensure that its internal billing system tracked the appropriate price for the term of that contract. (Minamyer, Tr. 3191).
1008. On February 6, 2008, Star issued letters to its customers specifying the multiplier increases that it would implement to match McWane’s multiplier increases, effective February 18, 2008. (CX 2336 at 001; CX 0893 at 001; Minamyer, Tr. 3193-3195; McCutcheon, Tr. 2408 (Star’s price announcement in January 2008 matched the prices reflected on McWane’s February 18, 2008 multiplier pricing map, as was circulated to Star’s division managers on January 29, 2008 by Mr. Minamyer)). (CX 0035 at 001, 003).

7.2.3.4 Star Curtailed Its Project Pricing and Sought to Ensure That McWane Noticed

1009. Star curtailed its Project Pricing, and sought to ensure that McWane noticed that curtailment. (*Infra* ¶¶ 1010-1014).
1010. At Mr. Minamyers request, Ms. Garey prepared an internal report showing those projects where Star had extended Project Pricing to its customers, and conveyed that information to Mr. Minamyers in January 2008. (CX 0034 at 002; CX 0847 at 001; Minamyers, Tr. 3178-3180).
1011. Mr. Minamyers informed Stars sales force that they should use Ms. Gareys January 2008 report to identify which of their customers had previously been offered Project Prices, tell those customers that Star could no longer offer Project Pricing after March 1, 2008, and request that the customers accept shipment by March 1, 2008 for all Fittings for which they had been previously offered Project Prices. (CX 0847 at 001; CX 0034 at 002; Minamyers, Tr. 3179-3180).
1012. Mr. Minamyers wanted customers to accept shipment of Project Priced products by March 1, 2008, so that McWane could “figure it out” that Star had accepted McWanes invitation to curtail Project Pricing. (CX 0847 at 001; Minamyers, Tr. 3180-3181).
1013. Specifically, in a January 23, 2008 email to Stars division managers, Mr. Minamyers instructed his sales force to “get creative” to get the customers to take material that was subject to preexisting Project Pricing before March 1, 2008, the date through which McWane was honoring prior Project Pricing (CX 1178). Mr. Minamyers wrote, “I know this will be difficult but it is important that we all work together to get it done as if they linger, Tyler wont be able to figure it out and think we didnt take the increase.” (CX 0847 at 001; Minamyers, Tr. 3180-3181).
1014. Throughout 2008 and up until at least November 2008, Star was more disciplined about offering Project Pricing and required documentation of competitors offering Project Pricing before offering their own Project Prices. (CX 2526 (Minamyers, Dep. at 157, 174)).

7.2.3.5 Star Monitored McWanes and Sigma’s Compliance with the Commitment to Curtail Project Pricing

1015. Star monitored McWanes and Sigmas compliance with their commitment to curtail Project Pricing (*Infra* ¶¶ 1016-1021).
1016. From January 2008 through November 2008, Mr. Minamyers insisted on documentation that McWane or Sigma had offered a discount before he would approve Project Pricing by Star. (CX 2526 (Minamyers, Dep. at 157)). Mr. Minamyers reminded Stars sales force “on more than one occasion” that he wanted documentation that McWane or Sigma had offered Project Pricing to a Distributor before he would approve Project Pricing by Star. (CX 2526 (Minamyers, Dep. at 157)). Whenever a Distributor told Star that either McWane or Star had offered Project Pricing, Star representatives were instructed to ask

- the Distributor for written documentation of the offer by McWane or Sigma. (CX 2526 (Minamyer, Dep. at 175)).
1017. Mr. Minamyer requested reports from his sales personnel who monitored whether Sigma and McWane were also curtailing Project Pricing. (CX 0856 at 001 (Minamyer writing to his division managers on March 11, 2008: “Due last Friday were any issues we had with Sigma on how they are handling the Mult increases.”); Minamyer, Tr. 3197-3199 (discussing CX 0856); *see also* CX 0525 (Minamyer writing to his division managers on May 6, 2008: “We have to keep our focus on the pricing and continue to be diligent. I see it getting a little looser and am concerned that we won’t hold this increase. Don’t let our competitors practices force us to fail. One competitor is being pretty strong and one is being pretty weak on pricing. Continue to have the talks with your customers at the highest level to try to hold pricing. All Mfg’s are taking increases so it is not an unfamiliar conversation to them.”); McCutcheon, Tr. 2546-2547 (discussing CX 0525)).
1018. In response to Mr. Minamyer’s March 11, 2008 email asking for any reports on any issues with Sigma “handling the Mult increases,” Star’s Southwestern division manager, Shaun Smith, responded on March 11, 2008 that “It seems as though they have been pretty discipline[d] in my Division” and “everyone seems to be playing fair.” (CX 0856 at 001). By “playing fair,” Mr. Smith meant “pricing per their published multiplier letters.” (Minamyer, Tr. 3199<sup>5</sup>).
1019. Another of Star’s division managers, Ramon Prado, reported to Mr. Minamyer on March 6, 2008 that as of the week ending February 29, 2008, “it doesn’t appear that Sigma or Tyler is cheating on the new fitting multipliers.” In other words, Mr. Prado did not believe that Sigma and McWane were offering Project Pricing lower than their published multipliers. (CX 1692 at 002; Minamyer, Tr. 3199-3201<sup>6</sup> (“Q. And if -- would you understand that if they priced below their published letter, that would be cheating? A. That’s what we called it. Yes.”); CX 2526 (Minamyer, Dep. at 201-202) (“Q. And what he was telling you here is that they were adhering to the published multipliers? A. I believe that is what he meant. Q. They weren’t cheating by undercutting them? A. It’s still early, but it doesn’t appear that they are. Right.”)).
1020. In response to an April 18, 2008 sales activity report, Shaun Smith, a Star division manager, instructed his territory managers to offer Project Pricing only if they could confirm competitor “cheating.” “You know the gig, ask them why? If they give you

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<sup>5</sup> The cited trial testimony regarding the out of court statement of Mr. Smith is a business report from Mr. Smith to his superior and is cited as evidence that Mr. Minamyer received that report and of how he interpreted the report, and not to prove the truth of the matter asserted in the report. (*See* Minamyer, Tr. 3198-3199).

<sup>6</sup> The cited trial testimony regarding Mr. Prado’s out of court statement to his supervisor Mr. Minamyer that Sigma and McWane did not appear to be cheating is cited as evidence that Mr. Prado made such a report, and not to prove the truth of the matter asserted in the report. (*See* Minamyer, Tr. 3200-3201).

proof the other guys are cheating, then we will match!” (CX 1696 at 001). This reflected Star’s new policy of Project Pricing only if there was “proof that the other guy was cheating.” (Minamy, Tr. 3203-3204).

1021. On June 30, 2008, Mr. Prado reported to Mr. Minamy that as of the week ending June 27, 2008, he had “[c]onfirmed that Sigma has been cheating in Florida with fitting multipliers,” and was also “pretty certain that Tyler is doing the same.” (CX 1693 at 001, 002; Minamy, Tr. 3218-3219 (confirming that “cheating” referred to “offering prices below their published list times multiplier”)).

#### **7.2.4 The Suppliers’ Centralization of Pricing Authority and Curtailment of Project Pricing Was an Abrupt Change from Historical Business Practices**

1022. Sigma’s, Star’s, and McWane’s centralization of pricing authority and curtailment of Project Pricing represented an abrupt change from their historical business practices. (*Infra* ¶¶ 1023-1028).
1023. Prior to 2008, Star had always used Project Pricing in selling Fittings. (CX 2539 (McCutcheon, Dep. at 164) (“Being number three, we have to give a value to the customer; and we have chosen for that value to be price. And we have always project priced.”)).
1024. Traditionally, prior to 2008, Star had not used Project Pricing to meet competition in only isolated instances, but instead Project Pricing was central to its overall business strategy in the Fittings Market. (McCutcheon, Tr. 2387 (Project Pricing was “a significant part of Star’s competitive strategy”)).
1025. In light of its past practices and its position in the industry as the smallest supplier, Star’s own executives viewed its decision to stop project pricing as “unusual” and “bizarre.” (CX 2539 (McCutcheon, Dep. at 153-155) (“unusual”); CX 2538 (McCutcheon, IHT (Vol. 2) at 452) (“bizarre”); CX 2536 (Leider, Dep. at 75) (not recalling any instance in the four years he had previously been with Star that he had been instructed that Star’s goal was “to stop project pricing”); *see also infra* ¶¶ 1062, 1063).
1026. As Star’s national sales manager from 2004 to June 2009, Mr. Minamy generally did not exercise the authority to approve Project Pricing. (RX-684 (Minamy, IHT (Vol. 2) at 107). Instead, Mr. Minamy generally delegated that authority to Star’s division managers or territory managers throughout his tenure. (CX 2538 (McCutcheon IHT (Vol. 2) at 373-374 (After Mr. Minamy resigned in June of 2009, “I took over his spot, [and] I started changing the – I started tightening up on the approval process.”)). Mr. Minamy delegated the authority to approve Project Pricing to the division managers and territory managers because he had “faith” that they could decide when it was necessary for Star to offer Project Pricing to get the business. (RX-684 (Minamy, IHT at 29 (“It would more or less be faith in the people working for me that they could make the correct judgment.”)).



1027. At Sigma, Project Pricing had grown in 2007, including non-plant work Fittings jobs. Beginning in January, 2008, Sigma changed course and sought to end that practice when Mr. Pais set off “A NEW COMMITTED AND SERIOUS EFFORT TO NORMALIZE ALL PRICING FOR FITTINGS.” (CX 1145 at 001 (emphasis in original); Rybacki, Tr. 1129, 1133-1134; CX 2528 (Pais, Dep. at 263-267) (Sigma sought to turn back the practice of special pricing, which had spread into stocking orders from traditional plant work segment); RX-687 (Pais, Dep. 82-83) (“[T]he distributors and everyone alike started stocking less and they started showing these so-called lists, RFQs, request for quotation, on anything and everything . . . . So I initiated to address the problem. We cannot eliminate, of course entirely, let’s minimize it to say, that, look, you don’t have to have a special pricing, you have the pricing already, use the same list price because it is the same fitting.”); *see also* CX 1439 at 002 (“We also need to review our [Plant Work] quotations to check and reverse any deep erosion in NET pricing, even as we use multipliers to do so! McWane does NOT have a PW activity and doesn’t understand why and how we can give a lower ‘special job’ price!”); Pais, Tr. 1920-1925 (“eliminating [Project Pricing] is wishful thinking. I was just trying to have them minimize it.”)).
1028. For McWane as well, centralization of pricing authority and curtailment of project pricing was a change. Fittings suppliers, including McWane, had always project priced. CX 2485 (Walton, Dep. at 114) (“[T]here was job pricing somewhere in the country all the time.”); CX 2483 (Tatman, IHT at 39) (project pricing increasing over the last few years); Jansen, Dep. 61-62 (since late 2006, when Distributors began buying smaller numbers of Fittings for their inventory, project pricing had increased). Before McWane’s 2008 centralization of pricing authority, McWane’s sales representatives had authority to offer Project Pricing up to a couple of percentage points. After January 2008, the sales representatives had to obtain approval from Mr. Napoli, McWane’s new pricing coordinator, before offering Project Pricing to customers. (CX2480 (Napoli, Dep. at 46-48, 50); *see also supra* §§ 7.1.2, 7.2.1).

**7.2.5 McWane, Sigma, and Star Directly Communicated with Each Other to Implement the Agreement, and Complained When They Perceived “Cheating”**

1029. McWane, Sigma, and Star communicated directly with each other to implement the agreement, and complained when they perceived each other cheating. (*Infra* ¶¶ 1030-1040; *see also infra* ¶¶ 1439-1450; *supra* ¶ 943).
1030. {
- } (*See supra* ¶¶ 884, 894, 895, 922, 952; *infra* ¶¶ 1033, 1034, 1040, 1088; *supra* § 6.4.1.3 (listing phone calls)).
1031. On March 5, 2008, Jim Stohr, Sigma’s branch manager for the southwest region, complained to his supervisor, Sigma’s southwest regional manager Al Richardson, about an incident of Project Pricing by a “rogue” McWane salesman, and asked for assistance from his superiors:



all of the suppliers could be less aggressive with pricing. Specifically, Mr. McCutcheon testified at trial that,

Victor had a thought that if we, ‘we’ being Sigma and Star, stayed within two points of McWane, then they would stop being as aggressive and Sigma and Star would stop being as aggressive.

(McCutcheon, Tr. 2373-2376); CX 2538 (McCutcheon, IHT (Vol. 2) at 227) (Pais’s statement occurred at a dinner in Birmingham at a DIFRA meeting); *see also* CX 2538 (McCutcheon, IHT (Vol. 2) at 232) (Mr. McCutcheon had numerous phone calls in which Mr. Pais said that Star “need[ed] to stay within two to three points of McWane.”)).

1037. At his investigational hearing, Mr. McCutcheon elaborated further about this dinner meeting, and testified that Mr. Pais told him:

[W]e should agree to stay within to two to three points, discount points, of McWane, and if we did, he felt that they would behave differently and not be so overbearing towards us. That if we were good, then they would be good -- they would treat us better and we could live happily ever after. . . . [H]e just said that they would treat us differently and it would firm up the market and that there was a lot of benefit to it.

(CX 2538 (McCutcheon, IHT (Vol. 2) at 227). *But see* Pais, Tr. 1957-1959 (denying that he proposed to Mr. McCutcheon staying within to two to three points of McWane’s prices, and claiming that, at their meeting in Birmingham, it was actually Mr. McCutcheon who was “berating” Sigma and “accusing [Sigma] of dropping price.”)).

1038. On April 2, 2008, Mr. Minamyer reported to Mr. McCutcheon that Star had lost a bid for a project with Winwater (referred to as the “Tulsa Bid Sleeves” project), because Sigma had offered Project Pricing and Star had not. Mr. Minamyer wrote to Mr. McCutcheon, “They should be very careful if they want to hold this price increase as we will not lose our partners or any more orders because they [Sigma] are not responsible in the market.” In calling Sigma “not responsible,” Mr. Minamyer was referring to the fact that Sigma was pricing below its published multiplier letters. (Minamyer, Tr. 3204-3207; CX 0044 at 001; RX-697 (McCutcheon, IHT (Vol. 2) at 453-454)).
1039. In response to Mr. Minamyer’s April 2, 2008 email, Mr. McCutcheon asked for additional information (“Please give me more info. Bid date, value, selling price, etc...”), and Mr. Smith responded that he would provide that information the next day, April 3. (CX 0044 at 001 (“I have a hard copy in my office and will be in on Thursday.”)).

1040. {

} (McCutcheon, Tr. 2469-2471, *in camera*; Rybacki, Tr. 3635, *in camera*; CX 1621-A at 098, *in camera* (Rybacki telephone records); *supra* ¶¶ 755-757 (detailing telephone records)).

### 7.2.6 McWane Monitored Progress of the Tatman Plan, and Considered It a Success through the First Quarter of 2008

1041. McWane monitored the progress of the Tatman Plan, and considered the suppliers' coordinated pricing conduct through the first quarter of 2008 to have been a success. (*Infra* ¶¶ 1042-1054).
1042. {  
}(CX 2480 (Napoli, Dep. at 43-45); Tatman, Tr. 1007, *in camera*; see *supra* ¶¶ 924-929).
1043. {  
}(Tatman, Tr. 931-933; 1007, 1013, *in camera*; RX-396, *in camera*).
1044. {  
}  
 (Tatman, Tr. 1022-1023, *in camera*; RX-396, *in camera*). {  
}(Tatman, Tr. 1022-1023, *in camera*; RX-396, *in camera*; see, e.g., RX-396.xls (produced in native format), {  
}
1045. {  
}(RX-396, *in camera*; {  
}; Tatman, Tr. 1028-1029, *in camera* {  
}
1046. {  
}(Tatman, Tr. 1031, *in camera*).
1047. {

} (RX-396.xls, *in camera*, {

}

1048. On January 31, 2008, Mr. Tatman received a copy of the Star January 30, 2008 email to HD Supply, in which Mr. Leider of Star informed HD Supply it would match McWane's pricing and curtail Project Pricing. Mr. Tatman viewed it as a positive development and forwarded the email to Messrs. McCullough and Walton. Mr. Tatman wrote:

Per the e-mail chain below Star is following the [McWane] Multiplier Maps also effective Feb 18<sup>th</sup>. Also note comment on NO UTILITY PROJECT PRICING NATION WIDE that was sent to HDS regional reps. The proof will be if they actually hold to what they say.

Note that Star has our actual maps, which isn't a bad thing.

We heard a similar announcement is out from Sigma but we've yet to receive a copy.

(CX 0178 at 001; Tatman, Tr. 412-413, 418).

1049. Three minutes after receiving Mr. Tatman's email, Mr. McCullough forwarded the email to McWane's CEO, Mr. Page, writing that "[t]he first tentative baby steps are encouraging but the proof will be in 'saying no' to customer requests for special pricing." (CX 0178 at 001; Tatman, Tr. 417; CX 2479 (McCullough, Dep. at 197-200) (expressing uncertainty about what "baby steps" meant)).
1050. Twenty minutes later, Mr. Page responded to Mr. McCullough's report of the good news from Star, "Beats a sharp stick in the eye." (CX 0178 at 001; *see also* CX 2482 (Page, Dep. at 146, 151) (explaining that Mr. McCullough's report in CX 0178 that Star was not going to offer Project Pricing on Fittings could be "good news"); CX 2482 (Page, Dep. at 160-161) (unable to explain what he meant by comment, other than anything or almost anything beats a sharp stick in the eye)).
1051. McWane's sales force reported to Mr. Tatman some instances in which Sigma and Star were continuing to Project Price after March 1, 2008, the date upon which McWane, Sigma and Star had all set as the date to no longer offer Project Pricing. (Tatman, Tr. 421-422; CX 0339).
1052. On March 10, 2008, Mr. Tatman sent an email to Messrs. McCullough and Walton, noting that March 1, 2008 had been "the last published date for [McWane], Sigma and Star to honor any project pricing," and that "Jerry [Jansen] is getting mixed competitive signals ranging from adherence to published pricing by Sigma and Star to cutting deals and extending terms." Mr. Tatman stated that he would work on getting qualified

competitive information rather than verbal inputs, and “nervously wait for the March data to come in.” (CX 0339; CX 2479 (McCullough, Dep. at 210-212) (explaining CX 0339, that “soft tonnage” means lower sales, and that McWane wasn’t offering new job pricing in February 2008)).

1053. In April 2008, McWane believed that Sigma and Star had both curtailed Project Pricing, and that they had concentrated pricing authority to individuals above the sales team. (Tatman, Tr. 423-424; CX 1564 at 004).
1054. In his Executive Report for the first quarter of 2008, Mr. Tatman noted the success of the Tatman Plan: higher invoiced prices, reduced discounting, and centralization of pricing authority by rivals:

Based upon our competitive feedback log, *the level of multiplier discounting by both Star and Sigma appears to have died down significantly*. As we understand it, both have removed pricing authority from the front line sales team and pushed it up higher within their organizations. Discounting is still available, but it now requires a more structured decision process . . . .

(CX 1564 at 004; Tatman, Tr. 423-424; CX 2484 (Tatman, Dep. at 117-118) (Acknowledging that “if I wrote that, I would have had some basis for making that statement,” including, “field sales reports from the guys of what’s going on at the branch level.”); CX 0627 at 004 (Tatman’s January 2008 Presentation (“keys to actual success are... Sigma & Star mgt pulling price authority away from front line sales.”))).

**7.2.7 Absent Concerted Action, the Abrupt Change of a Long-Standing Business Practice to Curtail a Key Element of Price Competition, Project Pricing, Would Be Against Each Supplier’s Unilateral Business Interest**

1055. Absent concerted action, the abrupt curtailment in 2008 by any of McWane, Sigma, or Star of a key element of price competition, Project Pricing, would have been against that supplier’s unilateral business interest. (*Infra* ¶¶ 1056-1071).
1056. McWane’s, Star’s, and Sigma’s actions were more consistent with collusion and coordinated interaction than with unilateral conduct or mere recognition of mutual interdependence. (Schumann, Tr. 3893-3899).
1057. The decision by Sigma, Star and McWane in January 2008 to curtail Project Pricing was an abrupt change from their prior business practices. (*Supra* § 7.2.4).
1058. McWane’s communication that it intended going forward to sell all products only off the newly published multipliers was in McWane’s best interest only to the extent that McWane had an agreement that its rivals would behave in kind. Otherwise, McWane’s announcement that it was going to maintain published pricing and not discount, would cause its rivals to come in and take McWane’s business away through discounting, which would be counter to McWane’s best interest. (Schumann, Tr. 3883-3884, 3893-3894).

1059. Mr. Tatman acknowledged from the outset that his plan would only work “with the proper communication and actions.” (CX 1702 at 004 (December 2007 Tatman email regarding list price changes).
1060. Mr. Pais of Sigma later echoed this, explaining in an April 2008 email regarding Sigma’s curtailment of Project Pricing, that Sigma “will NOT – and can NOT – do this unilaterally.” (CX 1137 at 001; Pais, Tr. 1935-1937).
1061. Likewise, Star’s National Sales Manager, Mr. Minamyer, testified that Star knew that it needed its competitors to participate in any effort to stabilize prices. (CX 2526 (Minamyer, Dep. at 141-142) (“Q. In other words, you would need your competitors to participate in an effort to stabilize prices? A. We believe that to be true.”) (objections omitted); Minamyer, Tr. 3173 (“Q. Did you believe at this point in time that Star could stabilize fittings prices on its own? . . . . A. I don’t recall ever believing that we could do that.”)).
1062. Mr. McCutcheon admitted at trial that Project Pricing had been a core part of Star’s pricing strategy. (McCutcheon, Tr. 2387 (Project Pricing was “a significant part of Star’s competitive strategy”); CX 2539 (McCutcheon, Dep. at 153-155) (“Q. And you thought it was unusual, to say the least, for Mr. Minamyer to say that Star was going to stop project pricing. Right? A. Yes, sir. Q. In fact, project pricing was a core part of Star’s sales strategy at this point in time, was it not? A. Yes, sir. Q. You had grown market share by offering project pricing and undercutting your competitors prior to this time. Am I right? A. Yes, sir.”)).
1063. Star’s President, Mr. McCutcheon, testified that the company’s change of course to curtail Project Pricing was contrary to its traditional practice of using Project Pricing to gain market share, and described the decision as “unusual,” “irrational,” and “bizarre.” (CX 2538 (McCutcheon, IHT (Vol. 2) at 452) (“Q. Is it fair to say that telling customers that there is no more project pricing, is that an unusual step for Star? A. It’s bizarre . . . it’s irrational . . . .”); McCutcheon, Tr. 2394 (Star had grown its market share by offering Project Pricing); McCutcheon, Tr. 2510 (“90 to 95 percent of our net realized prices to the customer have some type of discount variable to it. . . . [T]hat is the standard way Star Pipe does business.”); McCutcheon, Tr. 2392 (“Q. Would telling Star’s sales force that Star’s goal was to stop project pricing be unusual? A. Yes, sir.”)).
1064. Due to its traditional use of Project Pricing, pulling back on Project Pricing in January 2008 was a risky move for Star. As the smallest competitor in the market, Star could not afford to cease Project Pricing and remain competitively viable unless McWane and Sigma took similar steps. (McCutcheon, Tr. 2387; CX 2525 (Minamyer, IHT at 48, 127; *see also* Minamyer, Tr. 3147-3148 (Mr. Minamyer believes that Star would have lost orders to its lower priced competitors if it had pulled back on Project Pricing but McWane and Sigma had not).
1065. As Mr. Minamyer explained at trial, Star would not have made more money by unilaterally eliminating Project Pricing (*i.e.*, if Sigma and McWane had not also eliminated Project Pricing), because Star would have lost sales. (Minamyer, Tr. 3286-

3287; *see also* CX 2539 (McCutcheon, Dep. at 164) (“Q. If your competitors were willing to discount off of what you refer to internally as MSRP and Star was not, what effect would that have on Star? A. We wouldn’t have been successful.”)).

1066. Star did not reduce its Project Pricing until it had some degree of certainty that Sigma and McWane were both taking similar steps. (CX 2525 (Minamyler, IHT at 49) (“Q. So, is it fair to say, sir, that each and every time you took steps to reduce project pricing, you had some degree of certainty, more or less, that SIGMA and McWane were taking similar steps? A. That “would be fair.”)).
1067. In the January 22, 2008 email to Star’s division managers, Mr. Minamyler explained the decision to curtail Project Pricing as being “right for the industry”:

You need to know that we are strong in revenue and profit. We will have no problems weathering any price wars, even if they are prolonged. ***What we are doing is what is right for the industry.*** So, don’t think we need the price increases, as that is not the case. A price increase will be good for us on the short and long term profit situation but are not vital to our strength. The truth is that we would come out of a price war stronger than ever and with a bigger market share, but we don’t think the industry needs that right now.”

(CX 0752 at 001 (emphasis added); Minamyler, Tr. 3171-3173; *see also* CX 2254 at 004 (re-circulating the instructions and accompanying statements on June 19, 2008 in connection with the subsequent increase scheduled to go into effect July 14).

1068. {
- } (McCutcheon, Tr. 2497-2498,  
*in camera*; CX 1872 at 004, *in camera*; CX 2538 (McCutcheon, IHT (Vol. 2) at 408), *in camera* {
- }; McCutcheon, Tr. 2497-2499, *in camera*; CX 1872 at 004, *in camera*).

1069. {
- } (McCutcheon, Tr. 2496, *in camera*).
- {
- } (McCutcheon, Tr. 2498, *in camera* (2007); CX 1872 at 004, *in camera* (2006))). {
- } (CX 2539 (McCutcheon, Dep. at 147) (2007); CX 1872 at 004, *in camera* (2006)).



1070. By April 14, 2008, Star's sales of push-on Fittings was declining, by as much as 36 percent. Nevertheless, Star continued its plan to curtail Project Pricing. (CX 2526 (Minamyer, Dep. at 177-178); CX 0861 at 002).
1071. Star district manager Michael Berry received a copy of Mr. Minamyer's January 22 and 23, 2008, emails instructing Star's division managers that "Our goal is to take a price increase and to stop project pricing." (RX-691 (Berry, Dep. at 49)). A pullback in Project Pricing by Star was unprecedented, and Mr. Berry is unaware of any instance, other than the January 22, 2008, email of Mr. Minamyer, in which the stated goal of Star was "to stop project pricing." (CX 2532 (Berry, Dep. at 103-104) ("Q. You had never seen it before this e-mail came out? A. No. Q. . . . [Y]ou have never seen it since that e-mail came out? A. I do not recall seeing it since it came out.")).

### **7.3 McWane Supported Its Invitation to Collude by Communicating Its Manufacturing Cost Advantage to Sigma**

1072. McWane communicated its manufacturing cost advantage to Sigma in early 2008 to create the perception that it would be able to sustain aggressive pricing if its share position were threatened, and to encourage Sigma and Star to collude on pricing. (*Infra* ¶¶ 1073-1088).
1073. The cost of manufacturing Fittings in China was increasing in early 2008 due to high currency exchange rates, rising labor costs, and increases in the cost of pig iron. (Tatman, Tr. 866-875; *see supra* § 6.5.3).
1074. In conjunction with the Tatman Plan, McWane sought to communicate to Sigma that McWane's Domestic Fittings costs were now competitive with Sigma's and Star's costs of importing Fittings from China. (CX 1565 at 001).
1075. As Mr. Tatman explained in a January 30, 2008 email to Messrs. McCullough and Walton, "[t]here is a theory that our ability to stabilize the market is tied to our competitor's perception of our cost structure and our ability to sustain aggressive pricing if our share position is threatened." (CX 1565 at 001; Tatman, Tr. 439-441).
1076. To convey McWane's cost advantage, Mr. Page sent an email directly to Mr. Pais on January 4, 2008, offering to sell Sigma Fittings that McWane produced in the United States. (Tatman, Tr. 429-430; CX 1113 at 001 ("It has occurred to me that with China costs rising and us having excess time available on our DISAS around the plants, we could supply you with small compact fittings at a competitive price.")).
1077. Before January 2008, McWane had provided Fittings out of inventory to Sigma on a spot, "fitting-by-fitting" basis. These sales were negotiated on behalf of Sigma by Mr. Rona. (Tatman, Tr. 434). In contrast to other buy-sell arrangements between Sigma and McWane that occurred during the ordinary course of business, Mr. Tatman testified at trial that McWane's offer to Sigma was "more of a head fake than anything." (Tatman, Tr. 762).

1078. Mr. Pais responded to Mr. Page's offer two days later, thanking him for McWane's offer to sell small size Fittings to Sigma, and asking him to prepare a preliminary quote. (CX 2039).
1079. After internal consultations within McWane (CX 1565 at 001), Mr. Tatman sent an email to Mr. Pais on February 1, 2008, proposing to provide Sigma with 3" - 8" Fittings at \$1,220 per ton. (CX 1117; CX 1570 at 001-002; Tatman, Tr. 435-437).
1080. McWane's offer was for the sale of domestically-produced Fittings to be re-sold by Sigma on Open Specification jobs only. (Tatman, Tr. 430; CX 2039).
1081. The price McWane offered to Sigma was below McWane's total cost of production (but above its variable costs), and calculated to be below what McWane understood Sigma's landed cost of production to be. (CX 1565 at 001 (estimating McWane's total cost of production at \$1,249 per ton and Sigma's landed cost at \$1,252 per ton); Tatman, Tr. 441-442, 458 (offer was below full manufacturing costs but above variable costs); CX 1183 at 001 (Page: "The Chinese importers in water works fittings are seeking price increases are [*sic*] we are now in a position to resist. In fact I have offered to make 'A' items for an importer at the same price they can bring in it in.")).
1082. Mr. Pais responded to Mr. Tatman's February 1, 2008 offer later that day. He noted that he had discussed the matter with Mr. Page late in 2007, and that he would respond "at the earliest," adding, "We deeply appreciate and respect our relationship with McWane and look forward to growing our relationship along mutually beneficial lines." (CX 1570 at 001; Tatman, Tr. 437-438).
1083. On February 26, 2008, Mr. Tatman wrote in an email to Mr. Page that he did not expect Sigma to pursue the purchase of Fittings from McWane, but that "supplying that quote should reinforce the point that with the DISA and our TXX facility we're in a very different competitive cost game than what they've been used to with us." (CX 1571 at 001; Tatman, Tr. 452-454).
1084. On March 10, 2008, Mr. Tatman sent an email to Mitchell Rona forwarding his February 1, 2008 offer email and specifying the list of items that McWane proposed to supply to Sigma pursuant to that offer. (CX 1703 at 001).
1085. As a result of the McWane offer, Sigma understood that McWane was a low cost Fittings producer, had excess capacity, and would be a dangerous rival if Sigma and Star did not play by its rules. (CX 1565 at 001; CX 1571 at 001; CX 1142 at 002 (Pais describing McWane quote as an "interesting and revealing price" that suggests a McWane cost advantage over Sigma); CX 1141 at 001 ("Let's keep the follow up and start some relationship - as we need to build a new relationship with them, for our mutual good, apart from helping ourselves with perhaps the most competitive source for the 'AA' items!"))).
1086. Sigma eventually did place an order with McWane in June 2008, at which time Mr. Tatman emailed Messrs. Walton and McCullough (who forwarded the email to Mr. Page), reporting receipt of a purchase order of Fittings from Sigma, with the price set at

“what we believe the landed costs were for small diameter fittings out of China at that time.” (CX 2067 at 001).

1087. Star became aware of McWane’s offer to sell low-priced Fittings to Sigma, and understood that the point of the buy/sell exercise had been for McWane to demonstrate to Sigma its capacity to compete aggressively if necessary. In an October 17, 2008 email, Mr. McCutcheon told Messrs. Bhargava and Bhutada:

Sigma recently bought 8 [truckloads] from tyler because sigma said “they could buy them for 15% cheaper from tyler than they could get them from china”. After the 8 [truckloads], tyler would not take any more orders. *My guess is tyler took these orders to try to make a point. During the negotiation, tyler stated that they are now the low cost producer and said they could prove it.* I think there is some exaggeration in this statement, but I believe the core point.

(CX 0534 at 001 (emphasis added); McCutcheon, Tr. 2454-2456).

1088. {

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(McCutcheon, Tr. 2471-2473, *in camera*; CX 1621-A at 074, *in camera* (Rybacki telephone records); *supra* ¶ 783 (detailing telephone records)).

#### **7.4 In Early 2008, McWane, Sigma, and Star Restarted Efforts to Organize the DIFRA Information Exchange to Enhance Competitive Transparency**

1089. In early 2008, McWane, Sigma, and Star restarted efforts to organize the DIFRA information exchange in order to enhance competitive transparency in the Fittings market. (*Infra* ¶¶ 1090-1154).

##### **7.4.1 The Suppliers Had Been Working on Organizing DIFRA for Years, but DIFRA Did Not Become Operational Prior to the 2008 Price Fixing Conspiracy**

1090. McWane, Sigma, and Star had discussed forming DIFRA since at least as early as 2005. (CX 1473; RX-654 (Brakefield, Dep. (Vol. 1) at 11-12)).
1091. Mr. Pais initiated the effort to form DIFRA, and subsequently handed off responsibility for Sigma’s participation to Mr. Brakefield and Mr. Rybacki. (Pais, Tr. 1966-1967; Brakefield, Tr. 1220-1221; CX 1225 at 004 (Pais writing that “I took the initiative to form an industry association for Fittings”)).
1092. DIFRA was modeled after industry groups formed by manufacturers of ductile iron pipe and cast iron soil pipe, such as DIPRA (the Ductile Iron Pipe Research Association) and

- CISPI (the Cast Iron Soil Pipe Institute). (Tatman, Tr. 469; Pais, Tr. 1968; CX 2527 (Pais, IHT at 57-58); CX 1088 at 001 (Pais October 2008 memorandum noting influence of DIPRA and CISPI “lead[ing] to mature and disciplined decision making”)).
1093. Mr. Pais spoke with ACIPCO, U.S. Pipe, McWane, and Star regarding membership in DIFRA. (Pais, Tr. 1969-1970; McCutcheon, Tr. 2411 (Pais originally invited Star to join DIFRA)). In or around 2004, Mr. Pais also invited Mr. Saha of PCI, a former Fittings supplier that was ultimately sold to Sigma, to join DIFRA. (Saha, Tr. 1178).
1094. The DIFRA members engaged Thad G. Long of the law firm Bradley Arant Rose & White – the same law firm that had handled the formation and structuring of DIPRA – to assist in setting up DIFRA. CX 1473 at 001 (first DIFRA meeting held at Bradley Arant); CX 0048 at 001 (DIFRA organizational meeting minutes recounting Mr. Long’s advice)).
1095. DIFRA organizational meetings were held in March 2005 (CX 1473), November 2006 (CX 0048), and December 2006 (CX 1476).
1096. The first official DIFRA meeting occurred on March 18, 2005 at the offices of the Bradley Arant law firm, and was attended by Mr. Brakefield for Sigma, Mr. Crawford for U.S. Pipe, and Mr. Green for McWane. (CX 1473 at 001; Brakefield, Tr. 1222-1224).
1097. Attendees at the initial DIFRA meeting identified potential members of DIFRA, including McWane, Sigma, U.S. Pipe, ACIPCO, Star, and PCI. (CX 1473 at 001; Brakefield, Tr. 1222-1224). These potential members were identified because they were “predominantly the larger players in the industry as far as fittings, and to do the things that the organization was going to set out to do, you needed to have every -- every large player in it.” (Brakefield, Tr. 1225).
1098. The next known DIFRA meeting took place on November 21, 2006 at the offices of Bradley Arant, and was attended by Mr. Green for McWane, Mr. McCutcheon for Star, Messrs. Pais, Bhattacharji, Rybacki and Brakefield for Sigma, and Mr. Crawford for U.S. Pipe (CX 0048 at 001; Brakefield, Tr. 1226).
1099. Attendees at the November 2006 DIFRA meeting agreed upon requirements for DIFRA voting membership, including a requirement that any voting member must produce and/or sell at least 10,000 tons of Fittings annually. (CX 0048 at 002). According to Mr. Brakefield, the purpose of the requirement was to ensure that members were “committed to the industry” and “enthusiastic about what we were trying to do for the industry.” (Brakefield, Tr. 1226-1227 (discussing meeting minutes); Brakefield, Tr. 1264 (discussing same requirement in DIFRA bylaws, CX 0158 at 010)).
1100. Attendees at the November 2006 DIFRA meeting also agreed on a requirement that any voting member must sell 95% of its Fittings to Distributors. (CX 0048 at 002). Mr. Brakefield could not explain any reason for this requirement. (Brakefield, Tr. 1226-1227 (discussing meeting minutes); Brakefield, Tr. 1264 (discussing same requirement in DIFRA bylaws, CX 0158 at 010)).

1101. The minutes for the November 2006 DIFRA meeting reflect a discussion of the potential exchange of Fittings market information through DIFRA, and the advice provided by DIFRA's lawyer Mr. Long that information exchanges of market information can raise "significant anti-trust issues" when conducted by associations comprised of only a few members:

Mr. Long discussed the anti-trust concerns with associations in which competitors are members and work together on industry matters. *He noted the significant anti-trust issues when an association consists of only two or three competitors*, whereas an association with five, six or more competitors is less problematic.

Mr. Long noted that information gathered by competitors in the market place is permissible and is simply a part of operating a business in a competitive environment. On the other hand, compiling and disseminating information about a market and competitive issues within an association presents anti-trust concerns.

(CX 0048 at 001) (emphasis added).

1102. The next DIFRA meeting occurred on December 12, 2006 by conference call, and was attended by Mr. Green for McWane, Mr. McCutcheon for Star, Mr. Pais for Sigma, and Mr. Crawford for U.S. Pipe. (CX 1476 (meeting minutes)).
1103. DIFRA was incorporated by David Green as an Alabama nonprofit corporation on January 12, 2007. (CX 1480 at 007; Brakefield, Tr. 1227, 1349 (DIFRA was incorporated in Alabama in January 2007)). At that time, DIFRA's initial Board of Directors had seven members, consisting of two individuals each from McWane (Tatman, Leonard), Sigma (Brakefield, Pais), and Star (Bhutada, McCutcheon), and one from U.S. Pipe (Crawford). (CX 1480 at 006; Tatman, Tr. 616-617 (Tatman was a DIFRA board member)).
1104. Mr. Brakefield became DIFRA's president in January 2007, and was the first and only president of DIFRA. (Brakefield, Tr. 1221-1222, 1227).
1105. In January 2007, DIFRA engaged the accounting firm SRHW of Birmingham, Alabama, as the association's auditor. SRHW was also engaged for the purpose of compiling each member's sales data by tons shipped, and aggregating that data into monthly reports to be provided to each DIFRA member. (CX 1333 at 003, 005 (January 8, 2007 engagement letter describing data aggregation function); Brakefield, Tr. 1236-1238 (DIFRA retained accounting firm in January 2007 to aggregate member shipment data)).
1106. Following DIFRA's incorporation, the organization was largely dormant for the balance of 2007. (CX 1083 at 002 (Thad Long February 11, 2008 email describing hiatus and restarting organizational efforts); CX 1330 at 001 (McWane submitted data to DIFRA in early 2007, but other members did not, and Mr. Herren explained to SRHW that the group "seems to be a little disjointed at this point")).

**7.4.2 In February 2008, McWane and Sigma Agreed to Restart Efforts to Form the DIFRA Information Exchange**

1107. Mr. Rybacki spoke to Mr. McCutcheon in early 2008 to again ask Star to join or support DIFRA. (Rybacki, Tr. 3532-3533; CX 2531 (Rybacki, Dep. at 187). Mr. Rybacki and Mr. Pais contacted Mr. McCutcheon about DIFRA so frequently that Mr. McCutcheon felt as if he was being “pushed” by Sigma to join DIFRA. (CX 2538 (McCutcheon, IHT (Vol. 2) at 242-244)).
1108. Mr. Rybacki asked Mr. McCutcheon to take part in DIFRA because he thought DIFRA was important. (Rybacki, Tr. 3532-3533).
1109. Mr. Rybacki also contacted ACIPCO and U.S. Pipe to tell them that he thought they should participate in DIFRA. (Rybacki, Tr. 3534).
1110. {  
  
} (Rybacki, Tr. 3632-3633, *in camera*; CX 1621-A at 109, 110, *in camera* (Rybacki telephone records); *supra* ¶¶ 748-750 (detailing telephone records)).
1111. On February 7, 2008, Mr. Tatman reported to his superiors that Mr. Rybacki had called him that day to express Sigma’s interest in participating in a trade association for Fittings. (CX 1284 at 001; Rybacki, Tr. 3536). Among other things, Mr. Rybacki told Mr. Tatman that DIFRA should become active, that Sigma would support DIFRA, and that he had discussed DIFRA with Star, and that Star would also consider participating. (CX 1284 at 001; Tatman, Tr. 466-467; Rybacki, Tr. 3536-3538). Mr. Rybacki then suggested that Mr. Tatman contact Mr. Brakefield about restarting DIFRA efforts. (CX 1284 at 001; Rybacki, Tr. 3538).
1112. Mr. Rybacki testified that his February 7, 2008 conversation with Mr. Tatman was one of the two times he had spoken to Mr. Tatman in his career. (Rybacki, Tr. 3537).
1113. Later in the day on February 7, 2008, Mr. Tatman emailed Mr. Brakefield regarding “next steps” toward restarting DIFRA, including suggesting meeting dates for a face-to-face meeting among DIFRA members. (CX 1284 at 001; Tatman, Tr. 466-467, 470-471; CX 1081 at 002-003; Brakefield, Tr. 1257).
1114. Mr. Tatman’s February 7, 2008 e-mail to Mr. Brakefield also addressed DIFRA’s membership:

To have a viable association we’d need at a minimum McWane, Sigma and Star to be members. You have a historical perspective from the last attempt, but I would think ACIPCO and U.S. Pipe would bring some value to the association. There’s probably going to be some minimum requirement in terms of volume to join. Is

5,000 tons the appropriate level? If so who do you feel would be potential members?

(CX 1081 at 001; Tatman, Tr. 471-472).

1115. Before receiving the email from Mr. Tatman, Mr. Brakefield had not had conversations with anyone about restarting DIFRA efforts. (CX 2496 (Brakefield, Dep. (Vol. 2) at 135-136) (discussing CX 1081); Brakefield, Tr. 1257-1258 (does not recall specific conversations with Messrs. Pais, Rybacki or Bhattacharji)).
1116. On February 11, 2008, Mr. Long sent an email to the DIFRA members seeking to re-start the organizational process: “the organization has been relatively dormant in recent months. We have just been advised by a DIFRA member that it is believed the time might be right to take DIFRA to the operational stage, and we were requested to contact everyone with a potential interest.” (CX 1083 at 002).

#### **7.4.3 McWane, Sigma, and Star Included U.S. Pipe as a DIFRA Member Solely to Mask Antitrust Concerns**

1117. McWane, Sigma, and Star included U.S. Pipe as a DIFRA member to mask antitrust concerns, even though U.S. Pipe had stopped manufacturing Fittings years before, it did not satisfy DIFRA membership requirements, and the small number of Fittings that it sold were supplied to it largely by Sigma. (*Infra* ¶¶ 1118-1130).
1118. Section 2.2 of the DIFRA Bylaws provided that to be a member of DIFRA an organization must meet certain minimum requirements, including selling 95% of their Fittings through distribution and producing or selling at least 10,000 tons of Fittings annually:
- (i) Offer a full ductile iron fittings product line configuration for the United States water works and sewer industry;
  - (ii) Maintain a national market presence within the United States in the production or sale of ductile iron fittings;
  - (iii) Operate as either a Producer or Seller (as such terms are defined below) of ductile iron fittings;
  - (iv) At least ninety-five percent of sales of ductile iron fittings must be to a distributor;
  - (v) Be involved in the design and development of technical specifications and standards for ductile iron fittings; and
  - (vi) Produce or sell at least ten thousand (10,000) tons of ductile iron fittings on an annual basis.

- (CX 0158 at 010 (“final or close to final” draft circulated by Mr. Long on February 12, 2008); *see also* CX 1484 at 007 (same provisions in Bylaws circulated by Mr. Long in March 2008); CX 1083 at 002 (February 11, 2008 Long email explaining that Bylaws had been largely finalized prior to 2008); Brakefield, Tr. 1260-1264 (no changes were made to the DIFRA Bylaws after February 12, 2008)).
1119. DIFRA’s bylaws define “Producer” as “an entity that manufacturers ductile iron fittings in its own foundry facilities or in foundry facilities owned by an unrelated third-party with respect to which such entity has proprietary control over the engineering design, production processes and quality assurance systems for the production of all of the entity’s requirements for ductile iron fittings.” (CX 0158 at 010).
1120. DIFRA’s bylaws define “Seller” as “a seller of ductile iron fittings to distributors.” (CX 0158 at 010).
1121. DIFRA ultimately had four members: McWane; Sigma; Star; and U.S. Pipe. (Joint Stipulations of Fact (JX 0001) ¶ 17; Tatman, Tr. 478; Brakefield, Tr. 1227-1228; Brakefield, Tr. 1259-1260).
1122. McWane, Sigma, and Star understood that DIFRA’s information exchange would need at least four members due to antitrust considerations. (CX 0048 at 001 (DIFRA meeting minutes noting that counsel “discussed the anti-trust concerns with associations in which competitors are members and work together on industry matters. He noted the significant anti-trust issues when an association consists of only two or three competitors, whereas an association with five, six, or more competitors is less problematic.”); CX 2272 (counsel advising “With four, you can just barely justify [the information exchange]”); CX 0048 at 001 (DIFRA meeting minutes noting counsel’s advice that “compiling and disseminating information about a market and competitive issues within an association presents anti-trust concerns”); CX 2267 at 001 (counsel noting that “[t]his does not mean all antitrust concerns are definitely gone, as you always have some concern with information aggregations when there are relatively few participants”)).
1123. McWane, Sigma, and Star sought a fourth DIFRA member, ACIPCO, which manufactured large diameter Domestic Fittings. Brakefield, Tr. 1268 (“Q. Mr. Brakefield, did DIFRA seek out a fourth member so that it could avoid antitrust concerns? A. We -- we talked to several other companies. ACIPCO was one. And we tried to get them to have some interest in that, being a part of the group.”).
1124. Mr. Long invited ACIPCO to join DIFRA in February 2008, but ACIPCO declined the offer. In declining to participate in DIFRA, ACIPCO cited as a reason that it did not understand the business reason for a membership requirement in the DIFRA bylaws that all members must sell at least 95% of their Fittings through distribution. ACIPCO did not meet this requirement. (CX 1083 at 001; *see also* CX 1088 at 001 (Pais describing DIFRA membership: “Though we had aimed at enlisting the 5 largest members - McWane/Tyler, Sigma, Star, US Pipe and ACIPCO, the latter chose not to join. No effort was made to invite smaller suppliers . . . .”); Pais, Tr. 1974-1975 (ACIPCO declined membership in DIFRA); Brakefield, Tr. 1268 (ACIPCO showed no interest and did not



- come to any meetings); CX 1991 (ACIPCO did not meet 95% requirement); CX 2486 (Burns, Dep. at 98-99) (same)).
1125. In 2007, U.S. Pipe also did not meet the DIFRA membership requirement that at least 95% of its sales of Fittings must be to a Distributor. (CX 2541 (Crawford, Dep. at 69, 71-73) (“[T]here’s no way we would have satisfied” requirement for 95% of sales to be through distribution because only approximately 50% of U.S. Pipe’s Fittings sales were to Distributors)).
1126. In 2007, Sigma, McWane, and Star each satisfied the minimum membership requirement of 10,000 tons of Fittings sold annually. (Brakefield, Tr. 1264-1265; CX 1297 at 003-014 (showing 2007 shipments as reported to DIFRA amounting to 33,855 tons (Sigma), 22,073 tons (Star) and 60,632 tons (McWane)); RX-679 (Haley, Dep. at 30) (explaining these pages of CX 1297, Bates numbered SRHW-00023 through -00034, as copies of the internal work papers on which SRHW compiled the information obtained from the DIFRA members)).
1127. In 2007, U.S. Pipe’s sales of Fittings amounted to approximately 2,393 tons. (CX 1297 at 003-014 (showing 2007 monthly shipments as reported to DIFRA by U.S. Pipe of 254 tons (Jan.), 207 tons (Feb.), 173 tons (Mar.), 204 tons (Apr.), 210 tons (May), 191 tons (June), 160 tons (July), 225 tons (Aug.), 224 tons (Sep.), 154 tons (Oct.), 216 tons (Nov.), and 175 tons (Dec.)); CX 2520 (Haley, Dep. at 30) (explaining these pages of CX 1297, Bates numbered SRHW-00023 through -00034, as copies of the internal work papers on which SRHW compiled the information obtained from the DIFRA members); Brakefield, Tr. 1264-1265 (testifying that he did not know whether U.S. Pipe sold 10,000 tons of Fittings annually and that he did not ask)).
1128. Sigma, McWane and Star knew that U.S. Pipe had stopped manufacturing Fittings in April 2006, and re-sold Fittings that it largely purchased from Sigma. (Morton, Tr. 2810, 2819, 2866 (Sigma was U.S. Pipe’s primary supplier of Fittings after U.S. Pipe ceased production in 2006); Brakefield, Tr. 1268-1269 (U.S. Pipe did not manufacture its own Fittings, and purchased Fittings from Sigma); Tatman, Tr. 473-474 (U.S. Pipe sold Fittings that it bought from others); CX 0313 at 004 (Pais writing that U.S. Pipe was “not a producer anymore, but a small player buying almost all of their needs from Sigma”); CX 2527 (Pais, IHT at 74) (U.S. Pipe sales of Fittings during DIFRA period not significant); (CX 2538 (McCutcheon, IHT (Vol. 2) at 297-298) (by the time DIFRA was formed, U.S. Pipe only purchased Fittings from other producers and resold them)).
1129. U.S. Pipe’s participation in the DIFRA information exchange was so insubstantial that Mr. McCutcheon incorrectly believed that McWane, Star, and Sigma were the only three companies that exchanged data through DIFRA. (CX 2538 (McCutcheon, IHT (Vol. 2) at 298)).
1130. According to Mr. Rybacki, there was no connection between DIPRA and DIFRA, and DIFRA members had no interest in having DIPRA members participate in DIFRA, except to the extent a DIPRA member also was a manufacturer of Fittings. (Rybacki, Tr. 3539).

#### 7.4.4 DIFRA Operational Stage Organizing in 2008

1131. The four DIFRA members held an organizational meeting on March 27, 2008 in the Birmingham, Alabama offices of Bradley Arant to discuss the information exchange reporting procedures and guidelines. (CX 1486 at 001, 002 (agenda); CX 2272 (planning email); CX 1084 at 001 (planning email)).
1132. In attendance at the March 2008 meeting were representatives of all four DIFRA members: Messrs. Brakefield, Pais, Bhattacharji, and Rybacki of Sigma; Mr. McCutcheon of Star; Mr. Crawford or Mr. Murray of U.S. Pipe; and Mr. Tatman (and possibly Mr. Leonard and Mr. Walton) of McWane. Mr. Long did not attend. (Brakefield, Tr. 1270-1271 (listing attendees); Tatman, Tr. 475 (Mr. Tatman attended); McCutcheon, Tr. 2416 (Mr. McCutcheon attended); CX 1477 at 001 (Mr. Long, DIFRA's lead attorney, did not attend, but sent his colleague Mr. Herren instead)).
1133. The meeting agenda included the following item:
- Status of Reporting of production and/or sales data to independent CPA, including (1) reporting form, (2) reporting frequency, (3) identification of CPA, (4) dissemination and form of reports to membership (if any) based on reports input, and (5) proper and improper utilization of the data. To the extent one or more of the four remaining interested members opt out of the Association or out of the reporting aspect, there should be a discussion as to whether a continuation of the reporting program can be legally justified.
- (CX 1486 at 002; Brakefield, Tr. 1272).
1134. After the March 27, 2008 DIFRA meeting, Mr. Tatman had dinner alone with Mr. McCutcheon. (Tatman, Tr. 475; McCutcheon, Tr. 2418; RX-698 (McCutcheon, Dep. at 40)).
1135. Mr. McCutcheon also had dinner alone with Mr. Pais following one of the DIFRA meetings in Birmingham. (McCutcheon, Tr. 2373 (Mr. Pais and Mr. McCutcheon met in Birmingham after a DIFRA meeting); *see also supra* ¶ 1036 (describing dinner meeting between Pais and McCutcheon)).
1136. On March 28, 2008, Mr. Tatman reported on the DIFRA meeting to Mr. McCullough as follows:
- The DIFRA session was interesting. It would appear the association is a go with a tentative target to report 2006, 2007 and 2008 (Jan-Mar) data around mid April. McWane, Sigma, Star and U.S. Pipe will be the reporting members.
- (CX 1560 at 001; Tatman, Tr. 476-477).

1137. On April 2 and 4, 2008, Mr. Tatman sent follow-up emails to Mr. Long and Mr. Herren of Bradley Arant, suggesting input/output formats for the DIFRA reports and proposing a target of April 14, 2008 for the members' initial submittal of data to DIFRA. (CX 1477 at 001, 003; Tatman, Tr. 478-482).
1138. Later on April 4, 2008, Mr. Long sent an email to the four DIFRA members, noting that he had received proposed reporting forms and that:
- I find that they are consistent in approach and seem to minimize antitrust concerns. (This does not mean all antitrust concerns are definitely gone, as you always have some concern with information aggregations when there are relatively few participants, but the suggested approach is designed to minimize possible antitrust exposure down to a level which is acceptable.)
- (CX 2267 at 001, 002). Mr. Long requested comments from the DIFRA members on the proposed format and related assumptions, and relayed Mr. Tatman's suggestion of a target date of April 14, 2008 for the submission of data. (CX 2267 at 001, 002; Tatman, Tr. 483-484).
1139. On the morning of April 25, 2008, Messrs. Tatman, Pais, Brakefield, and McCutcheon held a conference call on which they finalized and agreed upon the information exchange reporting format. (CX 0160 at 002; Tatman, Tr. 485-486; CX 1479 at 001; McCutcheon, Tr. 2418; Brakefield, Tr. 1276; Brakefield, Tr. 1279 (stating that page 004 of CX 1479 reflects the reporting format that DIFRA adopted)).
1140. On the April 25, 2008 call, the three suppliers agreed that each member would submit data regarding its Fittings sales by tons shipped to the accounting firm SRHW, which would then aggregate the data and provide reports to the DIFRA members reflecting industry-wide sales by the 20th of the month. The three suppliers agreed that they would submit their data by "no later than" May 15, 2008. Going forward, members would report, by the 15th of each month, their prior months' data. (CX 0160 at 002; Tatman, Tr. 486-487; CX 1479 at 001; Brakefield, Tr. 1276-1277; *see also* CX 1186 (Tatman May 23, 2008 email stating that "Nearly four weeks ago all members agreed on a conference call to report by the 15th."); Brakefield, Tr. 1281-1282 (describing "consensus" on conference call as to May 15 submission of data); McCutcheon, Tr. 2417).
1141. According to their April 25, 2008 agreement, DIFRA members would report to SRHW short-tons of Fittings shipped within the United States in the following six categories: 2"-12" Flanged; 2"-12" All Other; 14"-24" Flanged; Greater than 24" Flanged; Greater than 24" All Other. Members' initial submissions would include annual data for 2006, monthly data for 2007, and monthly data for 2008. (CX 1479 at 001; CX 1329 at 009; CX 0160 at 002; CX 1479 at 001; McCutcheon, Tr. 2417)).
1142. The data collected and reported by SRHW for DIFRA was organized in categories of Fittings (2" through 12", 14" through 24", larger than 24", and flanged versus non-



2413; CX 2538 (McCutcheon, IHT (Vol. 2) at 242) (“I fought it, for quite some time, and just politely fought it by just saying, no, politely, no, and they kept pushing it.”)).

1153. Mr. McCutcheon thought that joining DIFRA was a bad idea. He did not see a benefit of being in an association with competitors, did not see a real clear goal that would benefit Star, and was uncomfortable trusting his competitors. (McCutcheon, Tr. 2413). He did not think it was a good thing to have an association of competitors, and believed that “[w]e’re competitors for a reason, and I’d rather compete.” (CX 2539 (McCutcheon, Dep. at 191)).
1154. Mr. McCutcheon also feared that DIFRA would allow Star’s competitors to get information on Star Pipe, and did not think that was healthy. (McCutcheon, Tr. 2414; *see also* CX 2068 (McWane learned from DIFRA data that Star and Sigma had taken more of McWane’s share than previously thought)).

### **7.5 In May and June 2008 McWane Agreed to a Further Price Increase Conditioned Upon Sigma’s and Star’s Participation in the DIFRA Information Exchange**

1155. In May and June of 2008, McWane agreed to a further price increase in return for Sigma’s and Star’s participation in the DIFRA information exchange. (*Infra* ¶¶ 1156-1259).

#### **7.5.1 Sigma Remained Eager for a Further Price Increase, and Sought to Demonstrate to McWane That It Had Complied with the Tatman Plan’s Call for the Elimination of Project Pricing**

1156. In April 2008, Sigma remained eager for further price increases, and sought to proactively demonstrate to McWane that it had complied with the Tatman Plan’s call for the elimination of Project Pricing. (*Infra* ¶¶ 1157-1173).

##### **7.5.1.1 Sigma Planned a Further, “Big Bold” Price Increase, and Lobbied McWane and Star for Support**

1157. In April 2008, Sigma was internally considering whether to raise Fittings price multipliers. (Pais, Tr. 1926; CX 1138 at 001; Rybacki, Tr. 3541-3542).
1158. In an April 11, 2008 email to Sigma’s management team, Mr. Pais proposed a two-pronged approach to increasing pricing: Sigma would announce significant multiplier increases (described by Mr. Pais as a “BIG BOLD MOVE”); and Sigma would curtail Project Pricing (described by Mr. Pais as Sigma’s “ill-fated ‘dual’ pricing approach for PW/JOBS”). Mr. Pais wrote as follows:

Keeping with our ongoing effort to boost our Prices and hence GMs as our AIC keep rising due to sharp overseas raw material increases, which have finally caught up with the domestic scrap costs too, please find the proposed MULTIPLIER MAP that LR and I discussed 4/8 when he visited CRM. Though we would have

preferred a LIST PRICE increase, as it is generally deemed 'safer', we can also empathize with McWane's trepidation about that route when multiplier have slide last 2 years by almost 20% -- not to speak of VRs which have climbed about 20% too.

In the end, all we care about [is] a NET increase in ASP/MT which will ensure our maintaining -- an[d] even boosting -- our GMs despite the cost increases as we can benefit from Inventory profits as well, as we realized in 04.

Despite the gloomy assessment -- both about the market and competition -- we have a very strong opportunity to lead and be a catalyst in boosting the Multipliers to another level, in ONE SHOT! It's time BIG BOLD MOVES (BBM, baby!) and this M-Map aims at just that...

...

I also think our pricing strategy needs to be a 1-2 punch -- taking this opportunity to also correct the ill-fated 'dual' pricing approach for PW /JOBS. I have also drafted a letter -- which LR can abbreviate as he does so well -- and I think we should launch this 1-2 punch Monday 4/14 and make them effective 5/5/08. This ill-advised 'PW' pricing has been suspiciously perceived by McWane as a way to get around the Market pricing and they will continue to resist any price boosts as they have truly lost market share and they suffer from very high inventory levels and very uncertain future since they also have substantial manufacturing commitments. We need to earn their TRUST and CONFIDENCE in our plan to improve the industry. So, it will take a measure of DISCIPLINE and MATURITY on our part too. It's thru our gutsy example that we can and must draw the other to our cause and make them follow in a new paradigm that has worked well in other products -- DIP, V&H, Couplings etc.

(CX 1138 at 001-002; Pais, Tr. 1926-1927; Rybacki, Tr. 3541-3546).

1159. Mr. Pais attached a draft pricing letter to customers that explicitly stated that Sigma would cease to use any Project Pricing:

As such, we wish to inform our customers that starting **May 5, 2008**, all customer requests for quotations any Plant Work and Special Jobs will be processed using our prevailing national list price and our regional multiplier terms and we will cease to use any varying 'special' pricing.

(CX 1138 at 004 (emphasis in original); *see also* Pais, Tr. 1917 ("[W]e tried to tell our customers we're not going to give a different pricing for plant work and job and special

and underground. We're going to have one, which we would like to use the list price and multiplier, and then depending on the horse trading, we will try to win the business on a case-by-case basis."); Minamyer, Tr. 3144 ("project price" and "special price" are used interchangeably)).

1160. In his cover email, Mr. Pais admitted that his intent behind the customer letter was to earn McWane's "TRUST and CONFIDENCE in our plan to improve the industry." (CX 1138 at 001; *see also* CX 1132 at 002 (subsequent draft of same letter circulated by Mr. Pais on May 6, 2008); Pais, Tr. 1932 (Mr. Pais believed Sigma needed to show McWane that "we don't exist merely to keep inflicting pain on them"))).

1161. Later on April 11, 2008, Mr. Pais explained to a skeptical Sigma manager that Sigma "will NOT – and can NOT – do this unilaterally," but that "SIGMA/[McWane] may have to be patient and tolerant [of Star] to a certain extent as long as we maintain our volume." (CX 1137 at 001; Pais, Tr. 1935-1937). All in all, Mr. Pais concluded, "THE BENEFITS OF THESE SIGNIFICANT BOOST IN PRICING FOR ALL [FITTINGS] ARE TOO GREAT TO IGNORE OR BE SKEPTICAL ABOUT!" (CX 1137 at 002 (emphasis in original); Pais, Tr. 1938).

1162. {

}(Rybacki, Tr. 3635-3636, *in camera*; Rybacki, Tr. 3610, 3617, *in camera*, {  
}; CX 1621-A at 099-100, *in camera* (Rybacki telephone records);  
*supra* ¶¶ 758-760 (detailing telephone records)).

1163. {

}(Rybacki, Tr. 3635-3636, *in camera*; CX 1621-A at 098, *in camera* (Rybacki telephone records); *supra* ¶¶ 761-763 (detailing telephone records)).}

1164. {

}(Rybacki, Tr. 3638, *in camera*; Rybacki, Tr. 3610, 3617, *in camera*, {  
}; CX 1621-A at 104-105, *in camera* (Rybacki telephone records); *supra* ¶¶ 764-765 (detailing telephone records)).

1165. Mr. Tatman later noted, in his April 16, 2008 Executive Report for the first quarter of 2008, that Sigma had communicated its desire for a further price increase:

With costs continuing to rise in China, Sigma has recently been putting out feelers on executing another price increase. Their communications appear to be testing our acceptance or resistance to supporting their prior announced then retracted January list price increase.

(CX 1564 at 005; *see also* CX 2484 (Tatman, Dep. at 117-118) (discussing CX 1564)).

1166. On April 18, 2008, Mr. Pais told his management team in an email that he believed Star would follow Sigma's price increase, but that McWane was more "skeptical" and "CAUTIOUS," and that therefore "WE WILL HAVE TO INFLUENCE THEM THROUGH OUR SINCERITY AND CLARITY OF OUR PLANS AND ACTIONS." (CX 1134 at 001, 002; Pais Tr. 1942-1943 ("Q. . . . The 'them' in that sentence, that's a reference -- is that a reference to McWane and Star, sir? A. Possibly.")).
1167. Mr. Pais wrote in that email that Sigma's April 2008 price increase letter should "include one line to signal SIGMA's strong commitment to 'clean up' our pricing." (CX 1134 at 001; Pais, Tr. 1939-1940 ("clean up our pricing" referred to an effort to "streamline" or "reduce the variations" in Sigma's pricing)).

7.5.1.2 Sigma Prematurely Announced Its Price Increase After the DIFRA Members Reached Agreement on Reporting Procedures

1168. On or about April 25, 2008, the same day that McWane, Sigma, and Star reached an agreement to exchange information through DIFRA and settled on the corresponding reporting procedures (CX 0160 at 002), Sigma sent out new customer letters announcing that it would institute multiplier increases of up to ten multiplier points, to be effective May 19, 2008. (CX 0862 at 001-002 (Star email, dated April 25, 2008 at 4:18 pm: "Here is the Sigma fitting increase letter that just hit the streets today."); *see also* CX 0137 at 003 (version faxed to Ferguson on April 27); Tatman, Tr. 493-494; CX 1855 (revised draft emailed by Rybacki to Sigma M20 on April 24); Brakefield, Tr. 1278; RX-052 (Pais email instructing regional managers to send out letter on April 25); Pais, Tr. 1944; CX 1858 (Sigma regional manager forwarding letter on April 25 to be sent out that day); Rybacki, Tr. 3551-3552).
1169. The effective date for Sigma's April 25, 2008 price increase announcement was May 19, 2008, which was four days after the first DIFRA data was due to be submitted to SHRW and therefore the approximate date on which the members expected the first DIFRA report. (CX 0862 at 002; Tatman, Tr. 487. (CX 0862 at 001).
1170. The new, higher multipliers announced by Sigma in its April 25, 2008 price increase letter were intended to apply to all of Sigma's Fittings sales so that all of Sigma's Fittings prices would be at one level. (Pais, Tr. 1943; RX-051 at 0001).
1171. In its April 25, 2008 price increase announcement to customers, Sigma specified that "[o]nly orders that are placed before May 19, 2008 with a specific shipping date will be



honored and any jobs that are held for release will be subject to the new multipliers.” (CX 0862 at 002 (emphasis in original); CX 0176 at 002 (emphasis in original)).

1172. McWane received a copy of one of Sigma’s multiplier increase letters on April 25, 2008, and thought that the price increase that Sigma was announcing – an estimated 18% to 40% in the region covered by the letter – was too high to “stick.” (CX 0176 at 001; Tatman, Tr. 490-491). Mr. Tatman forwarded the letter to Messrs. McCullough and Walton, calling it “interesting reading,” and noting that “I don’t think any of us truly believe that degree of net price will stick.” (CX 0176 at 001; Tatman, Tr. 490-491).
1173. On May 7, 2008, Star announced multiplier price increases that matched Sigma’s, effective May 19, 2008. (CX 0037 at 001; McCutcheon, Tr. 2419-2420; CX 0819; CX 2538 (McCutcheon, IHT (Vol. 2) at 457-458); Minamy, Tr. 3209; CX 0816; CX 0817; CX 0818; CX 0819; CX 0820; CX 0821; CX 0822; CX 0823).

#### **7.5.2 McWane’s May 7, 2008 Coded Letter Invited Sigma and Star to Collude by Requiring Participation in DIFRA in Exchange for Fittings Price Increases**

1174. McWane’s May 7, 2008 customer letter was an invitation to collude directed at Sigma and Star, whereby McWane would agree to Fittings price increases if its competitors participated in DIFRA. (*Infra* ¶¶ 1175-1191).
1175. Mr. Tatman studied Sigma’s April 2008 price increase announcement and concluded that Sigma’s large proposed price increase was undesirable as it would likely lead the industry back to Project Pricing and “instability.” (CX 0137 at 001; Tatman, Tr. 495).
1176. In a May 5, 2008 email to Mr. McCullough, Mr. Tatman linked Sigma’s recently announced price increase to the DIFRA data he expected to receive in a few weeks’ time: “Although the Sigma announcement represented an increase range of 20% to 40%, I don’t believe we would follow that lead regardless of the DIFRA data as it would lead to instability.” (CX 0137 at 001).
1177. Rather than blindly following Sigma’s announced price increase, Mr. Tatman proposed a potential price increase ranging from 8% to 12%, and attached a draft customer letter that “would align with the approach of waiting until the DIFRA data is available before announcing any price actions.” (CX 0137 at 001).
1178. Mr. Tatman and Mr. McCullough decided to wait “until the DIFRA data is available before announcing any price actions.” (CX 2484 (Tatman, Dep. at 132) (Mr. McCullough wanted to have the DIFRA data before announcing any price action); Tatman, Tr. 494-496; CX 0137 at 001; CX 2484 (Tatman, Dep. at 136) (one of the reasons McWane announced that it was delaying a price action was that it wanted to wait for the DIFRA data, which it did not yet have)).
1179. The draft customer letter that Mr. Tatman emailed to Mr. McCullough on May 5, 2008 stated that McWane would wait before announcing any price increases until it had

“updates” on several unnamed “factors” that would become available at the same time McWane expected to receive the first DIFRA report:

Since several *misperceptions* are starting to circulate, we wanted to send out this general communication to clearly define our intention in regards to any future pricing actions.

Before announcing any price actions we carefully analyze all factors including: Domestic and Global inflation, market & competitive conditions within each region as well as performance against our own internal metrics. *We are currently waiting on updates for several factors but anticipate being able to complete our analysis towards the middle of the month.* At that point we will be sending out specific letters to each region detailing changes, if any, to our current pricing policy.

(CX 0137 at 002 (emphasis added)).

1180. McWane believed that by announcing a 20% to 40% price increase in advance of receipt of the first DIFRA report, Sigma had acted under the “misperception” that McWane would join a price increase prior to actual receipt of the DIFRA data. (CX 0137 at 001, 002; Tatman, Tr. 492-493 (admitting that he prepared the draft customer letter referring to “misperceptions,” and circulated the letter for discussion internally together with a copy of Sigma’s price announcement)).
1181. McWane sent the final version of this letter to its customers on May 7, 2008. (CX 0137 at 002; CX 0138; *see also* CX 2484 (Tatman, Dep. at 136) (letter drafted by Tatman); CX 2477 (Jansen, Dep. at 254-255) (Mr. Tatman wrote the May 7, 2008 letter); CX 2170 at 001; Tatman, Tr. 499-500).
1182. McWane’s May 7, 2008 letter did not communicate any specific change in McWane’s prices; instead, it communicated in veiled terms that McWane would not yet follow Sigma’s announced price increase, and that it would support higher prices only after it received the DIFRA report:

We are sending this general communication to our waterworks distribution customers to more clearly define our intention in regards to future pricing actions.

Before announcing any price actions, we carefully analyze all factors including: domestic and global inflation, market and competitive conditions within each region, as well as our performance against our own internal metrics. *We anticipate being able to complete our analysis by the end of May.* At that point, we will send out letters to each specific region detailing changes, if any, to our current pricing policy.

For planning purposes only, we expect for regions with a change that multipliers will increase in the range of 6% up to 16% effective June 16<sup>th</sup>.

(CX 0138 (emphasis added); CX 0526; CX 2170 at 002; Tatman, Tr. 499-502).

1183. Mr. Tatman testified that one “factor “ that he was waiting for before issuing a price increase was McWane’s monthly financial data for April 2008, as set forth in McWane’s monthly financial reports known as “blue books.” Mr. Tatman receives the blue books five days after the close of each month, and knew that McWane’s internal blue book data through April 2008 would be available by the second week of May 2008. (Tatman, Tr. 501, 818-819).
1184. Mr. Tatman believed that McWane would receive the DIFRA data in time to “complete [its] analysis by the end of May” and make a pricing decision that would be effective June 16, as provided in McWane’s May 7, 2008 letter to customers. (CX 2170 at 002; Tatman, Tr. 500-503).
1185. Mr. Tatman conceded at trial that McWane was waiting for the first DIFRA report before issuing the price increase. (*See infra* ¶¶ 1208-1221).

7.5.2.1 The Coded Language in McWane’s May 2007 Letter Was Meaningless to Its Distributor Customers

1186. McWane’s Distributor customers, to whom the May 7, 2008 letter was ostensibly addressed, consistently testified that McWane’s description of the factors it would consider before raising prices did not help them run their business, even for planning purposes, and was meaningless “fluff.” (CX 2516 (Sheley, Dep. at 153 (“Q. But the previous paragraph has no meaning to you? A. No. In my words, that’s fluff.”); Sheley, Tr. 3424-3425 (the sentence “Before announcing any price actions, we carefully analyze all factors including: domestic and global inflation, market and competitive conditions within each region, as well as performance against our own internal metrics” in Mr. Tatman’s May 7, 2008 letter (CX 0138) had no meaning to Mr. Sheley as a Distributor); CX 2544 (Coryn, Dep. at 125) (“Q. Does Tyler Union telling you what factors they analyze help you run your business? A. No.”); CX 2510 (Groeniger, Dep. at 233-234) (“Q. But as far as the factors that they are analyzing, that doesn’t help you run your business? A. No. I cannot use this letter for any district or any contractor to get relief because they don’t know what it is, what it means and they don’t know the date that they are going to effectively change prices to where, and are they going to allow us to buy fittings until that date at a specific date or after that date, are they going to give us a grace period? This letter could mean to me they are going to give us a grace period, but we don’t know how much it’s going up, so it’s difficult.”); CX 2514 (Webb, Dep. at 105) (“Q. Does Tyler Union telling you what factors they analyze help you in your running of your business as a distributor of Waterworks products? A. I – I don’t see where it helps us.”); CX 2504 (Thees, Dep. at 96) (“Q. Does Jerry Jansen telling you as a distributor what factors they analyze help you run your business? A. No.”) (objections omitted)).

1187. The factors McWane claimed it would “analyze” before issuing a price increase were never before, and never after, included in pricing letters. (CX 2516 (Sheley, Dep. at 152-153) (“You normally don’t see this.”); CX 2510 (Groeniger, Dep. at 231, 233-234); CX 2544 (Coryn, Dep. at 124-125); CX 2504 (Thees, Dep. at 96)). Similarly, on a prior occasion on which McWane had declined to follow a Sigma price increase, McWane had not issued a similar letter. At trial, Mr. Tatman was unable to explain why McWane felt the need to issue its May 7, 2008 customer letter announcing that it did not intend to match Sigma’s increase, but had not felt the need to issue a similar letter the last time it had declined to follow a Sigma price increase, in October 2007. (Tatman, Tr. 501-502 (unable to recall “another time where you sent out a letter like this where you announced that you were not increasing prices”)).
1188. The 6% to 16% range for a possible price increase that was provided in McWane’s May 7, 2008 letter was useless to customers for planning purposes. (Sheley, Tr. at 3443-3444 (“Q: And the amount of the price change, that’s information you would need to know; right? If there’s going to be a price change, you want to know what it is. A: In the range of 6 to 16 percent doesn’t do me a lot of good.”)).
1189. Mr. McCutcheon believed that the explanation contained in the McWane May 7, 2008 letter, *i.e.*, McWane was “carefully analyzing all factors,” etc., would not have been helpful to a Distributor, and that the only thing in the letter that would be of interest to a Distributor was the last sentence of the letter. (CX 0863 at 001 (copy of May 7, 2008 letter); CX 0138 (same); CX 2539 (McCutcheon, Dep. at 178-179, 182); CX 2538 (McCutcheon, IHT (Vol. 2) at 318-320) (third sentence of letter is not helpful to a Distributor, only the last sentence is helpful); McCutcheon, Tr. 2422 (McCutcheon saw the McWane May 2008 letter)).

7.5.2.2     The Other Suppliers Thought It Was Unusual for McWane to Send a Price Letter to Customers That Did Not Actually Announce a New Price

1190. Mr. Rybacki recognized the language in McWane’s May 7, 2008 letter as out of the ordinary. (Rybacki, Tr. 3569 (“I did remember that part because I thought it was a little quirky for Jerry Jansen.”)).
1191. When Mr. McCutcheon received a copy of McWane’s May 7, 2008 letter, he thought that the letter was “odd,” “arrogant,” and “humorous.” Mr. McCutcheon had never seen a price increase letter like that. In other instances in which a supplier chooses to take a price increase “he just announces we’re taking an increase.” (CX 2539 (McCutcheon, Dep. at 179)).

### 7.5.3 McWane Withheld Its Agreement to a Price Increase Until the DIFRA Information Exchange Was Implemented

#### 7.5.3.1 Sigma and Star Understood the Coded Message in McWane's May 7, 2008 Letter and Delayed Their Announced Price Increase

1192. Sigma and Star understood the coded invitation to collude in McWane's May 7, 2008 letter and delayed their announced price increases in response. (*Infra* ¶¶ 1193-1200).
1193. Only the DIFRA members – including Sigma and Star – were aware that McWane was scheduled to receive DIFRA data “by the end of May.” (CX 0138 at 001 (McWane May 7, 2008 coded pricing letter); CX 0160 at 002 (April 25, 2008 DIFRA conference call summary e-mail establishing reporting schedule)).
1194. When it issued its May 7, 2008 letter, McWane expected that Sigma and Star would respond to that announcement. (Tatman, Tr. 508-509; CX 0431 (Tatman May 13, 2008 email to McCullough: “Jerry is on a hunt for follow-up letters from Sigma and Star in response to our announcement.”)).
1195. Mr. Rybacki received and read a copy of McWane's May 7, 2008 letter. (Rybacki, Tr. 3568). He noted that the letter provided an indicative range of pricing increases “for planning purposes,” but did not “firmly say that they were going up.” Mr. Rybacki was “leery” of the letter because it was “ambivalent.” (Rybacki, Tr. 3570-3571).
1196. Sigma put most of its planned price increase on hold as a result of McWane's May 7, 2008 letter. (Rybacki, Tr. 3570-3572; CX 1734 at 001 (Greg Fox of Sigma forwarding a copy of McWane's May 7, 2008 pricing letter within Sigma on May 8, 2008, with the following comments: “I am certain we will delay our announced increases to mirror their dates. In addition, I'm certain we'll match their multipliers once published.”); RX-076 (June 16, 2008 email from Sigma's Greg Fox announcing a further delay of a Sigma price increase due to the delay in McWane's announcement of a price increase because “we are forced to delay our increase until we ascertain the specifics of Union/Tyler's increase from the market. Our increase will match U/T's both in amount and implementation date.”)).
1197. Sigma's northeast region, however, was the lone region that decided to implement Sigma's previously announced May 19, 2008 price increase, at least for some time, and Sigma lost business in that region as a result. (Rybacki, Tr. 3571-3572).
1198. Star also put its planned price increase on hold as a result of McWane's May 7, 2008 letter. CX 0527 at 001 (Star's Ramon Prado forwarding a Minamyler May 12, 2008 email to territory managers at Star, informing them that Star's “current multiplier changes on fittings have been put on hold for the time being” and that “Tyler is not going up until June 16th and multipliers are yet to be determined,” and attaching a copy of McWane's May 7, 2008 pricing letter); RX-060 at 001 (Minamyler May 12, 2008 email); CX 2526 (Minamyler, Dep. at 185-186); Minamyler, 3213-3214; McCutcheon, Tr. 2424-2425; CX 2537 (McCutcheon, IHT (Vol. 2) at 462)).

1199. In a May 13, 2008 email to Messrs. McCullough and Walton, Mr. Tatman observed that “Sigma and Star are verbally retracting the May 19th date. Nothing written has been uncovered yet. I suspect neither will put any hard copies out until they know what we’re doing and then I assume they will follow.” (CX 0367 at 001; Tatman, Tr. 509-510).
1200. Sigma and Star never fully implemented the May 19, 2008 multiplier price increases that they had announced. (Tatman, Tr. 514 (“I don’t believe that they made those effective.”); CX 2430 at 001 (Star June 27 announcement following a subsequent McWane multiplier increase); CX 2253 at 001-003 (Sigma following same McWane multiplier increase)).

7.5.3.2 Star Understood the Coded Message in McWane’s May 7, 2008 Letter and Immediately Agreed to Submit Its Sales Data to DIFRA

1201. Star understood the coded invitation to collude in McWane’s May 7, 2008 letter and immediately agreed to submit its sales data to DIFRA. (*Infra* ¶¶ 1202-1207).
1202. Star received a copy of McWane’s May 7, 2008 letter from HD Supply at 1:06 p.m. on May 7, 2008. (CX 0863 at 001; Minamyler, Tr. 3209-3210 (it was Mr. Minamyler’s normal practice to read McWane’s letters and share it with Mr. McCutcheon); McCutcheon, Tr. 2422-2423 (admitting that he saw the letter)).
1203. Mr. Minamyler believed that the language in McWane’s May 7, 2008 letter indicating that McWane was “analyz[ing] all factors including: Domestic and global inflation, market and competitive conditions within each region, as well as our performance against our own internal metrics” would not matter to customers, but could have meaning to Sigma and Star. (CX 2525 (Minamyler, IHT at 86-87); CX 0138).
1204. Star understood that McWane would not agree to increase prices until it had the actual DIFRA data in hand. Within hours of receiving McWane’s coded letter, Star’s Mr. McCutcheon responded to Mr. Long’s April 25, 2008 and May 5, 2008 emails regarding DIFRA reporting procedures, and confirmed to Mr. Long and to the other DIFRA members, including Mr. Tatman, that Star would submit its data to DIFRA. (CX 1085 at 001 (Star confirming it will submit DIFRA data on the afternoon of May 7); McCutcheon, Tr. 2423; Brakefield, Tr. 1287).
1205. At 4:45 p.m. on May 7, 2008, after responding to the May 5, 2008 email from Thad Long, confirming that Star would submit its data, Mr. McCutcheon forwarded Mr. Long’s April 25, 2008 email to Navin Bhargava (who would assemble Star’s DIFRA data submission), with the subject line “please call me on this.” (CX 0530 at 001; McCutcheon, Tr. 2426).

1206. {

} (McCutcheon, Tr. 2438-2442, *in camera*; Rybacki, Tr. 3642, *in*

*camera*; CX 1621-A at 085, 086, *in camera* (Rybacki telephone records); *supra* ¶¶ 771-772 (detailing telephone records)).

1207. On May 19, 2008, Mr. Bhargava sent Star's sales data to Mr. McCutcheon for submission to DIFRA. (CX 0530 at 001; McCutcheon, Tr. 2427).

7.5.3.3 McWane and Sigma Closely Monitored Star's Delay in Submitting Its Sales Data to DIFRA

1208. McWane and Sigma closely monitored Star's delay in submitting its sales data to DIFRA, repeatedly contacting DIFRA and Star to determine the status of Star's submission. (*Infra* ¶¶ 1209-1221).

1209. McWane submitted its DIFRA data to SRHW on May 14, 2008. (CX 1303 at 002).

1210. {

} (Rybacki, Tr. 3642, *in camera*; CX 1621-A at 095, *in camera* (Rybacki telephone records); *supra* ¶ 773 (detailing telephone records); (Rybacki, Tr. 3610, 3617, *in camera*, {  
 }  
 }

1211. Later on May 16, 2008, Mr. McCutcheon sent an email to Mr. Brakefield with the subject line "star's tonnage data," stating, "Hello Tom, sorry for the delay. The info should be in next week." Mr. Brakefield forwarded the message to Mr. Pais and Mr. Rybacki. (CX 1129; Rybacki, Tr. 3561-3563).

1212. On May 21, 2008, while Mr. Tatman was in China, Mr. Tatman sent an email to Margaret Powell of SRHW stating that he was "hoping to receive the DIFRA reports since I believe all members have submitted data," and asked for "an estimated date of when the reports will be available." (CX 1335; Tatman, Tr. 515-516).

1213. Mr. Tatman also contacted Mr. Brakefield directly, asking why the DIFRA report was late and why it had not been delivered as agreed upon in the conference call. (Brakefield, Tr. 1288 ("I started receiving either e-mails or calls from Mr. Tatman. . . . I think he had also tried to get in touch with the CPA and which I'd tried to warn him against that, that was not the proper way to handle it . . ."))).

1214. Mr. Brakefield told Mr. Tatman that Mr. Tatman should proceed through DIFRA's attorneys. (Brakefield, Tr. 1288 (he "tried to get Mr. Tatman to understand that that was not the proper way to do that, we need to proceed with the attorneys in that kind of communication"))).

1215. Mr. Tatman asked DIFRA counsel to contact the non-reporting DIFRA members to get their data in. (Tatman, Tr. 518).

1216. {

} (Rybacki, Tr. 3644-3644, *in camera*; CX 1621-A at 084, *in camera* (Rybacki telephone records); *supra* ¶¶ 774-775 (detailing telephone records); Rybacki, Tr. 3610, 3617, *in camera*, {  
}

1217. On May 28, 2008, Mr. Herren of Bradley Arant sent an email to the DIFRA members reminding them of the previously agreed deadline for initial submission of data to DIFRA, and requesting, “If you have not already submitted this data for your company, please submit the data to Margaret [Powell at SRHW] at your earliest convenience.” (CX 1090 at 001; Brakefield, Tr. 1289-1291).

1218. Mr. Brakefield kept Messrs. Pais, Rybacki, and Rona updated as to the status of the DIFRA data submissions. (CX 1129; CX 1130; CX 1086; Rybacki, Tr. 3561-3565).

1219. On May 30, 2008, Mr. Brakefield forwarded Mr. Herren’s May 28, 2008 email to Messrs. Rybacki, Bhattacharji, and Rona, noting “I will follow up on this and advise.” (CX 1090 at 001; CX 1130 at 001 (Brakefield email forwarding to Messrs. Rybacki, Bhattacharji and Rona the Star May 16, 2008 commitment to submit the DIFRA data and stating that he would “stay on top of this and advise”); Brakefield, Tr. 1291).

1220. Mr. Brakefield spoke with Mr. McCutcheon regarding Star’s late submission of data. (Brakefield, Tr. 1291-1292; McCutcheon, Tr. 2430).

1221. {

} (McCutcheon, Tr. 2438-2442, *in camera*; Rybacki, Tr. 3644-3645, *in camera*; CX 1621-A at 085, 086, *in camera* (Rybacki telephone records); Rybacki, Tr. 3564 (Q. Did you contact Mr. McCutcheon in late May, early June to encourage him to get his DIFRA data in? A. Again, I’m -- I don’t know specifically. Maybe. I don’t know.”); *supra* ¶¶ 776-778 (detailing telephone records)).

7.5.3.4 Star Submitted Its Data to DIFRA on June 5, 2008 Invoking the Language of McWane’s May 7, 2008 letter

1222. Star submitted its data to DIFRA on June 5, 2008, acknowledging the suppliers’ agreement by invoking the language of McWane’s May 7, 2008 letter. (*Infra* ¶¶ 1223-1226).



1223. Mr. McCutcheon submitted Star's DIFRA data to SRHW at 12:37 p.m. on June 5, 2008. (CX 0049 at 001; McCutcheon, Tr. 2427; CX 2538 (McCutcheon, IHT (Vol. 2) at 304)). Star's June 5, 2008, submission to DIFRA contained, *inter alia*, Star's annual sales data for Fittings for 2006 and its monthly sales data for Fittings for 2007 and for January 2008 through April 2008. (CX 0049 at 001-005).
1224. Immediately thereafter, at 12:48 p.m. on June 5, 2008, Mr. McCutcheon notified Mr. Brakefield and Mr. Rybacki of Sigma by email that Star had submitted its DIFRA data, and included verbatim language from McWane's May 7, 2008 letter:
- Good morning Mr. President. I just sent our info in. Sorry it took so long, but we were "carefully analyzing all factors including: domestic and global inflation, market and competitive conditions within each region, as well as performance against our own internal metrics." (Does that look familiar?).
- (CX 1091; CX 0138 (May 7, 2008 letter); CX 2538 (McCutcheon, IHT (Vol. 2) at 311-313) (Acknowledging that the verbiage above came from a McWane pricing letter to customers, and that this letter was likely intended to "poke at [Star] for trying to take a price list increase."); Brakefield, Tr. 1292).
1225. Mr. McCutcheon's repetition of the McWane May 7, 2008 letter in its submission of the Star data to DIFRA reflects Mr. McCutcheon's then state of mind that the price increase that was the subject of McWane May 7, 2008 was contingent upon Star and Sigma participating in DIFRA information exchange. (CX 1091; *see also* RX-697 (McCutcheon, IHT (Vol. 2) at 315) (after investigation is initiated, Mr. McCutcheon can offer no plausible explanation for his reference to McWane's May 7, 2008 letter, except to suggest, "the quote was just my attempt at humor.")).
1226. Several hours after receiving Mr. McCutcheon's June 5, 2008 email, Mr. Brakefield reported to Messrs. Rybacki, Pais and Rona that Star had submitted its numbers: "looks like the numbers are in." (CX 1086).

#### 7.5.3.5 McWane Delayed Its Price Announcement Because of Delays in Receiving the First DIFRA Report

1227. In late May and early June, 2008, McWane delayed its price announcement because of delays in receiving the first DIFRA report. (*Infra* ¶¶ 1228-1239).
1228. On May 23, 2008, Mr. Tatman informed Messrs. McCullough and Walton that SRHW had not yet received the sales data from all of the DIFRA members, and that he had asked DIFRA's counsel to follow up and contact the DIFRA members. Mr. Tatman suspected that the delay was due to Star and Sigma being "upset over their perception of McWane's lack of support on pricing." (CX 1186; Tatman, Tr. 517-518).
1229. On May 24, 2008, Mr. McCullough responded to Mr. Tatman's May 23, 2008 email by stating that McWane should "stand pat" on a new price increase until the DIFRA market

- share data was available. Mr. Tatman and Mr. Walton agreed. (CX 1186; Tatman, Tr. 518-521; CX 2479 (McCullough, Dep. at 224)).
1230. McWane's decision to "stand pat" on any price increase until it had received the DIFRA market share reports was "somewhat painful to the bottom [line] in the short term, [but it] would re-enforce the message we've been trying to drill in which when successful will pay long term dividends." (CX 1186 at 001; Tatman, Tr. 519-520; *see also* CX 2484 (Tatman, Dep. at 136)).
1231. Mr. Tatman's statement regarding "painful to the bottom [line]" was a reference to the short term pain to McWane's financial bottom line that would result from delaying the price increase announcement. (CX 1186; Tatman, Tr. 520-521; CX 2484 (Tatman, Dep. at 136)).
1232. Mr. Tatman admitted at trial that the "message we've been trying to drill in" was McWane's unwillingness to "lose visibility of where the competitive level in the marketplace is." (CX 1186; Tatman, Tr. 522 (message was that "we are not going to lose visibility of where the competitive level in the marketplace is"))).
1233. On May 29, 2008, McWane already had a draft of a price increase letter ready to send to its customers, announcing a weighted average increase on blended Fittings of approximately 8%. (CX 1193 at 001; Tatman, Tr. 517).
1234. On Mr. McCullough's instructions, Mr. Tatman waited for the DIFRA data before issuing any price increase. (Tatman, Tr. 494-495 ("[G]etting the DIFRA data was important to my boss Leon.")).
1235. In a series of emails on June 10, 2008, Mr. Tatman pressed Ms. Powell at SRHW for timely turnaround of the aggregated DIFRA report. (CX 1334 at 002 ("[T]he week of the 23<sup>rd</sup> is going to be difficult to accept."); Tatman, Tr. 528-529; CX 2520 (Haley, Dep. at 60-61) (Ms. Powell reported that Mr. Tatman was "harassing" her); *see also* CX 1332 at 001 (Ms. Powell writing to Mr. Haley on June 10, 2008: "This same guy [Tatman] that was harassing me a month ago about getting him the reports asap (even though we didn't have all the members reporting) is calling me again wanting everything completed this week."); CX 2270 at 001, 002 (June 11, 2008 email from Herren to DIFRA members apologizing for the confusion surrounding initial reporting and asking members to "avoid direct communication between the individual members and [SRHW]"))).
1236. Also on June 10, 2008, Mr. Tatman sent an email to Mr. Wood of the Bradley Arant law firm asking if DIFRA could use another accounting firm in order to get the DIFRA data more quickly. (Tatman, Tr. 530; *see also* CX 2269 at 002).
1237. Mr. Tatman admitted at trial that the only new information that McWane received before issuing its June 17, 2008 price increase was the DIFRA data. (Tatman, Tr. 544 ("Q. Sir, the only new information that you received on the afternoon of June 17 was the DIFRA data; right? A. Yes. Q. And after -- once you received that information, between yourself and Mr. McCullough, you made a decision on price; is that right, sir? A. We elected to go with the lower number. Yes. Q. You elected to go with a lower number, 8 versus 12; is

that what you're saying? A. Yes."); *see also supra* ¶ 1183 (the availability of McWane's internal financial numbers does not explain its delay in issuing a price increase)).

#### 7.5.3.6 The First DIFRA Report Was Issued On June 17, 2008

1238. McWane and the other DIFRA members received the first DIFRA report from SRHW at 2:41 p.m. on June 17, 2008. (CX 0052 (email from Bree Holland of SRHW to Messrs. Tatman, Brakefield, Crawford, and McCutcheon attaching DIFRA reports for 2006, 2007, and January through April of 2008); Tatman, Tr. 534-536, 936; Brakefield, Tr. 1297-1298; Pais, Tr. 2121; McCutcheon, Tr. 2444-2445, *in camera*).
1239. The first DIFRA report contained annual data for 2006, monthly data for 2007, and monthly data for the first four months of 2008. (CX 0052 at 003, 005, 007; Tatman, Tr. 535).

#### 7.5.3.7 McWane Issued a Price Increase Within Hours After Receiving the First DIFRA Report

1240. McWane issued a price increase within hours after receiving the first DIFRA report (*Infra* ¶¶ 1241-1245).
1241. Rick Tatman's initial analysis of the first DIFRA report took less than 40 minutes. In that time, he did a quick market share analysis comparing the data with other benchmarks, such as data obtained from another information exchange in a related market, the Valve Manufacturer's Association (VMA). (CX 0139 at 001; Tatman, Tr. 536-537). Mr. Tatman provided his "initial observations" in an email to McWane's management:

1. 2006 baseline total DIFRA tonnage tracks very well with what we would have expected based upon walking the 2001 market data from the 421 hearings forward using the change in VMA units
2. Our share loss for 2007 and Apr YTD 2008 is actually larger than what I expected. Note the DIFRA tonnage is not down as much over those period as the VMA unit data
3. The "backed into" non DIFRA tonnage appears to be on the lower end of what we would have expected
4. All points above suggest that data is accurate within reason which was probably the resistance to sending it out before we announced any price.
5. The larger than expected share loss will make the task of getting it back more difficult, but of course will make victory all the more sweeter [*sic*] in terms of the incremental financial benefits."

(CX 0139 at 001; CX 2068 at 001; Tatman, Tr. 536-537, 949-950).

1242. Later that same day, at 6:26 p.m. on June 17, 2008, less than four hours after receiving the DIFRA report, McWane issued its price increase letter, announcing an increase in Fittings multipliers effective July 14, 2008, and stating that the weighted average increase on blended Fittings and accessories was “approximately 8%.” (CX 1191 at 001 (letter to Glenn Fielding at HD Supply); CX 1576 at 003 (email to Mr. Doane and Mr. Thees at Ferguson attaching nationwide multiplier map); Tatman, Tr. 538, 544, 952; RX-644 (Tatman, Dep. at 155); CX 0047 (multiplier increase letter to Southeastern states)).
1243. In an email to Mr. Doane and Mr. Thees at Ferguson attaching the pricing letter, Mr. Tatman stated that “[t]he increase is significantly smaller than what I believe others have proposed, but we believe this level is rational given all factors considered.” (CX 1576 at 003; Tatman, Tr. 544; 954-955 (referring to other proposed price increases by Sigma and Star)).
1244. While Mr. Tatman conceded that he waited until after he had received the first DIFRA report before issuing McWane’s June 17, 2008 price increase letter (*see* ¶¶ 5.5.3.5), Mr. Tatman offered contradictory explanations at trial for how McWane used the first DIFRA report in issuing its June 17, 2008 price increase:
- a. Mr. Tatman initially testified that he used the DIFRA data to determine the magnitude of the price increase that McWane would announce:
 

[W]e had two options discussed earlier in a brainstorming session for price increase, an 8 percent and a 12 percent. Because our share loss was greater than what we thought [based on DIFRA data], we went out with the 8 percent, which is consistent with the strategy I’ve been discussing all day long.

(Tatman, Tr. 536-538; CX 0139 at 001; Tatman, Tr. 538 (“[W]e had two options, an 8 percent and a 12 percent. The DIFRA data came in. It’s like oh, crap, the share loss is worse than we thought. What are we going to do? Let’s go with the lower number because we obviously must be getting beat on price again . . . .”)); Tatman, Tr. 544 (“Q. Sir, the only new information that you received on the afternoon of June 17 was the DIFRA data; right? A. Yes. Q. And after -- once you received that information, between yourself and Mr. McCullough, you made a decision on price; is that right, sir? A. We elected to go with the lower number. Yes. Q. You elected to go with a lower number, 8 versus 12; is that what you’re saying? A. Yes.)).
  - b. In later testimony, Mr. Tatman claimed that while McWane was waiting to issue its price increase until it had received the DIFRA market share reports, Mr. Tatman did not need or use the DIFRA data to determine the magnitude of McWane’s pending price increase:

[T]he decision in my mind was already made. . . . I was going with the lower number. And we just waited till the DIFRA data came in because Leon wanted to see that and [do] a quick analysis. I really

didn't need to look that hard at the DIFRA data because I knew the answer already.

(Tatman, Tr. 957-958; CX 1193 at 001 (May 29, 2008 draft price increase letter reflecting 8% increase); Tatman, Tr. 539 (“My draft letter before the DIFRA data is 8 percent. Now that we have the DIFRA data, that confirms it.”)).

1245. Mr. Page and Mr. McCullough also examined the DIFRA data, concluding that the market share losses reflected there had been a result of Project Pricing. (CX 2068 (June 18, 2008 email exchange in which McCullough explains that “Sigma and Star were seeking an increase in the 25% range which we will not support as they continue to take share with special pricing,” and Page responds “This just reflects the lack of support and feedback we got from distribution as they wanted us to hold high price levels and buy under neath us.”)).

7.5.3.8 Star and Sigma Quickly Matched McWane’s June 17, 2008 Price Increase

1246. {

(McCutcheon, Tr. 2447-2448, *in camera*; Rybacki, Tr. 3645-3646, *in camera*; CX 1621-A at 088, 089, *in camera* (Rybacki telephone records); *supra* ¶¶ 781-782 (detailing telephone records)).

1247. On or about June 27, 2008, Star announced it would follow McWane’s price increase, and issued letters to its customers specifying the multiplier increases that it would implement to match McWane, effective July 14, 2008. (CX 2430 at 001 (Star June 27 announcement for states with .30 multiplier); CX 2255 (Star June 27 announcement for states with .28 multiplier); CX 2252 (Star June 27 announcement for states with .33 multiplier); Minamyler, Tr. 3216-3218; CX 2254 at 001-004 (preparing sales force for another round of multiplier increases and instructing them that they should follow the same procedures as previously announced before offering any Project Prices); Minamyler, Tr. 3216-3217; *see also supra* ¶¶ 972-996 (similar instructions circulated in January 2008); McCutcheon, Tr. 2448, *in camera*).
1248. At least one of Star’s June 27, 2008 price increase letters was sent by Star directly to Craig Schapiro of Sigma, who forwarded it within Sigma with the comment “Looks like Star is sending their version of the TYLER letters....” (CX 2252 at 001; Rybacki, Tr. 3573).
1249. On or about July 7, 2008, Sigma followed McWane’s price increase. (CX 2253 at 001-003 (Sigma regional manager circulating Sigma multiplier increase letters matching McWane’s, noting that they would be faxed “to the marketplace” the next day and that “I believe it’s a confirmation of what the market already knows.”); *see also* Rybacki, Tr.

3574-3575 (“I wanted to go up as well. I wanted to make sure that we were locked step.”)).

1250. On July 18, 2008, Mr. Tatman observed in the “Sales/Market/Competitive Environment” section of his Second Quarter 2008 Executive Report that “[b]oth Sigma and Star have communicated support of the July 14th price increase.” (CX 1562 at 004; Tatman, Tr. 558).

7.5.3.9 Mr. Tatman Actively Policed the Prompt Submittal and Turnaround of Monthly DIFRA Reports

1251. After DIFRA issued its first report, Mr. Tatman continued to actively police the timely monthly submittal of data and the prompt turnaround of DIFRA reports (*Infra* ¶¶ 1252-1259).
1252. The normal DIFRA reporting cycle involved member submission of data to SRHW by the 15<sup>th</sup> of the month, with the aggregated report sent to members for the 20<sup>th</sup> of the month, and if the 20<sup>th</sup> fell on a weekend, the following Monday. (Brakefield, Tr. 1316 (“The normal reporting cycle was to report the previous month by the 15th, and hopefully they would end up sending that back out by the 20th. And if the 20th fell on a weekend, it would be the following Monday.”)).
1253. Mr. Tatman contacted DIFRA’s accountants at SRHW directly regarding the timeliness of DIFRA reports. (Brakefield, Tr. 1314-1315; Brakefield, Tr. 1316-1317 (“Mr. Tatman had a lot of concerns because a couple of times . . . the numbers didn’t show up exactly when he thought they should, and he was constantly really creating some issues.”)).
1254. On several occasions, Mr. Tatman contacted DIFRA members directly – without copying or going through DIFRA’s lawyers – regarding the timing of submission of data to DIFRA and receipt of DIFRA reports by members. (CX 2447; CX 2448).
1255. On August 18, 2008 Mr. Tatman sent an email to Mr. Brakefield asking if the DIFRA reporting cycle was on schedule. (CX 2447; Brakefield, Tr. 1315-1316; Tatman, Tr. 552-554).
1256. At the time of Mr. Tatman’s August 18, 2008 email, Sigma had not yet submitted its data to SRHW, and Sigma submitted its July 2008 data to SRHW the very next day. (CX 1318 at 001).
1257. On September 23, 2008, Mr. Tatman sent another email to Mr. Brakefield asking if the DIFRA reporting cycle was on schedule. (CX 2448; CX 2447 (Tatman email to Brakefield: “To your knowledge are we now on a normal reporting cycle for DIFRA? If so all members should have reported by the 15th and the reports should be out by the 20<sup>th</sup>.”); Brakefield, Tr. 1315-1317; Tatman, Tr. 556-557).
1258. As with the prior month, Sigma had not yet submitted its data to SRHW, and it submitted its August 2008 data to SRHW three days later. (CX 1316 at 001).

1259. On several occasions, Mr. Brakefield instructed Mr. Tatman that such direct communications between DIFRA members, and between DIFRA members and SRHW, were inappropriate, and that communications should go through the association's lawyers. (Brakefield, Tr. 1314-1317 ("Did you tell Mr. Tatman that it was inappropriate for him to contact you directly? A. Yes, sir, I did. On several occasions."); Brakefield Tr. 1288 ("I basically tried to get Wood Herren to make that call and then also tried to get Mr. Tatman to understand that that was not the proper way to do that, we need to proceed with the attorneys in that kind of communication.")).

## **7.6 DIFRA Was Intended and Used to Facilitate Price Stability and Transparency Through an Information Exchange**

1260. Notwithstanding the potentially procompetitive purposes set forth in DIFRA's Articles of Incorporation (such as industry standard setting, education, outreach, advocacy, and research), DIFRA's actual objective, and the only activity it meaningfully engaged in, was the operation of an information exchange aimed at monitoring market shares, reducing competition, and stabilizing prices in the Fittings market. (*Infra* ¶¶ 1261-1337).

### **7.6.1 Original Purposes of DIFRA**

1261. DIFRA did not meaningfully engage in any of the salutary purposes listed in its Articles of Incorporation. (*Infra* ¶¶ 1262-1274).
1262. Article III of the DIFRA Articles of Incorporation sets forth various purposes of the organization:
- (i) To promote the interests of the ductile iron fittings industry and to promulgate policies and conduct activities for the betterment of the ductile iron fittings industry, provided that all policies and activities of the Association be consistent with applicable federal, state and local antitrust, trade regulation and other laws and regulations;
  - (ii) To provide members and others with the opportunity for discussion, education, advancement and improvement of the ductile iron fittings industry through meetings, seminars, publications, and other programs and activities;
  - (iii) To advocate and publicize the needs, interests and merits of the ductile iron fittings industry to industry, the public; and the government;
  - (iv) To assist in the development and establishment of standards with respect to the ductile iron fittings industry;
  - (v) To acquire, prepare, publish and disseminate technical data and information relating to the ductile iron fittings industry;

(vi) To plan and conduct research and test programs for ductile iron fittings and other products of interest to the ductile iron fittings industry; and

(vii) To do those things necessary or desirable for the accomplishment of any of the foregoing purposes and for the interest and benefit of the Association and its members, including the exercise of those powers which are authorized by the Act.

(CX 0158 at 002-003; Tatman, Tr. 576).

1263. DIFRA did not do anything to “promote the interests of the ductile iron fittings industry,” despite that being a purpose listed in its Articles of Incorporation. (Tatman, Tr. 576-577 (“[T]hey did not do anything to promote the interests of the ductile iron fittings industry”); Brakefield, Tr. 1229-1234 (DIFRA did not actually do anything to pursue this purpose); CX 0158 at 002-003 (listing purpose in DIFRA Articles); CX 1480 at 004-005 (same)).
1264. DIFRA did not do anything to create “opportunity for discussion, education, advancement and improvement of the ductile iron fittings industry through meetings, seminars, publications or other programs and activities,” despite that being a stated purpose in the articles of incorporation. (Tatman, Tr. 577; Brakefield, Tr. 1230 (DIFRA never provided seminars, never issued publications); CX 0158 at 003 (listing purpose in DIFRA Articles); CX 1480 at 005 (same)).
1265. DIFRA did not do anything to “advocate or publicize the needs, interests and merits of the ductile iron fitting industry to industry, the public and the government,” despite that being a stated purpose in the articles of incorporation. (Tatman, Tr. 577; Brakefield, Tr. 1231 (DIFRA did not engage in any activities to advocate for the interests of the Fittings industry); CX 0158 at 003 (listing purpose in DIFRA Articles); CX 1480 at 005 (same)).
1266. DIFRA did not do anything to “assist in the development and establishment of standards with respect to the ductile iron fittings industry,” despite that being a stated purpose in the articles of incorporation. (Tatman, Tr. 578; Brakefield, Tr. 1231-1232, 1256 (DIFRA did not establish or propose any Fittings standards, did not form a standards committee); Brakefield, Tr. 1328 (from 2005 until the present, DIFRA has never taken action to promote standards for Fittings); CX 0158 at 003 (listing purpose in DIFRA Articles); CX 1480 at 005 (same); CX 2538 (McCutcheon, IHT (Vol. 2) at 246) (DIFRA never did any work on setting industry standards or industry codes); CX 2541 (Crawford, Dep. at 82) (U.S. Pipe representative recalls no DIFRA committees established to discuss industry standards)).
1267. DIFRA did not do anything to “acquire, prepare, publish and disseminate technical data and information relating to the ductile iron fittings industry,” despite that being a stated purpose in the articles of incorporation. (Tatman, Tr. 578; Brakefield, Tr. 1232-1233; CX 0158 at 003 (listing purpose in DIFRA Articles); CX 1480 at 005 (same); CX 2541



(Crawford, Dep. at 83-85 (U.S. Pipe representative recalls no committees established to discuss technical aspects of Fittings)).

1268. DIFRA did not do anything to “plan and conduct research and test programs for the ductile iron fittings and other products of interest,” despite that being a stated purpose in the articles of incorporation. (Tatman, Tr. 578; Brakefield, Tr. 1233; CX 0158 at 003 (listing purpose in DIFRA Articles); CX 1480 at 005 (same)).
1269. DIFRA never formed any committees. (Brakefield, Tr. 1236, 1256).
1270. DIFRA never sought input from Fittings Distributors. (Brakefield, Tr. 1330).
1271. DIFRA’s only operating expenses were payments to the law firm Bradley Arant, which were split evenly by the four members and were inclusive of SRHW’s fees. (Brakefield, Tr. 1272-1274; CX 1486 at 002 (meeting agenda item re: operating expenses)).
1272. DIFRA has never filed tax returns, and DIFRA members have never paid dues to DIFRA. (Brakefield, Tr. 1323-1324).
1273. Notwithstanding the various stated purposes set forth in the DIFRA Articles of Incorporation, the only thing that DIFRA did was to report aggregated sales data of its members Fittings sales data (by tons shipped). (Tatman, Tr. 577-578 (the only thing that DIFRA did was to aggregate data and send it out to the DIFRA members)).
1274. The DIFRA information exchange (*i.e.*, the DIFRA members’ submission of data to the accounting firm SRHW and SRHW’s subsequent distribution of aggregated reports of that data to the DIFRA members) did not relate to any of the purposes of DIFRA that are identified in the DIFRA Articles of Incorporation. (Brakefield, Tr. 1328).

### **7.6.2 McWane, Sigma and Star Intended DIFRA to Facilitate Their Information Exchange and Stabilize the Fittings Market**

1275. For each of McWane, Sigma and Star, the actual intended purpose of DIFRA was to facilitate the exchange of sales information and stabilize the Fittings market. (*Infra* ¶¶ 1276-1296).

#### **7.6.2.1 Sigma**

1276. At trial, Mr. Rybacki testified that he believed DIFRA to be important because of the threat to the Fittings industry posed by PVC, and because Fittings linings and coating needed to be standardized; however, Mr. Rybacki conceded that DIFRA never took any action on the PVC threat, or standardizing linings or coatings. (Rybacki, Tr. 3533).
1277. At trial, Mr. Pais testified to several purposes of DIFRA and Sigma’s reasons for participating in the DIFRA information exchange, including:
- a. Mr. Pais testified that he communicated to potential DIFRA members that visibility into the size of (and changes in the size of) the Fittings market by tonnage would help

with inventory management and was one reason to form the organization. (Pais, Tr. 1971-1972, 1975-1976).

- b. Specifically, Mr. Pais believed that the market and market-share information generated by DIFRA could help Sigma and the other suppliers avoid over- or under-production of Fittings and consequent lost profits for the industry. (Pais, Tr. 1983-1985; CX 1088 at 001-002 (October 13, 2008 Pais email: “[T]he result of erroneous or misunderstood market and market share can lead to unwise and often costly marketing decisions, as McWane/Tyler themselves found in ‘06 - ‘07, to their detriment and to that of the whole industry!”)).
  - c. Mr. Pais also testified that he communicated to potential DIFRA members that another benefit of DIFRA would be possible standardization of Fittings coatings and linings. (Pais, Tr. 1971-1972).
  - d. Mr. Pais specifically denied that he expected that sharing Fittings sales information the DIFRA members would create a more stable market. (Pais, Tr. 1975 (“Q. Was it your expectation that by sharing this information you could create a more stable market? A. I don’t think that follows from that. And again, for me, “stable” was a very broad term. I was more focused on knowing the size of the market”)).
1278. Mr. Pais’s trial testimony was impeached by Mr. Saha’s trial and deposition testimony:
- a. In 2004, Mr. Pais invited Mr. Saha, then at the small Fittings supplier, PCI, to join a new organization he wanted to start, DIFRA. (Saha, Tr. 1178-1179).
  - b. Mr. Pais told Mr. Saha that DIFRA would be an organization like DIPRA, the Ductile Iron Pipe Research Association, and would require at least three members. (Saha, Tr. 1179-1180, 1182<sup>7</sup>).
  - c. Mr. Pais informed Mr. Saha that DIFRA would operate an information exchange that would have required PCI to provide its Fittings sales information in tonnage and dollars. (Saha, Tr. 1187; CX 2519 (Saha, Dep. at 72-73) (Mr. Pais “explained to me, that . . . if we formed an organization where we turned in -- we had to turn in every quarterly our sales by product group and category and tonnage, and that we will -- we should stay within a range of our existing tonnage.”)).
  - d. Mr. Pais explained to Mr. Saha that “it is hurting the business, all of us trying to compete,” and that Mr. Pais was seeking to organize DIFRA in order to “stabilize prices.” (Saha, Tr. 1202<sup>8</sup>; CX 2519 (Saha, Dep. at 72-75)).

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<sup>7</sup> The cited trial testimony regarding the out of court statement of Mr. Pais is not cited for the truth of the matter asserted in the statement. (See Saha, Tr. 1179-1180).

<sup>8</sup> At trial, the cited testimony regarding Mr. Pais’s out of court statements was admitted for impeachment purposes. (See Saha, Tr. 1211-1212). The cited testimony regarding Mr. Pais’s

- e. Mr. Pais encouraged Mr. Saha to join DIFRA because having all the Fittings suppliers as DIFRA members would provide market stability on pricing. (Saha, Tr. 1207<sup>9</sup> (“The reasons were basically – it’s the same – he wanted market stability on pricing issues, and he felt that all the sellers of fittings belonging to an organization would give the stability on pricing.”)).
  - f. Specifically, Mr. Pais explained to Mr. Saha that PCI would have to maintain its rank among suppliers, rather than growing its Fittings sales. (Saha, Tr. 1187-1188). Mr. Saha believed he would not be allowed to grow his sales tonnage beyond his then current levels at the time DIFRA was formed. (Saha, Tr. 1196, 1199).
  - g. PCI ultimately did not join DIFRA because Mr. Saha believed doing so would require his company to curtail its growth. (Saha, Tr. 1185-1186, 1194, 1996).
1279. Mr. Pais’s trial testimony on the purpose of DIFRA is contradicted by Mr. Pais’s own business documents:
- a. In a June 19, 2008 email to Sigma’s “M20” management group, Mr. Pais described the establishment and benefits of DIFRA:
 

This is a huge step by Sigma and Star, in being able to demonstrate our willingness and commitment to strengthen our industry and signal our willingness to grow in a responsible manner. Though most of the initial benefit is intangible such as increased trust and respect between members, it is also the first step fro [*sic*] more substantial economic benefits in the future.

(CX 1092 at 001; Pais, Tr. 1976-1978).
  - b. In explaining his June 19, 2008 email, Mr. Pais testified that he was pleased that the DIFRA members had overcome “animosities and cultural differences,” and that he considered DIFRA an achievement “because for me, I always believed in the team concept, and . . . to me team means together everyone achieves more.” (CX 2528 (Pais, Dep. at 124-125); *see also* Pais, Tr. 1978-1979 (explaining that “more substantial economic benefits” referred to the ability to manage inventory based on the size of the Fittings market and the ability to assess Sigma’s relative performance in different Fittings product segments based on size)).

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out of court statements should also be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3).

<sup>9</sup> At trial, the cited testimony regarding Mr. Pais’s out of court statements was admitted for impeachment purposes. (*See* Saha, Tr. 1211-1212). The cited testimony regarding Mr. Pais’s out of court statements should also be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3).

- c. In an October 2008 email sent to Sigma's M20 group (approximately top 20 managers) and to its two Frontenac board members, Mr. Florence and Mr. Kuehl, Mr. Pais described DIFRA as benefitting Sigma by creating "an opportunity to create trust and respect among fellow suppliers, which can lead to mature and disciplined pricing decision making in an appropriate and legally sound environment." (CX 1088 at 001; Pais, Tr. 1982-1985).
- d. In a December 2008 email to Mr. Walsh, Mr. Bhattacharji and Mr. Rybacki, Mr. Pais wrote that DIFRA reassured McWane, Star and Sigma that their sales declines were due to the decline in the market and not due to competition:

[A]ll competitors are shaken by the sever[e] decline in the market volume and thanks to DIFRA data, the 3 [McWane, Star, and Sigma] are somewhat reassured that it's the market weakness that's costing them volume and they are not losing to the competition."

(CX 1077 at 002; Pais, Tr. 2005-2006).

- e. In a February 9, 2009 letter from Mr. Pais to Sigma's lender Ares Capital Corporation, Mr. Pais explicitly explained that DIFRA helped stabilize Fittings prices and preserve strong gross margins despite the weak Fittings market in 2008 because it enabled the suppliers to determine whether a loss in sales volume was due to overall market conditions or due to "cheating" by competitors:

In Fittings, there are effectively 3 – McWane, Sigma and Star – and all suffer from the same challenges and there seems to be a great desire to improve the pricing and *each one has demonstrated thru a reasonable amount of discipline, even being protective of our respective market share*. This is where the monthly market size data produced by DIFRA, an industry association that SIGMA helped to form, with 4 supplier members fro [sic] Fittings (one, U.S. Pipe, actually is not a producer anymore, but a small player buying almost all their needs from SIGMA), *helps maintain the pricing discipline, as the market and market share data point to a relatively consistent and stable market pattern. It has helped us not to allow the sharp market decline to be mistaken as a 'loss of market share', which mostly causes price reaction*. Our [Gross Margins] have continued to be strong, throughout the year, even as the volumes have been weak.

(CX 0313 at 004 (emphasis added); Pais, Tr. 1992-1996 ("Q. Sir, and my question is: In providing this information to your lender, Ares Capital, was Sigma intending to be truthful and transparent? A. The answer is yes.")).

1280. Mr. Pais's trial testimony is also contradicted by his own prior sworn testimony in this matter:

- a. Mr. Pais testified that “[t]o Sigma, it really helped to know that our loss of volume and the decline of volume compared to previous, or our targets, was a result of the market,” (CX 2528 (Pais, Dep. at 307-308); *see also* Rybacki, Tr. 3557 (testifying that Sigma’s motivation for participating in DIFRA was to confirm Sigma’s market share in Fittings)).
  - b. Mr. Pais further testified that without the reassurance provided by DIFRA – i.e., “in a thoroughly competitive almost hostile environment” – the suppliers would have been prone to “mistaken diagnosis” of their declining volumes, making it harder to make the “right decision” on pricing and other competitive decisions. (CX 2527 (Pais, IHT at 86-87)).
  - c. For example, if the DIFRA data showed that “[v]olume was certainly going down, but the market share was holding up” it would help Sigma know that it was not being threatened by McWane or Star. (CX 2527 (Pais, IHT at 80-87)).
1281. While the DIFRA information exchange was active, Mr. Pais hoped that if Sigma were to announce a price increase, then McWane and Star would follow because of their knowledge from DIFRA data that their reduced volume was due to overall market decline rather than a loss of market share. (Pais, Tr. 2006).
1282. After DIFRA had largely collapsed, (*see infra* § 7.8.5), Mr. Pais saw reviving DIFRA as instrumental to realizing a Fittings price increase. For example, on or about December 7, 2009, Mr. Pais identified a “Top 10 goals” for Sigma’s top five managers for 2010 to include: “Exercise Pricing Leadership to **realize a net increase of 5% in ASP, thru reviving DIFRA** and attempting other Industry Associations.” (CX 1074 at 001 (emphasis added)).
1283. Mr. Rybacki believed that if that if the principal members did not submit their tonnage data to DIFRA, there was a distinct possibility that the association would fall apart. (Rybacki, Tr. 3564-3566 (“[I]f you don’t participate in the agreed-upon conditions, then I was afraid it might disband.”)).

#### 7.6.2.2 Star

1284. Star’s motivation for joining DIFRA was to obtain the market share data that it would be able to obtain through the association. (McCutcheon, Tr. 2413 (testifying that he was persuaded to join DIFRA because “it would be nice to know what our market share was”); CX 2538 (McCutcheon, IHT (Vol. 2) at 241-243, 245)).
1285. At the first DIFRA meeting he attended, Mr. McCutcheon asked the group what the purpose of the association was. In response, “nobody said anything about market share,” and Mr. Brakefield gave an answer “about doing things to help the industry, standards, codes, helping the, you know, the customer.” (CX 2538 (McCutcheon, IHT (Vol. 2) at 245-246)).
1286. Mr. McCutcheon did not believe that the purposes given by Mr. Brakefield were the real purposes of DIFRA. (CX 2538 (McCutcheon, IHT (Vol. 2) at 246) (“Q. Did you think

that was the real purpose of DIFRA? A. Never did.”); CX 2538 (McCutcheon, IHT (Vol. 2) at 294-295) (McCutcheon never thought the purpose of DIFRA was to pursue standards or certifications; he thought the purpose of DIFRA was “for my competitors to get information”).

1287. While DIFRA discussed doing things that would collectively benefit the Fittings industry, Mr. McCutcheon believed that the only purpose of DIFRA was to facilitate the exchange of Fittings sales information among the competing suppliers. (CX 2538 (McCutcheon, IHT (Vol. 2) at 246) (“[O]ddly enough, . . . as soon as McWane got the information that they wanted, this is my opinion, as soon as they got what they wanted to get, there was never another conversation about having a meeting.”)).

#### 7.6.2.3 McWane

1288. In the “Competitive Environment” portion of his April 29, 2008 presentation at McWane’s General Manager’s Meeting, Mr. Tatman reported on the upcoming availability of DIFRA data and his expectation that that data would help McWane track its market share and plan pricing strategy, stating that “DIFRA will start reporting after April,” and that the “Objective is to Regain 1Q Share Loss While Continuing to Lead Upward Stable Pricing.” (CX 2047 at 020).
1289. The only activity that DIFRA ever engaged in was the exchange of sales data. (CX 2537 (McCutcheon, IHT (Vol. 2) at 246); Tatman, Tr. 577-578; *supra* § 7.6.1). After the DIFRA members began to exchange sales data, McWane never asked for, and there never was, another meeting of the members of DIFRA. (CX 2537 (McCutcheon, IHT (Vol. 2) at 247)).

#### 7.6.2.4 Initial Inclusion of Dollar Amounts

1290. DIFRA members initially planned to include dollar values of sales in addition to tonnage shipped, which would have allowed each firm to determine how their average price per ton compared with the industry average. (CX 2495 (Brakefield, Dep. (Vol. 1) at 109) (McWane proposed exchanging sales dollars information); CX 1333 at 007 (draft reporting form attached to January 2007 SRHW engagement letter showed dollar value of net sales); CX 1467 at 004 (draft Sigma submission from January 2007 showing dollars)).
1291. McWane in particular wanted the DIFRA information exchange to include dollar amounts of sales. (Brakefield, Tr. 1242).
1292. McWane submitted DIFRA data to SRHW in 2007 that included its Fittings sales in dollars. (CX 1331 (McWane February 16, 2007 submission to SRHW showing dollar amounts of sales)).
1293. Sigma was prepared to provide sales information to DIFRA in dollars. (Brakefield, Tr. 1244-1253); CX 1467 at 004 (draft Sigma submission from January 2007 showing dollars)).

1294. The DIFRA format that included dollars allowed DIFRA members to determine average price per ton of Fittings sales. (Brakefield, Tr. 1251).
1295. As late as March 19, 2008, Mr. Long circulated to the DIFRA members a draft data reporting form that included dollar amounts of Fittings sales. (CX 1843 at 001, 006; Brakefield, Tr. 1253-1255).
1296. Ultimately, however, the DIFRA reports aggregated Fittings sales in tonnage shipped only, and not in dollars. (*See supra* ¶¶ 1140-1141 (describing agreed reporting format)).

### 7.6.3 McWane, Sigma and Star Used the DIFRA Data to Monitor Their Market Shares, Detect Cheating and Inform Their Pricing Decisions

1297. From the second half of 2008 and into 2009, McWane, Sigma and Star used the DIFRA data to monitor their market shares, detect cheating and inform their Fittings pricing decisions. (*Infra* ¶¶ 1298-1337).
1298. The DIFRA data was collected, analyzed, and used by the DIFRA members for the purpose of determining and monitoring the members' respective market shares in the Fittings market. (*E.g.*, Tatman, Tr. 558-559 (McWane would analyze the data received from DIFRA each month to determine market share); CX 1712 at 001, *in camera* { }; McCutcheon, Tr. 2477-2478, *in camera* { }; CX 1088 at 003 (October 13, 2008, Pais email within Sigma reviewing DIFRA data and analyzing Sigma's market shares and the assumed market shares of competitors based on DIFRA data)).
1299. DIFRA helped McWane, Sigma, and Star overcome an impediment to reaching and sustaining collusive agreements: the need to adequately monitor the behavior of cartel participants and to detect and deter defections from the collusive strategies. (CX 2260 (Schumann Rep. at 47, 49)).

#### 7.6.3.1 McWane Use of DIFRA Data

1300. Internal McWane reports tracking market share trends relied on DIFRA data, including Mr. Tatman's July 18, 2008 Executive Report for the second quarter of 2008. (CX 1562 at 001 (Tatman email noting that report had been updated based on DIFRA data that had come in that morning); Tatman, Tr. 546).
1301. Within a day of having received the first DIFRA report (with data through April 2008), Mr. McCullough emailed the market share findings to McWane's CEO Ruffner Page, with an accompanying analysis of the implications for Fittings pricing strategy: continue to withhold full support for price increases until Project Pricing declines and McWane regains market share:

I believe that until they feel prolonged profit margin pressures they will continue their historical practice of undisciplined market pricing. Until we see at least minor market share improvement I

am in favor of no price increase support in the utility fittings market.

(CX 0139 at 001; CX 2479 (McCullough, Dep. at 230-231) (explaining that in the above passage of CX 0139 “they” referred to Sigma and Star, and perhaps other importers, and that “undisciplined market pricing” may be a reference to Project Pricing)).

1302. The DIFRA market share and market share trend data gave the Fittings suppliers insight into their relative pricing levels. McWane was able to use the DIFRA sales report to determine that McWane was losing market share because Distributors were purchasing Fittings at discounted prices below McWane’s. (CX 2068 (Page email responding to Mr. Tatman’s market share analysis of the first DIFRA report: “This just reflects the lack of support and feedback we got from distribution as they wanted us to hold high price levels and buy underneath us.”); CX 2482 (Page, Dep. at 207- 209) (testifying that he interpreted McWane’s lost market share as being presumably caused by discounting)).
1303. McWane then relied on the DIFRA data to determine the magnitude of its Fittings price increases; because the DIFRA data indicated McWane’s share loss was larger than McWane had believed, McWane only announced an 8 percent price increase, rather than the 12 percent increase that it had also contemplated. (Tatman, Tr. 537; *see also* CX 1576; Tatman, Tr. 544).
1304. In addition, Mr. Tatman used the DIFRA data to evaluate the success of the Tatman Plan and the compliance of the other suppliers with the January 2008 agreement to curtail Project Pricing. By early September of 2008, he had used the DIFRA data to conclude that the Tatman Plan was not working. Mr. Tatman wrote in a presentation that he emailed to Mr. McCullough and Mr. Walton on September 9, 2008 that McWane’s attempt to compress prices and lead price stability had been detrimental to its market share. (RX-616 at 0005 (observing, based on DIFRA data that “Leading price stability has been detrimental to share”); CX 1188 at 005 (same observation in a subsequent draft); Tatman, Tr. 972 (explaining his conclusion in that document that “[i]t was a plan, didn’t work”)).
1305. Still, in that same document, Mr. Tatman held out hope that the DIFRA information exchange would enable McWane to coexist with its competitors without lowering its costs or providing better service, writing that “[o]ur competitors have both a lower average cost basis and a better service model which limits options for profitabl[e] share growth,” but that “DIFRA will eventually add some increased stability.” (RX-616 at 0012; CX 1188 at 012).
1306. On December 17, 2008, Mr. Tatman forwarded to Messrs. McCullough, Walton, and Jansen a detailed month-by-month market share analysis based on DIFRA data. (CX 0362).
1307. On January 21, 2009, Mr. Tatman sent an email to Messrs. Walton, McCullough, and Jansen forwarding and summarizing a spreadsheet entitled “McWane, Inc. DIFRA Market Share Analysis” covering DIFRA data through December 2008. In his cover



email Mr. Tatman drew conclusions regarding McWane's Fittings market share performance based on the DIFRA data: "December was clearly our worst share performance for the year!" and that "Our share performance for the Sept-Dec. period is noticeably off from the May-Aug. period." (CX 0656; Tatman, Tr. 560-564).

1308. Mr. Tatman used the DIFRA data to draw conclusions regarding levels of competitor Project Pricing, and to plan McWane's future pricing moves. In his January 21, 2009 email forwarding the DIFRA Market Share Analysis, he stated:

As we've historically seen, as the market volume tightens up our import competitors tend to be less and less disciplined with pricing and more and more creative with making and hiding deals.

It's still too early in the year to determine whether the new fiscal year will bring a change in behavior, but with the Jan MTD order trend and competitive feedback data my gut tells me I'm going to have some tough pricing decisions to make during the 1st quarter.

(CX 0656; Tatman, Tr. 560-562).

1309. In a January 23, 2009, email to Mr. McCullough, Mr. Page responded to the December 2008 DIFRA data, which had shown a McWane loss of market share: "Trying to not be emotional about it. But these numbers are infuriating. We have serviced our customers I assume and have the product they need, we are just being discounted against?" (CX 1226 at 001).
1310. Mr. Page then sent an email to McWane owner C. Phillip McWane, informing him that Sigma and Star had announced price increases in the "<10% range," and that Mr. Page and Mr. McCullough had decided that McWane would not follow those increases "since we continue to lose market share to somebody." (CX 2089 at 001).
1311. Mr. Tatman formulated his recommendations for McWane's April 2009 Fittings list price restructuring using DIFRA data. (Tatman, Tr. 279-280).
1312. Mr. McCullough also viewed the DIFRA data as a way to measure price stability and market share when making pricing decisions. In a January 21, 2009 response to Mr. Tatman's January 21, 2009 email, he wrote:

My inclination is to "not" send [out] a revised multiplier notice and "not" send a letter of explanation but simply let our customers know that price instability has led to Tyler/Union market erosion and that we cannot support higher pricing until there is pricing stability and market share maintenance.

(CX 2458 at 001; Tatman, Tr. 566-569).

1313. Mr. McCullough expressed a concern to Mr. Tatman that the DIFRA reports may be inaccurate due to underreporting:

[B]eing pessimistic on this I will take a 'wait and see' attitude. Please get the data circulated promptly so we can analyze and reach a decision on pending price increase letter. I know we must have some confidence that our competitors are reporting accurately but it is entirely possible they will under report their sales. . . .

(CX 1187).

1314. Nonetheless, while Mr. Tatman acknowledged the possibility of underreporting, especially because Star was a reluctant participant in the DIFRA information exchange, Mr. Tatman felt confident that any gross under-reporting could be discovered fairly quickly:

I would agree that since at least one member is being somewhat drug to the party . . . there is certainly a risk of under reporting. . . . Slight under reporting by a few thousand tons would be hard to find without an audit, but we flush out any gross under reporting fairly quickly.

(CX 1187; Tatman, Tr. 528 (Mr. Tatman admitting that he is referring to Star)).

#### 7.6.3.2 Star Use of DIFRA Data

1315. On or about June 17, 2008, Star received the DIFRA report compiling the data from McWane, Sigma, and Star for 2006, 2007, and January 2008 through April 2008. (CX 0052 at 001-007; *see* CX 2538 (McCutcheon, IHT (Vol. 2) at 321)).

1316. { }  
(McCutcheon, Tr. 2445, *in camera*).

1317. { } (McCutcheon,  
Tr. 2445-2446, *in camera*; CX 1712 at 001, 004, *in camera* {

}; CX 1707 at 001, 006, *in camera* {

}; CX 1711 at 001, 002, 004, 006, *in camera* {

}

1318. { }  
McCutcheon, Tr. 2477-2481, *in camera* { };  
McCutcheon, Tr. 2491-2492, *in camera* { }; McCutcheon,  
Tr. 2492-2496, *in camera* { }; CX 2525 (Minamyer, IHT  
at 21) (Star broke down the DIFRA data to estimate its market share and the market share of McWane and Sigma in each state in the country)).

1319. {  
 } (McCutcheon, Tr. 2482, *in camera*; *see also* CX  
 2525 (Minamyer, IHT at 22) {  
 }

1320. {  
 } (CX 2334 at 001, *in camera*).

1321. The DIFRA reports enabled Star to assess whether any decline of Star's sales of Fittings was due to the decline of the economy or due to a decline in performance in comparison to McWane or Sigma. (CX 2538 (McCutcheon, IHT (Vol. 2) at 330)). Star would have had "definitely more uncertainty" as to how it was doing in the Fittings market without the DIFRA data. (CX 2538 (McCutcheon, IHT (Vol. 2) at 334, 336)).

1322. {  
 } (CX  
 1706, *in camera*), {  
 } (RX-143, *in camera*).

1323. {  
 } (CX 2538  
 (McCutcheon, IHT (Vol. 2) at 336) {  
 }; McCutcheon, Tr. 2446, *in  
 camera*).

### 7.6.3.3 Sigma Use of DIFRA Data

1324. Sigma used the DIFRA data to measure its market share and to help formulate its pricing and marketing strategy:

Q. But in October of '08, is that typically the time where you're doing the planning for 2009, including whether you're going to announce a price increase at the beginning of the year?

A. That is correct.

Q. And you would have used the DIFRA data – would you have used the DIFRA data as a guide to those discussions?

A. Yeah. We would have certainly used it as some guide.

...

Q. At this point, in December of 2008, are you – you're planning pricing strategy for 2009?

A. Certainly. As it is the norm in every December.

Q. When Sigma was doing that pricing strategy planning, were you using the DIFRA data?

A. Certainly.

(Pais, Tr. 1986, 2002-2003).

1325. On June 19, 2008, two days after receiving the initial DIFRA report, Mr. Pais sent to Sigma's top 20 managers an analysis he created based on the DIFRA data that set forth Sigma's Fittings market share (referred to as "SMS") in each of the Fittings categories that were delineated in DIFRA data. (CX 1092 at 001, 004, 005; Brakefield, Tr. 1299; Pais, Tr. 1980-1981).
1326. Sigma analyzed the DIFRA data both with and without Sigma's OEM sales to ACIPCO in order to assess (by excluding ACIPCO) its market share in the segment of the Fittings market sold to Distributors. (Pais, Tr. 1980-1981).
1327. On October 1, 2008, Mr. Pais directed Raju Kakani, Sigma's IT Director, to prepare monthly reports of Sigma's market share using DIFRA data. Mr. Kakani prepared such reports monthly under Mr. Brakefield's supervision. (Brakefield, Tr. 1299, 1304-1305; CX 1848 at 001).
1328. Mr. Bhattacharji, who was responsible for sourcing Fittings and managing Sigma's supply chain, rarely looked at the monthly DIFRA reports. (CX 2523 (Bhattacharji, Dep. at 259)).
1329. Aside from the generation of Sigma market share reports, Mr. Brakefield was unable to identify any specific use of the DIFRA data by Sigma in its business. (Brakefield, Tr. 1308-1309; CX 2496 (Brakefield, Dep. (Vol. 2) at 154-155)).
1330. On October 13, 2008, Mr. Pais drafted a lengthy email to Sigma's top 20 managers analyzing the DIFRA data and Sigma market shares indicated by that data, and urging his managers to "discuss this important data as a source to guide our Pricing and marketing strategy in 09, with a clear goal to achieve an overall gain of at least 2%." (CX 1088 at 001, 004; Pais, Tr. 1986-1987). Mr. Pais added that "At this rather small level, it does not automatically mean we need to be disruptive or reckless with our pricing!" (CX 1088 at 004; Pais, Tr. 1987-1988).
1331. In May 2009, Mr. Pais sent an email to Sigma's M20 group using DIFRA 2008 data to analyze market shares and to determine who had taken McWane's "alleged loss of 4-5%" market share. (CX 0319 at 001). The email set forth detailed market share trend analysis based on the DIFRA data. (CX 0319 at 007; Pais, Tr. 1998-1999).
1332. Sigma used the DIFRA data to track its Fittings market share and reassure itself that it was maintaining its share of the market even though it was losing volume in a declining market. As Mr. Pais told Sigma's top managers, Sigma "kept up our DIFRA membership

thru 08 and had used the monthly data in an useful manner to keep track of both the total market size and our SMS (Sigma Market Share),” and as overall volume continued to decline in 2008, Sigma was “able to stay reassured that we were holding on to our [market share] . . . or close to it!” (CX 0319 at 002 (May 4, 2009 email from Mr. Pais to Sigma’s M20)).

1333. Sigma carefully considered the DIFRA data to determine its market share and whether it needed to lower its prices to regain a loss of market share. Had the DIFRA data pointed to a substantial loss of market share by Sigma, then Sigma would have lowered prices to gain share. (CX 2527 (Pais, IHT at 85-86) (“If the DIFRA data pointed to that we were really losing market share, then we would have used price to get it back.”)).

#### 7.6.3.4 Sigma Correction of DIFRA Data

1334. A Sigma audit detected errors in the data initially submitted to DIFRA, and Sigma voluntarily corrected these errors by resubmitting data on June 30, 2008. (RX-086 at 0002; Brakefield, Tr. 1318).
1335. The August 19, 2008 DIFRA report, reflecting data through July 2008, reflects the corrected Sigma data, whereas the original June 17, 2008 DIFRA report reflects the original, incorrect Sigma data. (Brakefield, Tr. 1318-1320 (discussing CX 1340 (corrected report) and CX 0052 (report with errors)).
1336. Sigma’s corrected sales figures represented an error of approximately .25% to 2% from Sigma’s previously reported sales data, and did not cause Mr. Brakefield to reevaluate any of the opinions he had previously formed based on the original DIFRA reports. (Brakefield, Tr. 1319-1321).
1337. No DIFRA member ever formally requested an audit of data submitted by other members to DIFRA, and no such audit of a member’s submissions to DIFRA has been performed. (Brakefield, Tr. 1322-1323).

### **7.7 The Agreements Among McWane, Sigma, and Star Were Successful Through Most of 2008 Before Trust Began to Break Down in the Fall of 2008**

1338. The conspiracy among McWane, Sigma, and Star was largely effective through most of 2008, resulting in reductions in Project Pricing, higher and more stable prices, and improved financial performance by the suppliers. (*Infra* ¶¶ 1339-1435).

#### **7.7.1 The Suppliers Observed Reduced Project Pricing and Stabilized and Increasing Prices**

1339. Under the “Sales/Market/Competitive Environment” section of Mr. Tatman’s 2008 Second Quarter Executive Committee Report, Mr. Tatman concluded that Project Pricing had “slowed” in May and June and that Sigma and Star had “communicated support” for McWane’s June 17, 2008 announced price increase (that was to be effective July 14, 2008):

We continue to track the level of confirmed discounting and job pricing within our competitive action file. *The level of activity appears to have slowed over the past several months* probably driven by a combination of rising costs putting more pressure on price and more creative use of programs.

Both Sigma & Star have communicated support of the July 14th price increase although Sigma's method has been much less public or open from what they have historically done. The sales team is picking up spotted branch inputs, mostly in the Southeast, of still being able to place orders at the old multipliers, but it will be mid-August until we can make an accurate assessment of the adherence level to published pricing.

(CX 1562 at 004; Tatman, Tr. 549-551, 558, 1061-1065; *see also supra* ¶ 1047 (describing the low level of Project Pricing observed in McWane's pricing protection logs for the first nine months of 2008)).

1340. Star believed that the suppliers had been successful in their efforts to reduce Project Pricing. (CX 0814 (Minamyer email dated August 25, 2008) ("I know we have been very careful on special pricing and it seems to be working pretty good."); McCutcheon, Tr. 2570-2571 (Mr. Minamyer provided this assessment to Mr. McCutcheon and to Star's division managers in August 2008); *see also infra* § 7.7.5.4 (describing reduced levels of Project Pricing reflected in Star's special project pricing reports)).
1341. Sigma also noted the success – and prospect for further success – of the suppliers' collaboration. On December 7, 2008, Mr. Pais emailed the Sigma management team, including Mr. Florence and Mr. Kuehl of Frontenac, with an assessment of the DIFRA data through October 2008:

All in all, we can infer from the DIFRA data over the past about 6 months that the 3 primary suppliers -- McWane, Sigma and Star -- may be at a *relatively steady market share level*, without any significant swings from one to the other. This in turn should bode well for a more *mature and responsible pricing strategy* for 09 *which focuses on realizing higher prices* and hence better GMs to offset the loss of volume, which is inevitable for most of 09.

(CX 1174 at 001 (emphasis added); Pais, Tr. 2000-2004 ("We were just hoping for a price increase, period, whether it came from some revelation or some opportunity or our salesmanship because that was -- at that point we were desperate for the revenue . . . .")).

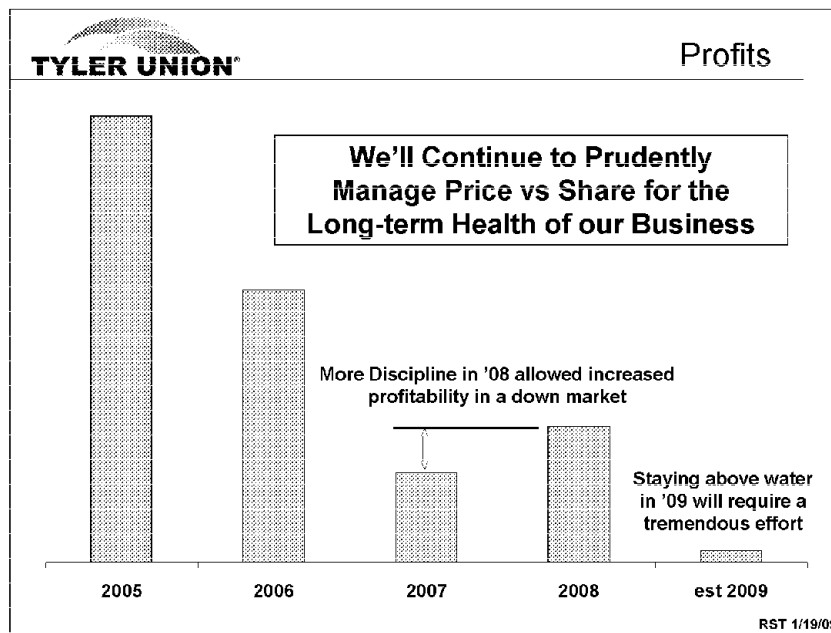
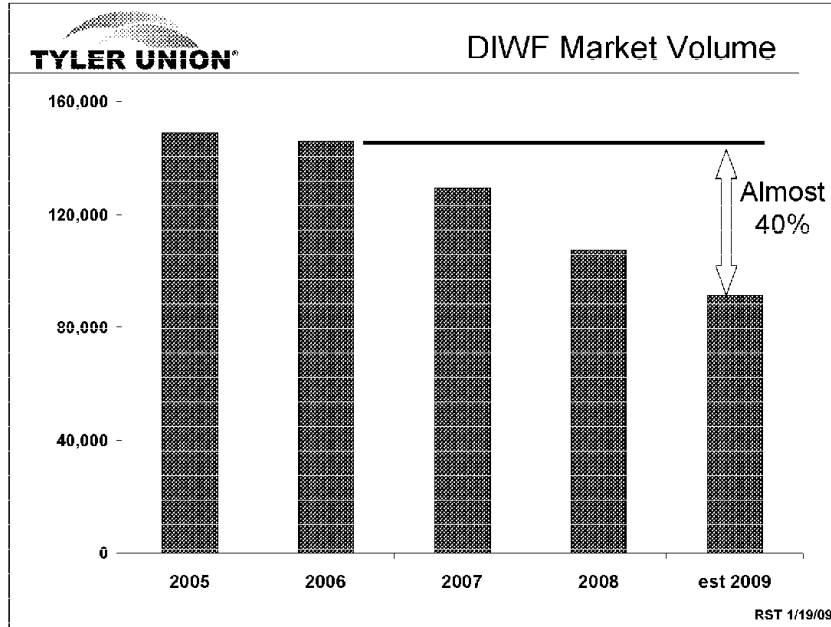
1342. Mr. Pais's May 4, 2009 market share graphs based on DIFRA data showed that Sigma's Fittings market share stabilized shortly after the DIFRA information exchange began, and remained relatively stable (within .2 percentage points) for the balance of 2008. (CX 0319 at 007; Pais, Tr. 1998-1999).

### 7.7.2 McWane's Fittings Prices and Financial Performance Improved

1343. McWane's Fittings prices increased and its financial performance improved as a result of the conspiracy. Its 2008 profits were better than its 2007 or 2009 profits, and the improvement was driven by improved pricing. (*Infra* ¶¶ 1344-1359).
1344. Mr. Tatman's presentation to McWane's CEO and others at McWane's April 29, 2008 General Manager's Meeting reported a 50% increase in profit on a 14% decline in sales for the Fittings business through the first four months of 2008. (CX 2047 at 004).
1345. Mr. Tatman's 2008 Second Quarter Executive Committee Report also reflects increased level of aggregate blended Fittings invoice prices through the first half of 2008. The average invoice price for 2007 was \$2322 per ton, and the average invoice price for the first quarter of 2008 was \$2576 per ton; April 2008 was \$2712 per ton; May 2008 was \$2632 per ton; and June 2008 was \$2769 per ton. (Tatman, Tr. 546-548; CX 1562 at 002).
1346. McWane's year-to-date Fittings profits through June 2008 increased \$5.209 million over the prior year, despite a 24% reduction in volume, in part because Fittings were sold at a higher price in 2008 compared to 2007. (CX 2145 at 006 (July 8, 2008 McWane budget variance report); CX 2481 (Nowlin, Dep. at 133-134)).
1347. McWane's year-to-date Fittings profits through July 2008 were up over \$5.4 million over the prior year based on over \$11.4 million in pricing gains, even as volumes fell 24%. (CX 1569 at 005 (August 13, 2008 McWane budget variance analysis); Tatman, Tr. 831-834). Non-Domestic Fittings prices rose between July 2007 and July 2008 from \$1,730 to \$1,981 per ton. (CX 1569 at 003; Tatman, Tr. 823, 826-831).
1348. McWane's year-to-date Fittings profits through August 2008 were up \$5.852 million over the prior year notwithstanding a 25% reduction in volume, in part because Fittings were sold at a higher price in 2008. (CX 2123 (September 8, 2008 McWane budget variance report); CX 2481 (Nowlin, Dep. at 130-132)).
1349. McWane's year-to-date Fittings' profits through September 2008 were up \$5.595 million over the prior year notwithstanding a 24% reduction in volume, in part because Fittings were sold at a higher price in 2008. (CX 2124 (October 7, 2008 McWane budget variance report); CX 2481 (Nowlin, Dep. at 129-130)).
1350. Although the U.S. was in a recession and the Fittings business was hit hard by rising costs and decreasing volumes, the gross profitability of McWane's Fittings business on a percentage basis for the first nine months of 2008 was higher than that for every full year from 1999 through 2007. (CX 0120 at 006; Tatman, Tr. 840-841).
1351. According to a profitability history analysis prepared by Mr. Tatman in October 2008 and based on data pulled from McWane's official financial records, McWane's Fittings business gross profit margin for the first nine months of 2008 was 22%, as compared to 15.4% for 2007, 19.6% for 2006, 20.6% for 2005, 14.9% for 2004, 0.0% for 2003, -0.4%







(CX 0622 at 003, 005) (profitability was up even though volume was down, attributed to “More Discipline”).

**7.7.3 Star’s Fittings Prices and Financial Performance Improved**

1360. Star’s Fittings pricing increased and its financial performance improved as a result of the conspiracy. (*Infra* ¶¶ 1361-1369).

1361. {

} (McCutcheon, Tr. 2497, *in camera*; CX 1872 at 001, *in camera*).

1362. {  
  
} (McCutcheon, Tr. 2500-2501, *in camera*; CX  
0042, *in camera*).

1363. {  
  
} (McCutcheon, Tr. 2501-2502, *in camera*; CX 0528  
at 003, *in camera*).

1364. {  
  
} (McCutcheon, Tr. 2653, *in camera*; CX 2470  
at 002, *in camera*).

1365. {  
  
} (McCutcheon, Tr. 2653, *in camera*; CX 2470 at 002, *in  
camera*).

1366. {  
  
} (McCutcheon,  
Tr. 2656, *in camera*; CX 2470 at 004, *in camera*).

1367. {  
  
} (McCutcheon, Tr. 2656-2657,  
*in camera*; CX 2470 at 004, *in camera*).

1368. {  
  
} (McCutcheon, Tr. 2656-2658,  
*in camera*; CX 2470 at 004, *in camera*).

1369. {





1389. To obtain approval of a proposed Project Pricing multiplier, the Star sales person had to submit a form requesting approval to a supervisor. If the supervisor approved the form, Mr. Minamyer would then receive the request for approval. (McCutcheon, Tr. 2273; Minamyer, Tr. 3145).
1390. Generally, Star's employees referred to this form as a "Special Pricing Request" ("SPR"), or a "Pink," reflecting the color of the paper on which an SPR was submitted. (McCutcheon, Tr. 2273; CX 2539 (McCutcheon, Dep. 23); Minamyer, Tr. 3191 (A "pink" is a document that Star used to set up and track Project Pricing for its customers)). Star's term "special pricing request," or "pink," refers to all special pricing requests regardless of whether Star ultimately approves those requests. (McCutcheon, Tr. 2690-2691).
1391. Star periodically issued a "Special Project Pricing Report" ("SPPR") that listed all pending bids for which a special price for its products had been approved. CX 2532 (Berry, Dep. at 37-39) (Special Project Pricing Reports were issued by Star periodically, and included those open projects for which Star had submitted bids at prices that differed from the published multiplier)).
1392. The SPPRs included a cover memo and an attached Excel spreadsheet. (*E.g.*, RX-444, RX-444.xls (utility spreadsheet, December 2008); RX-548, RX-548.xls (utility spreadsheet, November 2008); RX-446, RX-446.xls (utility spreadsheet, September 2008); RX-448, RX-448.xls (utility spreadsheet, August 2008); RX-449, RX-449.xls (utility spreadsheet, May 2008); RX-558, RX-558.xls (utility spreadsheet, March 2008); *see* RX-695 (Leider, Dep. at 36)).
1393. In the course of the FTC's investigation, and at Mr. McCutcheon's request, Star produced a spreadsheet dated July 23, 2011. Star produced the spreadsheet with a cover memo, (RX-557), and an attached Excel spreadsheet that was denominated "2008\_Pinks-final.xls" ("RX-557.xls Pinks-final"). This spreadsheet purportedly identifies instances in which Star engaged in Project Pricing in 2008. (McCutcheon, Tr. 2550-2551). Star's RX-557.xls Pinks-final was based on the same data Star used to generate the Special Project Pricing Reports. (McCutcheon, Tr. 2673).

7.7.5.1 The SPPRs and RX-557.xls Pinks-final Are Internally Inconsistent, Contradictory, or Otherwise Unreliable Evidence of Whether Star Engaged in Project Pricing to Meet Competition in the Sale of Fittings During the Conspiracy

1394. The SPPRs and RX-557.xls Pinks-final are unreliable as evidence of Star's continued Project Pricing in the sale of Fittings during the conspiracy. (*Infra* ¶¶ 1395-1401).
1395. Star's SPPRs and Star's RX-557.xls Pinks-final did not set forth the amount of the discount Star extended to a particular Distributor for a particular purchase or purchases. (*E.g.*, RX-557.xls; RX-558.xls).
1396. Star's SPPRs are facially unreliable in estimating Star's actual use of Project Pricing in the sale of Fittings in the United States during the conspiracy because they provide

inconsistent information regarding the product, location, Distributor, and the date of a transaction. For example,

- a. The Special Project Pricing Reports are unreliable because they contain contradictory information regarding Star's sales. For example, RX-548.xls and RX-445.xls both purport to provide information regarding projects outstanding in November 2008. Although both spreadsheets list the projects in the same order, they identify different Distributors and locations for each project. Thus, in RX-548 and RX-548.xls, which purports to be a SPPR for November 2008, the first entry identifies a bid for "St. Joe's Hospital," which is listed as Star's bid to HD Supply for a project in Alabama. In contrast, in RX-445.xls, which also purports to be the SPPR for November 2008, the first entry is for "St. Joe's Hospital" and is listed as Star's bid to Emco for a project in Ontario, Canada.
  - b. The Special Project Pricing Reports are unreliable because they contain inconsistent information regarding the location of the Distributor in the United States, which is the geographic market in which the conspiracy took place. For example, Entries 15 and 16 of RX-548.xls have two bids for the "Farmington Station" project. Entry 15 identifies the Distributor as Wolseley in British Columbia, but Entry 16 identifies the Distributor as Ferguson in California. In RX-445.xls, these same projects are attributed to a branch of HD Supply in Utah
  - c. The Special Project Pricing Reports are unreliable because they contain contradictory information regarding the date of the sale in the recorded transaction, and it is not possible to determine whether the sale occurred during the conspiracy. In Entry 15 of RX-548.xls for the Farmington Station project, the expiration date is listed as 12/31/07 in Column B, but the expiration date is listed as 12/31/08 in Column H.
  - d. The Special Project Pricing Reports are unreliable because they contain information regarding projects that is internally inconsistent. For example, Entry 290 in RX-548.xls is a project for the City of Quebec, but is listed as being in Oregon.
1397. Star's SPPRs are facially unreliable in estimating Star's actual use of Project Pricing in the sale of Fittings during the conspiracy because they list the same project multiple times. For example, Star's bid for a sale to HD Supply Waterworks for a project in Ohio is separately listed in at least six different SPPRs. (RX-558.xls, Row 28 (March 2008); RX-449.xls, Row 84 (May 2008); RX-448.xls, Row 153 (August 2008); RX-446.xls, Row 173 (September 2008); RX-445.xls, Row 222 (November 2008); RX-444.xls, Row 244 (December 2008)).
1398. Star's SPPRs are facially unreliable in estimating Star's actual use of Project Pricing in the sale of Fittings during the conspiracy because they list projects for which the bids had expired before the parties had implemented their conspiracy. For example, the SPPRs for March 2008 through December 2008 list a bid Star had submitted to Groeniger even though that bid had expired on February 19, 2008, before the parties had implemented their conspiracy. (*Compare* RX-558.xls, Row 72 (March report includes Groeniger bid

that had expired in February), *with* RX-444.xls, Row 288 (December report includes Groeniger bid that had expired in February)).

1399. Star's SPPRs and Star's RX-557.xls Pinks-final are facially unreliable in estimating Star's actual use of Project Pricing in the sale of Fittings during the conspiracy because they include entries to extend the expiration date for an existing discount that had been previously approved, rather than a new bid in which Star sought to meet competition with either McWane or Sigma on a bid for a particular project. (McCutcheon, Tr. 2681 ("[I]f we knew there was going to be a price change in mid-July, this customer service person may have tied it to that even to resubmit an SPR. That's very possible.")).
1400. Star's SPPRs and Star's RX-557.xls Pinks-final are facially unreliable in estimating Star's actual use of Project Pricing in the sale of Fittings during the conspiracy because they include entries to extend a discount to a new branch of a Distributor with which Star had previously negotiated a discount, rather than meeting competition with either McWane or Sigma on a bid for a particular project. (McCutcheon, Tr. 2682).
1401. Mr. McCutcheon did not recognize and could not explain the basis for or reasons that Star extended any of discounts that are listed Star's RX-557.xls Pinks-final under the tab labeled "rogue." (McCutcheon, Tr. 2682-2683).

7.7.5.2 The SPPRs and Star's RX-557.xls Pinks-final Included Numerous Transactions in Products Other Than Fittings and in Locations Outside the United States

1402. The SPPRs and Star's RX-557.xls Pinks-final included numerous transactions in products other than Fittings and in locations outside the United States. (*Infra* ¶¶ 1403-1405).
1403. Star's SPPRs include sales to Canadian customers. (McCutcheon, Tr. 2405; *E.g.*, RX-446.xls, Row 106 (sale to Howie Bird for project in New Brunswick); RX-446.xls, Row 10 (sale to Wolseley for project in Quebec); RX-446.xls, Row 104 (sale to Marcel Baril for project in Quebec); RX-446.xls, Row 150 (sale to Tempispal Val Dor for project in Quebec); RX-446.xls, Row 56 (sale to Real Huot for project in Quebec)).
1404. Star's RX-557.xls Pinks-final includes sales to Canadian companies. (*E.g.*, RX-557.xls, Row 191 (Howie Bird); RX-557.xls, Row 31 (Wolseley); RX-557.xls, Row 617 (Canada Pipe); RX-557.xls, Row 744 (Tempispal Val Dor); RX-557.xls, Row 634 (Real Huot)).
1405. Star's SPPRs, including RX-557.xls Pinks-final, included entries for Project Prices offered to Distributors that involved other products and not Fittings, such as plumbing products, joint restraints, bolts and accessories, castings, and valve boxes. (McCutcheon, Tr. 2673-2676; RX-557.xls at Row 567 (plumbing products); CX 3033 at 002 (showing project receiving special pricing reflected in RX-557.xls at Row 567 referred to plumbing products); RX-558.xls at Row 69-71 (joint restraints); RX-558.xls at Row 2-3 (bolts and accessories); RX-558.xls at Row 33 (castings); RX-557.xls at Row 1452 (valve boxes); CX 3041 at 001 (showing project receiving special pricing reflected in RX-557.xls at Row 1452 referred to valve boxes)).

7.7.5.3 The SPPRs and Star's RX-557.xls Pinks-final Included Numerous Transactions That Occurred Before the Conspiracy Was Implemented or After It Broke Down

1406. The SPPRs and Star's RX-557.xls Pinks-final included numerous transactions that occurred before the conspiracy was implemented or after it broke down. (*Infra* ¶¶ 1407-1409).
1407. Star's SPPRs, including RX-557.xls Pinks-final, included entries for Project Pricing that had a start date prior to March 1, 2008, the date when Star (and McWane) announced to its customers that it would no longer offer Project Pricing. (*E.g.*, RX-558.xls, Rows 49-558 (Star's March 2008 SPPR); RX-557.xls, Rows 1-566 (Star's Pinks-final)).
1408. Star's SPPRs and Star's RX-557.xls Pinks-final include numerous instances of special pricing with effective dates within a month after March 1, 2008, which were likely approved by Star sometime before McWane, Sigma, and Star implemented their conspiracy to curtail Project Pricing. (*E.g.*, RX-558.xls, Rows 7-48 (March 2008 SPPR); RX-557.xls, Rows 567-770). The "Start Date" for special pricing, as reflected on the SPPR, was as much as a month after Star's management approved the special pricing. (RX-691 (Berry, Dep. at 41)).
1409. Star's SPPRs, including Star's RX-557.xls Pinks-final, include numerous instances of special pricing that were approved after Mr. Minamyler had sent his November 25, 2008 email, (CX 0831), instructing Star's sales force to once again engage in Project Pricing. (*E.g.*, RX-444.xls, Rows 1-26 (December 2008 SPPR); RX-557.xls, Rows 2430 - 2670); *see infra* ¶¶ 1456-1457 (discussing Star re-engaging in Project Pricing).

7.7.5.4 To the Extent the SPPRs Constitute Probative Evidence at All, They Show That Star Extended Fewer Project Pricing Discounts During the Conspiracy Period Than It Extended in Corresponding Periods in 2007

1410. The SPPRs indicate that Star extended fewer Project Pricing discounts during the conspiracy period than it extended in corresponding periods in 2007. (*Infra* ¶¶ 1411-1423).
1411. The number of instances in which Star engaged in Project Pricing on all products (not just Fittings) dropped from 3,226 instances in 2007 to 2,669 in 2008. (CX 2570 at 001; *see* McCutcheon, Tr. 2685).
1412. Star engaged in fewer instances of Project Pricing in 2008 than it had in 2007, even though there was a surge in Project Pricing in the February and March 2008 time period just prior to the effective date of the newly announced multiplier increases. (McCutcheon, Tr. 2403-2404; CX 2336 (Star price increase letter effective February 18, 2008); CX 0752 (Minamyler email indicating that Star's prior pricing would remain effective through March 1, 2008)).



1413. The decrease in Star's Project Pricing from 2007 to 2008 occurred despite the fact that Star enacted multiplier increases twice during 2008 – an action that ordinarily has the effect of creating a spike in Project Pricing as the new prices are implemented. (McCutcheon, Tr. 2403-3404, 2406; *see also*, CX1566 (Star's January 2009 increase letter to HD); CX2430 (Star's June 2008 multiplier increase letter to customers with a 0.30 multiplier).
1414. When Star announces a price increase, whether through an increase in the list price or the published multiplier, there is generally a significant increase in special pricing requests before the new price takes effect. The requests for special pricing will then taper off soon after the new price takes effect. (CX 2538 (McCutcheon, IHT (Vol. 2) at 378-379) (“Special pricing requests . . . stay really high after the date that it's suppose[d] to start and then it kind of tapers off, and it – that happens on a very regular basis.”)).
1415. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 242 instances in March 2007, but only 204 instances in March 2008. (CX 2570 at 001; *see* McCutcheon, Tr. 2685).
1416. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 265 instances in May 2007, but only 229 instances in May 2008. (CX 2570 at 001; *see* McCutcheon, Tr. 2686).
1417. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 246 instances in June 2007, but only 199 instances in June 2008. (CX 2570 at 001; *see* McCutcheon, Tr. 2686).
1418. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 355 instances in July 2007, but only 280 instances in July 2008. (CX 2570 at 001; *see* McCutcheon, Tr. 2686).
1419. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 309 instances in August 2007, but only 198 instances in August 2008. (CX 2570 at 001; *see* McCutcheon, Tr. 2686).
1420. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 282 instances in September 2007, but only 151 instances in September 2008. (CX 2570 at 001; *see* McCutcheon, Tr. 2686).
1421. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 342 instances in October 2007, but only 194 instances in October 2008. (CX 2570 at 001; McCutcheon, Tr. 2686).

1422. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 305 instances in November 2007, but only 159 instances in November 2008. (CX 2570 at 001; *see* McCutcheon, Tr. 2686).
1423. Assuming the accuracy of the SPPRs and counting all entries as if they were unique instances of Project Prices and related to Fittings, Star offered Project Pricing in 151 instances in December 2007. In December 2008, after Mr. Minamyer had sent his November 25, 2008, email instructing his sales force that Star would once again engage in Project Pricing, (CX 0831), Star extended discounts in 217 instances. (CX 2570 at 001).

### 7.7.6 The Fittings Pricing Analysis of McWane's Expert Is Flawed

1424. The Fittings pricing analysis of McWane's Expert Dr. Parker Normann is flawed and unreliable. (*Infra* ¶¶ 1425-1435).
1425. Dr. Normann's analysis of Fittings prices is flawed because it is based on meaningless and flawed data. (CX 2265 (Schumann Rebuttal Rep. at 3, 9-17); Schumann, Tr. 5792). The data do not reflect actual transaction prices or the actual prices paid by customers for the Fittings they purchase. (CX 2265 (Schumann Rebuttal Rep. at 10); Schumann, Tr. 5805-5806). The data do not reflect discounts below multiplier discounts, freight charges paid by customers or waived by the supplier, rebates to customers, extended terms, and cash discounts. (CX 2265 (Schumann Rebuttal Rep. at 10-11); Schumann, Tr. 5806).
1426. Dr. Normann's analysis of Fittings prices is also flawed because of known, but non-systematic lags between agreement on price terms and actual shipment and invoicing. (CX 2265 (Schumann Rebuttal Rep. at 5); Schumann, Tr. 5802-5805). Such lags between the time that prices are negotiated and the actual shipment date undermine any effort to associate an invoiced price with an event such as a change in list prices or multipliers or communication among parties. (CX 2265 (Schumann Rebuttal Rep. at 5)).
1427. Dr. Normann does not control for customer mix issues in his data analyses. (CX 2265 (Schumann Rebuttal Rep. at 11); Schumann, Tr. 5806-5807). Customers in different regions of the country or customers of different sizes receive different actual prices. (CX 2265 (Schumann Rebuttal Rep. at 12); Schumann, Tr. 5807). Accordingly, changes in the regional locations and relative sizes of customers from month to month will alter average transactions prices. (CX 2265 (Schumann Rebuttal Rep. at 12)). Without controlling for differences in customer mix, comparing prices from month to month or over longer periods of time is not meaningful. (CX 2265 (Schumann Rebuttal Rep. at 12)).
1428. Dr. Normann's analysis of fitting prices is also flawed because the data has errors. (CX 2265 (Schumann Rebuttal Rep. at 9); Schumann Tr. 5805). One type of error occurs when the actual multiplier from a given transaction is larger than the list multiplier. (CX 2265 (Schumann Rebuttal Rep. at 13); Schumann, Tr. 5814-5815). McWane's counsel acknowledged these circumstances were "most likely an order entry error" because "there

is no commercial reason” for such a situation to exist. (CX 2552 at 001 (June 5, 2012 email from McWane Counsel to Complaint Counsel); Schumann, Tr. 5810-5811, 5821-5822). This error rate is measured by the fraction of transactions in which the reported (or implied) transaction multiplier exceeds the list multiplier. (CX 2265 (Schumann Rebuttal Rep. at 13)).

1429. In 2008, the known error rate was 4.27 %, representing the instances of non-domestically produced Fittings (those marked with ND in their product code) in which the actual multiplier exceeded the list multiplier. (CX 2265 (Schumann Rebuttal Rep. at 13); Schumann, Tr. 5808-5809 (error rate a little over 4 percent)). In 2009, the known error rate was 10.75 %. (CX 2265 (Schumann Rebuttal Rep. at 13); Schumann, Tr. 5818 (nearly 11 percent)).
1430. In January 2008, the known error rate for non-domestically produced Fittings was 21 % error rate, representing the instances of non-domestically produced Fittings (those marked with ND in their product code) in which the actual multiplier exceeded the list multiplier. (CX 2265 (Schumann Rebuttal Rep. at 14-15); Schumann, Tr. 5809-5810). These errors create an upward bias in the January 2008 price data. (CX 2265 (Schumann Rebuttal Rep. at 15); Schumann, Tr. 5810). These errors impact and call into question Dr. Normann’s conclusion that non-domestic prices fell from January 2008 to February 2009, and the errors also impact his Figures 2A and 2B. (CX 2265 (Schumann Rebuttal Rep. at 16); Schumann, Tr. 5847-5849).
1431. There is no way to unambiguously identify domestically made Fittings sold at Domestic Fittings prices versus domestically made Fittings sold at the Open Specification prices. (CX 2265 (Schumann Rebuttal Rep. at 13); Schumann, Tr. 5825). Thus, there are errors in the classification of sales data between Domestic spec and Open Specification sales. If product is incorrectly classified, it introduces uncertainty and randomness in the data that would then require statistical hypothesis testing for analysis of the data. (Schumann, Tr. 5825-26).
1432. There are also errors in the multipliers in the data set of domestically produced Fittings. (CX 2265 (Schumann Rebuttal Rep. at 13-14); Schumann, Tr. 5823, 5824-5825). In 2008, the error rate was 9.10 %, representing the percentage of the actual transaction multipliers for domestically produced Fittings that exceed the list multipliers for domestic. (CX 2265 (Schumann Rebuttal Rep. at 14); Schumann, Tr. 5824). For 2009, this error rate was 6.40 %. (CX 2265 (Schumann Rebuttal Rep. at 14); Schumann, Tr. 5824).
1433. Dr. Normann’s analysis of Fittings prices does not control for the many other factors that directly and substantially impact price. (CX 2265 (Schumann Rebuttal Rep. at 18); Schumann, Tr. 5832-5834). To estimate the effect of any specific economic event on price, one must control for all other factors that might affect price besides the event of interest. (CX 2265 (Schumann Rebuttal Rep. at 18); Schumann, Tr. 5833, 5837-5838). Dr. Normann’s failure to control for the other factors that shift supply and demand curves, and thus impact prices, renders his analysis and conclusions of no value in

understanding the markets at issue. (CX 2265 (Schumann Rebuttal Rep. at 18-19); Schumann, Tr. 5834-5838).

1434. Dr. Normann fails to follow standard and long accepted practices when performing statistical analysis and hypothesis testing. (CX 2265 (Schumann Rebuttal Rep. at 3, 62); Schumann, Tr. 5794-5795). He fails to report standard errors or confidence intervals of slopes for his hypothesis tests. (CX 2265 (Schumann Rebuttal Rep. at 25); Schumann, Tr. 5801-5802, 5849, 5863, 5871). Dr. Normann does not report tests for robustness of his data analysis. (CX 2265 (Schumann Rebuttal Rep. at 23, 29, 48); Schumann, Tr. 5831-5832).
1435. Because of the meaningless and error ridden data and because of his failure to follow standard econometric practices, Dr. Normann's figures are unreliable and are not relevant to or useful for economic analysis. (CX 2265 (Schumann Rebuttal Rep. at 62)).

### **7.8 As Market Conditions Worsened, the Fittings Suppliers Continued to Monitor Each Other's Pricing Actions, and Communicated Regarding Perceived "Cheating"**

1436. As market conditions worsened in August 2008 and thereafter, the Fittings suppliers continued to monitor each other's pricing actions, complained about perceived "cheating," eventually resumed Project Pricing and stopped participating in DIFRA. (*Infra* ¶¶ 1437-1490).
1437. In August 2008, the housing market declined precipitously, creating additional pricing pressure. (Rybacki, Tr. 1105, 3578 (testifying that "[a]fter the third week of August of 2008, I alerted my team that the demand was starting to weaken" and that is when the "demand for all waterworks products started to get soft"); CX 1651 at 026, *in camera* { } (CX 2531 (Rybacki, Dep. at 134-135, 157-158 ("That's when housing had just stopped and the economy had taken -- in August of 2008, the market, somebody just shut the faucet off."; "[W]e had a big July. I remember we had a big July and good first half of August, and that's when it started to go down. It started to go down mid to late August 2008"))).
1438. The softening of demand caused the Fittings market to become more competitive. (Rybacki, Tr. 3578-3579).

#### **7.8.1 The Suppliers Monitored the Marketplace for "Cheating"**

1439. Star continued to monitor whether its competitors were offering Project Pricing as the market became more competitive in August 2008. (CX 0814 (Minamyer August 25 email to Star division managers: "I have noticed that recently we have been seeing more pricing pressure . . . ."); McCutcheon, Tr. 2452-2453).
1440. Star had limited its Project Pricing to situations where there was proof that competitors were "cheating." (CX 1694 at 001 (September 4, 2008 email ("We have seen Sigma cheat on larger projects in other parts of the country and have responded accordingly when we see something."); Minamyer, Tr. 3221).

1441. When Star division manager Mr. Shaun Smith received reports of Project Pricing by McWane, he reminded his sales force on August 18, 2008:

We need to stay on the high road, but with our relationships, we should be able to react when necessary. I know it sometimes becomes a difficult discussion, but because of how manufactures/distributors/contractors have acted over the years with (I need a better price!) it created this spiraling price erosion that needed to stop. It doesn't help that the market is soft, but let's be as diligent as we can gathering the proper data needed if the other suspects are cheating. We will react, just need to make sure it is real.

(CX 1695 at 001; Minamyers, Tr. 3219-3221).

1442. Although Star believed that efforts to reduce Project Pricing had been successful, and that the results were positive, in August 2008, Mr. Minamyers asked his team to compile evidence of "Sigma's Antics." (CX 0814 (Minamyers August 25, 2008 email ("I know we have been very careful on special pricing and it seems to be working pretty good. But the competitors are starting to get weak and we can't sit back and let them play games and lose our market share."))).

1443. Mr. Minamyers continued to receive reports about Sigma and McWane cheating. For example, on September 9, 2009, Mr. Minamyers received the following report from a Star sales representative:

I know we would like to keep the market up but Tyler and Sigma keep cheating and costing our partners in a baddddd [sic] market where they are down substantially already. . . . We are going to loose [sic] market share by continuing the tough stance. Tyler got where they are by being staunch and arrogant. I don't want to be looking back a year from now with a 2% [price] increase and 25% less biz.

(CX 1697; Minamyers, Tr. 3222-3226 ("keep the market up" referred to prices, and "tough stance" refers to Star's effort to not offer Project Prices)).

1444. In a September 19, 2008 email to Mr. Minamyers, Star regional sales manager Ramon Prado referred to Sigma's conduct as "cheating on the fitting deal." (CX 1691 ("I think we are doing better since figuring out that Sigma was cheating on the fitting deal."); Minamyers, Tr. 3221-3222).
1445. By October 2008, Star was "catching Sigma cheating more and more." (CX 1698 at 001 (October 22); see also CX 1699 (October 28 weekly activity report ("As reported, we are seeing cheating all over from Sigma . . . ."))).
1446. On October 22, 2008, Mr. Minamyers wrote that "Sigma is silently bringing markets down and acting as if they are being good stewards." (CX 0827).

1447. At the end of October 2008, Mr. Minamyer asked his division managers for “the top five things Sigma does or has done in your division that is out of market pricing or any weird stuff.” (CX 0871 at 001).
1448. On November 20, 2008, Mr. McCutcheon received a report from Mr. Prado of more Sigma cheating in Florida (selling fittings at a .25 multiplier), and responded “Too bad they keep doing this.” (CX 0750 at 001).
1449. Sigma made sure its disciplined reduction in job pricing did not cause it to lose share. Sigma used the monthly DIFRA reports to ensure that it was not losing market share to Star and McWane. (CX 0319 at 002 (May 4, 2009 email from Mr. Pais to Sigma’s M20 (Sigma “kept up our DIFRA membership thru 08 and had used the monthly data in an useful manner to keep track of both the total market size and our SMS (Sigma Market Share),” and as overall volume continued to decline in 2008, Sigma was “able to stay reassured that we were holding on to our [market share] . . . or close to it!”); *see supra* § 7.6.3.3 (Sigma use of DIFRA Data.)) Mr. Rybacki also had numerous phone conversations with Mr. McCutcheon, although he does not remember what was discussed on those calls. (*See supra* § 6.4.1.2).
1450. McWane’s sales representatives were tasked with identifying and logging instances of Project Pricing being offered in their territories. (Tatman, Tr. 333-334, 915-916, 919-920 (describing competitive feedback reports as being based solely on weekly narratives from each of McWane’s eight to ten sales representatives); RX-598 (a competitive feedback report); Tatman, Tr. 931-933; 1007, 1013, *in camera* { }; RX-396.xls, *in camera* { }; *see also supra* ¶¶ 1043-1047 (describing McWane’s initiation of market monitoring efforts in 2008)). Mr. Tatman used the competitive feedback log to conclude that Project Pricing, *i.e.*, cheating, had died down in his Quarterly Executive Report. (*See supra* ¶ 1054).

### **7.8.2 The Suppliers Complained About Cheating**

1451. When Mr. Tatman heard about instances of other suppliers not adhering to published pricing, he contacted them to complain. For example, in March 2008 Mr. Tatman complained to Mr. Rona at Sigma about ongoing Project Pricing. (*See supra* ¶ 1035).
1452. In another example, on August 22, 2008, Mr. Rona of Sigma forwarded Mr. Tatman’s complaints about Sigma’s and Star’s prices in Florida and California to Sigma’s OEM5 email group of top managers (including Mr. Pais, Mr. Bhattacharji, Mr. Rybacki, and Mr. Brakefield):

Guys, Rick [Tatman] was upset by the numbers in Florida and California based on what he has seen from us and Star. He said the .26 and .30 were available from us both without any second thought.

(CX 1149; Rona, Tr. 1613-1618; CX 2530 (Rona, Dep. at 147, 148, 194, 197-198) (Mr. Tatman complained to Mr. Rona that Sigma and Star were too quick to offer to discounted Fittings price multipliers down to .26 and .30 in Florida and California)). (CX 1149; Rona, Tr. 1613-1618; CX 2530 (Rona, Dep. at 147-149, 194-198) (Mr. Tatman

complained to Mr. Rona that Sigma and Star were too quick to offer to discounted Fittings price multipliers down to .26 and .30 in Florida and California)). Mr. Tatman testified that he has no recollection of this conversation with Mr. Rona. (CX 2484 (Tatman, Dep. at 113) (“Q. Do you recall having any conversations about the prices available from Sigma or Star with Mr. Rona in August of 2008? A. Not that time frame, no.”); Tatman, Tr. 364 (“I do not remember the call.”)). Mr. Tatman did recall, however, that he and Mr. Rona discussed prices on another occasion, on which Mr. Tatman had taken the opportunity to complain about Project Pricing. (CX 2484 (Tatman, Dep. at 114) (“I believe at some point in time Mitchell asked me, you know, do you think the marketplace will support a price increase or something, and I give my same sarcastic answer . . . [w]hich is . . . I don’t think the marketplace will support a price increase . . . when the current prices aren’t valid.”)).

1453. Mr. Rybacki understood from Mr. Rona’s August 22, 2008 email that Mr. Tatman was upset about the Fittings multipliers that Sigma and Star were quoting in California and Florida. (Rybacki, Tr. 3577; CX 1149). Mr. Rybacki testified that at the time he “already knew that,” and that he told Mr. Rona that, “Mr. Tatman needs to look in the mirror because pricing from McWane was a little inconsistent as well.” (Rybacki, Tr. 3577-3578).
1454. Mr. Rona’s August 22, 2008 email does not convey any purpose for Mr. Rona’s conversation with Mr. Tatman other than the price communication, and Mr. Rona does not recall any other purpose. (CX 1149; RX-689 (Rona, Dep. at 197); Rona, Tr. 1718 (nothing in the e-mail that suggests a legitimate business discussion between Mr. Rona and Mr. Tatman)).
1455. In a November 24, 2008 email, Mr. Pais sent an ‘URGENT’ email to Mr. Rybacki to “stabilize market pricing” in the Southeast where Sigma had been viewed as pulling prices down. This email was apparently prompted by communications from Sigma’s competitors complaining about Sigma’s cheating:

With the severe contraction in market volume over the recent few weeks, the equally quick and sharp erosion in market pricing is an alarming ‘double whammy’! What’s even more disturbing is our two main competitors in Fittings seem to see SIGMA as ‘leading’ this recent price decline . . . .

(RX-698 at 001).

### **7.8.3 The Suppliers Resumed Project Pricing**

1456. Star eventually decided to resume Project Pricing to quietly gain share. At 8:26 a.m. on November 25, 2008, after Mr. McCutcheon was informed by Mr. Prado, one of Star’s division managers, that he had discovered that Sigma had extended a discount to an End User, Mr. McCutcheon responded to Mr. Prado and Mr. Minamyser, “Nice work, now let’s drop some responsible, coordinated, napalm.” (CX 0829 at 001; CX 2539 (McCutcheon, Dep. at 218-219) (“I was tired of asking Matt to do what they needed to do

in the southeast, and this is me jokingly lashing out, telling the guys in the southeast to get it in gear.”)).

1457. Later in day on November 25, 2008, Mr. Minamyer told his sales team that “[w]e have all been extremely diligent in protecting the stability of our market pricing,” but that Star was losing revenues and that they should become more aggressive to recapture the lost share, but to do it “under the radar”:

Please get with your teams to be sure we are all clear on the following plan.

We will take every order we can after exhausting all avenues to document the competitors pricing . . . [W]e will no longer tolerate the competition being irresponsible in the market and being undersold as a result. The reason is that we have documented so much under market pricing that we have to react to protect our partners’ [*i.e.*, Distributors] and our own market shares. . . . ***Do this quietly and selectively and as much under the radar as you can*** but, if it is necessary, be sure to do it. Go get every order!!!!

(CX 0831 (emphasis added); Minamyer, Tr. 3226 (describing email as “asking them to get more aggressive on pricing to get more orders.”); *see also* CX 2526 (Minamyer, Dep. at 69-71, 72-73) (“I’m telling them to take off the gloves and looks like we lost a market share and my patience had run out with that and we were going to go take it back.”; “Q. So what are you directing your sales folks to do? You said take off the gloves; what does that mean? A. It means we were attempting to hold our pricing and it looks like the competition was not, and we’re not going to do that anymore. We’re going to go out and we’re going to take that business back by using pricing.”)).

1458. In his November 25, 2008 email to Star’s Division Managers, Mr. Minamyer questioned the sincerity of Sigma’s original commitment to the suppliers’ common plan:

***We have all been extremely diligent in protecting the stability of our market pricing.*** So much so that we have earned the reputation at being the best at protecting the market pricing and at times, to the extent that some think us inflexible in that area. You have all done a great job and deserve credit for the effort and results.

***However, some of our competition has not performed as admirably nor are we now certain that it was ever part of their strategy . . . .*** We have many instances where we have documented the competition being irresponsible (Mostly Sigma) and selling under our multipliers in almost every market with varying strategies. We have lost too much revenue to tolerate it any longer.



- (CX 0831 at 001 (emphasis added); Minamyer, Tr. 3227-3230 (discussing email, and noting that reference to Sigma being “irresponsible” is to Sigma selling below published multipliers)).
1459. Mr. Minamyer instructed his sales team to re-start its aggressive Project Pricing “quietly and selectively and as much under the radar as you can,” in order to keep McWane and Sigma from realizing that Star was cheating for as long as possible. (CX 0831; Minamyer, Tr. 3231 (“[T]he less your competition knows what you’re actually doing, the better off you are.”)).
1460. After having centralized Project Pricing authority in himself in January 2008, Mr. Minamyer gave back that authority to his division managers in February 2009, informing them that they would be able to approve pinks, or SPRs, within certain limits. (CX 0884; Minamyer, Tr. 3232-3233).
1461. Mr. Minamyer’s instruction to his sales team to resume Project Pricing is inconsistent with the testimony of Star witnesses such as Mr. McCutcheon that Star had been actively engaged in Project Pricing prior to November 25, 2008. (*Compare* CX 2539 (McCutcheon, Dep. at 213-214) *with* CX 0831). Mr. McCutcheon could not offer any explanation as to why Mr. Minamyer sent his November 25, 2008 email to Star’s sales force to again engage in project pricing, or why Mr. Minamyer told them to do so “quietly,” “selectively” and “under the radar.” (CX 2539 (McCutcheon, Dep. at 214)).
1462. On December 17, 2008, Mr. Tatman told Mr. McCullough, Mr. Walton, and Mr. Jansen that “There’s some pretty aggressive pricing going on out there that we’re only participating in on a select basis.” (CX 0362 at 001).
1463. In late 2008, Sigma’s commitment to the conspiracy weakened and instances of its project pricing increased. (CX 1694 at 001 (September 4, 2008, Star email noting “We have seen Sigma cheat on larger projects in other parts of the country and have responded accordingly when we see something.”); CX 0871 (Star effort to compile list of “Sigma antics”); CX 1697 (“Tyler and Sigma keep cheating”); CX 1454 (Sigma April, 27, 2009 letter noting “While none of us like to see lower pricing, . . . [w]e at Sigma are just as much at fault as any of our competitors,” and promising to “USE FIRM NEW MULTIPLIERS OFF THIS PRICE LIST, TO BRING STABILITY BACK TO OUR BUSINESS”); CX 0651 at 001 (McWane reading April, 27, 2009 Sigma letter as “Admission of guilt for driving prices down and a renewed commitment [to] firm multipliers and stability.”)).
1464. McWane was late to abandon the suppliers’ collapsing agreement on Project Pricing. In a February 9, 2009 email to Mr. Tatman summarizing past and present pricing actions, Mr. Jansen reported that McWane had “stayed firm on pricing” for the better part of 2008, and had started to give out job pricing in a few territories in late 2008, well after prices had started to move. Mr. Jansen reported as follows:

**Stayed Firm on Pricing** = for better part of 2008 held pricing to try to stabilize market pricing.

- Consequence = Lost market share due to competitors playing pricing games and having distributors keep it quiet either on the front and/or backside.
- Customer Reaction = Customers had large scale reduction in inventory which is what we were getting and were relying more on regional distribution yards to supply jobs and support inventory.

**Job Pricing** = Gave out pricing on jobs in few territories late 2008.

- Consequences = started to get some support from customers that wondered where we had been. Too little too late since the jobs were few and far between.
- Customer Reaction = Numbers are dropping rapidly and they had been long before we started to move. They know it's ugly but they are in survival mode and have very little loyalty. They would like to work with us but need to know we will support them.

(CX 1223 at 002 (emphasis in original); Tatman, Tr. 1074-1076).

1465. Sometime in 2010, McWane's local sales agents gained the authority to extend Project Pricing up to one percent, provided they supplied evidence that the Project Pricing was in response to competitor prices. (CX 2480 (Napoli, Dep. at 52-54)).
1466. In May 2009, in the context of a discussion about supplying Sigma with Domestic Fittings, Mr. Tatman explained to Mr. Page that he had "a general trust issue based upon recent experience that they [Sigma] don't seem to consistently stay within the Spirit of agreements." (CX 0456 at 001 (May 2009 email from Tatman to Page, McCullough, and Walton)).

#### **7.8.4 Sigma Attempted a Further Price Increase in January 2009**

1467. On January 19, 2009, Sigma sent letters to its customers announcing multiplier increases. (E.g., CX 0878 at 002 (Sigma letter in Star's files); CX 2451 (Sigma regional manager informing sales force letter would be sent evening of January 19)).
1468. On January 20, 2009, in response to Sigma's price increase announcement, Mr. Minamyer wrote to Mr. McCutcheon and Ramon Prado: "What do you think about announcing and then backing off quietly like they did to us? If you all disagree it may take some convincing because I want to hurt them." (CX 0878 at 001).
1469. Star followed Sigma's price announcement on January 23, 2009, announcing a multiplier increase effective February 9, 2009. (CX 2452 at 001, 002 (Star letter in Sigma's files, with Sigma sales representative Kevin Pennington writing "SEE BELOW FOR A COPY OF STAR'S INCREASE LETTER. . . . LOOK'S THE SAME AS OURS . . . ."))).

1470. On January 27, 2009, Mr. Pais sent an email to Sigma's management team describing plans to improve pricing and recent increase announcements made by Sigma and followed by Star. (CX 1002 at 001, *in camera* {

}).

1471. On January 23, 2009, Mr. Page sent an email to McWane owner C. Phillip McWane, informing him that Sigma and Star had announced price increases in the "<10% range," and that Mr. Page and Mr. McCullough had decided that McWane would not follow those increases based on their analysis of the DIFRA data "since we continue to lose market share to somebody." (CX 2089 at 001; CX 1226 at 001 (Page January 23, 2009 email responding to December 2008 DIFRA report that had shown a McWane loss of market share: "Trying to not be emotional about it. But these numbers are infuriating. We have serviced our customers I assume and have the product they need, we are just being discounted against?")).

1472. On January 30, 2009, Star withdrew the multiplier increases it had announced. (CX 0882 ("All multiplier increase [*sic*] in the US are on hold.... Do you think we need to call or send a notice? I would think a retraction E-mail, maybe? We can have Sigma write it!")). Sigma also ultimately withdrew its increase and followed McWane. (*Infra* ¶ 1552).

### 7.8.5 DIFRA Collapsed in Early 2009

1473. DIFRA collapsed in early 2009 when first Sigma and Star, and then McWane, stopped submitting their sales data. (*Infra* ¶¶ 1474-1483).

1474. The last DIFRA report, covering the period through December 2008, came out in January 2009. (Pais, Tr. 2121; Brakefield, Tr. 1400 (there was no DIFRA report issued after the January 2009 report covering shipments through December 2008); CX 1339 at 001 (DIFRA report e-mail dated January 20, 2009, incorporating December 2008 data)).

1475. In February 2009, Star and Sigma stopped submitting data to the DIFRA information exchange. (CX 1278 at 001; CX 0319 at 001 (Pais noting that Sigma and Star had chosen "to withhold providing our respective monthly Sales (MT) reporting requirements")).

1476. On February 19, Mr. Tatman reported to Mr. Walton and Mr. McCullough that Sigma and Star had failed to submit their January 2009 data to DIFRA: "Two of the DIFRA members haven't yet reported January data. I know one is Sigma and most likely the other is Star." (CX 1278 at 001; Tatman, Tr. 571-573).

1477. Mr. Tatman reported that "Per [Mr.] Brakefield, he suspects there may be some hard feelings over the [ARRA] Buy American provision." (CX 1278 at 001; Tatman, Tr. 571-573).

1478. In a later email, Mr. Pais explained that Mr. Rybacki had determined that Sigma would withdraw from DIFRA participation in February 2009 because of a perception that the threat to Sigma posed by the Buy American provisions in ARRA had been an initiative of McWane. (CX 0985 at 001; CX 0319 at 002-003).
1479. Star submitted no further data to DIFRA after its January 2009 submission of data through December 2008. (CX 1325 at 002 (as of May 2009, SRHW had no Star data for January 2009 through April 2009)).
1480. Upon learning that Star and Sigma had stopped submitting data, McWane too stopped submitting data to DIFRA. (CX 1325 at 002 (as of May 2009, SRHW had no McWane data for February 2009 through April 2009)).
1481. U.S. Pipe, which had not participated in the conspiracy or the breakdown in trust, continued to submit DIFRA data after January 2009, and until at least the summer of 2010. (CX 2232 at 001, 006 (March 4, 2010 internal U.S. Pipe email reflecting February 2010 U.S. Pipe data for submission to DIFRA); CX 1343 (July 8, 2010 email from U.S. Pipe submitting Fittings data to DIFRA)).
1482. With the exception of Sigma's May 2009 attempt to revive DIFRA activity, (*see infra* § 7.8.6), the last time that DIFRA was active as an association was with the January 2009 reporting of data for December 2008. (Brakefield, Tr. 1228).
1483. DIFRA continues to today to be a corporation in good standing with the State of Alabama. However, there was never another meeting of DIFRA or any effort to accomplish any of the stated purposes of DIFRA. (*See supra* ¶ 1260).

#### **7.8.6 Sigma Tried to Restart DIFRA in May 2009 to Restore Trust**

1484. In the spring of 2009, following a conflict among the suppliers over McWane's list price restructuring (*infra* § 7.9), Sigma attempted to re-start DIFRA to restore trust and pricing discipline among Fittings suppliers. (*Infra* ¶¶ 1485-1490).
1485. Sigma and Star issued multiplier increases in January 2009, which McWane did not follow. Instead, McWane issued a restructured price list that raised prices on small diameter Fittings, but lowered prices on larger Fittings, in which Sigma and Star held more market share. (*See supra* § 7.8.4; *infra* ¶ 1492).
1486. In an effort to convince McWane to retract its new price list, Sigma tried to restart the DIFRA Information Exchange. Sigma tried unsuccessfully to revive DIFRA in May 2009 to "control the damage" and "restore the badly dented competitive confidence" and to demonstrate that Sigma's "efforts to commit to a new pricing discipline would succeed." (CX 0319 at 003).
1487. Mr. Pais communicated his intent to restart DIFRA to Mr. Page in a personal meeting on May 1, 2009. (CX 0214 at 005).

1488. On May 11, 2009, Mr. Brakefield submitted Sigma's data for the first four months of 2009 to Bree Holland at SRHW. (CX 1336 at 001).
1489. Following Sigma's May 11, 2009 submittal of late data to DIFRA, Mr. Brakefield worked with Wood Herren to try to set up a DIFRA annual meeting; Mr. Pais emailed Mr. Brakefield telling him to wait until Star submitted its data before arranging the meeting, and also told him that McWane needed "to endorse the validity of a meeting, before we galvanize others, as I am not sure of their mindset given their recent market moves." (CX 2329 at 001).
1490. The efforts of Messrs. Pais and Brakefield to revive the DIFRA Information Exchange were unsuccessful, as neither McWane nor Star submitted data again and no DIFRA meeting was held. (CX 1324 (June 25, 2009 Wood Herren email to Bree Holland noting "We have been trying to get the members to schedule an annual meeting and it has not been held yet. . . . hold tight for now as far as the reports go until we can get this organization back on course."); *see also supra* § 7.8.5).

## **7.9 In the Spring of 2009, McWane Restructured Its List Prices and Exchanged Pricing Assurances with Star**

1491. In the spring of 2009, Sigma openly sought to persuade McWane, Star, and SIP not to follow through with McWane's announced list price restructuring, and Star and McWane exchanged assurances regarding their decision to proceed with the price restructuring. (*Infra* ¶¶ 1492-1500).

### **7.9.1 McWane Announced a Price Restructuring**

1492. On April 13, 2009, McWane announced that it would begin using a new price list, to be effective May 1, 2009, that would increase prices for small diameter fittings (where McWane's share was highest), and would lower prices for medium and large diameter Fittings (where McWane had little or no share and Sigma and Star were stronger). The "net effect" across all Fittings size ranges was "near zero." (CX 0569 at 001; CX 1669; CX 1563; Tatman, Tr. 595, 597).
1493. McWane designed its new price list to be revenue neutral across all Fittings size ranges. McWane restructured its price list to (1) realign its prices among different Fittings size ranges in order to better align McWane's prices with its production costs; (2) squeeze margins and give less room for Project Pricing on larger diameter Fittings, where Star and Sigma had significantly larger shares; and (3) attempt to achieve greater price transparency. (CX 0171 at 001, 002 (goal "to promote stability and 'reduce' the wiggle room for profitable job pricing"); Tatman, Tr. 595 (restructuring was "close to being revenue neutral" and was aimed at "compressing" published and actual Fittings prices and "getting greater visibility"))).
1494. The DIFRA data through December 2008 showed that McWane's market share was strongest in the 3"-12" Fittings segment, and weaker in the 14-24" and over 24" segments. McWane's restructured prices went up 3% to 4% in the 3-12" segment and down in the others. (Tatman, Tr. 594; CX 0656).

1495. Mr. Tatman's conclusion that the overall effect (across all size ranges) of the McWane list price restructuring was neutral was based on McWane's product mix, though he recognized that McWane's price restructuring could have had a non-neutral impact on a supplier with a different mix of Fittings. (Tatman, Tr. 598-599).
1496. According to a pricing strategy presentation dated April 8, 2009, Mr. Tatman had proposed a 4% price increase for 3-12" Fittings, an 18% decrease for 14-24" Fittings, and a 33% decrease 30-48" Fittings. The presentation noted that "[c]ompressing the \$/lb range in theory makes it more difficult for Importers to heavily undercut published levels on larger diameter jobs," and that "[c]ompressing Gross Margins across the product line might help stabilize pricing in the (3"-12") stocking segment." (CX 1181 at 004; *see also* CX 1563 (restructuring will "help stabilize prices" and "help us obtain more accurate feedback on competitive levels"))).
1497. Echoing the Tatman Plan, Mr. Tatman's April 2009 pricing strategy presentation again explained the behavior that McWane was seeking to encourage in its competitors and customers in pursuit of "Stable Markets." Among other things, for "pure" market stability to occur, Mr. Tatman wrote that competitors would have to centralize their pricing authority, resist Project Pricing, and cut back on incentive rebates and other terms, while Distributors would have to stop demanding Project Pricing, focus their own selling efforts on relationships and service rather than price, and believe that if they "play by the rules" all their competitors will also. (*Compare* CX 1181 at 007 *with* CX 0627 (calling for price authority centralization and an end to Distributor price "auctions"); *supra* § 7.1 (Tatman Plan); *see also* CX 2477 (Jansen, Dep. at 257) (testifying that he did not disagree with CX 1181 at 007)).
1498. The list price change as announced resulted in average Fittings list price changes as follows:
- (3" - 12") fittings up 7.5%
  - (14" - 24") fittings down 16.6%
  - (30" - 48") fittings down 31.4%
- (CX 1563; Tatman, Tr. 279-280); Pais, Tr. 2011 (in the spring of 2009 McWane restructured its price list such that prices went up on the smaller size fittings and down fairly significantly on the larger size fittings)).
1499. On April 22, 2009, Star announced that it would also change its price list, effective May 19, 2009, but did not specify whether it would match McWane. (CX 2349).
1500. Mr. Tatman had received the Star April 22, 2009 announcement by April 23, 2009, and forwarded it to Mr. Walton, noting that "[w]e assume they are following us but we should know for sure by the end of next week." (CX 2349; Tatman, Tr. 598).

### 7.9.2 Sigma Opposed McWane's Price Restructuring and Attempted to Persuade McWane to Rescind or Delay Its Price Restructuring

1501. In April and May 2009, Sigma opposed McWane's price restructuring and attempted to persuade McWane to rescind or delay the restructuring. (*Infra* ¶¶ 1502-1524).
1502. Sigma received word of McWane's price restructuring on or about April 15, 2009. (CX 0989 at 005 (HD Supply email informing Sigma of McWane "price increase" notice and asking whether Sigma will follow); CX 0989 at 003 (Pais April 15, 2009 email observing that McWane appeared to have "revamped" its price list, including a decrease in large-diameter fitting list prices); Rybacki, Tr. 3581-3583).
1503. Sigma analyzed the impact that McWane's price restructuring would have on Sigma's business, and determined that it would have a "fairly drastic" negative impact, resulting in a \$4 million to \$5 million annual hit to Sigma's bottom line. (Pais, Tr. 2011-2012; CX 0211 at 001; *see also* Pais, Tr. 2142 (McWane restructuring was "not at all" a good thing for Sigma); Pais, Tr. 2171 (Sigma price restructuring was "potentially a knockout punch" for a struggling Sigma); Rybacki, Tr. 3580 (April 2009 McWane Fittings list price revision considerably reduced large-diameter Fittings prices)).
1504. {  
  
} (Rybacki, Tr. 3647-3648,  
*in camera* {  
}; CX 1860-A at 004, 006, *in*  
*camera* {  
} *supra* ¶ 784 (detailing telephone records)).  
  
(Rybacki, Tr. 2467-2468, *in camera*; CX 1621-A at 034-035, *in camera*;  
*supra* ¶¶ 785-786 (detailing telephone records)).
1505. Sigma was upset about the price restructuring. Mr. Rybacki "tried to let the whole world know that we weren't happy," and discussed with Mr. McCutcheon the possibility of suing McWane for predatory pricing. (Rybacki, Tr. 3580-3581).
1506. Sigma took affront at McWane's price restructuring because Sigma had been trying to be more consistent in its pricing. (Rybacki, Tr. 3590-3591 ("that's why we took affront to this [McWane price list] because we were always trying to be . . . consistent in our pricing, in our policies.")).
1507. Sigma believed that McWane's price cut in larger Fittings was designed to hit Sigma and Star in products where they performed strongly. (CX 2531 (Rybacki, Dep. at 197-198); CX 0985 (Pais May 4, 2009 email noting that Sigma's cessation of DIFRA data submissions "seems to have precipitated the strong and drastic reaction from Tyler by way of the unfavorable revision of the entire Price List.")).

1508. Sigma decided to “protest” the price restructuring and attempt to maintain the prior prices. (Pais, Tr. 2012; *see also* Rybacki, Tr. 3584-3585 (Sigma reacted “not favorably” to McWane’s April 2009 list price changes, and sent a letter to its customers)).
1509. In an April 23, 2009 email, Mr. Pais described his plan to ask Mr. McCullough of McWane for help on the price list issue:

I meet LM 4/28 and I will go all out to get the MOST from this rare mtg. Pvt Label is just 1 part. He needs to hear our version of a grand strategy and I may layout the P2 potential to grab his interest and that *there is an end game in helping us with the P/L [Price List]*.

(CX 0209 at 001 (emphasis added)).

1510. Several days later, on April 26, 2009, Mr. Pais further spelled out his plan to raise the price list issue directly with Mr. McCullough of McWane, and to seek a “stay of execution” on the price restructuring, in exchange for Sigma’s agreement to implement pricing discipline. On April 26, Mr. Pais wrote to Mr. Bhattacharji regarding an upcoming April 28, 2009 meeting between Mr. Pais and Mr. McCullough:

I have a full plate with LM . . . Pvt Label is one issue and their new Pricing move is even bigger! Our team was confused and was resigned to blindly follow the leader -- but, I felt once done, it would spell a PBT hit of about \$4M - \$5M, not only for 09 for even 2010 ... I asked RK2 to do a very thorough impact review and my fears pan out -- a little bump in S range, but a big hit in M/L range ... SO, thru a long and heated RM-call 4/24, *we decided to try Option 3* (#1 -- follow Tyler ... #2 -- start a rebel action for the 4 non-dom suppliers to follow a different/ old PL) *being somehow seek a one mth’s hold to implement our new pricing discipline* -- Old PL + FIRM MULT ! You may have seen letr draft. I hv coached LR to blitz the G3 to support our move by NOT pandering/pressuring for LOWER prices etc...

(CX 0211 at 001 (emphasis added); Pais, Tr. 2027-2034).

1511. Before communicating its opposition directly, Sigma used its customer letters to deliver its message to McWane. (CX 0211 at 001 (“we decided to . . . seek a one mth’s hold to implement our new pricing discipline -- Old PL + FIRM MULT ! You may have seen letr draft”)).
1512. On April 27, 2009, Sigma issued a letter to its customers announcing that it planned to continue to use the existing price list for Fittings but would use “firm” multipliers to bring “stability” to the market. (Pais, Tr. 2022-2023). The letter, which was an attempt to restore the pricing agreement the suppliers had arrived at the prior year, and to send a message that Sigma would control its pricing if McWane would pull back its list price restructuring, stated in part:



The problem of over supply and a cataclysmic drop in demand has created a market that doesn't seem to have a bottom. While none of us like to see lower pricing, we've all had a hand in it either directly or indirectly, and any semblance of responsibility and market discipline seems to have disappeared. We at Sigma are just as much at fault as any of our competitors.

In response to this turbulent patch, our industry leader has recently announced a highly re-structured pricing plan that you are aware of, with severe drops in the list prices. While we respect their rationale, whatever it may be, we disagree with their approach . . . We believe this action will hurt our industry, both in the short and the long term . . .

At the same time, we also sense the need to reverse the unhealthy pricing spiral thru a mature, prudent and disciplined pricing approach. . . .

THEREFORE, WE PLAN TO CONTINUE THE EXISTING PRICE LIST FOR THE FITTINGS AND ACCESSORIES . . . AND USE FIRM NEW MULTIPLIERS OFF THIS PRICE LIST, TO BRING STABILITY BACK TO OUR BUSINESS.

...

We hope you understand our sincere efforts to reverse the unhelpful course of the past and support our efforts to be a responsible supplier for now and for the future, given the challenging times we all face together as one industry. We also hope this effort will stabilize the value of your own inventories as well.

(CX 1454 at 001 (emphasis in original); Pais, Tr. 2021-2024; CX 0575 at 002; CX 0651 at 001-002).

1513. Sigma's letter of April 27, 2009 was an attempt to restore the pricing agreement the suppliers had arrived at the prior year, and to send a message that Sigma would control its pricing if McWane would pull back its list price restructuring. (See CX 1454 (noting Sigma's disagreement with McWane's restructuring, and Sigma's own "sincere efforts to reverse the unhelpful course of the past" and "to be a responsible supplier for now and for the future")).
1514. To Sigma, the phrase "BRING STABILITY BACK TO OUR BUSINESS" in its letter referred to the drop in sales volume and "nosedive" in prices that had occurred in late 2008 and early 2009. (Pais, Tr. 2023; CX 1454). Sigma was taking "a very firm stand that we wanted to stay with the previous price listing" and making a "renewed effort" to offer responsible multipliers and curtail Project Pricing. (Pais, Tr. 2023-2024 ("[W]e wanted to stay with. . .[a] price list that we thought was rational and we were making a

renewed effort to make sure that we will offer, you know, responsible multipliers and, as we discussed yesterday, without too much of a variation for the various jobs.”)).

1515. Sigma’s April 27, 2009 customer letter was an attempt by Sigma to send a message to McWane, indirectly through its customers. (Rybacki, Tr. 3590; CX 1454 at 001).
1516. Mr. Rybacki describes Sigma’s customer communications in response to McWane’s April 2009 price restructuring as expressing that “this was going to hurt us deeply and we did not want this to take place,” and that “[w]e also didn’t think it was good for the industry, not good for anybody to have prices decrease.” (Rybacki, Tr. 3587-3588 (“I was trying to stop it any way I could.”); Pais, Tr. 2024 (explaining April 27, 2009 letter as expressing a hope that the McWane price restructuring could be reversed)).
1517. Mr. Pais explained the approach to the Sigma management team as being intended:

to induce Tyler to hold off the New LP/Mult decision for now -- with our resolve to ‘clean up’ the marketing price slide, on our own . . . . Privately, using market forces and customer channels, we are hoping to influence Tyler to hold off for ONE month, during which we have to demonstrate our sincerity, our resolve and our commitment to a disciplined and responsible market pricing behavior!

(CX 0212 at 001). Mr. Pais told his managers to ask customers to “support the Sigma Plan and . . . lean on Tyler to grant the ONE month reprieve for their new LP . . .” (CX 0212 at 001; Pais, Tr. 2014).

1518. Mr. Tatman received Sigma’s customer letter the day it was sent – April 27, 2009 – and forwarded it to Mr. McCullough and Mr. Walton. Mr. Tatman correctly interpreted Sigma’s message to McWane as being that Sigma would control its pricing if it pulled back on the new price list:

This is an interesting read. .... Admission of guilt for driving prices down and a renewed commitment [to] firm multipliers and stability.

Note that they are going to stay with the current list price. I may be reading too much into Larry’s words but his message to Tyler/Union [McWane] may be that I’ll control my pricing and I want you pull back your list price restructuring?????

The “severe drops in list prices” Larry references is on the larger diameter items (14” - 48”) where Sigma’s share position is much stronger than ours. As you know we actually raised ‘list prices’ on the (3”-12”) segment by over 7%

. . .

Note that Star announced late last week that they would have a new List Price effective May 19<sup>th</sup>. It will be interesting to see what they do in light of Sigma's announcement.

(CX 0651 at 001; Tatman, Tr. 599-605).

1519. On May 1, 2009, in response to Sigma's characterization of McWane's restructuring as involving "severe drops" in list prices, and in response to "*a lot of chatter and false perceptions*," Mr. Tatman sent an email to Mr. McCullough and Mr. Walton explaining the rationale for the restructuring, and stating that the restructuring would "help stabilize prices" and "help us obtain more accurate feedback on competitive levels." (CX 1563 (emphasis added)).
1520. As set forth in his plan (*supra* ¶ 1510), Mr. Pais met with Mr. McCullough near the airport in Des Moines, Iowa on April 28, 2009. (Pais, Tr. 2018-2019, 2025-2026; CX 0209 at 001, 004 (Pais email regarding upcoming meeting with McCullough); CX 0728 (email between Pais and McCullough planning meeting)).
1521. On April 29, 2009, Mr. Pais sought a meeting with Mr. Page to discuss pricing.

I need to meet you in person ASAP, to review a host of issues all related. So, please make some time to see me either Thursday evening, even if I have to trouble you for a working dinner or Friday morning. It's important Ruffner -- else, I wouldn't have bothered you, knowing how busy you must be these days. We need to have a frank and open talk -- we are at cross roads.

(CX 0213 at 002).

1522. Mr. Pais met with Mr. Page in Birmingham on May 1, 2009 at 9:00 a.m. and, among other things, expressed Sigma's displeasure with McWane's price restructuring. (CX 2531 (Rybacki, Dep. at 199) (Mr. Rybacki believes Mr. Pais also communicated that "Sigma was not happy" with McWane's restructuring directly to Mr. Page); *but see* Pais, Tr. 2035 (admitting to meeting, but denying that he discussed McWane's restructured prices at the meeting); CX 0314 (Pais April 30, 2009: "I will be away on a quick visit to Birmingham Friday 5/1/09"); CX 0213 at 001; CX 0317 at 001 (Pais May 13, 2009 email describing meeting)).
1523. Mr. Pais sought the meeting with Mr. Page for the purpose of making his case against McWane's price restructuring. In a May 4, 2009 memo to the Sigma Board, Mr. Pais described the meeting as follows:

As we also faced another major challenge from Tyler, as addressed below ["Major Price Restructuring"], Larry and I sought and met Ruffner Page, CEO of the McWane Inc last week, for a major review of industry trends . . .

(CX 0214 at 004). The phrase “another major challenge from Tyler, as addressed below” referred to McWane’s price restructuring. (CX 0214 at 004).

1524. Although Mr. Pais did not succeed in convincing Mr. McCullough or Mr. Page to reverse or postpone McWane’s price restructuring, he noted afterward that the meetings had at least provided him the opportunity to “convey [Sigma’s] intentions to revive the DIFRA activity” and to communicate Sigma’s assurances regarding its “commitment to a stable and rewarding industry.” (CX 0214 at 007 (“Our meetings last week are likely to at least give them some assurance of our intentions and commitment to a stable and rewarding industry.”)).

### 7.9.3 Sigma Attempted to Persuade Star and SIP to Join in Resisting McWane’s Price Restructuring

1525. In April 2009, Sigma attempted to persuade Star and SIP to resist McWane’s price restructuring. (*Infra* ¶¶ 1526-1532).
1526. Mr. Pais contacted SIP and Star and proposed to them that the three companies should resist McWane’s changes and adhere to the old price list. (McCutcheon, Tr. 2458; CX 2538 (McCutcheon, IHT (Vol. 2) at 224) (“SIGMA didn’t want to follow the price list change that McWane dropped their prices significantly and Victor [Pais] was very upset about it. I definitely talked to Victor about it.”); CX 2538 (McCutcheon, IHT (Vol. 2) at 257-258 (“Victor told me that they absolutely were not going to do the price list”); *see also* CX 2539 (McCutcheon, Dep. at 227-228) (Mr. McCutcheon discussed the McWane price restructuring with Mr. Tatman and Mr. Rybacki); CX 2528 (Pais, Dep. at 329-332)).
1527. On April 26, 2009, Mr. Pais had also indicated that he had reached out to Star regarding the issue, and would continue to do so to ensure that Star “complied” with his plan.

I will then seek [from McWane] a special ‘*stay of execution*’ of 1 month... HTN promises to comply -- I am prepared to then visit HTN to ensure they do... You have already seen my ‘personal olive branch’ to RB...”

(CX 0211 at 001 (emphasis added)).

1528. The initials “HTN” in Mr. Pais’s April 26, 2009 email were a reference to Star. At trial, Mr. Pais testified that “HTN” in his April 26, 2009 email referred to Sigma’s regional manager, Al Richardson. (Pais, Tr. 2032-2033). In previous documents, however, Mr. Pais referred to Mr. Richardson by his initials, AR1, and referred to Star as “HTN” for its Houston headquarters. (Pais, Tr. 2032-2033 (Al Richardson is AR1); Pais, Tr. 1865-1866 (“HTN” (Houston) in CX 0915 stands for Star). Mr. Pais admitted that the reference in the April 26, 2009 email to “RB” was to Ramesh Bhutada, Star’s president. Pais, Tr. 2033-2034 (“RB” is Ramesh Bhutada, Star’s President)).
1529. In late April or early May 2009, Mr. Pais and Mr. McCutcheon had a telephone conversation before Star formally announced that it would issue a price list like that

issued by McWane. (CX 2539 (McCutcheon, Dep. at 229)). Mr. McCutcheon told Mr. Pais that Star was following McWane's announced price list. (CX 2539 (McCutcheon, Dep. at 229)).

1530. Mr. Pais told Mr. McCutcheon that he was angry about McWane's revised price list, particularly because of the drop of about 40% on Fittings of 14" and greater diameter. Mr. Pais attempted to convince Mr. McCutcheon that that if Star were to not follow McWane, and instead send a letter to the market announcing that it was staying with its old price list on those Fittings, that Mr. Pais could possibly convince McWane to reverse its list price change. (McCutcheon, Tr. 2457-2458).

1531. Specifically, Mr. Pais told Mr. McCutcheon,

Mr. Pais told me that he was very confident that he was going to change McWane's mind. And he told me that he had -- I believe in that phone conversation he told me he had spoken to SIP-Serampore, and that I think he had insinuated he had already spoken to McWane and that he felt that they weren't going to make that change. And he was encouraging me to join them to give strength to there not being a change in the price list to McWane.

CX 2539 (McCutcheon, Dep. at 231)).

1532. Between April 22, 2009, the date on which Star first announced that it would also change its price list effective May 19, 2009, (CX 2349), and May 1, 2009, the effective date of McWane's new list price and the date on which Star announced its internal plan to match McWane's pricing, (CX 0569 at 001; CX 0890; McCutcheon, Tr. 2464), {

}(McCutcheon, Tr. 2467-2468, *in camera*; CX 1621-A at 034, 035, *in camera* (Rybacki telephone records); *supra* ¶¶ 785-786 (detailing telephone records)).

#### **7.9.4 McWane Exchanged Assurances with Star Regarding Setting List Prices**

1533. In late April 2009, McWane exchanged assurances with Star regarding the two suppliers' intent to implement the restructured price list. (*Infra* ¶¶ 1534-1553).

1534. The events surrounding McWane's price restructuring in the spring of 2009 and Sigma's opposition created uncertainty among McWane and Star about each other's intentions. (*Infra* ¶¶ 1535-1538).

1535. As of April 27, 2009, Mr. Tatman did not know what Fittings price action Star might take in response to Sigma's April 27, 2009 letter. (CX 0651 at 001 (Tatman, April 27, 2009: "Note that Star announced late last week that they would have a new List Price effective May 19th. It will be interesting to see what they do in light of Sigma's announcement."); Tatman, Tr. 604-605).

1536. As of April 27, 2009 when Sigma announced that it would stick to its old price list, there “was uncertainty about what everybody would do” regarding pricing. (CX 2485 (Walton, Dep. at 157)).
1537. Mr. Tatman wondered whether Star would follow McWane, and in an email sent to Mr. Walton at 11:26 a.m. on April 28, 2009 referred to Star as “The Wild card.” (CX 1180 at 002 (“The Wild card right now is Star . . . [T]here is now some probability that Star may change direction and retract their list price change.”); Tatman, Tr. 605-606 (“I did not know what they were doing, so I could only speculate. . . . I can only get the letters and read the tea leaves. . . . Don’t have any information that tells me what they’re going to do.”); Tatman, Tr. 607 (“Q. And so at this point in time you were uncertain as to whether Star would follow McWane’s new list price; correct, sir? A. That’s fairly clear from what I wrote.”)).
1538. After his conversation with Mr. Pais, Mr. McCutcheon was uncertain as to whether McWane would actually follow through with its announced list price restructuring. (CX 2539 (McCutcheon, Dep. at 235-236); McCutcheon, Tr. 2459-2460).
1539. To eliminate the uncertainty, Mr. McCutcheon called Mr. Tatman to ask whether McWane would follow through with its announcement or stay with the old price list. (CX 2539 (McCutcheon, Dep. at 227-228) (“I did have a doubt in the back of my mind – I wanted to make sure before we moved ahead and printed all these price lists, so I called Rick just to make sure.”)).
1540. Mr. McCutcheon described the conversation as follows:
- It cost[s] us about \$25,000 to print a new price list. So, I picked up the phone and I called Rick Tatman. And I said, I’m only going to ask you one question, are you guys going to come out with a new price list, because I’m getting ready to approve it and spend \$25,000 to do it. And he said, we absolutely are, and he says, I’m so sure that I’ll pay the \$25,000 if we don’t. And I said, I appreciate that, nice talking to you, and hung up the phone.
- (CX 2538 (McCutcheon, IHT (Vol. 2) at 258); *see also* McCutcheon, Tr. 2460 (“I asked Mr. Tatman if they were going to continue with their price list change. And he said yes.”); CX 2538 (McCutcheon, IHT (Vol. 2) at 257-258); RX-698 (McCutcheon, Dep. at 233)).
1541. At his investigational hearing, Mr. McCutcheon did not suggest that Mr. Tatman’s response was joking or otherwise suggest that Mr. Tatman was not serious. (CX 2538 (McCutcheon, IHT (Vol. 2) at 258)). At his deposition, however, after the lawsuit was filed, Mr. McCutcheon for the first time described Mr. Tatman’s response as “a laughing matter,” and “joking.” (RX-698 (McCutcheon, Dep. at 233)).
1542. Mr. Tatman testified that he has no recollection of the telephone call with Mr. McCutcheon. (CX 2484 (Tatman, Dep. at 179-180); Tatman, Tr. 610).

1543. At 5:25 p.m. on the afternoon of April 28, 2009, six hours after Mr. Tatman sent the email in which he described Star as a “Wild card” with “some probability” of “chang[ing] their direction and retract[ing] their list price change,” Mr. Tatman emailed Mr. McCullough to report that he was “now highly confident that Star will follow our List Price.” (CX 1180 at 001 (emphasis added)).
1544. At his deposition, Mr. Tatman testified that he had no explanation for how he became “highly confident” about Star’s plans. (Tatman, Tr. 610).
1545. At trial, however, Mr. Tatman initially testified that he had reviewed documents since his deposition and that, “I know why I said it.” (Tatman, Tr. 608-609). Mr. Tatman explained that he had become “highly confident” about Star’s plans on April 28, 2009 based on a telephone conversation with Glenn Fielding of HD Supply that he had seen referenced in an email. (Tatman, Tr. 608).
1546. Upon further examination at trial, Mr. Tatman conceded that the Glenn Fielding email he was referencing was CX 3027, an email dated April 30, 2009, in which Mr. Tatman refers to a conversation “yesterday” with Mr. Fielding, *i.e.* April 29, 2009. (CX 3027 at 001 (Tatman email to Jansen dated April 30, 2009: “Glenn Fielding said yesterday that Star was using our List.”); Tatman, Tr. 816-817).
1547. Mr. Tatman then admitted that his conversation with Mr. Fielding does not explain how Mr. Tatman became “highly confident” about Star’s plans on April 28, 2009, the day before he spoke with Mr. Fielding on April 29, 2009. (CX 1180 at 001; Tatman, Tr. 816-817).
1548. On April 29, 2009, Mr. Minamyler sent an email to Star’s division managers (copying Mr. McCutcheon) stating that, “We are in receipt of Sigma’s price increase letter and will let you know shortly what our plan is.” (CX 0889; McCutcheon, Tr. 2462).
1549. Star’s National Sales Manager, Mr. Minamyler, telephoned Greg Adams of McWane on May 1, 2009 and was also assured about McWane’s plans to move forward with the new list price. (CX 2352 (“Matt Minamyler just called me to ask if we went ahead with our list price today. I told him yes and that is all I told him made me pretty uncomfortable but I thought you guys should know.”)).
1550. On May 1, 2009, Mr. Minamyler sent an email to Star’s division managers (copying Mr. McCutcheon), setting out a implementation plan for Star to match McWane’s new prices. (CX 0890; McCutcheon, Tr. 2464).
1551. On May 4, 2009, Star followed McWane and adopted substantially identical Fittings list prices and multipliers. (RX-620 (letter as produced from McWane’s files) (May 4, 2011 multiplier announcement); *compare* CX 2358, *with* CX 2359 (list prices)).
1552. On May 11, 2009, the same day that Sigma submitted four months of overdue data to DIFRA in an attempt to “control the damage,” (CX 0319 at 003; CX 2329 at 001), Sigma sent letters to its customers announcing that it would adopt McWane’s restructured list prices and multipliers, (CX 1060 at 001, 002; Rybacki, Tr. 3591 (Sigma ultimately

adopted the McWane price list); Rybacki, Tr. 3588 (“[F]irst we tried to keep it. I know we were going to try to keep our old pricing and hope McWane had a change of heart, but when we realized that wasn’t going to happen, we ended up going along with it. The bottom line is we ended up going along with it.”)).

1553. { (Rybacki, Tr. 3665, *in camera*)).

### **7.10 McWane, Sigma, and Star Have Continued Their Pattern of Improper Pricing Communication and Coordination**

1554. A pattern of improper pricing communications and coordination among McWane, Sigma, and Star continued into 2010. (*Infra* ¶¶ 1555-1571).

1555. In early 2010, Sigma raised its published Fittings multipliers to 0.27. At that time, Mr. Rybacki believed that if the sales force was disciplined in pricing and the published multiplier “stuck” and “took hold,” then there would be another increase in June. (CX 1378; Rybacki, Tr. 3506-3509).

1556. On June 8, 2010, in response to a communication from Star, Sigma drafted and distributed a letter announcing that Sigma was raising prices on certain products and signaling to the marketplace that Sigma was prepared to follow a Fittings price increase. In an internal email discussing the price increase letter, Mr. Pais described the letter as a “heads up” to the customers and the market, in response to the pricing actions that had been “signaled” by Star:

Since our price increase letter at this point is largely a ‘*heads up*’ to the customers *and the market* about our intention to follow suit when Star or others take a definitive action on price increases, I thought the attached revised letter would be more effective. As you can see, it captures the 2 specific actions signaled by Star while adding a few ‘wishful thoughts’ of our own thrown in, hopefully to create some momentum and traction...

(CX 1413 at 001(emphasis added); Pais, Tr. 2036-2038; Rybacki, Tr. 3498-3499; CX 2531 (Rybacki, Dep. at 210-213) (discussing CX 1413 and stating, “Now, it is a message to everybody in the waterworks industry, foes, customers, everybody, that we are going up and we want a price increase and we need one.”)).

1557. The Sigma price increase letter was sent out on June 10, 2010. (CX 2453 at 001 (email from Iona Shenoy transmitting final version of customer letter to sales force for forwarding to customers); Rybacki, Tr. 3489-3499 (discussing CX 1413 and CX 2531)).

1558. The final June 10, 2010 letter stated that effective July 1, 2010 the price of some waterworks products was increasing, but did not specify how Fittings multipliers would change. The final price language was identical to that proposed by Mr. Pais to deliver a “heads up”:



The following is a summary of these changes:

1. The List Prices of all of our Restrained Joint Products will be increased by about 12%.
2. The List Prices of our Protecto 401 Lined products will be increased by about 12%.
3. The Net Prices of our Municipal Castings including Valve Boxes and Meter Boxes will be increased on a regional basis.
4. The multipliers for Domestic and non-Domestic Restraints will be revised.
5. The *multipliers for non-Domestic Fittings will be revised.*

CX 2453 at 002 (emphasis added); *compare* CX 2453 at 002 *with* CX 1413 at 004; *see also* Rybacki, Tr. 3495-3497).

1559. The Sigma price increase letter that was sent out on June 10, 2010 said only that Sigma's Fittings multipliers would be "revised." It did not indicate whether Fittings prices would be going up or down, or by how much. (CX 2453 at 002; Rybacki, Tr. 3496-3497).
1560. At the time the Sigma price increase letter was sent out on June 10, 2010, Sigma did not yet know by how much it would change its Fittings prices, or which Fittings prices it would change. (CX 2453 at 001 (Mike Walsh June 10, 2010 cover email transmitting final letter: "There will be a multiplier change on fittings. I am not exactly sure what fittings nor what multiplier we are moving to . . ."); Rybacki, Tr. 3496-3497).
1561. Sigma's June 10, 2010 pricing letter was intended to signal Sigma's willingness to increase prices to its competitors. (Rybacki, Tr. 3498-3499 (Sigma wanted a price increase, and viewed sending its June 10, 2010 price increase letter as a way to express that desire to the market and trigger a price increase); CX 1413 ("[O]ur price increase letter at this point is largely a 'heads up' to the customers and the market about our intention to follow suit when Star or others take a definitive action on price increases . . ."); CX 2531 (Rybacki, Dep. at 212) ("I think this was basically sending a message to the customer base that we're going up, that we needed these prices increased. Now, it is a message to everybody in the waterworks industry, foes, customers, everybody, that we are going up and we want a price increase and we need one."); CX 2531 (Rybacki, Dep. at 216) ("Q. He says 'Since our price increase letter at this point is largely a 'heads up' to the customers and the market,' do you see that? A. It's to everybody, everybody that's in the market. Q. Okay, and that would include your competitors; right? A. Correct.")).
1562. One of the messages that Sigma intended to convey to its customers and to the market in its June 10, 2010 price increase letter was that if Star or somebody else took a definitive action on a price increase, Sigma would follow that increase:

Q. So just to be clear, if there was an increase by Star or McWane on fittings prices, what you were saying in this letter is Sigma is prepared to follow that increase?

A. Yes.

(Pais, Tr. 2036-2037).

1563. Sigma intended its June 10, 2010 letter to be a message for its competitors as well as its customers:

Q. And so when you said this is a heads up to the customers and the market, was Sigma sending a heads-up to its competitors as well?

A. It's an expression of hope that they could also if the same circumstances apply to them. Yes.

(Pais, Tr. 2038).

1564. By June 11, 2010, McWane had received a copy of Sigma's "heads up" letter and noted that it "follows on the heels [*sic*] of the prior Star communication." (CX 2438 at 001).

1565. On June 16, 2010, Mr. Tatman wrote to Mr. McCullough and Mr. Jansen regarding the "recent communication from Star and Sigma":

In regards to recent communication from Star and Sigma, I believe our response will be to support a price increase on non domestic fittings, glands and accessories, but not to provide any supporting communication on restraints or other products.

I believe Sigma is waiting for either a supporting communication from us or an announcement on specific price actions.

At this stage we really have two approach options:

1. Send out an "it's coming" communication prior to any further announcements from either Sigma or Star and then quickly decide on what multipliers we want to publish and send out that announcement by week's end to which *most likely the others will follow*.

2. Send out communication supporting the need for a price increase, wait for Sigma or Star to publish new multipliers and then follow.

(CX 2442-A at 001; *see also* Tatman, Tr. 319).

1566. McWane chose to follow the first option outlined in Mr. Tatman's June 16, 2010 email, and announced a blended Fittings multiplier increase in 45 of 50 states on June 17, 2010, to be effective July 1, 2010. The McWane letter's effective date was July 1, 2010, the same as the effective date suggested in Sigma's "heads up" letter of June 10, 2010. (CX 2440 at 001; Tatman, Tr. 320-324; CX 1384 at 002 (Sigma emails discussing McWane announcement)).
1567. Star announced its matching increase on June 18, 2008. (CX 1406; CX 2441 at 001).
1568. By June 18, 2010, Mr. Rybacki had received McWane's June 17 price letter and Star's June 18, 2010 letter matching McWane's price increase. (CX 2450 at 002 (forwarding McWane pricing letter from Mr. Webb of HD Supply); CX 1406 at 001-002 (Mr. Schapiro forwarding a copy Star's price increase letter); Rybacki, Tr. 3501-3503, 3499-3501).
1569. Sigma distributed its matching price increase letter on June 24, 2010. On that date, Mr. Rybacki signed a letter announcing Sigma's non-Domestic Fittings multiplier increase to 0.29, effective July 1, 2010. Mr. Rybacki forwarded this letter to his team for distribution to customers. (CX 1396 at 001; Rybacki, Tr. 3503-3504).
1570. Upon learning of McWane's price increase announcement, Sigma regional manager Mike Walsh sent an email to his sales team (copying Mr. Rybacki, Mr. McGivern, and Mr. Brakefield) with the subject line "price increase from Tyler?!", in which he wrote, "if this is true then it is a huge victory in [the] war we have been fighting." (CX 1378; Rybacki, Tr. 3509-3511).
1571. Regarding the two successive Fittings price increases in 2010, and Sigma's "success in getting the pricing up," Mr. Walsh wrote: "We had a game plan. We stuck to it. It has worked. And now it has turned into a big victory." (CX 1378; Rybacki, Tr. 3509-3511).

## **8 ARRA Changed the Competitive Landscape in the Fittings Market**

1572. In February 2009, Congress enacted the American Recovery and Reinvestment Act of 2009, known as "ARRA." (Joint Stipulations of Fact (JX 0001) ¶ 19; Tatman, Tr. 610-611 (ARRA was signed into law by the President in early 2009, and included stimulus funds for waterworks projects); Pais, Tr. 1732-1733; Thees, Tr. 3075).
1573. ARRA allocated more than \$6 billion to water infrastructure products. (Joint Stipulations of Fact, JX 0001 ¶ 20).
1574. Waterworks projects receiving ARRA funds were required to be "under contract or construction within 12 months of the date of enactment of this Act." (American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (codified as amended in scattered sections of 6, 19, 26, 42, and 47 U.S.C. (2006 Supp. III))).

## 8.1 ARRA Had a Buy American Requirement

1575. ARRA contained certain Buy-American provisions applicable to Fittings. (Joint Stipulations of Fact, JX 0001 ¶ 21).
1576. ARRA's Buy-American provisions required that all ARRA-funded projects use Fittings (and other products) made in the United States (the "Buy American" requirement). (Brakefield, Tr. 1401 ("[T]he ARRA basically had several paragraphs, particularly paragraph 1605, that stated that the items were to be made in the United States of America, and that would be part of the specifications on product -- on projects that would be funded by ARRA."); Sheley, Tr. 3402 (ARRA required that all products on ARRA-funded jobs be domestically certified products); Morton, Tr. 2816 ("I believe that we were required to provide domestic products if the customer was being funded by the ARRA funds."); CX 1991 at 002 (Sigma white paper describing ARRA's Buy American requirement); CX 1996 (Sigma February 11, 2009 email noting need to prepare for Buy American "fall out"); CX 1003 (Pais February 20, 2009 memorandum reviewing Buy American issue); CX 2500 (Swalley, Dep. at 61-62) (Electrosteel was not allowed to bid Fittings for ARRA jobs because of the Domestic-only requirement)).
1577. Raw materials for a Fitting could be sourced from a foreign country so long as the Fitting itself was manufactured in the United States. (Pais, Tr. 1785-1786).

### 8.1.1 Sigma and Star Unsuccessfully Lobbied Against the Buy American Requirement

1578. Sigma and Star unsuccessfully lobbied against the ARRA Buy American requirement and its application to Fittings. (*Infra* ¶¶ 1579-1582).
1579. Sigma lobbied against the Buy American provision being included in ARRA. (Pais, Tr. 1733 ("Initially, we tried to enlist some help to even stop that [Buy American provision] from being included in the law prior to it becoming a law."); Pais, Tr. 1735 ("[O]vernight the government, you know, dealt a huge blow by diverting that business to just one manufacturer, and that's what we objected to."); CX 1994 (February 4, 2009 Bhattacharji email regarding a proposed customer petition opposing application of ARRA's Buy American requirement to Fittings)).
1580. Star lobbied on ARRA, supporting exceptions to the Buy American provisions of ARRA that would allow the use of fittings produced in places like Korea. (RX-694 (Bhutada, Dep. at 35-36)).
1581. Sigma and other Fittings suppliers also lobbied for a national "single-supplier" exception to the Buy American requirement, which would have meant that ARRA's Buy American requirement would not have applied to Fittings because McWane was the sole supplier of Domestic Fittings at that time. (CX 0101 at 002; CX 1991 at 002 (February 6, 2009 Sigma White Paper arguing for an exception to ARRA's Buy American requirement when there was only a single domestic supplier of the product in question); Pais, Tr. 1435, 1738-1740 (also lobbying for NAFTA products to be included within Buy American requirement)).

1582. Sigma's efforts to obtain a single-supplier waiver were unsuccessful. (Pais, Tr. 1735, 1740). In a May 4, 2009 memorandum to the Sigma Board, Mr. Pais reported that the EPA had declined to provide a nationwide "sole domestic supplier" Buy-American waiver for Fittings, despite Sigma's lobbying efforts. (CX 0214 at 003; *see also* CX 1998 at 003 (minutes of April 14, 2009 Sigma board meeting indicating that Sigma was studying potential for waivers from EPA)).

### **8.1.2 Fittings Produced in Mexico or South Korea Did Not Satisfy ARRA's Buy American Requirement**

1583. Sigma and Star could not satisfy the ARRA Buy American requirement by using Fittings produced in Mexico or South Korea. (*Infra* ¶¶ 1584-1588).
1584. McWane understood that Fittings produced under NAFTA, *e.g.*, in Mexico or Canada, would not qualify under the ARRA Buy American requirement, and sent out a letter to that effect to customers. (CX 2477 (Jansen, Dep. at 110) (testifying that he attended a meeting in San Diego where an EPA representative explained that NAFTA did not qualify for ARRA, in response to a question from Metalfit, a Mexican Fittings supplier); CX 1886 (April 8, 2009 McWane letter to customers stating that they "may NOT use Mexican or Canadian products" on certain federal contracts); CX 2498 (Teske, Dep. at 57) (discussing CX 1886)).
1585. McWane cannot identify any sale of any Mexican- or Canadian-produced Fitting for use in an ARRA-funded waterworks project. (Supp. Response to RFA at ¶ 6 ("McWane admits it has no first-hand knowledge of any sales of Imported Relevant Product Manufactured in Mexico or Canada for use in any ARRA Waterworks Project.")).
1586. Star looked into the possibility of whether Star could satisfy the ARRA Buy American requirement with Fittings produced in Mexico or Korea, but concluded in early 2009 that Fittings produced in Mexico or Korea would not satisfy ARRA's Buy American requirement. (McCutcheon, Tr. 2277, 2279; Bhargava, Tr. 2927-2928 (before deciding to produce Fittings in the United States, Star determined that producing Fittings in a WTO country like South Korea, or a NAFTA country like Mexico, would not have satisfied the Domestic specification for all jobs); RX-694 (Bhutada, Dep. at 39); CX 2537 (McCutcheon, IHT (Vol. 1) at 102-103) (Star explored the possibility of using products purchased from Mexico under NAFTA or from South Korea under WTO, but decided that neither approach was practical for it to meet the demands of the Distributors)).
1587. Sigma also considered the possibility that Fittings manufactured in Korea or Mexico may satisfy the Buy American requirement of ARRA, but concluded that such Fittings would not be ARRA-compliant. (CX 0214 at 004 (Sigma Memo to Board considering possible WTO exemption to ARRA); CX 1998 at 003 (minutes of April 14, 2009 Sigma Board meeting indicating that Sigma was studying potential for NAFTA exemptions); Pais, Tr. 1738-1739 (Fittings produced in Korea or in Mexico did not qualify as a domestic supply source under the Buy American provision of ARRA); CX 2528 (Pais, Dep. at 184-185) (noting that Mexico and Korea production options "turned out to be dead ends"); RX-153 at 001 (concluding that NAFTA-produced Fittings would not qualify for ARRA-funded

waterworks projects); CX 0083 at 002 (draft memo from Mr. Bhattacharji to Sigma Board concluding that foreign-made Fittings could not be used for ARRA-funded projects)).

1588. SIP also believed that NAFTA countries did not qualify as domestic supply sources under the Buy American provision of ARRA. (CX 2522 (Agarwal, Dep. at 91)).

### **8.1.3 There Was Insignificant Use of Waivers of the Buy American Requirement for Fittings Used in ARRA-Funded Waterworks Projects**

1589. The use of waivers for the Buy American provision of ARRA was insignificant and had no meaningful impact on the Domestic Fittings market. (*Infra* ¶¶ 1590-1615).

#### **8.1.3.1 The EPA Had Authority to Grant Certain Waivers of the Buy American Requirement for ARRA-Funded Waterworks Projects**

1590. The United States Environmental Protection Agency (“EPA”) was the sole authority for granting or approving waivers of ARRA’s Buy American requirement for any ARRA-funded waterworks project, though the *de minimis* exception did not require applications for each job. (Supp. Response to RFA at ¶ 2)
1591. In the statute itself, there are three types of waivers or exceptions to the Buy American requirement for ARRA-funded waterworks projects (also referred to by the EPA as “Regional Project Waivers” or “Regional Waivers”): public interest; insufficient and not reasonably available quantities; and cost. (American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 §1605(b), 123 Stat. 115 (codified as amended in scattered sections of 6, 19, 26, 42, and 47 U.S.C. (2006 Supp. III))). There is also a *de minimis* waiver as set out in separate Federal Register Notices. (RX-155 (original *de minimis* waiver); RX-195 (revised *de minimis* waiver)).
1592. The EPA will grant a waiver if it finds that “(1) applying [the Buy American Requirement] would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.” (American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 §1605(b), 123 Stat. 115 (codified as amended in scattered sections of 6, 19, 26, 42, and 47 U.S.C. (2006 Supp. III))). Also, replace (Pub. L. No. 111-5 §1605(b) and (c), 123 Stat. 115 (2009)). with (American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 §1605(b) and (c), 123 Stat. 115 (codified as amended in scattered sections of 6, 19, 26, 42, and 47 U.S.C. (2006 Supp. III))).
1593. On August 10, 2009, the EPA granted a revised *de minimis* waiver from the requirements of ARRA Section 1605(a) for any incidental components that comprise in total no more than 5 percent of the total cost of the materials used in and incorporated into a project. (RX-195). Those using this waiver did not have to apply for the waiver and be granted

such a waiver, but they were required to retain documentation as to these incidental items in their project files, and to “summarize in reports to the State the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.” (RX-195). The Federal Register Notice setting out the revised de minimis waiver described incidental goods as ““nuts and bolts’-type components whose origins cannot readily be identified prior to procurement.” (RX-195 at 0002).

1594. McWane informed its customers in an April 8, 2009 letter that an exception from ARRA’s Buy American requirements related to the cost impact of a project would only be available if domestic sourcing would increase the cost of an entire project (as opposed to the cost of a given component) by at least 25%: “[T]he exception does not apply if the cost of the pipe or valves for a project will be 25% greater than foreign products; rather the use of U.S. made pipe or valves must increase the cost of the *entire project* by more than 25%.” (CX 1886 (emphasis in original); CX 2498 (Teske, Dep. at 57) (discussing CX 1886)).
1595. The cost waiver allowing the use of imported products if the cost of the overall project increased by more than 25 percent from the inclusion of domestic products could not be used for Fittings because “Fittings typically comprise five (5) percent or less of the total cost of a typical waterworks project.” (Joint Stipulations of Fact, JX 0001 ¶ 10). The EPA did not issue any Regional waivers for Fittings under the authority of Section 1605(b)(3), which allows for waivers due to overall cost increases of more than 25 percent. (Clean Water and Drinking Water State Revolving Funds: ARRA Implementation, [http://water.epa.gov/grants\\_funding/eparecovery/index.cfm](http://water.epa.gov/grants_funding/eparecovery/index.cfm) (listing waivers)).

#### 8.1.3.2 The EPA Granted Only Three Public Interest Waivers During the Entire ARRA Period

1596. The EPA granted a total of three public interest waivers of ARRA’s Buy American provision for Fittings, which allowed three local municipalities to purchase a total of 35 imported Fittings for use on ARRA-funded waterworks projects. (CX 1592 (waiver for City of Lewiston, ME and the Auburn, Maine Water District for purchase of 33 imported Fittings); CX 1590 (waiver for Lowell, MA for purchase of an imported 30” diameter pipe tee fitting); CX 1591 (waiver for Richland, WA for purchase of an imported 42” by 24” AWWA C153 cement lined mechanical joint reducer tee fitting)).
1597. McWane is unable to identify any imported Fitting that was sold for use in an ARRA-funded waterworks project under a public interest waiver other than the three identified in *supra* ¶ 1596. (Supp. Response to RFA at ¶ 3 (McWane unable to identify any other public interest waivers); CX 2477 (Jansen, Dep. at 112-114) (same)).
1598. The limited use of the public interest waiver may have been caused by the actual or perceived difficulty involved in applying for waivers of ARRA’s Buy American requirement. (CX 2518 (Meyer, Dep. at 67) (Metalfit believed that the onerous process of

applying for a waiver prevented End Users from seeking waivers from the Buy American provision); CX 1918 at 002 CX 2486 (Burns, Dep. at 181-182) (ACIPCO believed that waivers of the Buy American requirement would be limited and require advanced publication in the Federal Register)).

1599. {  
 }  
 (CX 2522 (Agarwal, Dep. at 92-93), *in camera*).

8.1.3.3 The *De Minimis* Waiver of the Buy American Requirement for ARRA-Funded Waterworks Projects Had Limited, if Any, Use for Fittings

1600. Industry participants -- including Distributors and Suppliers -- consistently testified that they did not believe that the *de minimis* waiver of ARRA's Buy American requirement applied to Fittings. (*See infra* ¶¶ 1601-1604).
1601. For example, Mr. Thees of Ferguson testified that he did not believe that the *de minimis* waiver applied to Fittings because the waiver only applied to products where the country of origin for such products was not readily identifiable, such as nuts and bolts, not Fittings. (Thees, Tr. 3078-3080) (Fitting's country of origin is readily identifiable because suppliers stamp this information on the side of the Fitting).
1602. Mr. Webb of HD Supply also testified to his understanding that the EPA's *de minimis* waiver did not apply to Fittings based on information he had gathered from End Users. (Webb, Tr. 2740-2742).
1603. Likewise, Mr. Sheley of Illinois Meter and others also understood that ARRA's *de minimis* waiver did not apply to Fittings. (Sheley, Tr. 3404-3405 (testifying that he believed that firms could use imported mechanical joint gaskets on ARRA-funded waterworks projects because the only suppliers of mechanical joint gaskets were in Costa Rica); *see also* CX 2510 (Groeniger, Dep. at 172) ("It was never fittings, it was bolts, gaskets, small things, accessories to fittings, the accessory packs for the fittings, never the fittings."); CX 1885 at 001; CX 2499 (Keffer, Dep. at 89-92) (August 2009 EPA guidance provided that components such as Fittings "that are described in detail via project specific technical specifications are not applicable to this [de minimis] waiver"))).
1604. McWane also did not believe that Fittings qualified for the EPA's *de minimis* waiver of the ARRA Buy American requirement, and sent this message to its Distributor customers. (CX 2477 (Jansen, Dep. at 111-112) (admitting that McWane's sales people sent this message to customers); CX 1886).
1605. Industry participants also consistently testified that they were unaware of any widespread use of the *de minimis* waiver for Fittings, and that they were often unaware of any instance in which an imported Fitting was sold for use in an ARRA-funded waterworks project under the *de minimis* waiver. (*See infra* ¶¶ 1606-1615).



1606. McWane did not sell any imported Fittings for use in any ARRA-funded waterworks projects, and cannot identify any sale of any imported Fitting that was used in an ARRA-funded Waterworks project pursuant to the *de minimis* waiver. (Supp. Response to RFA at ¶ 5 (admitting that McWane possesses no first-hand knowledge of the use of an imported Fitting in an ARRA-funded waterworks project under a *de minimis* waiver)).
1607. Star did not sell any imported Fittings for use in any ARRA-funded waterworks projects under either a public interest waiver or a *de minimis* waiver. (CX 2535 (Bhutada, Dep. at 43-44)).
1608. To the extent that Sigma’s imported Fittings were used on any ARRA-funded waterworks project, the quantities were few and the circumstances limited. (Pais, Tr. 1742-1744; CX 2523 (Bhattacharji, Dep. at 222-223) (*de minimis* waivers on ARRA projects were “few and far between”)).
1609. {  
}(CX 2522 (Agarwal, Dep. at 92), in  
*camera*).
1610. HD Supply never sold an imported Fitting to any customer for use on an ARRA-funded waterworks project, and its President is unaware of any instance where any Distributor supplied imported Fittings into an ARRA-funded waterworks project under any circumstances. (Webb, Tr. 2742-2744; CX 2514 (Webb, Dep. at 66-67)).
1611. Mr. Thees of Ferguson does not know of any instance in which Ferguson used the *de minimis* waiver to use an imported Fitting in a domestic-only waterworks project. (Thees, Tr. 3081).
1612. Mr. Sheley of Illinois Meter is unaware of anyone using imported Fittings as a substitute for Domestic Fittings on any ARRA-funded waterworks projects. (Sheley, Tr. 3405-3406).
1613. Metalfit’s Mr. Meyer is unaware of any project for which Metalfit, a Mexican manufacturer, provided imported Fittings for use on an ARRA-funded waterworks project. (CX 2518 (Meyer, Dep. at 66, 71-72, 133-134) (Metalfit was neither asked to provide, nor did provide, any quotes for ARRA-funded projects)).
1614. As Mr. Meyer explained, because “enforcement by the EPA was -- was so thorough, [customers] were reluctant to use the *de minimis* waiver for anything but the smallest incidental components” and risk the substantial penalties that might attach if it were later determined that they improperly had used non-Domestic Fittings in an ARRA-funded job. (CX 2518 (Meyer, Dep. at 67, 152-153)).
1615. Mr. Swalley of Electrosteel does not know of any instance in which a customer used an imported Fitting for an ARRA-funded waterworks project, or any instance in which a customer received a waiver of ARRA’s Buy American requirement for a Fittings purchase. (CX 2500 (Swalley, Dep. at 62-63, 159)).

## 8.2 Sigma and Star Only Sold Imported Fittings, and Were Threatened by ARRA's Buy American Provision

1616. Sigma and Star, each of which sold only imported Fittings, believed that their businesses were threatened by the ARRA Buy American requirement. (*Infra* ¶¶ 1617-1646).

1617. { } (CX 1997 at 007, *in camera* (also noting that { } )

### 8.2.1 Fittings Suppliers Projected That the Domestic Fittings Market Would Grow – at the Expense of the Import Market – After ARRA Became Law

1618. After ARRA became law, Fittings suppliers projected that the Domestic Fittings market would grow, as some projects that would otherwise have been Open Specification would now be Domestic-only. (*Infra* ¶¶ 1619-1627).

1619. Prior to the passage of ARRA, Domestic-only Fittings projects comprised approximately 15% to 20% of the overall Fittings market. (Tatman, Tr. 236 (15% to 18%); McCutcheon, Tr. 2279-2280 (Star estimated 15% to 20%); CX 2535 (Bhutada, Dep. at 11), *in camera* (approximately { })); CX 2501 (Prescott, IHT at 41) (20% of customers were “a hundred percent domestic”); CX 2509 (Groeniger, IHT at 41) (“Q. Do you have a sense of what your split in terms of revenue for domestic and imported fittings was before the ARRA? A. 75/25 foreign. Q. . . . 75% foreign, 25% domestic? A. Yes.”); Webb, Tr. 2732 (Before ARRA, about 20% of HD Supply’s Fittings sales were of Domestic Fittings)).

1620. At the time that ARRA was signed into law, McWane believed that the Domestic Fittings market would expand as a result of the Buy American provisions in the Act. (Tatman, Tr. 613-614; CX 2479 (McCullough, Dep. at 95) (McWane anticipated that there could be a greater demand for Domestic Fittings after the passage of ARRA); Tatman, Tr. 629 (Mr. Tatman expected the Domestic market to “go from a traditional domestic market to a lot of domestic opportunities”)).

1621. Mr. Tatman did not know whether the increase of Domestic-only jobs as a result of ARRA would be 10% or 50%, but he knew it would not be zero. (Tatman, Tr. 614; CX 1209 at 001).

1622. Sigma projected that the Domestic Fittings market would grow to 25-30% of the overall Fittings market following ARRA. (CX 0214 at 005 (May 2009 Sigma Memorandum to the Board discussing ARRA’s impact on the market); Pais, Tr. 1752-1753 (25-30% was Pais’s “best estimate”); CX 0081 at 004 (similarly projecting Domestic Fittings market to grow from 10-12% of the overall Fittings market to 25-30%)).

1623. Sigma knew that some projects that would have been open-specification in the absence of ARRA would become Domestic-only. (Rona, Tr. 1458 (“a percentage of fittings

which . . . would have previously been accepted as foreign would be converted to required as domestic.”)).

1624. Sigma was concerned that ARRA’s Buy American requirement would cause its import business to suffer by diverting demand from imported Fittings to Domestic Fittings. (Pais, Tr. 1735, 1737 (noting that Sigma did not have a supply source for Domestic Fittings); CX 2523 (Bhattacharji, Dep. at 188-189) (viewed the Buy American market growing to 25-20% as “something to be concerned about in terms of future planning.”)).

1625. Star also believed that the market for Domestic Fittings would increase in size. Star based its belief on its own observed increase in Domestic-only Specifications in the market and on recent strong Domestic requirements in government appropriations. (McCutcheon, Tr. 2282-2283).

1626. {  
}  
 CX 2534 (Bhutada, IHT at 80-82), *in camera* {  
}

1627. {  
}  
} (CX 2537 (McCutcheon, IHT (Vol. 1) at 92), *in camera*;  
 McCutcheon, Tr. 2280-2281).

### **8.2.2 Fittings Suppliers Expected That Buy-American Sentiment Would Extend Beyond ARRA**

1628. There was also a threat to Sigma and Star that the growth in demand for Domestic Fittings would outlast and extend beyond the effect of ARRA. (CX 2530 (Rona, Dep. at 220-221); *infra* ¶¶ 1629-1638).

1629. Sigma feared that ARRA was part of a larger groundswell of Buy-American sentiment in the United States that would spread beyond ARRA-funded projects and outlast the federal bill. (Pais, Tr. 1737-1738 (“Q. Was Sigma concerned that the Buy American sentiment might outlast the ARRA? A. Yes.”); CX 1984 at 001 (Bhattacharji June 15, 2009 report from AWWA conference to Sigma lobbyists and Buy America team: “[Distributors] see a growth in customers demanding a domestic product because of the law, but more important, the sentiment was in favor of buying domestic.”); CX 0231 at 001 (Bhattacharji June 16, 2009 report from AWWA conference outlining next steps for Sigma Domestic Production: “[T]he sentiment in favor of domestic production is growing and though the BA restrictions may eventually be struck down, there could be domestic only specs that could stay on longer.”); Rona, Tr. 1502 (discussing CX 0231); CX 2523 (Bhattacharji, Dep. at 187-188) (“Q. Was it Sigma’s belief in June of 2009 that [Buy American] sentiment was gaining traction? A. As far as Sigma believed, it was a fear.”)).

1630. As Mr. Pais explained in a May, 14, 2009 internal email, “Buy American” sentiment was “slowly spreading and becoming a part of American life and business,” especially in the waterworks industry:

As for Fittings, the current DIFRA market size of about 100,000 ST may include about 10%-12% using the ‘DA’ [domestic spec] option, on the strength of the few specific markets like PA, NJ etc which are still ‘domestic’ . . . . [T]he ‘DA’ segment may swell to about 25% - 30% of the entire market due to the ARRA/BA and other BA [Buy American] drivers.

(CX 0081 at 003-004).

1631. Sigma anticipated that McWane would mount a campaign in some states for the adoption of Buy American requirements similar to those in ARRA. (CX 1996 at 001 (February 11, 2009 email of Mr. Bhattacharji)).
1632. Mr. Rona believed that Domestic-only Fittings specifications would continue for three to five years after ARRA. In a May 21, 2009 email, he described the impact of Buy American beyond ARRA-funded projects:

We knew that the government stimulus money would have a “buy American” preference but we are also seeing much more domestic requests and specifications that we expect will stay with our industry for several years if not for the next 3-5 years or even longer. To the customers if there is confusion about whether a job can be foreign or domestic they will take the easiest route and be forced to offer domestic. Making the wrong choice will cost [them] considerable problems and money loss.

(CX 0219 at 001; Rona, Tr. 1463-1464; *see also* CX 2530 (Rona, Dep. at 70-71) (“I particular[ly] felt that post ARRA . . . there absolutely would be a carryover sentiment in domestic fittings that would be a level greater than the domestic percentage leading up to ARRA.”)).

1633. {

}

(CX 1997 at 007, *in camera*).

1634. Star had seen a movement toward Domestic-only Specifications since ARRA because of the “sentiment in our country towards jobs,” and Star expected that trend to continue. (McCutcheon, Tr. 2282).
1635. Mr. McCutcheon believes that future legislation containing Buy American requirements similar to ARRA’s will further cause the Fittings business to have more Domestic-only Specifications. (McCutcheon, Tr. 2282-2283).
1636. Some municipalities that allowed import fittings prior to ARRA changed to Domestic Fittings requirements during the ARRA period and stayed with the Domestic Fittings requirement after the ARRA period ended. (CX 2489 (Morrison, IHT at 26-27)).
1637. Because of ARRA and the residual demand for Domestic Fittings, there has been an increase in demand for Domestic Fittings. (CX 2531 (Rybacki, Dep. at 16)). In 2009, Sigma was concerned that ARRA would have a carry-on effect in the domestic market, and it did. (CX 2531 (Rybacki, Dep. at 160); *see also infra* ¶¶ 1647-1654 (describing increased post-ARRA Domestic Fittings demand)).
1638. There is an ongoing concern on the part of suppliers that there could be legislation in the future that would also require the use of domestic fittings in projects. (CX 2535 (Bhutada, Dep. at 39) (noting potential for future stimulus)).

**8.2.3 Sigma and Star Were Concerned That ARRA’s Requirement for Domestic Fittings Would Also Result in the Loss of Non-Domestic Fittings Business**

1639. McWane’s competitors were also concerned that Distributors might shift their imported Fittings business to McWane because of McWane’s position in the Domestic market. (CX 0083 at 002 (Bhattacharji April 2009 draft memo to Board: “[W]e may lose a portion of the market that is not restricted to domestic simply because McWane will demand a larger share of the business.”); CX 1998 at 003 (minutes of April 14, 2009 Sigma board meeting noting that “SIGMA has to be watchful that McWane is not able to leverage its domestic product into an unfair gain in market share”); *see also* CX 2522 (Agarwal, Dep. at 94), *in camera* {
- }
1640. Specifically, Sigma was concerned that its inability to supply Domestic Fittings would negatively impact its sales of imported Fittings. If its customers were required to turn to McWane for Domestic Fittings for ARRA projects, they might also shift their purchases of imported Fittings to McWane. (Rona, Tr. 1459-1460; CX 2530 (Rona, Dep. at 119); *see also* CX 2523 (Bhattacharji, Dep. at 136-138) (Sigma feared that ARRA would cause it to lose sales to import jobs in addition to domestic sales)).
1641. Distributors risked losing project sales if they were unable to sell Domestic Fittings during the ARRA period. (CX 2489 (Morrison, IHT at 35-36) (“If I was not a distributor for Tyler Union and they’re the only person making domestic pipe fittings and there’s a job that requires domestic pipe fittings, the chances of me getting an order on that project would be remote because the contractor’s going to give the order to somebody that can

supply him the proper fittings and he's not going to be interested in buying the fittings from X and giving the rest of the business to Y."); CX 2501 (Prescott, IHT at 28) (explaining that if domestic fittings were unavailable "we would have to go against Buy America"))).

1642. Sigma viewed entry into the Domestic Fittings market in part as a "defensive move to protect our market share in the area of current sales." (CX 1172 at 001 (March 6, 2009 email of Mr. Bhattacharji); CX 2523 (Bhattacharji, Dep. at 135-137) (Sigma feared that the ARRA Buy American requirement would lock it out of ARRA jobs as well as non-ARRA work)).
1643. In an April 4, 2009 draft memorandum to the Sigma Board of Directors, Mr. Bhattacharji depicted the Buy-American provisions of ARRA as a "serious and unexpected handicap" to Sigma, and as threatening Sigma even in the "portion of the market that is not restricted to Domestic." (CX 0083 at 002).
1644. In May 2009, Mr. Rona echoed this concern regarding the threat that ARRA posed to Sigma's non-Domestic Fittings business, and noted that Sigma was coming under pressure to find a Domestic solution:

The total domestic requirements may only raise from the present maybe 10-12% to maybe 20% to 25% but even if we concede this volume to McWane there is likely more that will also go due to McWane putting pressure on the distributor to give the foreign business to them as well. They see this as a major chance to reclaim the market share they have seen slip away the last 20 years.

It is quite clear now that we need a credible plan to offer our customers, our sales people, and the industry as a whole. Many key industry people are asking how we plan to combat this extremely real threat.

(CX 0219 at 001; Rona, Tr. 1464-1467).

1645. Star also viewed Domestic entry as essential to defend against the likelihood that McWane would use its Domestic position to lead Distributors to deal more with McWane for its imported Fittings. (CX 2537 (McCutcheon, IHT (Vol. 1) at 104-105) (Star was in "panic mode" and thought ARRA was "the beginning of the end of Star Pipe" and would be a "death blow," because McWane's monopoly in Domestic would spill over into Star's core business of imported Fittings)).
1646. Sigma's and Star's concerns were not unfounded. On February 23, 2009, Mr. McCullough emailed Mr. Tatman to suggest that McWane should leverage its position in Domestic Fittings to increase its non-Domestic Fittings business: "We need to leverage our domestic position while not driving a wedge between ourselves and our customers as this Buy American requirement will not last forever." (CX 1209 at 001).



## **9 McWane Has Monopoly Power or a Dangerous Probability of Achieving Monopoly Power in the Domestic Fittings Market**

1655. McWane has monopoly power in the Domestic Fittings market. (Schumann, Tr. 3770, 3948; CX 2260-A (Schumann Rep. at 8, 57); *infra* ¶¶ 1658-1711).
1656. Market power or monopoly power is the ability to raise price above marginal cost. Having market power implies a firm has the power to control prices or exclude competitors. (Schumann, Tr. 3948).
1657. McWane could not have imposed its Exclusive Dealing Policy without exercising its monopoly power. (CX 2260-A (Schumann Rep. at 75, 78)).

### **9.1 McWane Has a Dominant Market Share in the Domestic Fittings Market**

1658. McWane has a dominant market share in the Domestic Fittings market. (*Infra* ¶¶ 1659-1663).
1659. From at least 2006 and until Star entered the Domestic Fittings market in late 2009, McWane was the only source of Domestic Fittings. (Answer at ¶ 40 (“McWane admits, on information and belief, that it was the only remaining domestic manufacturer of [Fittings] in sizes below 30” in 2009 until Star expanded its [Fittings] product offerings and sales to include domestic [Fittings] in 2009”); Tatman, Tr. 1047 (describing McWane as the “last man” in Domestic Fittings after U.S. Pipe, Griffin and ACIPCO had exited the market); CX 2513 (Webb, IHT at 98) (McWane was the only manufacturer of Domestic Fittings during ARRA); Thees, Tr. 3078 (when ARRA was enacted, McWane was the only supplier of Domestic Fittings in the 3” to 24” diameter range); Sheley, Tr. 3401-3402 (when ARRA was enacted in 2009, only McWane sold Domestic Fittings, with the exception of Backman Foundry in Utah, which only sold specialty “oddball” Fittings); Brakefield, Tr. 1408 (in evaluating entering the Domestic Fittings production market, Sigma concluded that “even though it was a small part of the market, it could become much bigger, and there would be only one source, and that would be Tyler/Union.”); Pais, Tr. 1733 (describing ARRA’s Buy American requirement: “[O]vernight the government, you know, dealt a huge blow by diverting that [Domestic Fittings] business to just one manufacturer [McWane]...”); McCutcheon, Tr. 2298 (to his knowledge, over the two years prior to Star’s entry in 2009 “there was not another manufacturer of 24” and down domestically manufactured pipe fittings” other than McWane); Morton, Tr. 2817-2818 (after U.S. Pipe closed its Chattanooga, Tennessee plant in April of 2006, McWane was the only producer of Domestic Fittings); Morton, Tr. 2823 (in April 2009, McWane was the sole supplier of Domestic Fittings 24” and under; ACIPCO was the sole supplier for Domestic Fittings 30” and over); CX 2223 at 002 (same); CX 2222 at 001 (U.S. Pipe June 3, 2009 email to EPA: “There is only one domestic manufacturer for 4” though 24” fittings – McWane, Inc.”); CX 2523 (Bhattacharji, Dep. at 140-142) (the ARRA domestic Buy-American requirement meant that Distributors were left to deal with only one Fittings supplier); CX 0551 (May 12, 2009 email from Mr. Fielding of HD supply: “Unfortunately, since they [McWane] are the only domestic mfg. of fittings, they have the upper hand this time.”)).





1669. Star did face one significant barrier to entry into the Domestic Fittings market – McWane’s Exclusive Dealing Policy. Exclusionary conduct is recognized as a barrier to entry. (CX 2260-A (Schumann Rep. at 65) (explaining that preventing a Fittings supplier from the using the services of Distributors “would face an absolute, long-term ‘economic barrier to entry.’”)).
1670. A business practice that delays an entrant’s efficient entry into a market (*e.g.*, delays an entrant’s ability to achieve minimum efficient scale) creates an antitrust barrier to entry that may result in harm to consumers. (CX 2260-A (Schumann Rep. at 62)). Antitrust barriers to entry harm consumers by delaying entry that expands output, increases competition, and lowers prices. (CX 2260-A (Schumann Rep. at 62-63)).

#### **9.4 Domestic Foundries, Pipe Manufacturers, and Other Suppliers of Imported Fittings Are Not Potential Entrants into the Domestic Fittings Market**

1671. There are no potential entrants into the Domestic Fittings market. (*See infra* ¶¶ 1672-1693).
1672. McWane is unaware of any person that has plans to begin manufacturing Domestic Fittings in the next two years. (Supp. Response to RFA at ¶ 11).

##### **9.4.1 Domestic Foundries Are Not Potential Entrants into the Domestic Fittings Market**

1673. Domestic foundries are not potential entrants into the Domestic Fittings market. (*Infra* ¶¶ 1674-1682).
1674. Frazier & Frazier, Glidewell, EBAA, and East Jordan, which are all domestic foundries that have produced unfinished Domestic Fittings or castings, have each testified that they have no plans to enter the market for selling finished Domestic Fittings. (CX 2505 (Frazier, Dep. at 69-70); CX 2507 (Glidewell, Dep. at 127); CX 2499 (Keffer, Dep. at 13-14); CX 2498 (Teske, Dep. at 33-34)).
1675. Currently, Frazier & Frazier, Glidewell, and Mabry are each producing Domestic Fitting castings, or unfinished Fittings, for suppliers like Star. (CX 2505 (Frazier, Dep. at 68-69); CX 2507 (Glidewell, Dep. at 122-123); RX-676 (Hall, Dep. at 16-20)).
1676. Frazier & Frazier, Glidewell, and Mabry do not sell Domestic Fittings or Domestic Fittings castings to any End User. (CX 2505 (Frazier, Dep. at 68-69); CX 2507 (Glidewell, Dep. at 122-123); CX 2517 (Hall, Dep. at 148-150)).
1677. Backman Foundry “never even considered” producing large quantities of Domestic Fittings in response to the demand created by ARRA because of the “many million dollars” it would cost to “make the expansion to be able to get into the market.” (RX-648 (Backman, Dep. at 109-110) (“I never even considered it. It wasn’t an option. Sorry, I didn’t mean to beat on the table.”)).

1678. While EBAA and East Jordan produce waterworks products, neither foundry currently produce Domestic Fitting castings. (RX-658 (Keffer, Dep. at 8-9); CX 2498 (Teske, Dep. at 112)).
1679. To enter the manufacture of Domestic Fittings would require major equipment additions and an economic investment at EBAA Iron, including: molding machines; equipment for producing cored or hollow castings; and new furnaces. (CX 2499 (Keffer, Dep. at 13-14)).
1680. EBAA considered expanding into Domestic Fitting production three or four years ago, and estimated that the required expansion would cost at least \$10 to \$12 million, and take two years to realize. (CX 2499 (Keffer, Dep. at 49-51)).
1681. Manufacturing Domestic Fittings at East Jordan would require an extremely expensive capital investment including: a major conversion of EJ's East Jordan, Michigan melt facility, core-making equipment, and an investment in Domestic Fitting tooling. (CX 2498 (Teske, Dep. at 31-34)).
1682. To manufacture finished Domestic Fittings, a domestic foundry already making Domestic Fitting castings would have to design and develop a Domestic Fittings product line, invest in a Domestic Fitting sales force, identify customers, and invest in the equipment and expertise required to finish Domestic Fittings. (CX 2505 (Frazier, Dep. at 69-72); CX 2507 (Glidewell, Dep. at 125-126)).

#### **9.4.2 Pipe Manufacturers Are Not Potential Entrants into the Domestic Fittings Market**

1683. Pipe manufacturers are not potential entrants into the Domestic Fittings market. (*Infra* ¶¶ 1684-1688).
1684. {  
} (CX 2508 (Kuhrts, Dep. at 19-20, 49, *in camera*); CX 2486 (Burns, Dep. at 70-71, 123-124); CX 2542 (Morton, Dep. at 56)).
1685. ACIPCO has not considered re-entering the manufacture of Domestic Fittings under 24" in diameter, despite a 7% to 8% market price increase after ACIPCO stopped making these sizes. (CX 2486 (Burns, Dep. at 36, 70-71, 123-124)).
1686. ACIPCO presently lacks the equipment necessary for producing Domestic Fittings of less than 30" in diameter. (CX 2486 (Burns, Dep. at 84)).
1687. U.S. Pipe evaluated re-entering domestic production in 2009 and chose not to re-enter because it was cost prohibitive. (RX-701 (Morton, Dep. at 47-49, 56-57)).
1688. {  
} (CX 2508 (Kuhrts, Dep. at 19-20, 49, *in camera*)).

### 9.4.3 Other Suppliers of Imported Fittings Are Not Potential Entrants into the Domestic Fittings Market

1689. Other suppliers of imported Fittings are not potential entrants into the Domestic Fittings market. (*Infra* ¶¶ 1690-1693).
1690. Metalfit stated that it has no plans to begin manufacturing Domestic Fittings under 24” in diameter. (CX 2518 (Meyer, Dep. at 184-185)).
1691. Metalfit, a Mexican Fittings producer and supplier to the US market, has indicated that even a 10% increase in the price of Domestic Fittings would not induce the company to invest in entering the Domestic Fittings market. (CX 2518 (Meyer, Dep. at 184-185)).
1692. SIP, a supplier of imported Fittings, has no plans to enter the Domestic Fittings market given McWane’s Exclusive Dealing Policy. (*See infra* § 10.8).
1693. {  
  
} (CX 2500 (Swalley, Dep. at 184-185), *in camera* {  
  
} (CX 2500 (Swalley, Dep. at 178)).

## 9.5 McWane Was Able to Control Prices, Impose Unfavorable Terms on Customers, and Exclude Competitors in the Domestic Fittings Market

### 9.5.1 McWane Charged Higher Prices and Earned Higher Margins for Domestic Fittings Than for Non-Domestic Fittings, and Its Pricing Was Not Constrained by Competitor Efforts to “Flip” Domestic Specifications to Open Specifications

1694. In 2008, 2009, and 2010, McWane was able to charge higher prices, offer less discounting, and earn higher margins for Domestic Fittings than for otherwise identical non-Domestic Fittings, and its Domestic Fittings prices were not constrained by competitor efforts to “flip” Domestic Specifications to Open Specifications. (*Infra* ¶¶ 1674-1682).
1695. The price of a Domestic Fitting was “twice as much as an imported fitting” during the ARRA period, notwithstanding the functional interchangeability of imported and Domestic Fittings. (CX 2489 (Morrison, IHT at 45) (“As we sit here today, without question a domestic fitting is twice as much as an imported fitting, and that’s primarily because of the stimulus situation.”); *see also supra* §§ 4.2.1, 5.2.2).
1696. In 2008, McWane did not typically offer Project Pricing for Domestic Fittings because the less competitive Domestic market did not require it. (Tatman, Tr. 334-335; CX 2199 at 001 (McWane’s Pricing Coordinator’s email refusing a sales person’s request for Project Pricing for Domestic Fittings because “We are the only one who makes the full line of 24” and down. No need to drop the price unless Star is an issue.”); CX 2480

- (Napoli, Dep. at 73 (stating that McWane often was not asked to offer Project Pricing for Domestic Fittings)).
1697. McWane was not willing to negotiate the price of Domestic Fittings after the passage of ARRA. (CX 2489 (Morrison, IHT at 45) (“[U]ntil the stimulus project came around, everything was negotiable. When the stimulus project came around the price became firm on the domestic fitting. There has been little if any that I’m aware of negotiation on what you’re going to pay for the domestic fitting and the spread widened.”); Sheley, Tr. 3420-3421 (Illinois Meter sometimes receives Project Pricing for specific imported Fittings orders, but does not receive Project Pricing for Domestic Fittings); CX 2515 (Sheley, IHT at 28) (“Well, on that import product you can negotiate prices. Domestic product, there’s a price and that’s what you pay.”); CX 2513 (Webb, IHT at 99-100) (explaining that after ARRA was passed McWane “changed and reduced” the rebate on domestic fittings which is “effectively” an increase in price for domestic fittings)).
1698. Based on Electrosteel USA’s analysis regarding the production of Domestic Fittings, Mr. Swalley sees no cost-based reason for the price differential between Domestic Fittings and non-Domestic Fittings. (CX 2500 (Swalley, Dep. at 160-161)).
1699. {  
} (Tatman, Tr. 1042, *in camera*); CX 2537 (McCutcheon, IHT at 87-91) (describing the significant price differential between Domestic and non-Domestic prices, and the persistence of Domestic Only specifications – even before ARRA – despite the differential)).
1700. In 2003, Buy America preference provisions applied to 10% to 20% of all ductile iron fittings shipments in the United States. (RXD-012 at 033 (admitted into evidence at trial, Tr. 4637) (U.S. International Trade Commission report on Certain Ductile Iron Waterworks Fittings From China, Dec. 2003; ITC’s finding based on testimony of McWane (the petitioner in the ITC matter, *see* RDX-012 at 009) and Sigma)). Prior to the passage of ARRA in 2009, Domestic-only Fittings projects still comprised approximately 15% to 20% of the overall Fittings market. (Tatman, Tr. 236 (15% to 18%); McCutcheon, Tr. 2279-2280 (Star estimated 15% to 20%); CX 2535 (Bhutada, Dep. at 11), *in camera* {  
}; CX 2501 (Prescott, IHT at 41) (20% of customers were “a hundred percent domestic”); CX 2509 (Groeniger, IHT at 41) (“Q. Do you have a sense of what your split in terms of revenue for domestic and imported fittings was before the ARRA? A. 75/25 foreign. Q. Uh-huh, 75% foreign, 25% domestic? A. Yes, uh-huh.”); Webb, Tr. 2732 (Before ARRA, about 20% of HD Supply’s Fittings sales were of Domestic Fittings)).
1701. Sigma does not try to change statutes that require the use of Domestic Fittings. (CX 2523 (Bhattacharji, Dep. at 127-128) (Sigma has “never attempted in any concentrated fashion to work at state level to change the law, a Buy America law. Like in Pennsylvania, we have not gone to the state level to make changes. New Jersey is another state which is Buy America, but we haven’t gone. So all of our efforts have been in those geographical areas where the state doesn’t have a mandated Buy America law, and townships and water companies have something on a spec which doesn’t allow an imported product to

be used. . . . We are businessmen, and talking to politicians and people like that is a waste of time.”)).

1702. {

**0043, in camera {**

**}(RX-721 at 0041,**

**RX-632 at 0027, 0029 {**

**} see also CX 2416 at 043, in camera {**

**}**

### **9.5.2 McWane Was Able to Impose Unfavorable Terms on Distributor Customers**

1703. McWane was able to impose more onerous terms on Distributors for Domestic Fittings than for otherwise identical imported Fittings. (*Infra* ¶¶ 1704-1708).
1704. In a January 28, 2010 Domestic Fittings program and policy review document, Mr. Tatman observed that “[w]hile most distributors understand the reasons behind the [Exclusive Dealing] policy, it has created negative goodwill among many of them.” (CX 0118 at 003).
1705. Under the Exclusive Dealing Policy announced by McWane on September 22, 2009, McWane would withhold rebates and cut off the supply of Domestic Fittings from Distributors who chose to buy Domestic Fittings from Star. (*See infra* §§ 10.3.1, 10.3.2).
1706. McWane imposed its Exclusive Dealing Policy on an all-or-nothing basis against customers with multiple branches. (CX 0024 at 001 (“[I]f any Hajoca location chooses to buy another domestic fittings supplier[‘s] product Hajoca **will not** have direct access to the McWane ductile iron water main fittings for a period of time as well as loss of any accrued rebate to date.” (emphasis added))). Hajoca opposed this policy and asked McWane to modify it and have the policy apply branch by branch, but McWane refused. (CX 0022 at 002; Pitts, Tr. 3306-3308; *see also infra* § 10.4).
1707. TDG was opposed to McWane’s Exclusive Dealing Policy and its terms, and thus did not accept McWane’s September 2009 Domestic Fittings rebate proposal. (*See infra* § 10.5.6). TDG objected, in part, because the new policy required TDG to police its members’ Domestic Fittings purchases to ensure that all locations for all TDG Distributors purchase all of their Domestic Fittings from McWane. (Sheley, Tr. 3408-3409; CX 2494 (R. Fairbanks, Dep. at 114) (because McWane proposal involved policing of individual member companies, it “[d]idn’t fit our model”)).

1708. End Users that use Open Specification also enjoy better price, quality, product range, and service from import manufacturers than they receive from McWane on Domestic Fittings. (CX 2523 (Bhattacharji, Dep. at 131-134)).

### **9.5.3 McWane Was Able to Exclude Competitors from the Domestic Fittings Market**

1709. McWane was able to exclude competitors from the Domestic Fittings market. (*See infra* ¶¶ 1710-1711).
1710. McWane’s Exclusive Dealing Policy had the effect of excluding Star from the Domestic Fittings Market. McWane’s Exclusive Dealing Policy caused Star to lose sales, prevented Star from investing in its Domestic business, and made Star unable to effectively compete with McWane in Domestic Fittings. (*See infra* § 10.9)
1711. SIP abandoned its plans to enter the Domestic Fittings market after McWane adopted the Exclusive Dealing Policy. (*See infra* § 10.8).

## **10 McWane Implemented an Exclusive Dealing Policy in the Domestic Fittings Market**

### **10.1 Star Entered the Domestic Fittings Market**

1712. Prior to 2009, all the Fittings sold by Star were generally imported from China, Korea, Brazil or Venezuela. (RX-692 (Bhargava, Dep. at 9-10)).

#### **10.1.1 Star Announced Its Entry into the Domestic Fittings Market in June 2009**

1713. At a June 2009 AWWA industry conference, Star publicly announced that it would begin selling Domestic Fittings in September 2009. (Joint Stipulations of Fact, JX 0001 ¶ 23; Brakefield, Tr. 1401-1402; CX 2533 (Bhargava, Dep. at 47-48); CX 2489 (Morrison, IHT at 68) (“Star surprised everyone at the convention by unveiling their new line of domestic fittings.”); McCutcheon, Tr. 2295-2296 (announcing entry into Domestic Fittings market through AWWA show announcement, handouts, email “blast[s]” to customer base, and its website); Tatman, Tr. 645 (noting that Star also announced its Domestic entry on its website)).
1714. On or about June 15, 2009, Star sent a letter to customers stating, “Look for our . . . Fitting inventories to start arriving in September.” (CX 1674 at 002).
1715. On or about June 24, 2009, Star issued letters to its customers announcing the multipliers for its “American Made” Domestic Fittings. (CX 2330; CX 2331; CX 2332; CX 2333).

**10.1.2 Star Planned to Quickly Enter the Domestic Fittings Market While It Built Its Inventory and Sales to Become a Full-Line Supplier with Its Own Domestic Foundry**

1716. In 2009, Star planned to quickly enter the Domestic Fittings market with a partial line manufactured by independent foundries, and to build up the inventory and sales base required to become a full-line supplier with its own domestic foundry. (*Infra* ¶¶ 1717-1732).
1717. Star began to seriously consider entering the Domestic Fittings market after ARRA was enacted. (Bhargava, Tr. 2926-2928 (Star first considered Domestic entry around March or April of 2009, in response to ARRA’s Buy American provision and after eliminating Korea and Mexico as potential solutions); RX-698 (McCutcheon, Dep. at 132) (around April 2009); McCutcheon, Tr. 2277-2278 (2009); RX-694 (Bhutada, Dep. at 48) (March or April 2009); CX 2533 (Bhargava, Dep. at 11) (Star first considered producing fittings domestically in 2009 after the passage of ARRA, because projects funded by ARRA had to be made in the United States)).
1718. Star believed that there would be sufficient demand in the Domestic Fittings market to support two suppliers. (McCutcheon, Tr. 2285).
1719. Upon the enactment of ARRA, Star estimated that the demand for Domestic Fittings could double and that it would be foreclosed from the domestic market. (CX 2535 (Bhutada, IHT at 31) (demand for Domestic Fittings could increase from 20% to 40% of total demand for fittings); *see supra* § 8.2 (describing threat posed by ARRA)).

10.1.2.1 Star Decided to Initially Enter the Domestic Fittings Market by Contracting with Independent Domestic Foundries in Order to Bring Its Domestic Fittings to Market More Quickly

1720. To bring its Domestic Fittings to market more quickly, Star initially entered the Domestic Fittings market by contracting with independent domestic foundries.. (*Infra* ¶¶ 1721-1725).
1721. In 2009, Star considered three alternatives for producing Domestic Fittings in the United States: (1) building a new foundry; (2) purchasing an existing foundry; or (3) contracting with existing independent foundries to manufacture castings (unfinished Domestic Fittings). (McCutcheon, Tr. 2284; Bhargava, Tr. 2928-2929 (“[W]e could set up our own foundry from ground zero[,] . . . we could buy an existing foundry . . . or we could go to contract manufacturing . . . .”); *see also* CX 2533 (Bhargava, Dep. at 19-22), *in camera* {
- }; CX
- 2534 (Bhutada, Dep. at 46), *in camera* {

}

1722. {



} (Bhargava, Tr. 2930, 2990, *in camera* {

}; McCutcheon, Tr. 2284-2285 (also supporting initially entering Domestic Fittings market by contracting with third party foundries because Star was uncertain if it would have sufficient sales to sustain its own foundry); CX 2537 (McCutcheon, IHT (Vol. 1) at 109, *in camera*) {

}

1723. { }  
(Bhargava, Tr. 2930-2031, *in camera* {

}

1724. {

} (Bhargava, Tr. 2945-2946, *in camera*).

1725. { }  
(CX 2535 (Bhutada, Dep. at 118-119), *in camera*); McCutcheon, Tr. 2284; Bhargava, Tr. 2931, *in camera* {  
}; CX 2533 (Bhargava, Dep. at 26-27), *in camera*).

10.1.2.2 Star Decided to Enter the Domestic Market by First Supplying the Most Common Fittings as It Built Its Inventory to Become a Full-Line Supplier

1726. Star planned to enter the Domestic Fittings market by offering the most popular Fittings items first. Star developed a priority for the patterns it constructed by identifying the best-selling Fittings, which require approximately 150 to 200 patterns but account for approximately 80% of Fittings sales. (CX 2535 (Bhutada, Dep. at 52-53)).

1727. Star planned to offer a relatively full line of the more commonly used C153 Domestic Fittings, and a more limited line of C110 fittings, for which Star would stock "A" items and otherwise produce on a per-project basis. (McCutcheon, Tr. 2292-2293; CX 2537 (McCutcheon, IHT (Vol. 1) at 133) (Star was anticipating having a lot of patterns, but not all, by the end of 2009)).

1728. The contracting and incremental approach to entering the Domestic Fittings market adopted by Star is the same approach that others had taken when entering the imported Fittings market. (CX 2527 (Pais, IHT at 155) (import entry); Pais, Tr. 1723 (Sigma first entered Fittings market with about 50 items); CX 2522 (Agarwal, Dep. at 75-76), *in*

*camera* { }; CX 2522 (Agarwal, Dep. at 97-98), *in camera* {  
}

10.1.2.3 Star Planned to Buy or Build Its Own Foundry in Order to Recognize Manufacturing Cost Efficiencies After It Had Sufficient Sales to Justify the Additional Investment

1729. {

*in camera* { } (Bhargava, Tr. 2946; CX 2537 (McCutcheon, IHT (Vol. 1) at 108-109),

}

1730. {

(Bhargava, Tr. 2963, *in camera* {

}

}; CX 2535

(Bhutada, Dep. at 127), *in camera* {

}; *see infra* § 10.9.2.1)).

1731. {

*camera*). {

} (Bhargava, Tr. 2961, *in*

} (Bhargava, Tr. 2962, *in camera*).

1732. {

} (Bhargava, Tr. 2955-2956, *in camera*).

**10.1.3 Star Took the Steps Necessary to Enter the Domestic Fittings Market in 2009**

1733. {

} (Bhargava, Tr. 2936-2938, *in camera*; CX 2535 (Bhutada, Dep. at 50); CX 2533 (Bhargava, Dep. at 30, *in camera*); *infra* ¶¶ 1734-1757).

10.1.3.1 Star Identified and Contracted with Independent, Third-Party Foundries to Produce Domestic Fittings for Star

1734. In 2009, Star identified and contracted with independent, third party foundries to produce Domestic Fittings for Star. (*Infra* ¶¶ 1735-1747).

1735. {

- } (Bhargava, Tr. 2931-2932, *in camera*; CX  
2535 (Bhutada, Dep. at 56), *in camera*).
1736. {  
  
}  
(CX 2535 (Bhutada, Dep. at 57, 118-119), *in camera*).
1737. {  
  
}(CX 2535 (Bhutada,  
Dep. at 119), *in camera*; CX 2533 (Bhargava, Dep. at 93), *in camera*).
1738. {  
  
  
  
  
  
  
  
  
  
}(Bhargava, Tr. 2937-2938, *in  
camera*; CX 2535 (Bhutada, Dep. at 57-59), *in camera*).
1739. {  
  
  
  
  
  
  
  
  
  
}(CX 2533 (Bhargava, Dep. at 30, *in camera*)).
1740. {  
  
  
  
  
  
  
  
  
  
}  
(Bhargava, Tr. 2933, *in camera*; CX 2535 (Bhutada, Dep. at 60), *in camera*). {  
} (CX 2535  
(Bhutada, Dep. at 61), *in camera*).
1741. Star and Frazier & Frazier, a domestic foundry, signed a confidentiality agreement on June 2, 2009, and a supply chain agreement on June 12, 2009. (RX-665 (Gupta, Dep. at 16, 20, 43-44).
1742. On July 2, 2009, Star submitted a purchase order to Frazier & Frazier for \$328,599 worth of Domestic Fitting castings. (RX-665 (Gupta, Dep. at 48, 49)). Frazier & Frazier sold its first Domestic Fitting casting to Star in approximately August 2009. (RX-665 (Gupta, Dep. at 57-58)).
1743. Frazier & Frazier produced 70 to 80 patterns of Domestic Fitting castings for Star by the end of 2009, which increased to approximately 300 unique patterns with a 9" or smaller diameter by 2012. (CX 2506 (Gupta, Dep. at 75-76, 89-90)).
1744. Star first contacted Glidewell about making Domestic Fitting castings at the end of 2009 or early in 2010, and Glidewell began producing Domestic Fittings casting for Star less than one month later. (RX-666 (Glidewell, Dep. at 29-30, 58)).

1745. In 2010, Glidewell sold \$635,439 in products, and 34 different types of Fittings castings to Star in 2010. (RX-666 (Glidewell, Dep. at 54); CX 1417 at 007). In 2011, Glidewell sold \$590,773 in products, and 46 different types of Fittings castings to Star. (RX-666 (Glidewell, Dep. at 56-57); CX 1418 at 008). And from January 1, 2012 through March 23, 2012, Glidewell sold \$83,878 in products. (RX-666 (Glidewell, Dep. at 58); CX 1419 at 002).
1746. Star and Mabry entered into a confidentiality agreement for the production of Domestic Fittings castings on November 2, 2009, and Mabry began producing at least three types of Domestic Fittings castings for Star by the end of 2009. RX-676 (Hall, Dep. at 32-33, 37-38, 67-68)).
1747. In 2010, Mabry produced at least 135 types of Domestic Fitting castings for Star. (CX 1581; RX-676 (Hall, Dep. at 69)). To date, Mabry has produced at least 177 types of Domestic Fitting castings for Star, resulting in approximately \$2.9 million in invoices from Mabry to Star. (CX 1581; RX-676 (Hall, Dep. at 69-70)).

#### 10.1.3.2 Star Acquired Patterns for Producing Domestic Fittings

1748. To enter the Domestic market, Star acquired patterns in China that could be used at foundries in the United States for the construction of a full line of C153 Fittings. (CX 2537 (McCutcheon, IHT (Vol. 1) at 112-113); RX-694 (Bhutada, Dep. at 51); *infra* ¶¶ 1749-1754).
1749. Star invested approximately \$3.5 million to secure the patterns necessary for producing Domestic Fittings. (RX-694 (Bhutada, Dep. at 62)).
1750. By September 2009, Star had obtained in China the patterns for the most popular Fittings that it had identified for inclusion in its initial Domestic Fittings offering, and these patterns were either available in the United States or were in transit to the United States. (CX 2535 (Bhutada, Dep. at 55)).
1751. By the end of 2009, Star had patterns for more than 325 C153 Fittings. (CX 2533 (Bhargava, Dep. at 61)). {  
}(CX 2533 (Bhargava, Dep. at 65-66), *in camera*).
1752. {  
}(CX 2533 (Bhargava, Dep. at 66), *in camera*).
1753. {  
}(Bhargava, Tr. 3013, *in camera*). Star was capable of offering a full line of C153 Fittings comparable to the line of Domestic Fittings offered by McWane. (CX 2537 (McCutcheon, IHT (Vol. 1) at 115-116); *see also* Bhargava, Tr. 3011-3012, *in camera* {  
}; CX 2533 (Bhargava, Dep. at 65-66), *in camera* {  
}

1754. Star did not immediately acquire patterns for the less commonly used C110 Fittings, except when a Distributor placed an order for a particular C110 Fitting. (CX 2537 (McCutcheon, IHT (Vol. 1) at 113-114)). When it received an order for a C110 Fitting, Star would place an order for the appropriate pattern. By using this approach, it was able to compete in the smaller, less active market for domestic C110 Fittings. (CX 2537 (McCutcheon, IHT (Vol. 1) at 113-114)).

#### 10.1.3.3 Star Expanded Its Finishing Facilities for Domestic Fittings

1755. {  
 } (McCutcheon, Tr. 2288-2289; Bhargava, Tr. 2937-2939, *in camera*; RX-694 (Bhutada, Dep. at 62)).

1756. {  
 } (Bhargava, Tr. 2940, *in camera* {  
 }

1757. {  
 } (Bhargava, Tr. 2939, *in camera*).

#### 10.1.4 **Star's Imported Fittings Business Provided It with the Expertise and Distributor Relationships Necessary for Manufacturing and Selling Domestic Fittings**

1758. Star's existing imported fittings business provided it with the expertise and Distributor relationships necessary for manufacturing and selling Domestic Fittings. (*Infra* ¶¶ 1759-1765).

1759. {  
 (Bhargava, Tr. 2979-2980, *in camera*) {

}

1760. As an existing supplier of non-Domestic Fittings, Star already had in place the network of Distributor customers required to enter and compete effectively in the Domestic Fittings market. (Answer at ¶ 25 (“[A]ll suppliers of [Fittings] have distribution relationships or other abilities within the United States sufficient to enable them to compete effectively throughout the country.”)).

1761. Star's entry into the Domestic Fittings market did not require any changes to Star's sales team. (McCutcheon, Tr. 2287).

1762. Star's entry into the Domestic Fittings market did not require any changes to Star's relationships with its existing Distributor customers, who would also be its customers for Domestic Fittings. (McCutcheon, Tr. 2287).

1763. Star's entry into the Domestic Fittings market did not require any changes to Star's existing regional distribution centers, which Star would also use for Domestic Fittings. (McCutcheon, Tr. 2287).
1764. In 2009, Star already had in place the back office support needed to sell a line of Domestic Fittings. (McCutcheon, Tr. 2288).
1765. Star did not encounter any problems with municipalities accepting its Domestic Fittings under Domestic specifications. (McCutcheon, Tr. 2294-2295).

#### **10.1.5 Star Had the Overwhelming Support of Its Customer Base**

1766. After ARRA was enacted, Star's customers were concerned about their access to Domestic Fittings and were "begging for someone to solve their problem." (CX 2537 (McCutcheon, IHT (Vol. 1) at 132) ("[O]ur phone was ringing off the hook, what are you guys going to do, I got – you know, we're going to need you.")).
1767. Distributors welcomed another Domestic Fittings supplier in the market. (CX 2489 (Morrison, IHT at 69) ("[I]n June of '09 is when Star announced theirs and that sort of rocked the world from a waterworks distribution standpoint of: Hey, here's going to be another source."); CX 2546 (Gibbs, Dep. at 92) ("It was the talk of the show if you were in the ductile iron fitting business."); CX 2513 (Webb, IHT at 179-180) (describing his response to Star's entry as "positive" and stating that "becoming domestic in nature is in general a positive for the country"))).
1768. Star believed that its announcement of its Domestic entry was favorably received by its Distributor customers. At the AWWA show in June 2009, Mr. McCutcheon discussed Star's entry with as many as 100 different Distributors, including HD Supply, Ferguson, TDG, Groeniger and the WinWater Group, and they uniformly told him they were pleased that Star was entering. (McCutcheon, Tr. 2296<sup>10</sup> ("The general reaction was that the customer base was happy to have another option, to have some competition in the domestic fitting arena, and it was extremely well-received"); CX 2537 (McCutcheon, IHT (Vol. 1) at 125, 127, 130, 133) (Star was "the hit of the show . . . the talk of the town"))).
1769. All of the Distributors that came to Star's booth at the AWWA show gave Star some form of soft commitment of support, such as "this is excellent," "outstanding," "I am glad you guys are doing it," or "I will definitely buy from you guys." (CX 2537 (McCutcheon, IHT (Vol. 1) at 132-133)).
1770. None of Star's customers expressed a negative reaction to Star's entry into Domestic Fittings. (McCutcheon, Tr. 2300).

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<sup>10</sup> The cited trial testimony regarding out of court statements of the Distributors is cited for its effect on Mr. McCutcheon and Star, not to prove the truth of the matters asserted in the statements. (See McCutcheon, Tr. 2296).

1771. Distributors explained to Star that they supported Star's entry because they believed that having a second supplier of Domestic Fittings would provide balance to the market, improving both price and service and enabling Distributors to better serve End Users. (CX 2537 (McCutcheon, IHT (Vol. 1) at 126-128)).

#### 10.1.6 Star Began Producing Domestic Fittings

1772. As planned, Star began producing, selling and shipping Domestic Fittings in late 2009. (*Infra* ¶¶ 1773-1781).

1773. { } (Bhargava, Tr. 3002, *in camera*).

1774. { } (CX 2535 (Bhutada, Dep. at 60), *in camera*).

1775. Distributors requested a significant number of quotes for Domestic Fittings from Star between June 2009, when Star announced its entry into the Domestic Fittings market, and September 2009. (McCutcheon, Tr. 2300; CX 2535 (Bhutada, Dep. at 66)).

1776. An August 25, 2009 roll-out schedule for Star's Domestic Fittings promised availability of 80% of compact and flange Fittings between September 15, 2009 and November 15, 2009, and availability of 95% of such Fittings between December 1, 2009 and February 15, 2010. (CX 2215 at 002-003 (schedule as sent to U.S. Pipe on September 3, 2009); *see also* RX-207 at 001-002 (as sent to Ferguson on September 4, 2009)).

1777. Star met its planned production dates for bringing its Domestic Fittings production online and rolling out its Domestic Fittings line. (McCutcheon, Tr. 2294).

1778. By September or October of 2009, Star was building its inventory of Domestic Fittings. (McCutcheon, Tr. 2300; RX-692 (Bhargava, Dep. at 113)).

1779. Star charged a price for Domestic Fittings that was competitive with McWane's price, if not slightly cheaper. (CX 2535 (Bhutada, Dep. at 82-83)).

1780. There were a limited number of instances in which Star had to delay delivery of Domestic Fittings to Distributor. Star hardly lost any sales because of delays in deliveries. (CX 2535 (Bhutada, Dep. at 123-124); RX-696 (McCutcheon, IHT (Vol. 1) at 202-203) (Star did not lose any customers because of problems it faced by acquiring Domestic Fittings from contracting foundries); CX 2535 (Bhutada, Dep. at 82) (No supplier regularly can immediately provide 100% of the Domestic Fittings demanded by Distributors)).

1781. { } (CX 2508 (Kurhts, Dep. at 54-55, *in camera*)).

## 10.2 McWane Adopted an Exclusive Dealing Policy with the Specific Intent to Eliminate Star as a Competitor in the Domestic Fittings Market

1782. McWane developed, adopted, and implemented an Exclusive Dealing Policy (*see infra* ¶ 1824) with the specific intent of eliminating Star as a competitor in the Domestic Fittings market. (*Infra* ¶¶ 1783-1822).
1783. McWane was “caught blindsided” by Star’s announcement at the June 2009 AWWA show that it would be entering the Domestic Fittings market. This was the first time that Mr. Tatman had learned that Star was entering the Domestic Fittings market. (Tatman, Tr. 644).
1784. On June 15, 2009, Mr. Tatman forwarded Star’s domestic entry announcement to Mr. McCullough and Mr. Walton, and reported that “[w]e’re trying to get confirmation on the breath [*sic*]of the available fittings available and the locations of the foundries they are working with. One distributor believes they are working with multiple domestic foundries but that has not been substantiated.” (CX 1674 at 001).
1785. McWane also tried to find out which foundries were working with Star in its domestic production because McWane did not want any foundry that it was working with to also work with Star. (CX 2479 (McCullough, Dep. at 161-162); CX 0354 at 001).
1786. In addition to its exclusive dealing policy, McWane’s sales force also actively tried to prevent Star from being listed with municipalities as an eligible supplier of Domestic Fittings. (CX 2477 (Jansen, Dep. at 195-198); CX 1605)).

### 10.2.1 McWane Feared That Star’s Entry Would “Cream” Prices in the Domestic Fittings Market

1787. McWane feared that Star’s entry into Domestic Fittings would cause prices in the Domestic Fittings market to erode. (*Infra* ¶¶ 1788-1797).
1788. Upon hearing an update that Star apparently was entering as a full-line supplier, Mr. McCullough wrote, “Star is a determined competitor that just keeps making a bad industry worse.” (CX 0423). Mr. McCullough explained that he was expressing a concern that Star would change what was “basically a break-even [Fittings] business,” to one where McWane was “going to lose more money.” (CX 2479 (McCullough, Dep. at 165)).
1789. On June 24, 2009, Mr. McCullough sent an email to Mr. Tatman, cc’ing Mr. Walton, requesting information about Star’s domestic entry and Sigma’s potential entry. Specifically, Mr. McCullough raised questions regarding McWane’s “position short term/long term on sharing distribution of our domestic fitting line. ***Just because we share our blended fittings does not require us to share our domestic***, especially if the competition is a short line domestic supplier.” (CX 0074 at 002 (emphasis added); Tatman, Tr. 646-647).



1790. In a June 24, 2009 email, Mr. Walton responded to Mr. McCullough's email and expressed his concern that :

Whether we end up with Star as a complete or incomplete domestic supplier *my chief concern is that the domestic market gets creamed from a pricing standpoint just like the non-domestic market has been driven down in the past. That would dramatically effect our profit potential.* Further, I have a sense there is a slim to none possibility that we would ever be able to sell Star domestic product at this point, one I do not think they would ever trust us and, two they seem to be so far down the road that I do not think they will be willing to turn back. I do agree whole heartedly that we need to evaluate our options and plot a comprehensive strategy going forward.

(CX 0074 at 001 (emphasis added); CX 2485 (Walton, Dep. at 91-92) (email accurately reflected Mr. Walton's "chief concern" regarding Star's entry at the time); Tatman, Tr. 647).

1791. Mr. Tatman's initial response to Mr. McCullough's and Mr. Walton's emails was to agree that there were "slim" chances for "profitable cohabitation" of the Domestic Fittings market with Star, and that McWane needed to ensure that Star didn't "reach any critical market mass that will allow them to continue to invest and receive a profitable return:"

I agree that at this stage the chance for profitable cohabitation with Star owning a pc of the Domestic market is slim. Their actions in soil pipe are a good indication. . . . If their claims are ahead of their actual capabilities *we need to make sure that they don't reach any critical market mass that will allow them to continue to invest and receive a profitable return . . . .* I don't sense that Sigma is yet fully committed and they will be watching our response very closely to assess their strategy and probability of financial success."

(CX 0074 at 001 (emphasis added); Tatman, Tr. 649-652).

1792. On or about June 29, 2009, Mr. Tatman drafted and sent a PowerPoint presentation to Messrs. McCullough and Walton that expressed his concern that Star might "drive profitability out of business," and assumed that Star "would not be a responsible competitor [in the Domestic market] as long as incremental sales generate incremental margins for their business." (CX 0076 at 009, 006, 001; Tatman, Tr. 653-656).
1793. McWane's concern was rooted in its perception of Star as historically being an "aggressive" competitor that obtains business by offering Project Pricing and lower prices than McWane. (CX 2480 (Napoli, Dep. at 66) ("yeah, obviously, [Project Pricing] is one of their tactics"); CX 0105 at 001 (Tatman post-September 22, 2009 strategy

notes) (“Star has historically shown that they will just continue incremental discounting down to the point when they’re selling near breakeven.”); CX 2483 (Tatman, IHT at 183-184) (Star “would normally be very, very, very aggressive with pricing”); CX 2483 (Tatman, IHT at 232-234) (“Star historically has been a very aggressive and sometimes irrational—it’s always irrational to you, because you don’t know what they’re doing on that....So we have a perception, whether it’s true or not, that they’re a little bit irrational for what they do, and they just like to shake things up.”)).

1794. When Star offers Project Pricing to Distributors, it requires McWane also to lower its price if it wants to win that business. (CX 2480 (Napoli, Dep. at 69, 71) (describing Project Pricing as “irresponsible” when a supplier cuts its prices more steeply than necessary to win the job, and that Star cuts its prices “more than they need to”)).
1795. McWane believes that Star has “absolutely ruined pricing nationwide” because they only know how to sell their products through discounting, and that this has “totally devastated the Southeast” pricewise. (CX 1611 at 001; CX 2480 (Napoli, Dep. at 77-79) (stating that CX 1611 accurately reflected market facts)).
1796. Accordingly, in the narrative for McWane’s 2010 budget, Mr. Tatman listed the biggest risk factor for McWane’s Fittings business in 2010 as the “Erosion of domestic pricing if Star emerges as a legitimate competitor.” (CX 0102 at 002 (narrative accompanying Tyler/Union’s 2010 budget); CX 0102 at 002).
1797. McWane knew that the mere threat of low prices from Star could bring down prices in the market. (CX 1609 at 001 (explaining that exclusive dealing policy “keeps the market stable”); CX 2477 (Jansen, Dep. at 219-220) (explaining CX 1609 and that if a Distributor were to take Star up on its Domestic Fittings offer, “the whole market will go to hell” because prices would decrease in the stable Utah market)).

### **10.2.2 McWane Wanted to Prevent Star from Gaining a “Toehold” in the Domestic Fittings Market**

1798. McWane wanted to prevent Star from gaining a toehold in the Domestic Fittings market. (*Infra* ¶¶ 1799-1803).
1799. McWane wanted to prevent Star from gaining a toehold with Distributors in the sale of Domestic Fittings because McWane was concerned Star would then lower market prices. For example, McWane executives were concerned that Distributors not aligned with McWane would cause McWane’s loyal Distributors to pressure McWane for lower prices so that they could compete against the Distributors supporting Star:

It’s the take-a-hit now vs take-a-hit-for-decades argument as in 1984-1990. We chose not to react then and know the result. We may not be losing business now but I am concerned about the future. Those dist. not aligned with us or Sigma will be aggressive with Star backing them against our people... When that happens our distributors will continually pressure us to ‘do something’

(lower prices). If they stay in the business we will always see downward pressure in the future.

(CX 2192; CX 2480 (Napoli, Dep. at 90-95) (discussing CX 2192 and that, in order to avoid the loss of business and lower prices that occurred when imported Fittings first entered the U.S. market, McWane should lower their Domestic Fittings prices so that Star will become convinced that the Domestic Fittings business is unprofitable and exit the market)).

1800. McWane understood that there would be no need for McWane to match Star's prices if nobody was willing to buy Domestic Fittings from Star; in such cases, Star's price would be "mute" [*sic*] or not "real." (CX 0108; CX 2477 (Jansen, Dep. at 178-181) (explaining that sales representatives should use this response when Distributors express concern that one of their Distributor competitors could underbid them using Star's low Domestic Fittings prices)).
1801. McWane's National Sales Manager, Mr. Jansen, wrote to his sales representatives, "We don't want the market tumbling and if we keep everyone on board we shouldn't have to drop prices." (CX 0107; CX 2477 (Jansen, Dep. at 228-229) (explaining that "market tumbling" means prices falling; and "keep everyone on board" refers to Distributors being loyal to McWane under the exclusive dealing program)).
1802. McWane also wanted to prevent Star from gaining a toehold with local Distributors because that would help Star gain legitimacy as a supplier of Domestic Fittings. (CX 2261 at 002 (Jansen email, "We need to make sure we are getting into the smaller players up there and keep them from Star. That's how a cancer starts is by letting them get in with one, two, then three, and it crumbles from there.")).
1803. As Mr. Napoli explained,

Like any -- any competitive situation in any industry, I mean, they'll start with the small ones. They won't go after the big fish first. They'll go to the small ones and build their -- build their reputation. You know, a competitor is not going to go to -- a new competitor in something is not going to go to Walmart from day one. They'll go to somebody smaller. Maybe that's not a good analogy, but they'll go to somebody smaller and build reputation and build a -- you know, a base and then go from there to bigger ones, makes them a little more legitimate, let's say, if they have a history or a track record.

(CX 2480 (Napoli, Dep. at 105-107) (explaining CX 2261); (CX 0100 at 001) (November 2009 Tatman email) ("What I'm more concerned with at this point is Hajoca supporting Star's domestic program and the potential price ripple effect that could have in the market.")).

### 10.2.3 McWane Developed Its Exclusive Dealing Policy Specifically to “Block” Star

1804. Between May and August of 2009, McWane developed an Exclusive Dealing Policy for Domestic Fittings for the specific purpose of “blocking” Star from entering the Domestic Fittings market. (*Infra* ¶¶ 1805-1814).
1805. In a May 26, 2009 presentation discussing McWane’s possible strategic responses to potential competitive entry into the Domestic Fittings market and whether to sell Domestic Fittings to Sigma, Mr. Tatman observed that “any competitor” seeking to enter the Domestic market could face “*significant blocking issues*” if they are not a “full line” domestic supplier. (CX 0067 at 002 (emphasis added) (noting that approximately 500 patterns are required to cover 95% of Fittings items); Tatman, Tr. 620-621; *see also* CX 2529 (Rona, IHT at 195-196 (“Q. Do you think McWane’s policy that we’re discussing here, this exclusivity with respect to distributors, is something that could erect a roadblock to a new entrant coming into the market with less than a full line? A. There’s – there’s no question for any entrant that requiring exclusivity on those parts would be inherently more difficult than without it.”))).
1806. After Star had announced its planned entry into the Domestic Fittings market, Mr. Tatman considered how to “block Star” from entering the Domestic Fittings market. (CX 0076 at 008 (emphasis added)).
1807. In a cover email transmitting his June 29, 2009 presentation, Mr. Tatman concluded that if McWane could keep Sigma from establishing an independent source for Domestic Fittings, leaving Star as the only Domestic entrant, then “the appropriate response to distribution is probably fairly hard line approach like a full line or no line approach.” (CX 0076 at 001; Tatman, Tr. 653-655).
1808. Mr. Tatman’s June 29, 2009 presentation described three potential options for McWane’s response to Star’s entry: employ a “Wait and See approach,” “Handle on a Job by Job basis,” or “Force Distribution to Pick their Horse.” (CX 0076 at 009; Tatman, Tr. 658).
- a. A disadvantage (indicated by a “minus” sign) of the “Wait and See” approach identified by Mr. Tatman in the presentation was that it would give Star “time to continue building their business model.” (CX 0076 at 009).
  - b. A disadvantage of the “Job by Job” approach identified by Mr. Tatman in the presentation was that it would allow Star to “drive profitability out of the business.” (CX 0076 at 009; Tatman, Tr. 658).
  - c. The advantages (indicated by a “plus” sign) listed by Mr. Tatman for the “Pick their Horse” option included:
    - It “[a]voids the job by job auction scenario within a particular distributor”

- It [p]otentially raises the level of supply concern among contractors” and
- It “[f]orces Star/Sigma to absorb the costs associated with having a more full line before they can secure major distribution”

(CX 0076 at 009; Tatman, Tr. 658-666; *see also* CX 2483 (Tatman, IHT at 242-243) (explaining, in the context of this language, that it is quicker to build business through large national Distributors such as HD Supply and Ferguson); Tatman, Tr. 676-679 (Tatman does not recall the intent behind the discussion point “Forces Star/Sigma to absorb the costs associated with having a more full line before they can secure major distribution”); Tatman, Tr. 679-680 (Tatman does not recall whether he considered “major distribution” to be major national Distributors)).

1809. Mr. Tatman further elaborated on the “Pick their Horse” option, describing a “Soft Approach” whereby a Domestic rebate would require exclusivity, and a “Hard Approach – Full Line or No Line,” under which access to Domestic product line would “require[] exclusivity for Domestic fitting items we manufacture” – *i.e.*, if a customer did not support McWane’s full Domestic Fittings line, McWane would not sell to them. (CX 0076 at 010; Tatman, Tr. 672-674).
1810. Either approach under the “Pick their Horse” option would be applied to Distributors on a corporate basis (*i.e.*, across all branches of the Distributor), rather than “branch by branch.” (CX 0076 at 010; Tatman, Tr. 675)).
1811. Mr. Tatman wrote that an added consideration was that successful exclusion of Star could help deter Sigma from following through on its own plan to enter the Domestic Fittings market. (CX 0076 at 008 (“[T]he only reason for [Sigma] not to pursue [Domestic entry] is if they feel McWane’s response will make Star’s or their programs un-successful which may cause them to hold off making any heavy investments”)).
1812. On July 2, 2009, when pressed by Mr. Walton for a recommended course of action with respect to Domestic Fittings, Mr. Tatman responded that the “Full Line or No Line approach would be the preferred approach and certainly the best option against Star.” (CX 0329 at 001).
1813. On August 5, 2009, Mr. McCullough suggested that McWane should establish exclusive relationships in its Domestic supply chain to hinder Sigma’s and Star’s efforts at entry:

As we establish or continue existing casting sourcing relationships we need to emphasize with our casting suppliers that we are not interested in sharing their foundry production with Star/Sigma as we feel it will weaken the “McWane” brand recognition in the market place.

(CX 0354 at 001).

1814. On August 24, 2009, Mr. Tatman sent an email to Dennis Charko, head of Clow Water (a subsidiary of McWane that sells a limited number of Fittings (*see supra* ¶¶ 12-13), seeking Mr. Charko's support with respect to implementing the Distributor exclusivity program "as a McWane policy inclusive of the Clow brand." (CX 0113 at 001). In that email Mr. Tatman described the policy as follows:

Star, has announced a Domestic line of waterworks fittings and restraints. . . .

To protect our domestic brands and market position we are going to adopt a distributor exclusivity program for 2010 wherein we won't provide domestic product to distributors who are not fully supporting our domestic product lines."

(CX 0113 at 001; Tatman, Tr. 686-687).

#### **10.2.4 McWane's Specific Intent to Exclude Star Is Also Reflected in McWane's 2009 Revisions to Its Corporate Rebate Program**

1815. McWane's specific intent to exclude Star from the Domestic Fittings market is reflected in McWane's 2009 revisions to its corporate rebate program. (*Infra* ¶¶ 1816-1822).
1816. McWane's major customers, including WinWholesale, Ferguson, Hajoca, HD Supply and Mainline, have participated in McWane's corporate rebate program during the relevant period. (CX 2479 (McCullough, Dep. at 28, 33-34) (McWane offers a 2% rebate on customer purchases across multiple divisions of McWane, including Fittings); Tatman, Tr. 709-711). TDG has a separately negotiated rebate program. (Tatman, Tr. 709-711; *see also* ¶¶ 4.5.3.1 (describing rebates)).
1817. The Corporate Rebate Program has specific requirements that participating Distributors must meet in order to earn the 2% rebate. If a Distributor fails to comply with a requirement, Mr. McCullough speaks to that Distributor and asks it to correct its non-complying conduct. (CX 2479 (McCullough, Dep. at 45-47)).
1818. McWane understood that Distributors participating in its Corporate Rebate Program did not want to risk non-compliance with the program and potentially lose their 2% rebate on all of their applicable purchases across product lines from McWane. (CX 2479 (McCullough, Dep. at 54-55; CX 0051 at 001)).
1819. On or about November 19, 2009, Mr. Tatman proposed modifying one of the requirements that participating Distributors have to meet in order to earn their 2% corporate rebate from McWane. Specifically, Mr. Tatman proposed revising the final Corporate Rebate Program for 2010-2012 for HD Supply and others to state that HD Supply may lose its 2% corporate rebate, which is based on all of HD Supply's purchases of Fittings, soil pipe, iron pipe, and valve and hydrants from McWane, if HD Supply purchased Domestic Fittings from Star. (CX 0131 at 001, 002; CX 2479 (McCullough, Dep. at 155-156)).

1820. According to Mr. Tatman, his proposed modification to McWane's corporate rebate program was to "essentially eliminate Star as a supplier of domestic fittings." (CX 0100 at 001).
1821. On or about December 8, 2009, Mr. McCullough proposed extending the duration of McWane's corporate rebate program from one year to three years in part because he wanted "to remove the opportunity for Star to introduce their domestic made fittings" to McWane's large Distributor customers that participated in their Corporate Rebate Program. (CX 0126 at 001; CX 2479 (McCullough, Dep. 146-148)).
1822. Both of these proposed modifications, *i.e.*, extending the duration of the corporate rebate program and having Distributors risk their rebate if they purchased Domestic Fittings from Star, appeared in documents described as "Final Rebate Program 2010-2012." (CX 0131 at 001, 002 (email describing HD Supply program as "final" and attaching it); CX 2479 (McCullough, Dep. at 156) (supporting veracity and competence of Mr. Lowe, who transmitted CX 0131 to him)).

### 10.3 McWane Implemented a "Hard Line" Exclusive Dealing Policy

1823. McWane implemented a "hard line" Exclusive Dealing Policy under which it would cut off its supply of Domestic Fittings to any Distributor that did not source Domestic Fittings exclusively from McWane. (*Infra* ¶¶ 1824-1828).

#### 10.3.1 McWane Published Its Exclusive Dealing Policy on September 22, 2009

1824. McWane formally announced its exclusivity policy for its Domestic Fittings business (the "Exclusive Dealing Policy") in a September 22, 2009 letter to Distributors. (CX 0010 at 001; CX 1606 at 002; Tatman, Tr. 659, 687-689; CX 2477 (Jansen, Dep. 158-159) (September 22, 2009 letter reflected a new policy)).
1825. Like the Tatman Plan, the Exclusive Dealing Policy was the carefully thought out result of a methodical strategic process within McWane. (Tatman, Tr. 752 ("[E]verything we do is very methodical and very well thought out.")).
1826. McWane's September 22, 2009 letter notified Distributors that they would face penalties if they purchased Domestic Fittings from anyone other than McWane:

[E]ffective October 1, 2009, McWane will adopt a program whereby our domestic fittings and accessories will be available to customers who elect to *fully support* McWane branded products for their domestic fitting and accessory requirements. . . .

Exceptions are where Tyler Union or Clow Water products are not readily available within normal lead times or where domestic fittings and accessories are purchase from another domestic pipe and fitting manufacturer along with that manufacture's [*sic*] ductile iron pipe.

*Customers who elect not to support this program may forgo participation in any unpaid rebates for domestic fitting and accessories or shipment of their domestic fittings and accessory orders of Tyler Union or Clow Water products for up to 12 weeks.*

(CX 0010 at 001 (emphasis added); CX 1606 at 002; Tatman, Tr. 659, 687-688; CX 0559 at 002; CX 1190).

1827. Of the three options (“Wait and See,” “Job by Job basis,” or “Pick their Horse”) that Mr. Tatman had presented in his June 29, 2009 presentation, (*see supra* ¶¶ 1808-1809), McWane’s Exclusive Dealing Policy as reflected in its September 22, 2009 letter most closely aligned with the “Pick their Horse” option. (CX 2483 (Tatman, IHT at 246-247) (“The letter of September 22 would more closely align with the option 3”)).
1828. Mr. Tatman referred to the Exclusive Dealing Policy as an “exclusivity” policy both before and after the policy was announced on September 22, 2009. (CX 0340 (referring to “pending policy on supply exclusivity” on September 8, 2009); Tatman, Tr. 692 (same); CX 1246 (referring to “exclusivity policy” on September 23, 2009); Tatman, Tr. 697 (same)).

### **10.3.2 McWane Implemented the Exclusive Dealing Policy by Communicating a Harder Line Policy to Distributors Than Was Explicit in Its September 22, 2009 Letter**

1829. McWane purposefully, consistently, and systematically communicated the Exclusive Dealing Policy to the marketplace and implemented Exclusive Dealing Policy in a manner even more “hard line” manner than was explicit in its September 22, 2009 Letter. (*Infra* ¶¶ 1830-1849).
1830. In conversations with its Distributor customers, McWane communicated a more stringent policy than was explicitly written in its September 22, 2009 letter to Distributors. (Sheley, Tr. 3456-3458 (the September 22, 2009 letter that McWane sent to TDG regarding its Exclusive Dealing Policy does not accurately reflect the policy as communicated to Illinois Meter in conversations that Mr. Sheley had with Mr. Jansen and Mr. Tatman); (CX 2489 (Morrison, IHT at 71-73) (“Well, the message was clear, both written and verbally, that if you buy a project from Star, you’re going to go on our, I’m picking the term ‘bad list.’”); CX 2511 (Pitts, IHT at 78) (“Q. So, even though this letter, as written, suggests that you may or may not be penalized and that if you are penalized, it could be for – it could be one or the other – A. Yeah, um-hum. Q. – or essentially both – A. Selective enforcement, yeah. Q. – the – the message that Hajoca received, and specifically that Mr. Tatman and Mr. Jansen relayed to you, was that it would be – both would be implemented against Hajoca – A. Correct. Q. and it would happen indefinitely – A. Correct. Q. – if – if – A. That’s right. Q. – you started purchasing from Star. A. Correct.”)).



1831. Despite the “may/or” language of the written Exclusive Dealing Policy – *i.e.*, “Customers who elect not to support this program *may* forgo participation in any unpaid rebates for domestic fittings and accessories *or* shipment of their domestic fitting and accessory orders of Tyler Union or Clow Water products for up to 12 weeks,” (CX 1606 at 002 (emphasis added)) – McWane’s sales team told Distributors that if they purchased Domestic Fittings from Star that they would lose both access to McWane’s Domestic Fittings *and* their accrued rebates on Domestic Fittings. (CX 2511 (Pitts, IHT at 76-79, 137-139) (Stating ‘It wasn’t an either/or. It was both.’ Mr. Pitts also said that “[W]e were told right away that our Lansdale location would be cut off. They couldn’t buy the fittings anymore.” Mr. Pitts further acknowledged that to him, “may” meant “would”, and “or” meant “and.”); CX 2515 (Sheley, IHT at 85-87, *in camera*) {

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1832. In preparation for the rollout of the Exclusive Dealing Policy, McWane’s National Sales Manager, Mr. Jansen, led an internal conference call with the McWane sales force on August 28, 2009, where he explained to his sales force the “new policy on Star Domestic” as follows:

- What are we going to do if a customer buys Star domestic? We are not going to sell them our domestic . . . .
  - This means the customer will no longer have access to our domestic. They can still buy [non-Domestic] from us.
  - ***Once they use Star, they can’t EVER buy domestic from us. . . .***
  - For companies with multiple branches (HD, Ferguson, Winwater, Hajoca, etc) - if one branch uses Star, every branch is cut off.
- . . .
- Make sure you are discussing our stance with all customers, every day.

(CX 0710 at 001, 002 (emphasis added) (summarizing sales conference call); *see also* CX 2477 (Jansen, Dep. at 164-169) (confirming that CX 0710 accurately reflects Mr. Jansen’s statements during conference call); Tatman, Tr. 698-702 (discussing call)).

1833. Mr. Tatman attended at least a portion of Mr. Jansen’s internal conference call with the McWane sales force on August 28, 2009, and he does not recall needing to correct anything he heard Mr. Jansen say. (Tatman, Tr. 699, 702).

1834. Mr. Jansen’s August 28, 2009 instruction to his sales force is consistent with the “Q&A” that Mr. Tatman prepared and distributed to his sales force on September 22, 2009. In the internal Q&A, Mr. Tatman explained that the result of a Distributor’s disloyalty would be that McWane “won’t sell” any Domestic Fittings to that Distributor, not that it

“may not sell to that Distributor” (CX 0695 at 004; (CX 2477 (Jansen, Dep. at 198-201) (explaining that CX 0695, an internal Q&A for McWane sales force explaining McWane’s Exclusive Dealing Policy, was written by Mr. Tatman)).

1835. In a February 13, 2010 email to Mr. Jansen, McWane territory manager Dan Todd recalled McWane’s implementation of a policy that was stricter than the written letter:

I know that the fax stated that we could and or cut people off but we were told to tell them more than one time that if you support Star then we will not sell to you. Choose Star or Tyler for your Domestic products. Doug Allen rode around with me and we stated this and you even rode around with me when we told our loyal customers this.

(CX 0172; CX 2477 (Jansen, Dep. at 238-241) (discussing CX 0172: “He’s going by what our conference call said. We will cut them off.”)).

1836. McWane further communicated to customers that the Exclusive Dealing Policy would be applied on a company-wide basis, such that if one branch purchased Domestic Fittings from Star, all branches would be cut off. (CX 0108 at 001; CX 2477 (Jansen, Dep. at 177-178); CX 2501 (Prescott, IHT at 50)).

1837. For example, Mr. Jansen wrote to his sales force on November 3, 2009:

Team, I think we have made it very clear in the market regarding our stance on supporting the McWane domestic brand of fittings whether purchased through Tyler/Union, Clow or Sigma. If one branch buys from someone other than this, then the whole company will be affected, not just that branch.

(CX 0108 at 001; CX 2477 (Jansen, Dep. at 177-178) (explaining that he wanted to make sure that the sales people expressed this “one clear message” to the market); *see also* CX 1599; CX 2477 (Jansen, Dep. at 173-176) (two regional vice presidents of HD Supply expressed concern to McWane’s National Sales Manager, Mr. Jansen, that they did not want to be “punished” under the McWane policy if another HD Supply branch bought Star Domestic Fittings)).

1838. A McWane sales representative wrote to Mr. Jansen on [February 13, 2010](#), in relation to whether McWane should cut off Groeniger, a Distributor, because Groeniger bought Domestic Fittings from Star:

I know that the fax stated that we could and or cut people off but we were told to tell them more than one time that if you support Star then we will not sell to you. Choose Star or Tyler for your domestic products. Doug Allen rode around with me and we stated this and you even rode around with me when we told our loyal customers this.

- (CX 172; CX 2477 (Jansen, Dep. at 238-241) (explaining that he believed that Groeniger bought Star Domestic Fittings as part of a package sale from Griffin Pipe, which was an exception to McWane's Exclusive Dealing Policy)).
1839. The McWane sales force was tasked with compiling logs to document their communications of this all-or-nothing message to Distributors. (CX 2477 (Jansen, Dep. at 179); CX 1600, CX 1601, CX 1602 (sales force logs of communications with Distributors explaining Exclusive Dealing Policy)).
1840. McWane was unwilling to negotiate the terms of its Exclusive Dealing Policy with Distributors. (CX 2501 (Prescott, IHT at 50-51) (“If you bought one fitting in one of our 26 places, we’re out [meaning ‘not having access to McWane’s domestic fittings’], simple. I belong to an organization [TDG] that tried to negotiate. Other people tried to negotiate. . . . They said it’s all or nothing”); *see also* Sheley, Tr. 3411-3412 (describing heated conversation with Mr. Jansen in January 2010 in which Mr. Jansen threatened Illinois Meter with loss of access to McWane’s Domestic Fittings and loss of its rebates for both Domestic Fittings and imported Fittings)).
1841. Distributors understood that McWane’s Exclusive Dealing Policy meant “You better not buy anything from Star.” (CX 2489 (Morrison, IHT at 72) (“Q. What did you think the letter meant as a practical matter? A. Well, I knew what it meant was: You better not buy anything from Star. . . . [McWane’s] message was clear, both written and verbally that if you buy a project from Star, you’re going to go on our, I’m picking the term ‘bad list.’”); CX 2515 (Sheley, IHT at 77-78) (“Rick [Tatman] made the statement that he expected a hundred percent support for domestic product . . . if we bought any domestic from Star, they would not sell us anything. And the statement I made to Rick . . . I asked the question, ‘So you’re telling us all or none?’ And he said, ‘That’s correct.’”); CX 2501 (Prescott, IHT at 50) (“The understanding is in writing. If you bought one [Domestic] fitting [from Star] in one of our 26 places, we’re out, simple. . . . They [McWane] said it’s all or nothing.”)).
1842. Distributors believed the hard-line message McWane communicated to them regarding the policy. (CX 2489 (Morrison, IHT at 73-74) (“I had no reason to think they were bluffing. And, having been in this business for 30-plus years and knowing the attitude of McWane as a whole . . . there is an arrogance at McWane that I wouldn’t consider it a bluff. I would consider it to be that they’re serious about what they say they’re going to do to you.”); Sheley, Tr. 3412 (“There was no doubt in my mind they were serious.”)).
1843. McWane also communicated to Distributors that if they purchased Domestic Fittings from Star for a project, the Distributor’s rebate program for Domestic Fittings would be “voided.” (CX 2489 (Morrison, IHT at 72-73) (“If we have a program with you, it would be voided, you know, because you bought something from Star.”); CX 2544 (Coryn, Dep. at 113-114) (“Q. And was it your understanding that if you did purchase [Star Domestic Fittings] that you would lose your rebate dollars? A. Yes. Q. The policy on its face states that they may forego participation in any unpaid rebates. Was it your understanding, though, that you would forego them and that it wasn’t a ‘may forego’? THE WITNESS. Well, I took this as that we were going to lose it.”) (objection omitted);

CX 2546 (Gibbs, Dep. at 82) (“Q. Were you concerned that the WinWater local companies would lose their rebate if a WinWater local company purchased Star domestic fittings from Star? A. If they did it on an ongoing basis, yes.”); CX 2515 (Sheley, IHT at 85, *in camera*) {

}; CX 2514 (Webb, Dep. at 90) (“My understanding is that we would lose the rebate on the domestic fittings . . .”).

1844. In a presentation prepared by Mr. Tatman after implementation of the Exclusive Dealing Policy, with the file name “Sigma MDA Review 2.15.2010 Attorney Client Privileged Communication.ppt,” Mr. Tatman stated that the market had understood McWane’s Exclusive Dealing Policy to mean that McWane “will” – not “may” – cut them off. (CX 0119 at 002).
1845. Specifically, Mr. Tatman described McWane’s implementation of the Exclusive Dealing Policy as follows:

Although the words “may” and “or” were specifically used [in the September 22, 2009 announcement], the market has interpreted the communication in the more hard line “will” sense.

...

Access to McWane domestic product either through McWane or Sigma requires distributors to exclusively support McWane where products are available within normal lead times. Violation will result in: Loss of access, loss of accrued rebates.

(CX 0119 at 002, 004; Tatman, Tr. 722-723).

1846. McWane policed Distributors’ compliance with McWane’s Exclusive Dealing Policy by using its sales force to monitor Distributors for any Domestic Fittings purchases from Star. (CX 2480 (Napoli, Dep. at 75)).
1847. Sigma also understood that McWane’s Exclusive Dealing Policy was a “stern ‘all or nothing’ message and ‘take it or leave it’ approach,” and Mr. Pais observed that Distributors purchasing from Star “risk total exclusion from [Buy American] service from [McWane].” (CX 0948 at 001 (September 8, 2009 email); Pais, Tr. 1813-1815).
1848. Sigma believed that under McWane’s Exclusive Dealing Policy that customers like Ferguson would lose access to McWane’s Domestic Fittings if they purchased from Star. (Pais, Tr. 1809-1813; CX 0948 at 001 (“What intrigues me is how customers like Ferguson would even toy with Star when they can risk total exclusion from BA service from Tyler on the strength of their passionate commitment to the 1(c) clause -- Exclusivity.”)).
1849. In a September 8, 2009 email to Sigma’s OEM5 management group, Mr. Pais wrote, that when re-selling McWane’s Domestic Fittings, he “disguised” McWane’s exclusivity requirement as an “issue of ‘fairness’”:

What intrigues me is how customers like Ferguson would even toy with Star when they can risk total exclusion from BA service from Tyler on the strength of their passionate commitment to the '1C' clause -- Exclusivity! SO, actually, it may generate a steady loyalty to MCW/SIG if it is thoughtfully and effectively introduced and promoted! *Sensing the pivotal importance of this clause, I have disguised it as an issue of 'fairness'* -- helping SIG/McW thru their loyalty in return of our service of them thru delivery of the ENITIRE job!

(CX 0948 at 001) (emphasis added)).

#### **10.4 McWane Enforced Its Exclusive Dealing Policy Against Hajoca**

1850. McWane enforced the penalty provision of its Exclusive Dealing Policy by cutting off all Hajoca branches and by voiding Hajoca's Domestic Fittings rebates after Hajoca's Tulsa branch bought domestic fittings from Star. (*Infra* ¶¶ 1851-1859).
1851. Each of Hajoca's branches makes its own vendor selection decisions, including those regarding Domestic Fittings purchases. (Pitts, Tr. 3306-3307). Due to this structure, Mr. Tatman acknowledged to Mr. Pitts on September 22, 2009 that McWane's Exclusive Dealing Policy would present Hajoca with "a few more challenges to manage compared to other nationals." (CX 0021 at 001).
1852. On September 22, 2009, Mr. Pitts sent an email to his waterworks regional manager, Sean Kelly, attaching McWane's September 22, 2009 Exclusive Dealing Policy letter, and communicating the consequences to Hajoca of that policy. (CX 0021-A at 001).
1853. The week before McWane issued its September 22, 2009 Exclusive Dealing Policy, McWane's National Sales Manager, Mr. Jansen, informed Mr. Pitts that McWane would be taking a "hard stance" regarding Star's entry into the Domestic Fittings market, and that if any Hajoca branch purchased Star Domestic Fittings, all Hajoca branches "would" (not "may") lose access to McWane Domestic Fittings, and would possibly lose rebates as well:

I had heard from Jerry Jansen last week that [McWane] would be taking a hard stance regarding domestic fittings manufactured for McWane. . . . Jerry had told me last week that if any [profit center or branch] in the US purchases domestic fittings from Star, all PCs would lose access to McWane's fittings and possibly lose rebates.

(CX 0021-A at 001 (Pitts September 22, 2009 email); Pitts, Tr. 3296, 3304-3305).

1854. Based on McWane's September 22, 2009 letter and his conversation with Mr. Jansen, Mr. Pitts understood that if any branch of Hajoca purchased Domestic Fittings from Star that the consequences would include loss of rebates from McWane and an interruption of Domestic Fittings shipments from McWane to Hajoca. (Pitts, Tr. 3300-3303; CX 0021-A at 001).

1855. Mr. Pitts also had conversations with Mr. Tatman about the Exclusive Dealing Policy, both before and after its September 22, 2009 announcement, and Mr. Tatman reinforced the nationwide all-or-nothing nature of the policy – that if one Hajoca branch purchased Star, all branches would suffer the consequences. (Pitts, Tr. 3305-3306).
1856. On September 30, 2009, Mr. Pitts asked Mr. Tatman to modify its Exclusive Dealing Policy so that McWane would not hold all Hajoca branches responsible if a single branch purchased Domestic Fittings from Star. McWane explained that it applies the policy at the corporate level because “that’s where the [rebate] check is sent,” and did not agree to alter McWane’s policy. Hajoca also offered to change its rebate model so that checks would be sent to the individual branches, but McWane did not agree to relax the policy. (CX 0022 at 002; Pitts, Tr. 3306-3308).
1857. In a November 3, 2009 email to Mr. Kelly and Mr. Pitts of Hajoca, Mr. Jansen reiterated the mandatory and all-or-nothing nature of McWane’s Exclusive Dealing Policy:
- [I]f any Hajoca location chooses to buy another domestic fittings supplier[’s] product Hajoca *will not* have direct access to the McWane ductile iron water main fittings for a period of time as well as loss of any accrued rebate to date.
- (CX 0024 at 001 (emphasis added); Pitts, Tr. 3311-3313 (CX 0024 accurately reflects the mandatory nature of the Exclusive Dealing Policy as described to Mr. Pitts by Mr. Tatman and Mr. Jansen in multiple conversations)).
1858. Mr. Tatman also informed Mr. Pitts that HD Supply and Ferguson intended to comply with McWane’s Exclusive Dealing Policy. (Pitts, Tr. 3305-3306).
1859. At the time of the implementation of McWane’s Exclusive Dealing Policy, almost all of Hajoca’s purchases of Domestic Fittings were made by Hajoca’s Tulsa (Oklahoma) and Lansdale (Pennsylvania) branches. (CX 0023 at 001).

#### **10.4.1 Hajoca’s Tulsa Branch Purchased Domestic Fittings from Star**

1860. By November 3, 2009, Hajoca’s Tulsa branch had purchased some Domestic Fittings from Star. (Pitts, Tr. 3308-3310; CX 0024 at 001).
1861. In an email exchange between Mr. Jansen and Mr. Kelly of Hajoca between November 3, 2009 and November 7, 2009, Mr. Jansen reiterated the company-wide application of the Exclusive Dealing Policy, and acknowledged that Hajoca would have to make a decision as to whether to purchase exclusively from McWane. (CX 0024 at 001; Pitts, Tr. 3308-3310).
1862. Hajoca’s Lansdale, Pennsylvania location purchased a higher volume of Domestic Fittings and anticipated losing business if it lost access to McWane’s Domestic Fittings. (Pitts, Tr. 3314).

1863. Hajoca chose to continue allowing its branches to make its own Domestic Fittings vendor selections. (Pitts, Tr. 3313 (“Our decision was to stand by our [business model] and let the manager of that [Tulsa] location purchase those fittings if he chose to.”)).
1864. On November 16, 2009, Mr. Kelly informed Mr. Jansen that Hajoca “will not be changing our current business practice that allows our managers in the field to determine where or whom they buy their product,” and “cannot in good conscience support a program where the actions of one manager somewhere in the country could undermine an entire rebate program for the balance of the business.” (CX 0731 at 001).
1865. The next day, November 17, 2009, Greg Dill of Hajoca’s Tulsa branch contacted Susan Schepps of Star and informed her that he would be placing a Domestic Fittings stock order the following day. (CX 0731 at 001).

#### **10.4.2 McWane Cut Off All Hajoca Branches**

1866. As a result of Hajoca’s decision to continue allowing its branches to make its own Domestic Fittings vendor selections, all of Hajoca’s branches, including Hajoca’s Lansdale, Pennsylvania location, lost access to McWane’s Domestic Fittings. (Pitts, Tr. 3313-3314; Tatman, Tr. 730 (“Q. And you were enacting this policy [Exclusive Dealing policy] here by telling Hajoca, you’re cut off; right? A. At this moment in time, that’s what we did.”); *see also* CX 0173 at 001 (Jansen January 19, 2010 email to a customer of Hajoca’s Lansdale branch explaining McWane’s cutoff of Hajoca: “We don’t like the situation either but feel we can’t support someone who is helping our competition build a line against us.”); CX 2477 (Jansen, Dep. at 223-225) (explaining CX 0173 at 001)).
1867. On November 23, 2009, Mr. McCullough informed Sean Kelly of Hajoca that McWane would “discontinue selling Hajoca domestic fittings since they are supporting Star’s domestic line.” (CX 1800; Tatman, Tr. 729; *see also* CX 0100 at 001 (November 17, 2009 internal McWane email) (“What I’m more concerned with at this point is Hajoca supporting Star’s domestic program and the potential price ripple effect that could have in the market.”)).
1868. Based on his discussion with Sean Kelly, Mr. McCullough reported that Sean Kelly understood “[that] Lansdale will also be cut off on domestic. They had hoped to be able to buy Tyler/Union at a higher price, but I advised this was not an option.” (CX 1800; CX 2479 (McCullough, Dep. at 142) (CX 1800 accurately describes Mr. McCullough’s conversation with Sean Kelly of Hajoca)).
1869. Mr. McCullough further reported to McWane’s soil pipe division that Hajoca had elected to opt out of the McWane corporate rebate program unless the Exclusive Dealing Policy for Domestic Fittings could be regionalized. (CX 0398; CX 2479 (McCullough, Dep. at 155)).
1870. Mr. Tatman emailed Mr. McCullough and Mr. Walton on November 23, 2009, to confirm that all Hajoca orders had been placed on hold, that Sigma had been advised to do the same per the terms of the Master Distribution Agreement, and that Jeff Otterstedt and Scott Frank of Clow Water had also been advised. (CX 1800; Tatman, Tr. 729-730).

1871. The next day, Mr. Jansen confirmed to a member of the McWane sales team that the Hajoca decision was the “[f]inal word unless they change direction corporately.” (CX 0702 at 001).
1872. On November 26, 2009, Mr. Tatman sent an email to Mr. Pitts and Mr. Kelly of Hajoca, stating “I appreciate the candid dialog from your recent calls.” Mr. Tatman invited Hajoca to submit orders for “in process domestic jobs that require near term shipments before December 4” (but “excluding Tulsa”), and stated that “[w]hile you certainly don’t agree with our stance, I hope that at least you will consider the broader market view under which we have to make these decisions.” (RX-237; Tatman, Tr. 730-731; Pitts, Tr. 3314-3316 (McWane allowed it to place orders to cover existing commitments but after that, it cut off all of Hajoca’s access to McWane’s Domestic Fittings)).
1873. Hajoca’s Tulsa branch was excluded from the allowance for final Domestic Fittings orders because it was the Hajoca location that had purchased Domestic Fittings from Star. (Pitts, Tr. 3316 (testifying that McWane never mentioned any allegations that the Tulsa branch had ground off the country of origin on an imported Fitting as the reason why Tulsa could no longer purchase Domestic Fittings from McWane)).
1874. On December 14, 2009, Mr. Tatman informed Sigma that it could not supply Hajoca per the terms of the Master Distribution Agreement because Hajoca’s Tulsa branch “elected to support another brand for some of their Domestic fitting needs,” and that McWane therefore had “elected not to supply any of the Hajoca branches with our domestic product.” Mr. Rona of Sigma confirmed that Sigma was “clear about Hajoca.” (CX 1801 at 001; CX 1802 at 001, 002; Tatman, Tr. 720, 739-740; *see also* Tatman, Tr. 729-730 (When McWane cut off Hajoca, Mr. Tatman, as a matter of policy, told Sigma not to sell to Hajoca); Rona, Tr. 1606, 1608 (Rona forwarded to Sigma’s distribution group the instruction not to sell McWane-produced domestic fittings to any Hajoca branch)).
1875. On December 15, 2009, Mr. Tatman also instructed Clow Water not to accept any Hajoca orders. (CX 0477 at 001; Tatman, Tr. 721; *see also* Tatman, Tr. 730 (When McWane cut off Hajoca, Mr. Tatman, as a matter of policy, told Clow Water not to sell to Hajoca)).
1876. Scott Frank of Clow Water responded to Mr. Tatman that “All of Clow is aware to NO QUOTE and REFUSE all Hajoca orders.” (CX 1802; Tatman, Tr. 738).
1877. Between December 4, 2009 and April 13, 2010, all of Hajoca, including its Lansdale, Pennsylvania branch, was unable to place Domestic Fittings orders with McWane because of McWane’s Exclusive Dealing Policy. (Pitts, Tr. 3326-3327, 3363).
1878. Between December 4, 2009 and April 13, 2010, Hajoca’s Lansdale, Pennsylvania branch had wanted to place a Domestic Fittings order to fulfill a municipal contract but could not do so because of McWane’s Exclusive Dealing Policy and McWane’s decision to cut off Hajoca’s access to McWane’s Domestic Fittings. (Pitts, Tr. 3316-3320; CX 0027 at 001 (March 9, 2010) (“I can no longer purchase from [McWane] and have an immediate need for a large quantity of flanged fittings that must be Tyler Union.”)).



1879. Domestic Fittings received by Hajoca from McWane between December 4, 2009 and April 13, 2010, if any, were likely in response to orders placed prior to the December 4, 2009 cut-off date. (Pitts, Tr. 3320-3321; RX-289 at 004).

**10.4.3 After McWane Became Aware of the FTC Investigation, McWane Negotiated with Hajoca to Give All Non-Tulsa Branches Access to McWane's Domestic Fittings**

1880. After McWane learned of the FTC investigation into its Exclusive Dealing Policy, McWane negotiated with Hajoca and ultimately gave all non-Tulsa branches access to McWane's Domestic Fittings. (*Infra* ¶¶ 1881-1888).
1881. On March 27, 2010, prior to McWane executives meeting with Hajoca executives to discuss McWane's enforcement of the Exclusive Dealing policy against Hajoca, Mr. McCullough sent an internal email to find out "[h]ow our potential FTC action might effect how we do business with them [Hajoca]." (RX-628 at 001).
1882. Mr. Kelly of Hajoca met with Mr. Tatman in early March 2010, and reported to his colleagues that McWane appeared to be "seriously considering softening their stance." (CX 0027 at 001; CX 2479 (McCullough, Dep. at 155) (noting that Hajoca's sister company, EMCO, is McWane's single largest customer in Canada)).
1883. After a number of attempts by Hajoca to regain access to McWane's Domestic Fittings, McWane eventually began selling Domestic Fittings to Hajoca following discussions at the March 2010 ASA meeting that included McWane's Leon McCullough. (Pitts, Tr. 3323-3324 (noting that neither Mr. Tatman nor Mr. Jansen were in attendance at meeting)).
1884. On April 1, 2010, Mr. Kelly reported within Hajoca that he had met with Mr. McCullough and others at McWane, and that Hajoca's Lansdale, PA branch "will be reinstated as a full stocking distributor of [McWane] fittings." (CX 0028 at 001; CX 2479 (McCullough, Dep. at 153-154) (testifying that he did not know the date upon which the "hold" on orders from the Hajoca Lansdale branch was lifted)).
1885. On April 13, 2010, Mr. Kelly reported within Hajoca that he had spoken with Mr. Tatman, and that "we will be moving forward with Tyler/Union in Lansdale and perhaps some other waterworks locations depending on how the local relationships fare." (CX 0030 at 001; Pitts, Tr. 3324-3325).
1886. Shortly after April 13, 2010, McWane reinstated Domestic Fittings service to Hajoca's Lansdale, Pennsylvania branch. (Pitts, Tr. 3325).
1887. McWane did not reinstate Domestic Fittings service to Hajoca's Tulsa, Oklahoma branch, the Hajoca branch that was purchasing Star's Domestic Fittings. (CX 0030 at 001 ("Tulsa is excluded from the deal and will not have access to Tyler Union."); Pitts, Tr. 3325-3326).

1888. McWane has never told Hajoca that its Tulsa, Oklahoma branch had access to McWane's Domestic Fittings. (CX 0030; Pitts, Tr. 3326).

#### **10.4.4 McWane Withheld Hajoca's Domestic Fittings Rebate**

1889. Although McWane ultimately reinstated the individual Hajoca branches that did not buy Domestic Fittings from Star, Hajoca Corporate still lost its rebate on Domestic Fittings. (Pitts, Tr. 3320-3323).
1890. Specifically, McWane withheld Hajoca's rebate in the fourth quarter of 2009 because that was the quarter when Hajoca violated McWane's Exclusive Dealing Policy. (Pitts, Tr. 3320-3323).
1891. In a February 4, 2010 email to Roy Pitts of Hajoca, Mr. Tatman confirmed that McWane had withheld Hajoca's fourth quarter 2009 Domestic Fittings rebate as a result of Hajoca's decision to sell Star products in Tulsa. (CX 1803 at 001; Tatman, Tr. 740; Pitts, Tr. 3322-3323).
1892. While the amount of the Domestic Fittings rebate lost may have been relatively small compared to the size of the entire Hajoca corporation, Hajoca allocates rebates back to the branch that earns the rebate, and a rebate can be significant to an individual branch. (Pitts, Tr. 3323).

#### **10.5 McWane's Exclusive Dealing Policy Worked: Distributors Did Not Purchase Domestic Fittings from Star**

1893. McWane's Exclusive Dealing Policy worked as intended by McWane: It caused Distributors to refuse to purchase Domestic Fittings from Star, or to purchase Domestic Fittings from Star only in those limited circumstances under which they believed that McWane would not find out about it. (*Infra* ¶¶ 1894-2031).

##### **10.5.1 McWane's Exclusive Dealing Policy Was Viewed by Distributors as Presenting an Intolerable Risk That McWane Would Cut Them Off if They Purchased Domestic Fittings from Star**

1894. Distributors viewed McWane's Exclusive Dealing Policy as presenting an intolerable risk that McWane would cut them off if they purchased Domestic Fittings from Star. (*Infra* ¶¶ 1895-1902).
1895. Distributors viewed the McWane Exclusive Dealing Policy as a threat by McWane that if they purchased any Domestic Fittings from Star, McWane would not sell any Domestic Fittings to them. (Sheley, Tr. 3411 ("The implied threat that if we bought anybody else's fittings, they [McWane] wouldn't do business with us in any way, shape or form. We could buy no domestic fittings at all."); CX 2490 (Morrison, Dep. at 79-80) ("When I read the letter that they [McWane] sent out . . . I interpreted that as a threat."); CX 2510 (Groeniger, Dep. at 92) ("We were informed that they [McWane] were going to pull everything away from us, a threat."); CX 2543 (Coryn, IHT at 126) ("There was . . . that veiled threat out there that if you – if they [McWane] found out you were buying from

- them [Star], something would happen.”); CX 2489 (Morrison, IHT at 85) (“because of the letter, I mean because of the threats”).
1896. Distributors expected that McWane would cut off their access to Domestic Fittings if they purchased domestic fittings from Star. (CX 2516 (Sheley, Dep. at 141) (“Q. Going back to Star’s entry into the domestic production of fittings, what was your understanding of McWane’s likely response if you purchased fittings for a project from Star? . . . [A]: That I would lose the line. I would lose access to their product line.”); CX 2504 (Thees, Dep. at 31-32) (“there was some concern over reaction from McWane if we were to utilize Star as a domestic source”); CX 2502 (Prescott, Dep. at 114) (explaining that E.J. Prescott did not want to “turn up any apple carts” by purchasing Domestic Fittings from Star); CX 2489 (Morrison, IHT at 67) (“Well, if there was a project that Tyler Union was interested in and I decided to buy it from Star, that would get their attention. I mean they’d be very upset. That would not be good.”)).
1897. Distributors were concerned about losing their rebate for Domestic Fittings from McWane if they purchased any Domestic Fittings from Star. (Webb, Tr. 2762-2763; CX 2544 (Coryn, Dep. at 113) (“My big concern was loss of the rebate dollars.”); CX 2489 (Morrison, IHT at 74) (“[Y]our rebate percentage is in the teens, so you’re talking about a significant amount of money that you would lose.”); CX 2546 (Gibbs, Dep. at 82) (“Q. Were you concerned that the WinWater local companies would lose their rebate if a WinWater local company purchased Star domestic fittings from Star? A. If they did it on an ongoing basis, yes.”)).
1898. Distributors were more concerned about losing access to Domestic Fittings from McWane than they were about losing their rebates if they purchased any Domestic Fittings from Star. (Webb, Tr. 2762-2763; CX 2514 (Webb, Dep. at 93) (“[T]here’s no question not having access to the product is – is more penalizing than losing the rebate.”); Sheley, Tr. 3412 (Losing access to McWane’s Domestic Fittings was a more serious consequence to Illinois Meter than losing McWane’s rebates because Illinois Meter needs to have access to a full line of Domestic Fittings in certain locations and McWane carries a complete line.); CX 2489 (Morrison, IHT at 74) (“More importantly is the problems you’re going to have going forward in buying product from them [McWane].”); CX 2491 (Johnson, IHT at 84) (“Well, that [the rebate] was not the significant part of the paragraph that concerned me. It was the rest of the paragraph [access to Domestic Fittings]. I mean we would have lost some money, but it wouldn’t have been significant compared to the consequences of the latter part of the paragraph.”))
1899. Twelve weeks is a long period of time for a Distributor, and as a practical matter McWane’s threat of suspending access to Domestic Fittings for 12 weeks had the same effect as a threat of cutting off access to Domestic Fittings altogether. (CX 2502 (Prescott, Dep. at 121) (“Well, we took the – the – we took the 12 weeks that 12 weeks would wipe us out, so we took it as forever. I mean that -- that doesn’t make us right, but I mean 12 weeks in the season is – you would be out of business . . .”); CX 2489 (Morrison, IHT at 75) (“Oh, that’s an eternity. To say you can’t get something for 12 weeks, you might as well go out of business. I mean that’s – 12-week lead time would be devastating to a distributor.”); CX 2491 (Johnson, IHT at 25) (“Q. So following that logic

out, if you had to tell your customers it's going to be 12 weeks before we can – A. We wouldn't have any business.”)).

1900. Distributors risk losing a project if they are unable to sell one of the required products in the bundle for a waterworks project. (CX 2501 (Prescott, IHT at 28)). McWane's Exclusive Dealing Policy created this risk for Distributors during the ARRA period, because a Distributor that could not sell Domestic Fittings would not be able to win bids on projects funded under the ARRA. (CX 2489 (Morrison, IHT at 35-36) (“If I was not a distributor for Tyler Union and they're the only person making domestic pipe fittings and there's a job that requires domestic pipe fittings, the chances of me getting an order on that project would be remote because the contractor's going to give the order to somebody that can supply him the proper fittings and he's not going to be interested in buying the fittings from X and giving the rest of the business to Y.”); CX 2501 (Prescott, IHT at 28) (explaining that if domestic fittings were unavailable “we would have to go against Buy America”)).
1901. Distributors also risked longer-term, and broader, damage to their relationships with customers, including loss of business in related product lines, if their Domestic Fittings supply were disrupted by McWane's enforcement of its Exclusive Dealing Policy. (CX 2537 (McCutcheon, IHT (Vol. 1) at 147-148) (“Q. . . . Are we just talking about sales of domestic fitting in these subsequent round of bidding, or am I losing the opportunity to sell not only fittings but ductile iron pipe and valves and hydrants and any other product that's part of the typical normal bundle for a waterworks project? A. All products, the relationship -- it would affect the relationship for all products. Q. And did your distributors voice some or all of these concerns to you when they received the threats from McWane that we've been talking about? A. They did.”)).
1902. Based on McWane's Exclusive Dealing Policy, Distributors generally were not willing to take the risk of purchasing Domestic Fittings from Star, even if McWane had not been aggressively enforcing its Exclusive Dealing Policy. As Star's Regional Sales Manager explained in his deposition:

Every distributor -- every customer distributor that we talked to or that I talked to after this letter came out, wanted to talk about it. And they all wanted to know what I had seen in other parts of the countries or if any distributors were purchasing our domestic. And if so, had Tyler punished them. And -- and I had not seen anywhere or heard from anybody that -- that there was any repercussions for people buying our fittings anywhere from anybody. But the fear that something could happen in -- in areas that actually buy domestic fittings, customers are afraid. They don't want to take the chance of the what-if.

(CX 2532 (Berry, Dep. at 144)).<sup>11</sup>

**10.5.2 At McWane’s Urging, HD Supply Issued a Mandate Letter Directing Its Branches Not to Purchase Star’s Domestic Fittings**

1903. At McWane’s urging, HD Supply issued an internal mandate letter directing its branches not to purchase Star’s Domestic Fittings. (*Infra* ¶¶ 1904-1936).
- 10.5.2.1 McWane Requested That HD Supply Issue an Internal Letter Mandating Adherence to McWane’s Exclusive Dealing Policy
1904. Before issuing its Exclusive Dealing Policy, McWane met with HD Supply and Ferguson to discuss the policy. (Tatman, Tr. 689).
1905. On or about September 8, 2009, Mr. Tatman informed Mr. McCullough that Mr. Jansen had been discussing McWane’s “pending policy on supply exclusivity” for Domestic Fittings with Distributors, and that he was “starting to pick up some negative reaction from the HD Supply Region, District, and Branch managers.” (CX 0340; Tatman, Tr. 689-693).
1906. In light of concerns expressed by HD Supply’s Region, District, and Branch managers regarding McWane’s pending Exclusive Dealing Policy, Mr. Tatman suggested to Mr. McCullough that HD Supply’s CEO, Jerry Webb, should send an internal communication that HD Supply had elected to use McWane Domestic Fittings as its sole supply source through 2010. Mr. Tatman provided Mr. McCullough with draft language for an email to Mr. Webb. (CX 0340; Tatman, Tr. 693-694).
1907. On September 22, 2009, Glenn Fielding, HD Supply’s Director of Sourcing and Price Management, sent an email to Jerry Webb, CEO, and Darrin Anderson, Vice President of Sourcing and Operations, forwarding the text of the McWane September 22, 2009 letter and recounting a conversation with Mr. Tatman in which Mr. Tatman informed him that the policy “must be adhered to by entire company -- if one branch buys domestic from

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<sup>11</sup> The cited out of court statements should be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3). Hearsay introduced to prove a buyer’s reason or motivation for refusing to do business with a seller is admissible under the “state of mind” exception to the hearsay rule set forth in Federal Rule of Evidence 803(3). *See Calahan v. A.E.V.*, 182 F.3d 237, 251 (3d. Cir. 1999); *see Mun. Revenue Serv., Inc. v. Xspand, Inc.*, 700 F.Supp.2d 692, 705 (M.D. Pa. 2010) (hearsay regarding the buyer’s motives are admissible to establish that seller’s marketing strategy caused buyers not to do business with competitor); *Discover Fin. Servs. v. Visa U.S.A. Inc.*, 2008 U.S. Dist. LEXIS 80801 at 4 (S.D.N.Y. 2008) (“testimony concerning the motivation of customers for ceasing to deal with a business is admissible under the ‘state of mind’ exception to the hearsay rule”). This testimony is admissible even in instances in which the witness did not identify the declarant/customer who made the statement. *Calahan*, 182 F.3d at 252 n.1.

someone else it affects the whole companies program.” (CX 2173 at 001; Webb, Tr. 2750-2753).

1908. HD Supply was concerned about a reduction in rebate dollars as a result of McWane’s September 2009 Domestic Fittings policy. However, HD Supply was more concerned about the impact to customer satisfaction in the event that McWane cut off HD Supply’s access to its Domestic Fittings. (Webb, Tr. 2762-2763; CX 2173 at 003).
1909. On the morning of September 23, 2009, Mr. Tatman sent an email to Mr. McCullough and Mr. Walton relaying a report he had received from Mr. Jansen. Mr. Jansen had met with Jack Shaller of HD Supply, who told Mr. Jansen that HD Supply had held a manager’s meeting “and the McWane exclusivity policy for domestic fittings was discussed at length,” and that “nobody from Jerry [Webb] on down was happy about it.” (CX 1246). Tatman noted that “I suspect Jerry [Webb] sold this as a ‘We have to do’ rather than a ‘In the big picture this is best for our business.’” (CX 1246; Tatman, Tr. 696-697).

#### 10.5.2.2 HD Supply Issued the Requested Mandate Letter

1910. On or about September 23, 2009, in response to McWane’s Exclusive Dealing Policy, HD Supply’s CEO, Jerry Webb, sent a letter to HD’s branch managers, district managers, and operations managers stating that they needed “to adhere to this mandate and purchase all of our American made fittings through [McWane] or Sigma.” (CX 0552 at 001; Webb, Tr. 2763-2765 (explaining that the “mandate” was McWane’s Exclusive Dealing Policy)).
1911. Without McWane’s September 22, 2009 letter, Mr. Webb would not have issued his September 23, 2009 company-wide policy requiring HD Supply managers to only purchase Domestic Fittings from McWane (or Sigma). (Webb, Tr. 2804).
1912. Mr. Webb’s September 23, 2009 letter to HD Supply Managers reflected HD Supply’s understanding of McWane’s Exclusive Dealing Policy as a “mandate” requiring HD Supply to purchase all of its Domestic Fittings from McWane, or risk repercussions. (CX 0552 at 001; Webb, Tr. 2764-2765).
1913. HD Supply understood McWane’s Exclusive Dealing Policy to require HD Supply to purchase “all” of its Domestic Fittings from McWane, except where McWane was unable to supply the Domestic Fittings in question. (Webb, Tr. 2768-2770 (“Q. And was this an all-or-nothing support? A. This was all to the extent other than the exceptions where they had a service or inability to fill an order.”)).
1914. HD Supply also understood McWane’s Exclusive Dealing Policy to mean that if HD Supply purchased Domestic Fittings from Star that HD Supply “would lose the rebate on the domestic fittings and potentially lose access to the domestic line. . . . [I]t could be a significant event.” (CX 2514 (Webb, Dep. at 90-91); Webb, Tr. 2760-2761 (“Q. How did you interpret this policy from Tyler/Union? A. That if their domestic line was not fully supported, there could be implication to your rebate and access to domestic fittings.”); CX 2173 at 001).

1915. McWane's Exclusive Dealing Policy made HD Supply less willing to do business with any other provider of Domestic Fittings, including Star. (Webb, Tr. 2766-2768 ("This policy defined where we would need to get our domestic fittings from."); CX 2514 (Webb, Dep. at 95) (Exclusive Dealing Policy impacted HD Supply's willingness to deal with Star for Domestic Fittings in September 2009); CX 2513 (Webb, IHT at 196) (Exclusive Dealing Policy made HD Supply less willing to do business with Star on Domestic Fittings)).
1916. McWane's Exclusive Dealing Policy increased the risk involved for Distributors like HD Supply to source Domestic Fittings from Star. (Webb, Tr. 2766-2768).
1917. Because he could not risk noncompliance with ARRA Buy American requirements, Mr. Webb believed it was imperative to inform his district managers, branch managers, and operation managers of McWane's Exclusive Dealing Policy before the October 1, 2009 effective date of the policy. (Webb, Tr. 2765-2766; CX 0552 at 001).
1918. It is unusual, and may be unprecedented, for Mr. Webb to issue a directive to the district managers, operations managers, and branch managers laying out a policy for all of HD Supply's Waterworks Division. (CX 2514 (Webb, Dep. at 89) ("Q. How often do you issue these types of memos to district managers, branch managers, and operations managers? A. Rare."); Webb, Tr. 2765-2766).
1919. On September 26, 2009, Mr. McCullough forwarded to Mr. Page the September 23, 2009 HD Supply internal "mandate letter" from Jerry Webb, and noted, "This is perhaps the first time that Jerry has given written direction on the course HDS is to pursue, which is pretty big." (CX 1270; Tatman, Tr. 694-695).

#### 10.5.2.3 HD Supply Refused to Purchase Domestic Fittings from Star

1920. As a result of McWane's Exclusive Dealing Policy, HD Supply refused to purchase Domestic Fittings from Star. (*Infra* ¶¶ 1921-1936).
1921. Up until September 22, 2009, Star was a vendor to HD Supply for both imported and Domestic Fittings. (CX 2539 (McCutcheon, Dep. at 247)).
1922. Star has developed an excellent business relationship with HD Supply through the personal relationships that Star's personnel have developed both with their corporate officers and with HD's second tier of purchasing agents. (CX 2537 (McCutcheon, IHT (Vol. 1) at 56-57); CX 2513 (Webb, IHT at 182-183) (Star is "a good company, they're well run. Dan [McCutcheon]'s a – he's a genuinely – a person of his word.")).
1923. On September 22, 2009, Star's Southeast division manager Ramon Prado forwarded to Mr. McCutcheon a copy of McWane's September 22, 2009 letter announcing the Exclusive Dealing Policy. Mr. Prado warned Mr. McCutcheon that he would be receiving a call from Mr. Webb of HD Supply. (CX 0559 at 001; McCutcheon, Tr. 2305).

1924. After Mr. Webb issued the September 23, 2009 letter, HD Supply's branches complied with the instructions in that letter, and in McWane's Exclusive Dealing Policy. (Webb, Tr. 2803).
1925. On September 24, 2009, Star's Atlanta territory manager, Chuck Carrigan, forwarded to Mr. McCutcheon Mr. Webb's September 23, 2009 internal HD Supply "mandate letter" which directed HD's branch managers, district managers, and operations managers to follow the McWane policy and purchase Domestic Fittings only through McWane or through Sigma (which was selling Domestic Fittings made by McWane). (CX 0014; McCutcheon, Tr. 2306-2307).
1926. After September 22, 2009, Mr. McCutcheon and Mr. Webb of HD Supply had conversations in which Mr. Webb informed Mr. McCutcheon that HD Supply could not buy Star's Domestic Fittings, and asked Mr. McCutcheon "to not quote his branches any longer." (CX 2539 (McCutcheon, Dep. at 248-249); *see also* McCutcheon, Tr. 2302-2303<sup>12</sup> (Mr. Webb of HD Supply told him that because of McWane's Exclusive Dealing Policy, he "was sad to report that they would not be able to purchase domestic fittings from our company"); *see also* RX-601 (McCutcheon description of cutoff by HD Supply)).
1927. Mr. Webb of HD Supply informed Mr. McCutcheon that HD Supply could not purchase Domestic Fittings from Star because of McWane's Exclusive Dealing Policy. (CX 2539 (McCutcheon, Dep. at 248)). Mr. Webb explained to Mr. McCutcheon that HD Supply would buy 100% of its Domestic Fittings requirements from McWane due to McWane's Exclusive Dealing Policy. (CX 2539 (McCutcheon, Dep. at 249); CX 2537 (McCutcheon, IHT (Vol. 1) at 170, 171-172) (HD Supply informed Star that it would not entertain bids from Star for Domestic Fittings because of McWane's Exclusive Dealing Policy)).<sup>13</sup>
1928. HD Supply's president, Mr. Webb, instructed Star not to bid on 3" through 12" Domestic Fittings jobs. (CX 2537 (McCutcheon, IHT at 170); *see* CX 2539 (McCutcheon, Dep. at 248-249)).
1929. With the exception of items that McWane did not have available or that had been committed to prior to September 22, 2009, HD Supply's then-pending Domestic Fittings orders with Star were canceled. (McCutcheon, Tr. 2310-2311; CX 2539 (McCutcheon, Dep. at 248-249) ("[Webb] asked me for a list of the outstanding quotes that we had with his company. So we put together the list of projects that we had worked with his company and sent it to him. And to my knowledge, all of those were canceled."); CX

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<sup>12</sup> The cited trial testimony regarding the out of court statement of Mr. Webb is cited for the effect on Mr. McCutcheon and Star, and not to prove the truth of the matter asserted in the statement. (*See* McCutcheon, Tr. 2303).

<sup>13</sup> The cited testimony regarding out of court statements of Mr. Webb is cited for its effect on Mr. McCutcheon and Star, not to prove the truth of the matters asserted in the statements.



2539 (McCutcheon, Dep. at 250); *see also* CX 2537 (McCutcheon, IHT (Vol. 1) at 172); CX 0013 at 001-004).

1930. On September 28, 2009, in response to a request from Mr. Webb, Mr. McCutcheon sent Mr. Webb a list of orders and inquiries that HD Supply had pending with Star Pipe, noting that “I have instructed our people not to pursue these because of the recent events.” (CX 0013 at 001; McCutcheon, Tr. 2307-2309, 2311-2312). Mr. McCutcheon instructed his sales team not to pursue the listed items, based on his conversation with Mr. Webb regarding McWane’s Exclusive Dealing Policy. (McCutcheon, Tr. 2312; CX 2539 (McCutcheon, Dep. at 250)).<sup>14</sup>
1931. Two HD Supply Regional Vice Presidents (Ms. Bland and Mr. Anderson) and two HD Supply District or Branch Managers (Mr. Ellingsworth and Mr. Brock) each informed Mr. Berry that they could not purchase Domestic Fittings from Star because of McWane’s Exclusive Dealing Policy and that they did not have the discretion to do so under the HD Supply corporate policy. (CX 2532 (Berry, Dep. at 138-141) (Yvonne Bland is HD Supply’s Regional Vice President with responsibility over western and southwestern US; Deron Anderson is HD Supply’s Regional Vice President for HD Supply with responsibility over southeastern United States; Bruce Ellingsworth, a district manager, and Larry Brock, a branch manager, for HD Supply have responsibility for portions of Texas, including Fort Worth and Dallas)).<sup>15</sup>
1932. Specifically, Mr. Anderson informed Mr. Berry that he could not purchase Domestic Fittings from Star for a project in Arkansas because he could not be the reason that HD Supply lost its rebate for purchases from McWane. (CX 2532 (Berry, Dep. at 138-139)).<sup>16</sup>
1933. HD Supply refused to purchase Domestic Fittings from Star for other projects such as the Hughson Modesto WWTP because of the HD Supply corporate policy. (CX 2532 (Berry, Dep. at 170)).<sup>17</sup>
1934. Star maintained and used a “Domestic Quote Log” to track won and lost Domestic Fittings bids. (McCutcheon, Tr. 2312; CX 2294). Pam Garey of Star compiled the log on a regular basis at Mr. McCutcheon’s request, and used information provided by Star’s sales department. (McCutcheon, Tr. 2315).

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<sup>14</sup> The cited out of court statements should be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

<sup>15</sup> The cited out of court statements should be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

<sup>16</sup> The cited out of court statement should be considered for the truth of the matter asserted therein, as a statement of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

<sup>17</sup> The cited out of court statement should be considered for the truth of the matter asserted therein, as a statement of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

1935. Between September 22, 2009 and February 22, 2010, Star lost at least 25 Domestic Fittings jobs for which it submitted a quote to HD Supply, but where HD Supply purchased from McWane or Sigma rather than Star because of the McWane Exclusive Dealing Policy. (CX 2294 at 010-011, 013, 015, 017-019 (listing 25 lost jobs for which the loss was expressly attributed to “HD mandate letter,” “mandate letter,” “letter directing fitting purchases,” “Tyler-Sigma announcement,” or “HD will not buy from Star”); McCutcheon, Tr. 2313 (explaining that “lost due to mandate letter” on the log refers to the fact that Star lost an HD order due to McWane Exclusive Dealing Policy)).
1936. {
- }(McCutcheon,  
Tr. 2651-2652, *in camera*).

### **10.5.3 After Receiving McWane’s Exclusive Dealing Policy, Ferguson Ensured Compliance with the Policy Company-Wide**

1937. After receiving McWane’s Exclusive Dealing Policy, Ferguson sought to ensure company-wide compliance by Ferguson with the policy. (*Infra* ¶¶ 1938-1952).
- 10.5.3.1 Ferguson Informed All of Its District Managers of the Policy
1938. Mr. Tatman emailed the September 22, 2009 letter to Mr. Doane of Ferguson early in the afternoon of September 22, 2009. Mr. Doane forwarded the letter on to Mr. Thees and others within Ferguson. (CX 0506 at 001).
1939. Mr. Thees’s primary concern about purchasing Domestic Fittings from Star was that Star was an unknown entity in the Domestic Fittings market. (Thees, Tr. 3096).
1940. Nevertheless, McWane’s Exclusive Dealing Policy affected Ferguson’s willingness to purchase Domestic Fittings from Star because purchasing from Star could cause Ferguson to lose rebates and access to McWane’s Domestic Fittings supply. (CX 0506; Thees, Tr. 3086-3089; CX 2503 (Thees, IHT at 159)). Lack of access to supply could keep Ferguson from being able to ship to its customers on time. (CX 0506; Thees, Tr. 3086-3089; CX 2503 (Thees, IHT at 159)).
1941. Ferguson ordinarily permits its branch managers and district managers to make sourcing decisions for waterworks products, including Fittings. (RX-633 (Thees, Dep. 42) (“We allow general managers, district managers to make decisions regarding purchasing. Ultimately, through consensus, if it comes down to making the final decision that would fall to me, and that would not be over ridden.”)). At the time the Exclusive Dealing Policy was in place, there were Ferguson branches that had strong relationships with Star that would have likely purchased Domestic Fittings from Star had McWane’s Exclusive Dealing Policy not been in place. (CX 2503 (Thees, IHT at 162-163) (“[W]here the relationship was strong with a Star associate and a Ferguson branch, in all likelihood given they had a quality inventory position, [Star] would reap the benefits of increased business”)).

1942. To ensure that Ferguson complied with McWane's policy, Mr. Thees called the district managers reporting to him and reiterated that they needed to support McWane's products. This meant forgoing purchases of Domestic Fittings from Star. Mr. Thees expected his district managers to follow these instructions, and believes that they did. (Thees, Tr. 3091-3095; CX 2504 (Thees, Dep. at 77) ("Q. After this policy was received by Ferguson what steps did Ferguson take to ensure compliance of this policy? A. I would have called the DMs and informed them that we were going to continue to support Tyler/Union with this process and to make sure to communicate that through the branches."))).
1943. Mr. Thees was never told by anyone from McWane that Ferguson was not in compliance with McWane's Exclusive Dealing Policy. (Thees, Tr. 3113, 3117-3118).

#### 10.5.3.2 Ferguson Refused to Purchase Domestic Fittings from Star

1944. As a result of McWane's Exclusive Dealing Policy, Ferguson refused to purchase Domestic Fittings from Star. (*Infra* ¶¶ 1945-1952).
1945. After McWane issued its September 22, 2009 letter announcing its Exclusive Dealing Policy, Mr. Berry had negotiations with Darryl Case and Phil Selby, who are Ferguson district managers, and Dan Warner, who is a Ferguson general manager, for the sale of Star's Domestic Fittings to Ferguson. (CX 2532 (Berry, Dep. at 131-133)).
1946. Messrs. Case, Selby and Warner each informed Mr. Berry that there was a corporate edict that no Ferguson employees purchase Star Domestic Fittings unless McWane did not have the Domestic Fitting. (CX 2532 (Berry, Dep. at 133)).<sup>18</sup>
1947. Before McWane announced its Exclusive Dealing Policy, Star was awarded a job to supply Domestic Fittings for a project for Live Oaks WWTP. Ferguson cancelled the job after McWane issued its September 22, 2009, letter. (CX 2532 (Berry, Dep. at 164-65)). The job was cancelled after Ferguson issued its corporate policy notifying its employees that they should not purchase Star Domestic Fittings. (CX 2532 (Berry, Dep. at 164-165; CX 2288)).
1948. Ferguson refused to purchase Domestic Fittings from Star for other projects, including the Sunol Valley project and the North South project. (CX 2532 (Berry, Dep. at 170-171)).
1949. On numerous occasions Ferguson rejected a Star bid because of McWane's September 22, 2009 Exclusive Dealing Policy. (CX 2294 at 017-018 (Ferguson using McWane for West Hartford and Horn Pond jobs because of "letter threatening to cut off if they use Star domestic"); CX 2294 at 013 (Schantz Spring and Oakdale Pipe projects) ("Ferguson will not buy domestic from Star currently"); CX 2294 at 014 (North Laredo Water Treatment Plant) ("Ferguson won Star loss"); CX 2294 at 012-013 (listing 16 lost Star

<sup>18</sup> The cited out of court statements should be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

bids with the notation “All Ferguson are lost-they only get quotes from us for reference.”)).

1950. {  
  
}(McCutcheon, Tr. 2652, *in camera*).

1951. {  
  
} (CX 0502, *in camera*;  
CX 2503 (Thees, IHT at 146-147) (discussing CX 0502)).

1952. Ferguson has historically increased its purchases of McWane’s Fittings (and other products) in order to maximize its rebate under McWane’s rebate programs. (CX 2503 (Thees, IHT at 139-141) (“Q. Is . . . this the rebate structure that you’re pointing to as preferable to the programs offered by Sigma or Star? A. Yes. Q. The share tier, the 50-percent share and 55-percent share, do those incentives shape your purchasing activity in any meaningful way? A. Yes. Q. Do you on occasion direct the branches to maximize their purchases and fittings from Tyler in order to qualify for the next their? A. Yes.”)).

**10.5.4 After Receiving McWane’s Exclusive Dealing Policy, WinWholesale Put Star Domestic Fittings on Its “Not Approved” Vendor List**

1953. After receiving McWane’s Exclusive Dealing Policy, WinWholesale formally accepted the policy, and, as a result of the policy, put Star Domestic Fittings on its “not approved” vendor list, and refused to purchase Domestic Fittings from Star. (*Infra* ¶¶ 1954-1964).

10.5.4.1 Prior to McWane Issuing Its Exclusive Dealing Policy, WinWholesale was Interested in Purchasing Domestic Fittings from Star

1954. On September 10, 2009, Mr. Gibbs visited Star’s Houston facility to access “how fast they were ramping up production, when product would be able to be shipped.” (CX 2545 (Gibbs, IHT at 41-42) (“I wanted to see them.”)).

1955. When WinWholesale made its visit in early September 2009, Win was interested in purchasing Domestic Fittings from Star. (CX 2545 (Gibbs, IHT at 41) (“Q. Is it fair to say at this point of time you were at least potentially interested in doing business with Star on the domestic side? A. Sure.”)).

10.5.4.2 WinWholesale Put Star Domestic Fittings on Its “Not Approved” List

1956. On September 22, 2009, Mr. Gibbs received McWane’s Exclusive Dealing Policy from Mr. Tatman. (CX 2167 at 001).

1957. On September 24, 2009, Mr. Gibbs emailed all the WinWater local companies (branches), Regional Vice Presidents, Area Coordinators and Area Leaders to inform them that Star was placed on WinWholesale's "Not Approved" list for Domestic Fittings and restraints and to explain how McWane would enforce the policy against WinWholesale. (CX 2166 at 001-002; CX 2546 (Gibbs, Dep. at 72)).
1958. At WinWholesale, any "vendor that receives not approved status means that the local companies are not to buy from them under any circumstances unless they seek board approval." (CX 2546 (Gibbs, Dep. at 73)).
1959. Despite Star being on the "Not Approved" vendor list for Domestic Fittings, WinWater companies could purchase Domestic Fittings from Star "if, because of Tyler's inability to perform, they have to buy domestic fittings from Star;" which is the exception in McWane's Exclusive Dealing Policy. (CX 2166 at 002; CX 2167 at 002).
1960. WinWholesale was concerned that if the WinWater local companies, "on an ongoing basis," purchased Domestic Fittings from Star, they would lose their rebate and "be placed at the back of the line when [they] place [their] Tyler/Union orders." (CX 2546 (Gibbs, Dep. at 82-83) ("Q. Were you concerned that the WinWater local companies would lose their rebate if a WinWater local company purchased Star domestic fittings from Star? A. If they did it on an ongoing basis, yes. Q. Were you concerned about the lead times for Tyler/Union's domestic ductile iron pipe fittings if a WinWater local company purchased domestic fittings from Star? THE WITNESS: I wasn't concerned about the overall WinWater locations being able to get product from Tyler/Union, but there certainly was concern that if you head down that path, individual company, you may have – you may be placed at the back of the line when you place your Tyler/Union orders. I was not concerned for WinWholesale.")).
1961. On November 2, 2009, Mr. Gibbs officially accepted McWane's Exclusive Dealing Policy. (CX 2167 at 001).
1962. Star was verbally informed in early December 2009, and in writing on February 5, 2010, that WinWholesale placed Star on its "Not Approved" vendor list for Domestic Fittings and restraints. (CX 2166 at 001; RX-601 at 001 (McCutcheon description of cutoff by WinWholesale)).<sup>19</sup>
1963. On April 14, 2010, Mr. Gibbs reiterated in an internal email to all WinWater local companies, Regional Vice Presidents, Area Coordinators and Area Leaders that Star was on WinWholesale's "Not Approved" vendor list for Domestic Fittings and restraints. (CX 2166 at 001).

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<sup>19</sup> The cited out of court statement should be considered for the truth of the matter asserted therein, as a statement of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

1964. After discussing the Exclusive Dealing Policy with McWane, Mr. Gibbs pointed out that, although the policy dealt only with Domestic Fittings, it “may be an opportunity to consolidate down to two ductile fitting lines on import.” (CX 2166 at 002).

### **10.5.5 McWane’s Exclusive Dealing Policy Caused Groeniger to Stop Purchasing Domestic Fittings Directly from Star**

1965. Groeniger wanted to purchase Domestic Fittings from Star, and began to purchase Domestic Fittings from Star, but stopped as a result of McWane’s Exclusive Dealing Policy. (*Infra* ¶¶ 1966-1992).

#### 10.5.5.1 Groeniger Awarded Star Domestic Fitting Business Prior to McWane Issuing Its Exclusive Dealing Policy

1966. In 2009, prior to McWane issuing the Exclusive Dealing Policy in September 2009, Groeniger gave Star the Domestic Fittings business on “two sizeable projects” to “test[] to find out if Star could produce the domestic fittings.” (CX 2509 (Groeniger, IHT at 110); CX 2510 (Groeniger, Dep. at 213-214) (“that happened actually before this letter came out, the job was bid and submitted on and organized far before this letter came out”)).
1967. Groeniger awarded the two projects to Star for Domestic Fittings “[b]ecause they were more competitive.” (CX 2509 (Groeniger, IHT at 111) (“They [Star] were more aggressive [going] after the job.”)).
1968. The two projects “were difficult jobs,” but Star performed to Groeniger’s satisfaction. (CX 2509 (Groeniger, IHT at 110) (“Q. The two projects that you gave Star to perform, did they perform it to your satisfaction? A. Yeah.”); CX 2510 (Groeniger, Dep. at 224-225) (“Q. How did Star do in responding to the two projects that you gave to them? A. Excellent. Q. Did you have any issues of quality? A. No.”)).
1969. Groeniger wanted to “give these guys [Star] a chance because the best thing would be for us [Groeniger] to have another domestic [supplier].” (CX 2509 (Groeniger, IHT at 112)).
1970. Groeniger wanted another supplier of Domestic Fittings for “competitive pricing” and “better availability” and “better service.” (CX 2509 (Groeniger, IHT at 112) (“Q. What would have an alternative [domestic supplier] meant as a practical matter? A. Just say competitive pricing. Q. So, possibly lower pricing? A. And better availability and better service and Tyler has the worse service of any of them. So, you have to deal with that. That means you have to inventory more because you can’t rely on them getting material to you in time. All those things change.”)).

#### 10.5.5.2 McWane Punished Groeniger for Purchasing Domestic Fittings from Star

1971. McWane punished Groeniger for buying Domestic Fittings from Star by taking the unusual step of raising its prices to Groeniger mid-contract on a contract that had already

been awarded to Groeniger and for which Groeniger was sourcing Fittings from McWane. (*Infra* ¶¶ 1972-1977).

1972. McWane found out that Groeniger gave Star the Domestic Fittings business on these two projects and “put us [Groeniger] through the coals for it.” (CX 2509 (Groeniger, IHT at 110)).
1973. In 2010, after Groeniger gave Star the two Domestic Fittings jobs, McWane “raised the price arbitrarily” with “no rhyme nor reason” on a contract with the San Jose water district that Groeniger had been “buying previously” from McWane. (CX 2509 (Groeniger, IHT at 143) (“We were awarded half the contract and, suddenly, they raised the price.”); CX 2510 (Groeniger, Dep. at 216) (“They had a price increase sometime after the first of the year and they just upped our prices arbitrarily. And so we couldn’t up our process with the contractors and maintain a relationship with them.”)).
1974. When Groeniger challenged McWane for raising the price, McWane responded, “They say tough. That’s the way it is.” (CX 2509 (Groeniger, IHT at 143)).
1975. Groeniger was forced to buy Domestic Fittings from McWane at the higher price and sell them to their customer at the contract price, which resulted in Groeniger losing money. (CX 2510 (Groeniger, Dep. at 216) (“[W]e were buying Tyler at the higher price and selling it to them at the contract price, which means we were losing money.”)).
1976. Throughout 2010, Groeniger worked continuously to get McWane to recognize that Groeniger had the contract with the San Jose Water Company. (CX 2510 (Groeniger, Dep. at 216-217) (“And continuously fighting with Tyler trying to get them to acknowledge the fact that they had quoted us on the project and having the contractor talk to their regional guy when he went to the contractor’s office and say we are supplying the contractor through Groeniger, they gave us the price and we have the annual contract from the district and so forth. That didn’t work.”)).
1977. Groeniger had to go to the customer, San Jose Water Company, and get them to write a letter to McWane stating that they did in fact have the contract to supply the material including Domestic Fittings. (CX 2510 (Groeniger, Dep. at 217) (“So they wrote a letter from San Jose Water Company to McWane saying that Groeniger & Company is part of the San Jose contract for this year.”)).

#### 10.5.5.3 Groeniger Stopped Purchasing Domestic Fittings from Star Out of Fear of Retaliation from McWane

1978. As a result of McWane’s Exclusive Dealing Policy and its past history of enforcing such policies by cutting off Groeniger, Groeniger stopped purchasing Domestic Fittings from Star. (*Infra* ¶¶ 1979-1992).
1979. After Groeniger awarded Star two projects, Groeniger stopped purchasing Domestic Fittings from Star “[b]ecause of the inherent threats of retaliation” from McWane. (CX 2510 (Groeniger, Dep. at 207) (“Q. Have you considered purchasing more [ductile] iron pipe fittings from Star on the domestic side? A. Yes. Q. And did you purchase more

- domestic [ductile] iron pipe fittings from Star? A. Probably not. Q. Why not? A. Because of the inherent threats of retaliation. Q. Who was threatening you? A. Tyler.”); CX 2509 (Groeniger, IHT at 116-118) (“Q. Sir, you testified just now I asked you why you haven’t purchased any more domestic fittings from Star and you responded, well, because of the potential retribution. Do you recall that? A. Yes. Q. Did you mean because of the potential retribution from Tyler? A. Yes.”).
1980. Groeniger’s experience with McWane regarding the San Jose Water Company (explained above) and the concern that Tyler might raise the prices again adversely affected Groeniger’s willingness to continue purchasing domestic fittings from Star. (CX 2509 (Groeniger, IHT at 144)).
1981. Groeniger was concerned about “[b]eing shut out” from McWane if it purchased Domestic Fittings from Star. (CX 2509 (Groeniger, IHT at 119) (“What’s your understanding of the possible consequences of purchasing domestic fittings from Star in terms of what Tyler might do? A. Being shut out.”)).
1982. McWane had previously cut-off Groeniger from access to its supply of Fittings in the 1980s. (CX 2510 (Groeniger, Dep. at 102-104)).
1983. In the 1980s, McWane “came in and said all or nothing” for Fittings. (CX 2510 (Groeniger, Dep. at 104)).
1984. Groeniger elected to not give McWane all of its Fitting business in the 80s and was subsequently cut-off for up to three years. (CX 2510 (Groeniger, Dep. at 106) (describing being cut off for a “[y]ear, two years. Maybe three.”)).
1985. In 2009, Groeniger needed access to McWane Domestic Fittings in order to service customers with McWane-only Domestic Fitting requirements. (CX 2510 (Groeniger, Dep. at 214-215) (“There are one or two districts that are big . . . [that have] Tyler requirement, they didn’t approve Star, domestic they wouldn’t approve them. . . . So the realization is if we were going to be in that ballgame during that period of time when that was the biggest entity of anything going on in the Hayward region, and to support two of our major contractors in the area that were bidding work down there, we had to have Tyler. And Tyler knew that, it was pretty obvious.”)).
1986. Mr. Groeniger refused to purchase Domestic Fittings from Star for other projects because he was concerned that Groeniger would lose rebates from McWane to which it was otherwise entitled if Groeniger did so. (CX 2532 (Berry, Dep. at 163-164; CX 2288)).<sup>20</sup>

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<sup>20</sup> The cited out of court statement should be considered for the truth of the matter asserted therein, as a statement of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.



10.5.5.4 Groeniger Still Wanted to Purchase Domestic Fittings from Star

1987. In 2010, Groeniger would have given Star 50% of its Domestic Fittings business if McWane had not issued the September 2009 Exclusive Dealing Policy. (CX 2510 (Groeniger, Dep. at 219) (“Q. So had Tyler not issued this letter in September 2009, you would have purchased 50 percent of your domestic fittings needs from Star? . . . THE WITNESS: I would think we would have. Knowing personalities involved, knowing the history involved and the sales people that Star had currently in effect in the Central Valley coming out of Sacramento who were very astute to our needs and our capabilities, I think so, yeah.”)).
1988. Groeniger described the Exclusive Dealing Policy as “the hammer” that “could effect [sic] you price-wise and availability-wise” and could put Groeniger “theoretically out of business.” (CX 2509 (Groeniger, IHT at 142-143) (“They could tie you up so bad you could not function.”)).
1989. After McWane issued its September 22, 2009 letter announcing its Exclusive Dealing Policy, Mr. Berry had at least three conversations with representatives of Groeniger, including Mike Groeniger, Dick Alexander and Jim Wunschel. (CX 2532 (Berry, Dep. at 111-113)).
1990. Mr. Groeniger expressed his concern to Star that if Groeniger purchased any Domestic Fittings from Star, McWane would cut off any sales of Domestic Fittings to Groeniger. (CX 2532 (Berry, Dep. at 110, 113)).<sup>21</sup>

10.5.5.5 Groeniger Purchased Star Domestic Fittings Indirectly Through Griffin Pipe

1991. Mr. Groeniger expressed a preference in October 2009 for purchasing Star’s Domestic Fittings through Griffin Pipe Products Co. for the Walton project, rather than directly from Star, in order to avoid the repercussions under McWane’s Exclusive Dealing Policy. (CX 2532 (Berry, Dep. at 114); RX-224).<sup>22</sup>
1992. In October 2009, Groeniger and Star negotiated the sale through Griffin Pipe Products Co. of Star Domestic Fittings for the Walton transmission project. (CX 2532 (Berry, Dep. at 114-115)).

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<sup>21</sup> The cited out of court statement should be considered for the truth of the matter asserted therein, as a statement of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

<sup>22</sup> The cited out of court statement should be considered for the truth of the matter asserted therein, as a statement of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

### 10.5.6 McWane Enforced Its Exclusive Dealing Policy Against Members of The Distribution Group (TDG)

1993. McWane sought to enforce its Exclusive Dealing Policy against TDG at the buying group level, causing TDG to forgo McWane rebates on Domestic Fittings. McWane ultimately enforced its Exclusive Dealing Policy against TDG members at the individual member level. (*Infra* ¶¶ 1994-2025).

#### 10.5.6.1 TDG Vendor Committee Negotiations

1994. { } (CX 2494 (R. Fairbanks, Dep. at 107-108), *in camera*; CX 1361 at 004, 018, 034, *in camera*).
1995. { } (CX 2494 (R. Fairbanks, Dep. at 107-108), *in camera*; CX 1366 at 002 (“The following product categories do not carry a rebate. Domestic ductile iron waterworks Fittings.”)).
1996. The TDG vendor committee “certainly wanted to have a proposal on domestic ductile iron fittings.” (CX 2494 (R. Fairbanks, Dep. at 107)).
1997. In mid-September 2009, at the annual TDG Vendor Committee Negotiations, McWane explained that its new rebate program for TDG required TDG to police its members’ Domestic Fittings purchases to ensure that all locations for all TDG Distributors purchase all of their Domestic Fittings from McWane. Unless all TDG members purchased their Domestic Fittings solely from McWane, McWane would cut off all TDG members’ access to McWane’s Domestic Fittings. (Sheley, Tr. 3408-3409; *see also* CX 1364 at 002 (McWane proposed Domestic Fittings rebate program)).
1998. McWane wanted TDG to adhere to its Exclusive Dealing Policy as a whole and to commit to exclusivity on Domestic Fittings for every TDG member across the country. (Sheley, Tr. 3408-3409; CX 2501 (Prescott, IHT at 56); *see also* CX 1364 at 002 (McWane proposed Domestic Fittings rebate program)).
1999. On September 22, 2009, Mr. Tatman forwarded McWane’s “Q&A” document regarding its Exclusive Dealing Policy and its MDA with Sigma to Rick Fairbanks of the TDG Group, who forwarded it to the TDG members. (CX 1356 at 001).
2000. TDG did not accept McWane’s September 2009 Domestic Fittings rebate proposal, in part because TDG refused to police its members’ Domestic Fittings purchases. (Sheley, Tr. 3409; CX 2494 (R. Fairbanks, Dep. at 114) (because McWane proposal involved policing of individual member companies, it “[d]idn’t fit our model”)).
2001. Although the McWane Exclusive Dealing Policy was not ultimately enforced against TDG as a group, it has been enforced against the individual TDG members. (*See infra* ¶¶ 2002-2025).

10.5.6.2 Illinois Meter Refused to Purchase Star Domestic Fittings Because of McWane's Exclusive Dealing Policy

2002. As a result of McWane's Exclusive Dealing Policy, Illinois Meter refused to purchase Domestic Fittings from Star. (*Infra* ¶¶ 2003-2014).
2003. Mr. Jansen and Jennifer Heys of McWane informed Mr. Sheley that Illinois Meter, independently of TDG, is subject to McWane's Exclusive Dealing Policy. (Sheley, Tr. 3410-3411).
2004. Mr. Tatman and Mr. Jansen told Mr. Sheley that if Illinois Meter purchased Domestic Fittings from anyone but McWane, it "would lose the right to buy [McWane's Domestic Fittings] completely" and would also lose its Domestic Fittings rebate. Mr. Tatman and Mr. Jansen told Mr. Sheley this in September 2009 at a TDG meeting, and Jerry Jansen reiterated the message in January of 2010 at the TDG meeting in Dallas. (Sheley, Tr. 3407-3408).
2005. Mr. Jansen and Mr. Sheley had a heated conversation in January 2010 in which Mr. Jansen communicated to Mr. Sheley that if Illinois Meter purchased Domestic Fittings from anyone but McWane, Illinois Meter would lose access to McWane's Domestic Fittings and would lose its rebates for Domestic Fittings. (Sheley, Tr. 3411-3412 ("There was no doubt in my mind they were serious.")). McWane did not limit the threatened loss of access to Domestic Fittings to any time period. (Sheley, Tr. 3412-3413).
2006. Losing access to McWane's Domestic Fittings was a more serious consequence to Illinois Meter than losing McWane's rebates because Illinois Meter needs to have access to a full line of Domestic Fittings in certain locations and McWane carries a complete line. (Sheley, Tr. 3412).
2007. Illinois Meter purchases Domestic Fittings from McWane only. (Sheley, Tr. 3406).
2008. Illinois Meter has been unwilling to stock or ship Star's Domestic Fittings because it does not want to lose the ability to buy McWane's Domestic Fittings. (Sheley, Tr. 3407).
2009. Specifically, McWane's Exclusive Dealing Policy made Illinois Meter less willing to purchase Domestic Fittings from Star because Star could not supply Illinois Meter a complete line, and Illinois Meter was not willing to risk coming up short on a project because it did business with Star. (Sheley, Tr. 3413).
2010. Illinois Meter has a very good relationship with Star, and would have liked to have given them Domestic Fittings business. (Sheley, Tr. 3414). For example, Illinois Meter was interested in purchasing Domestic Fittings from Star for an ARRA-funded water treatment plant in Winchester, Illinois, and for a Domestic specification job in Macomb, Illinois. Both projects required smaller-diameter Domestic Fittings that Illinois Meter believed Star could provide. (Sheley, Tr. 3417-3418).

2011. {  
 } (CX 2537 (McCutcheon, IHT (Vol. 1) at 163), *in camera*)).
2012. Mr. Sheley believes that McWane’s Exclusive Dealing Policy remains in place as to Illinois Meter. As a result, Illinois Meter still does not purchase Star Domestic Fittings for customer projects, despite their very good quality. (Sheley, Tr. 3419-3420 (“We’re not buying any of them to speak of. We bought a few to look at them, but we are not buying them and supplying them on projects.”)).
2013. {  
 } (Sheley, Tr. 3433-3434, *in camera*). {  
 } (Sheley, Tr. 3434, *in camera*).  
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 } (Sheley, Tr. 3434, *in camera*).
2014. {  
 } (Sheley,  
 Tr. 3434-3435, *in camera* {  
 }  
 }

10.5.6.3 Other TDG Distributor Members Wanted to Purchase Domestic Fittings from Star but Did Not Because of McWane’s Exclusive Dealing Policy

2015. But for McWane’s Exclusive Dealing Policy, C.I. Thornburg would have purchased Domestic Fittings from Star during the entire 2010 calendar year. (CX 2489 (Morrison, IHT at 87) (“Oh, I’d say all of 2010.”)).
2016. In 2010, C.I. Thornburg purchased 95-98% of its Domestic Fittings from Tyler Union or Sigma, which sold Tyler Union Domestic Fittings. (CX 2489 (Morrison, IHT at 64) (“When I say Tyler Union, either through SIGMA or through Tyler Union.”)).
2017. In 2010, C.I. Thornburg sold \$339,781.80 in Domestic Fittings. (RX-650 (Morrison, Dep. at 37)). C.I. Thornburg started purchasing Star domestic fittings in 2010 “towards the end of the year.” (CX 2489 (Morrison, IHT at 66)).
2018. C.I. Thornburg would have been interested in purchasing A item Fittings from Star and then purchasing odd ball Fittings from Tyler. (CX 2489 (Morrison, IHT at 83-84) (“Q. Would you have been interested in purchasing the A item fittings that Star might have

<sup>23</sup> The cited testimony regarding out of court statements of the Illinois Meter is cited for its effect on Mr. McCutcheon and Star, not to prove the truth of the matters asserted in the statements.

- had during this time period and then purchasing your B through D items or your oddball fittings from Tyler as necessary? A. Oh, without question.”)).
2019. C.I. Thornburg would have given a third to a half of all its domestic business to Star but for the McWane Exclusive Dealing policy. (CX 2489 (Morrison, IHT at 85-86) (“Q. Any idea of how much business you would have given to Star in that world we’re describing, the world where the threat’s not in effect? . . . A. Oh, a third, easily, maybe half, but you would certainly start giving them [Star] some business for sure.”)).
2020. After McWane issued its Exclusive Dealing Policy, Mr. Berry had negotiations with Jim McDowell, a sales manager and now part owner of Western Waterworks, for the sale of Star’s Domestic Fittings to Western Waterworks. (CX 2532 (Berry, Dep. at 121-122)).
2021. Due to McWane’s Exclusive Dealing Policy, Mr. McDowell informed Mr. Berry in the course of their negotiations that Western Waterworks was willing to purchase Domestic Fittings from Star only if the transaction could “fly under the radar,” *i.e.*, that McWane would not find out about the sales. (CX 0011; CX 2532 (Berry, Dep. at 124); CX 2537 (McCutcheon, IHT (Vol. 1) at 142)).<sup>24</sup>
2022. In January 2010, after McWane announced its Exclusive Dealing Policy, Mr. Berry had negotiations with Todd Fowler, Brian Nelson, and David Kirker of the Distributor HD Fowler Company (a member of the TDG group), for the sale of Star’s imported and Domestic Fittings to HD Fowler. (CX 2532 (Berry, Dep. at 134)).
2023. Mr. Fowler, Mr. Nelson, and Mr. Kirker informed Mr. Berry that their company would not allow them to purchase Star’s Domestic Fittings because they were afraid that McWane would not sell Domestic Fittings to HD Fowler if it purchased Domestic Fittings from Star. (CX 2532 (Berry, Dep. at 134)).<sup>25</sup>
2024. Star submitted bids for Domestic Fittings to HD Fowler for a project called “Shelton WWTP.” HD Fowler purchased large Domestic Fittings from Star for this project because, at the time, Star could deliver the product more quickly than McWane. (CX 2532 (Berry, Dep. at 168)). However, for the same project, HD Fowler was unable to purchase smaller Domestic Fittings from Star because McWane had supply of the product. (CX 2532 (Berry, Dep. at 167-169 (also testifying that HD Fowler did not purchase Domestic Fittings from Star for its Coeur d’Alene, Idaho WWTP project; its Pendleton, Oregon WWTP project, or its HD Valley-Brownsville project); CX 2288)).<sup>26</sup>

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<sup>24</sup> The cited out of court statement should be considered for the truth of the matter asserted therein, as a statement of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

<sup>25</sup> The cited out of court statements should be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

<sup>26</sup> The cited out of court statements should be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

2025. {  
 2537 (McCutcheon, IHT (Vol. 1) at 163), *in camera*). } (CX

**10.5.7 Customers Purchased Domestic Fittings from Star in Limited Circumstances where McWane’s Exclusive Dealing Policy Did Not Pose a Threat**

2026. Many of Star’s Domestic Fittings sales were minor purchases, orders that McWane itself was unable to fill, or purchases that occurred after the customer learned of the FTC’s investigation in this matter, or other limited circumstances when McWane’s Exclusive Dealing Policy did not pose a threat. (*Infra* ¶¶ 2027-2031).
2027. Some Distributors only purchased domestic fittings from Star “under the radar,” or in other words, without McWane knowing.(McCutcheon, Tr. 2668-2669); CX 2489 (Morrison, IHT at 67) (“Now, what we’ve bought from Star has been under the radar. When I say under the radar, just nothing that it would get anybody’s attention. I don’t mean it was sneaky or was, you know, hidden from them [Tyler Union]. It was so minor that nobody would care because it wasn’t a project or something that was going on that Tyler Union was looking at or aware of or anything else.”); (CX 2516 (Sheley, Dep. at 63) (“Q. Do you purchase any domestic fittings from Star? A. We haven’t until – in the last 12 months we bought a few. I think that’s in that deposition also. We bought a few to see what they looked like. Q. Have you bought any for jobs? A. No.”); *see also* ¶ 1888).
2028. Some Distributors were willing to purchase Domestic Fittings from Star once they learned of the FTC’s investigation into McWane’s Exclusive Dealing Policy. (CX 2489 (Morrison, IHT at 78, 79) (“Q. So you think that right now the prospect of FTC scrutiny might be keeping Tyler from retaliating against distributors that purchase from Star? A. Yes.”)).
2029. U.S. Pipe was also willing to purchase Domestic Fittings from Star once it learned of the FTC’s investigation. (Morton, Tr. 2857-2858 (after FTC investigation opened U.S. Pipe decided that, if it bought Domestic Fittings from Star, the risk that McWane would stop Domestic Fittings sales to U.S. Pipe was “significantly less”); CX 2542 (Morton, Dep. at 154-155) (“Q. And why are you not concerned today? A. We believe, I believe, that they would not follow through on the -- I don’t want to use the word threat, on the message that Rick Tatman gave me back in 2009 as a result of all of the publicity and this investigation. I mean, so we felt that the threat of – the risk of not being able to get fittings, which you told you before was not my priority, was not an issue. Q. And when you say this investigation, do you mean the FTC’s investigation of McWane? A. That’s right.”)).
2030. Some of Star’s actual sales of Domestic Fittings were made in circumstances in which McWane could not provide Domestic Fittings in a timely fashion (*e.g.*, large-diameter Fittings), or where the End User needed a special coating such as “Protecto 401” that Star specialized in. (McCutcheon, Tr. 2666-2667).

2031. Star made a significant number of sales of Domestic Fittings to the Distributor Ramsco. After those sales, Ramsco was acquired by HD Supply. Those sales therefore appear in Star's records as sales to HD Supply even though they were made to Ramsco, not HD Supply. (McCutcheon, Tr. 2669-2670).

**10.6 McWane Employed Its Exclusive Dealing Policy to Prevent U.S. Pipe from Purchasing Domestic Fittings from Star**

2032. McWane enforced its Exclusive Dealing Policy with respect to U.S. Pipe, and as a result of McWane's policy, U.S. Pipe refused to purchase Domestic Fittings from Star. (*Infra* ¶¶ 2033-2063).

**10.6.1 U.S. Pipe Purchased and Re-sold Sigma, Star, and McWane Fittings**

2033. U.S. Pipe manufactured its own Domestic Fittings for sale in its waterworks systems packages until 2006, and has since purchased and resold Sigma's, Star's, and McWane's Fittings. (*Supra* § 3.4.8.1; *infra* ¶¶ 2034-2039).
2034. U.S. Pipe sells Fittings as part of its package sales of pipes and Fittings. (*Supra* ¶ 222)
2035. After U.S. Pipe stopped manufacturing Fittings in April 2006, Sigma was U.S. Pipe's main supplier of non-Domestic Fittings, and Star was its secondary source. (Morton, Tr. 2819).
2036. Today, Star and Sigma continue to be U.S. Pipe's source for non-Domestic Fittings, but Star is now the primary supplier and Sigma is the secondary supplier. (Morton, Tr. 2819-2820).
2037. After U.S. Pipe stopped manufacturing Fittings in April 2006, U.S. Pipe's sole source for Domestic Fittings (and the only supplier of Domestic Fittings) was McWane. (Morton, Tr. 2810).
2038. U.S. Pipe now also buys Domestic Fittings from Star. (Morton, Tr. 2820).
2039. U.S. Pipe never had a Fittings rebate program in place with McWane. (Morton, Tr. 2849, 2862).

**10.6.2 U.S. Pipe Pursued the Purchase of Domestic Fittings from Star and Star Offered Competitive Prices**

2040. When Star entered the Domestic Fittings market, U.S. Pipe pursued the purchase of Domestic Fittings from Star, and Star offered competitive prices. (*Infra* ¶¶ 2041-2049).
2041. Following the passage of ARRA, U.S. Pipe needed to ensure that it had sources for Domestic Fittings. (Morton, Tr. 2826).

2042. U.S. Pipe believed that it would benefit from having more than one supplier for Domestic Fittings because it wanted to, among other reasons, ensure supply and enjoy the benefits of competition. (Morton, Tr. 2826-2827).
2043. U.S. Pipe therefore began investigating small and medium Domestic Fittings sources other than McWane in early 2009. (Morton, Tr. 2825).
2044. U.S. Pipe initially considered manufacturing its own Domestic Fittings in response to ARRA. The main reason that U.S. Pipe stopped investigating that option was that Sigma contacted it in June of 2009 and committed to produce Domestic Fittings. (Morton, Tr. 2876-2877).
2045. In early September 2009, U.S. Pipe and Star discussed the potential purchase by U.S. Pipe of Domestic Fittings from Star. (Morton, Tr. 2834-2835; CX 2215 at 001).
2046. On September 3, 2009, Mr. McCutcheon sent an email to Mr. Morton and others at U.S. Pipe, thanking them for meeting the day before, and setting forth a schedule for the availability of Star's Domestic Fittings. (CX 2215 at 002-003; *see also* RX-207 (same schedule as sent to Ferguson in more legible form)).
2047. On September 15, 2009, Mr. Morton wrote an email to Susan Schepps of Star's sales group stating, "We are definitely interested in pursuing the purchasing of our domestic requirements from Star and are looking forward to receiving the list of configurations that will be available." (Morton, Tr. 2834-2835).
2048. On September 28, 2009, Mr. Morton met with Ms. Schepps in Birmingham, Alabama regarding U.S. Pipe's interest in purchasing Domestic Fittings from Star. (Morton, Tr. 2835-2837; CX 1936 at 001). Ms. Schepps provided a detailed list of Domestic Fittings products that Star was committed to having available by the end of 2009. (Morton, Tr. 2835-2837; CX 1936 at 001, 002).
2049. Star initially proposed to U.S. Pipe pricing for 3" to 12" Domestic Fittings that matched McWane's Domestic Fittings multipliers. In response to U.S. Pipe's statement that Star needed to incentivize U.S. Pipe to leave McWane, Ms. Schepps further committed to U.S. Pipe that Star would offer Domestic Fittings pricing significantly below McWane's in exchange for a major portion of U.S. Pipe's volume. (CX 1936 at 001; Morton, Tr. 2837-2838).

**10.6.3 Mr. Tatman Conveyed McWane's Exclusive Dealing Policy to U.S. Pipe as a Strict, All-or-Nothing Policy**

2050. Mr. Tatman conveyed McWane's Exclusive Dealing Policy to U.S. Pipe as a strict, all-or-nothing policy under which U.S. Pipe risked losing all access to McWane's Domestic Fittings. (*Infra* ¶¶ 2051-2056).
2051. After U.S. Pipe received a copy of McWane's September 22, 2009 Exclusive Dealing Policy, Stephen Gables of U.S. Pipe's sales group forwarded the letter to Mr. Crawford, Mr. Morton, and U.S. Pipe's president Ray Torok noting as follows:



There was a lot of buzz last week about [McWane] preparing to “cut off” certain wholesale distributors if they were found to have purchased any STAR domestic product. These letters make that buzz more like the sound of a 757.

(CX 2205 at 001; Morton, Tr. 2849).

2052. On October 13, 2009, Mr. Morton met with Mr. Tatman in Birmingham, Alabama regarding McWane’s Exclusive Dealing Policy. (Morton, Tr. 2840-2844).
2053. Mr. Tatman told Mr. Morton that McWane expected U.S. Pipe to purchase all of its Domestic Fittings needs from McWane, not from Star. (CX 2203 at 002 (Morton meeting notes indicating “Tatman - expect customers including USP to be loyal and purchase 100 percent of their requirements from [McWane]”); Morton, Tr. 2844-2845).
2054. Mr. Tatman told Mr. Morton that U.S. Pipe would be required going forward to purchase 100% of its Domestic Fittings requirements from McWane. U.S. Pipe could not “cherry pick” A- or B-items, or high volume Domestic Fittings from Star and expect McWane to supply the balance. (CX 2203 at 002; Morton, Tr. 2845-2846).
2055. Mr. Tatman warned Mr. Morton that if U.S. Pipe were to purchase any Domestic Fittings from Star, it should not expect McWane to sell any Domestic Fittings to U.S. Pipe. (CX 2203 at 002).
2056. Under its MDA with Sigma, McWane had also forbidden Sigma from selling even McWane branded Domestic Fittings to U.S. Pipe. (*See infra* § 11.8.5).

#### **10.6.4 U.S. Pipe Declined to Purchase Domestic Fittings from Star Because of McWane’s Exclusive Dealing Policy**

2057. Because U.S. Pipe needed access to a full line of Domestic Fittings, not just the “A” and “B” items initially being offered by Star, McWane’s Exclusive Dealing Policy prevented U.S. Pipe from buying any Domestic Fittings from Star. (Morton, Tr. 2846, 2848).
2058. In response to McWane’s Exclusive Dealing Policy as communicated by Mr. Tatman, Mr. Morton recommended to his boss, Mr. Torok, that U.S. Pipe continue purchasing 100% of its Domestic Fittings from McWane unless U.S. Pipe identified a source that could supply U.S. Pipe all of its Domestic Fittings instead. (Morton, Tr. 2848 (“In order to sell pipe, you have to have access to all types of fittings that are used in systems, and if you didn’t have the capability to buy all of your requirements, then you couldn’t compete and bid on projects for many systems.”)).
2059. U.S. Pipe complied with McWane’s Exclusive Dealing Policy, and Mr. Morton instructed his purchasing manager not to purchase Domestic Fittings from Star unless McWane could not provide the needed Domestic Fittings. (Morton, Tr. 2915-2916 (“My instructions to my purchasing manager were to only purchase if Union-Tyler couldn’t provide, so if we were buying a very minor number of fittings from January of 2010

through September when we really did make a change, it was as a result of one of those exceptions where we couldn't receive product.”)).

2060. On November 12 or 13, 2009, Mr. Morton and Stephen Gables of U.S. Pipe met with Mr. McCutcheon and Ms. Schepps of Star. At that meeting, U.S. Pipe conveyed to Star the message from McWane that if U.S. Pipe purchased any of its Domestic Fittings requirements from anyone other than McWane, then McWane would not sell U.S. Pipe any Domestic Fittings. (CX 2217 at 002; Morton, Tr. 2853-2854; *see also* RX-601 (McCutcheon description of cutoff by U.S. Pipe)).<sup>27</sup>
2061. U.S. Pipe further conveyed to Star that “We must have 100% confidence in Star’s ability to deliver all of our domestic requirements” before moving away from McWane. (CX 2217 at 002; Morton, Tr. 2854-2855).
2062. With the exception of minor purchases falling within the limited exceptions to McWane’s Exclusive Dealing Policy (*e.g.*, where McWane’s lead time to supply the requested Fitting was too long, or if McWane didn’t make a particular Fitting configuration), U.S. Pipe did not purchase significant amounts of Domestic Fittings from Star until September of 2010. (Morton, Tr. 2856-2858, 2859).
2063. In September 2010, U.S. Pipe became willing to purchase Domestic Fittings from Star because it believed the FTC investigation significantly reduced the risk of McWane refusing to sell it Domestic Fittings under the Exclusive Dealing Policy. (Morton, Tr. 2856-2858; CX 2210 at 001 (“We also believe that with the current FTC investigation that it is unlikely that McWane will deny selling domestic fittings to USP.”)).

### **10.7 McWane Never Publicly Withdrew Its Exclusive Dealing Policy**

2064. McWane never modified the Exclusive Dealing Policy by any subsequent letter. (Tatman, Tr. 707, 709 (asserting that the program was modified after Sept. 22, 2009, but that he never sent out a letter to his customers to the effect that “[t]he policy we announced on September 22, 2009 is no longer in effect.”); *infra* ¶¶ 2065-2067).
2065. Distributors and others in the market are not aware of McWane ever rescinding its Exclusive Dealing Policy. (Sheley, Tr. 3419 (“Q. Does this policy still have an effect on your willingness to deal with Star for domestic fittings today? A. Yes, it does. Q. And what effect is that? A. We’re not buying any of them [Star Domestic Fittings] to speak of. We bought a few to look at them, but we are not buying them and supplying them on projects.”); Morton, Tr. 2908-2909, 2911 (No one from McWane communicated to U.S. Pipe any revisions to the Exclusive Dealing Policy); Thees, Tr. 3118 (As far as Mr. Thees of Ferguson is aware, McWane never rescinded the Exclusive Dealing Policy or indicated that it was no longer in force); Pitts, Tr. 3364-3365 (As far as Mr. Pitts of Hajoca is aware, McWane never withdrew the Exclusive Dealing Policy)).

<sup>27</sup> The cited out of court statements should be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

2066. McWane was still actively enforcing its Exclusive Dealing Policy in July 2010. For example, Mr. Jansen warned the president of the third largest waterworks Distributor, WinWholesale, that one of its branches had purchased a “small order of Domestic from Star that was quoted last fall,” so that WinWholesale could “avoid a situation.” (CX 1603; CX 2477 (Jansen, Dep. at 189-191) (testifying that he was unaware of any WinWholesale branches buying any Domestic Fittings after that warning)).
2067. McWane continues to have a form of its Exclusive Dealing Policy in place with respect to HD Supply today, whereby HD Supply could lose the benefit of McWane’s Domestic Fittings rebate program if it fails to fully support McWane’s Domestic line of Fittings. (CX 2514 (Webb, Dep. at 100) (describing policy as of May 2012); Webb, Tr. 2770 (Webb believes a similar policy remains in place); *see also* CX 2193 (July 2010 internal McWane email from Mr. Jansen to Mr. Napoli that a Distributor would lose their “backside program” or no rebates if it purchased Domestic Fittings from Star); CX 2480 (Napoli, Dep. at 101-103); CX 2479 (McCullough, Dep. at 173-174) (“Backside pricing” generally refers to providing discounts with a rebate, although it may sometimes refer to extending payment terms)).

**10.8 { } Was Deterred by McWane’s Exclusive Dealing Policy from Entering the Domestic Fittings Market**

2068. { } considered entering the Domestic Fittings market in 2009, but decided not to enter because of McWane’s Exclusive Dealing Policy. (*Infra* ¶¶ 2069-2088).

**10.8.1 { } Considered Entering the Domestic Market in 2009**

2069. {

}

2070. {

}

2071. {

}

**10.8.1.1 { } Discussed Its Domestic Entry with Customers**

2072. {

}

2073. Customers, including HD Supply, informed { } that they wanted another source of Domestic Fittings, because McWane was currently the only source, and it was better to have multiple choices. {

}

2074. {

}

10.8.1.2 { } Identified a Cost-Effective Domestic Foundry to Produce Domestic Fittings for

2075. {

}

2076. {

}

2077. {

}

10.8.1.3 { } Had Sufficient Capital to Finance Domestic Entry

2078. {

}

2079. {

}

2080. {

}

2081. {

}

10.8.1.4 { } Had Patterns Available for Domestic Fittings Manufacturing

2082. {

}

2083. {

}

**10.8.2 { } Because of  
McWane's Exclusive Dealing Policy**

2084. Because McWane announced its Exclusive Dealing Policy in late September 2009, {  
} *in camera; infra ¶¶ 2085-2088*).

2085. {

}

2086. {

}

2087. McWane's Exclusive Dealing Policy meant that {

}

2088. While it was not the only reason, McWane's Exclusive Dealing Policy was a decisive reason why {

}

**10.9 McWane's Exclusive Dealing Policy Had an Immediate Negative Impact on  
Star's Business in the Market for Domestic Fittings**

2089. McWane's Exclusive Dealing Policy had an immediate negative impact on Star's business in the market for Domestic Fittings. (McCutcheon, Tr. 2303; *infra ¶¶ 2090-2166*).

2090. {

} (CX 2535

(Bhutada, Dep. at 84-85), *in camera*; see also *supra* ¶¶ 1893-2067 {  
 }<sup>28</sup>

### 10.9.1 Star's Domestic Fittings Business Lost Sales and Was Unprofitable Due to McWane's Exclusive Dealing Policy

#### 10.9.1.1 Star's Domestic Fittings Business Lost Sales Due to McWane's Exclusive Dealing Policy

2091. McWane's Exclusive Dealing Policy caused Distributors to refuse to purchase Domestic Fittings from Star, or to purchase Domestic Fittings from Star only in those limited circumstances under which they believed that McWane would not find out about it. (*See supra* § 10.5, *infra* ¶¶ 2092-2100).
2092. McWane's Exclusive Dealing Policy presented Distributors who wanted to buy Domestic Fittings from Star with an all-or-nothing decision, whereby purchasing any Domestic Fittings from Star would risk potentially disastrous retaliation by McWane. (*See supra* § 10.5.1 (describing risks to Distributors presented by McWane's Exclusive Dealing Policy)).
2093. Distributors wanted to purchase Domestic Fittings from Star. (CX 2489 (Morrison, IHT at 85) ("I know the Star folks very well, I want to support them, glad to see them in the domestic business, let me give you some orders, and what you can't supply I'll go get from Tyler Union. Yeah, I would have loved to have just not had anything floating around in the background about what might happen if I do that."); CX 2489 (Morrison, IHT at 84) ("If there wasn't a concern, whether it be from the letter or whatever other method of communication you want to talk about, if it was just a completely free market, buy whatever you want to, we're happy to sell you anything, you know, we're here to service you, and you could go give this order to Star and I'm going to have some advantage, whether it's a rebate from Star, a point or two price difference, whatever the case may be, just another option, but knowing that if they don't have something I'm going to turn around and buy it from Tyler Union and they're just going to be happy to sell it to me, sure, I mean there's no question you would have split the business."); CX 2501 (Prescott, IHT at 47) ("Q. Were you interested in purchasing domestic fittings from Star? A. Oh, yeah, if everything was on level playing field, we were, sure, because we buy stuff from Star. . . . Q. When you say everything on a level playing field, what do you mean by that, sir? A. Well, because originally if you bought one fitting from anybody else, you would lose the -- you know, that's in writing, so I didn't do that. Q. This is a policy of McWane that you're describing? A. Yes.")).
2094. {  
 } (Bhargava, Tr. 2965-2969, *in camera* {

<sup>28</sup> The cited out of court statements should be considered for the truth of the matters asserted therein, as statements of motive, intent, or plan under Fed. R. Evid. 803(3). *See supra* n.11.

}

2095. Despite their relationships with Star, the quality of Star's Domestic Fittings, and Star's expertise and service (*see supra* ¶¶ 1666-1668, 1758-1765), Distributors could not risk being cut off by McWane and having to purchase all of their needs from the new entrant with an untested supply chain and an incomplete product line. (RX-704 (Gibbs, IHT at 72) (Star was an unproven domestic supplier and did not have adequate breadth of line); CX 2491 (Johnson, IHT at 62) (Star needed to prove itself before Dana Kepner would move all of its business to Star); RX-662 (Thees, IHT at 154, 171-173) (describing risks of giving all of Ferguson's business to Star, including the need for breadth and depth of inventory); CX 2501 (Prescott, IHT at 86-87) (McWane's policy increased the risk [of purchasing Domestic Fittings from Star] from a Distributor's perspective)).
2096. Star has been unable to compensate Distributors for the open-ended risk of buying Domestic Fittings from Star created by McWane's Exclusive Dealing Policy. (CX 2513 (Webb, IHT at 204-205) ("not enough money . . . that could be offered" to compensate HD Supply for assuming risk of dealing with Star under the terms of McWane's Exclusive Dealing policy); CX 2515 (Sheley, IHT at 93-94) ("Q. [W]here's the price tag to compensate you for that risk? A. Half a million."); CX 2491 (Johnson, IHT at 66-67) ("Q. [I]s there any way that Star could have compensated you for taking that risk on before July of 2010? A. I don't think so. I mean you can have all the guaranties from a money standpoint, but you're still not servicing your customer. And the long-term fallout form that could have been much more than a million dollars."); *see also* CX 2534 (Bhutada IHT at 73-74); CX 2537 (McCutcheon, IHT (Vol. 1) at 196) (Star's cost structure would not allow it to cut prices further); CX 2537 (McCutcheon, IHT (Vol. 1) at 156-157) (Star could not compensate a Distributor for purchasing any Domestic Fittings from Star by charging the Distributor a lower price, because a Distributor would not accept the risk of losing access to any supply from McWane)).
2097. Even where Star was in a position to supply Domestic Fittings for an entire project, McWane's Exclusive Dealing Policy impacted Distributors' decisions to purchase Domestic Fittings from Star. (CX 2489 (Morrison, IHT at 76) ("I'm positive that it [McWane's Exclusive Dealing Policy] influenced our decision-making as time went along in 2010."); CX 2489 (Morrison, IHT at 84-85) ("The first half of the year we didn't have to make the decision -- well, we made our decisions based on the fact that we knew this was the case, you know, the letter was the threat.")).
2098. But for McWane's Exclusive Dealing Policy, Distributors, including two of the largest national chains and many of Star's largest imported Fittings customers, would have purchased more Domestic Fittings from Star. (*See supra* ¶¶ 1904-2063 (describing Star loss of sales as a result of Exclusive Dealing Policy); Bhargava, Tr. 2975, *in camera* ( {  
} ); CX 2513  
(Webb, IHT at 198-199) (HD Supply would probably purchase more from Star); CX 2515 (Sheley, IHT at 96-97, 142) (Distributor would shift the majority of its business to

Star); Thees, IHT at 160, 162-163 (Ferguson would allow local branches discretion to buy domestic from Star, and some of those local branches would likely have made purchases); CX 2545 (Gibbs, IHT at 55-57) (same, for WinWholesale); CX 2509 (Groeniger, IHT at 116-117, 118) (Testifying that Groeniger did not purchase more fittings from Star because of the “retribution policy” from Tyler); CX 2501 (Prescott, IHT at 54-60) (If not for the distribution policy, EJP was interested in purchasing A items from both Star and McWane); CX 2491 (Johnson, IHT at 57-59) (In a world with the Tyler distribution policy, “[W]e would have only bought the Tyler products if Star didn’t have them.”); *see also supra* ¶¶ 2032-2063 (describing Star’s loss of sales to U.S. Pipe as a result of Exclusive Dealing Policy)).

2099. If Star had been free to win business from the major national Distributors, these accounts would have offered Star a quick and efficient way to win large volumes of business as well as a measure of commercial validation. (CX 2534 (Bhutada, IHT at 18, 27-29); CX 2537 (McCutcheon, IHT (Vol. 1) at 50-53); CX 2483 (Tatman, IHT at 242-244)).
2100. Star’s sales force believed that McWane’s Exclusive Dealing Policy would completely shut Star out of the Domestic Fittings market. (McCutcheon, Tr. 2607 (“[T]hey thought at the time that . . . we would be completely foreclosed from domestic fittings.”)).

10.9.1.2 Star Failed to Meet Its Domestic Fittings Sales Targets and Its Domestic Fittings Business Was Unprofitable

2101. As a result of McWane’s Exclusive Dealing Policy, Star failed to meet its Domestic Fittings sales targets and Star’s Domestic Fittings business was unprofitable. (*Infra* ¶¶ 2102-2108).
2102. {  
} (CX 2537 (McCutcheon, IHT (Vol. 1) at 110), *in camera*; CX 2535 (Bhutada, Dep. at 79), *in camera* {  
}; McCutcheon, Tr. 2351, *in camera* {
2103. {  
} (CX 2535 (Bhutada, Dep. at 79), *in camera*). {  
} (CX 2535 (Bhutada, Dep. at 80, 87), *in camera*).
2104. {  
} (CX 1801-A at 002, *in camera*; CX 2535 (Bhutada, Dep. at 68), *in camera*; (RX-698 (McCutcheon, Dep. at 136)).
2105. {  
} (CX 1801-A at 003, *in camera*; CX 2535 (Bhutada, Dep. at 68), *in camera*; (McCutcheon, Tr. 2351, *in camera*; (RX-698 (McCutcheon, Dep. at 137))).





2113. {  
  
} (Bhargava, Tr. 2937-2940, *in camera*).
2114. { }  
(CX 2534 (Bhutada, IHT at 91), *in camera*).
2115. {  
  
} (CX 2535  
(Bhutada, Dep. at 129), *in camera*).
2116. {  
  
} }  
(Bhargava, Tr. 2950, 2954, *in camera* { }; CX 2535 (Bhutada,  
Dep. at 74, 91, 128, 131), *in camera*)).
2117. {  
  
} (E.g., CX  
2375 at 001, 002, *in camera* {  
}
2118. { } (Bhargava, Tr. 2933, *in camera*).
2119. {  
  
} (CX 2533 (Bhargava, Dep. at 47), *in  
camera*).
2120. { } (Bhargava, Tr. 2935-2936, *in camera*; CX  
2533 (Bhargava, Dep. at 55), *in camera*).
2121. {  
  
} (Bhargava, Tr. 2933, 2954-2955, *in camera*).
2122. {

- 2375 at 001, 002, *in camera* { } (Bhargava, Tr. 2941-2942, *in camera*; (e.g., CX 2375 at 001, 002, *in camera* { } )
2123. { }  
(Bhargava, Tr. 2942-2945, *in camera* { }; CX 2375 at 001, *in camera*).
2124. { }  
(Bhargava, Tr. 2963, 2995, *in camera*); *see also* CX 2535 (Bhutada, Dep. at 127), *in camera* { }
2125. { }  
(Bhargava, Tr. 2963, 2995, *in camera*)).
- 10.9.2.2 Star Planned to Obtain a Dedicated Foundry for Its Domestic Fittings Production
2126. When Star entered the Domestic Fittings market, it planned to purchase a dedicated foundry for its Domestic Fittings production, and it pursued acquisition of such a foundry. (*Infra* ¶¶ 2127-2140).
2127. { } (CX 2533 (Bhargava, Dep. at 26), *in camera*).
2128. { } (CX 2534 (Bhutada, IHT at 45-46), *in camera*).
2129. { } (CX 2535 (Bhutada, Dep. at 83-84), *in camera*).
2130. { }  
(Bhargava, Tr. 2956, *in camera*; CX 2535 (Bhutada, Dep. at 137), *in camera*; CX 2533 (Bhargava, Dep. at 67), *in camera*).

2131. {  
}  
 (Bhargava, Tr. 2956, *in camera*).
2132. {  
}  
 } (CX 2535 (Bhutada, Dep. at 138), *in camera*).
2133. {  
} (CX  
 2535 (Bhutada, Dep. at 138), *in camera*).
2134. {  
}  
 } (Bhargava, Tr. 3015-3017, *in camera*).
2135. {  
} (CX 2535 (Bhutada, Dep. at 137-138), *in camera*; CX 2389 at 001, *in camera* {  
 }  
 }
2136. {  
} (Bhargava, Tr. 3018, *in camera*); {  
} (Bhargava, Tr. 3021, *in camera* {  
 }  
 }
2137. {  
}  
 } (CX 2535 (Bhutada, Dep. at 138-139), *in camera*).
2138. {  
} (CX 2535  
 (Bhutada, Dep. at 138-139), *in camera*).
2139. {  
} (McCutcheon, Tr. 2285, 2342; CX 2537  
 (McCutcheon, IHT (Vol. 1) at 110, *in camera*); CX 2534 (Bhutada, IHT at 45-46), *in camera*; CX 2535 (Bhutada, Dep. at 84-85), *in camera* {  
};  
 }; Bhargava, Tr. 2960-2961, *in camera* {

} (RX-694 (Bhutada, Dep. at 85)).

2140. {

} (Bhargava, Tr. 2962, *in camera*;  
CX 2535 (Bhutada, Dep. at 91-93, 140-142), *in camera*) {  
*camera* { }; CX 1801-A at 005, *in*  
}

10.9.2.3 Star Did Not Purchase a Dedicated Foundry for Its Domestic Fittings Production Because of McWane's Exclusive Dealing Policy

2141. As a result of McWane's Exclusive Dealing Policy, Star did not purchase a dedicated foundry for Domestic Fittings production. (*Infra* ¶¶ 2142-2159).

2142. {

2534 (Bhutada, IHT at 47-48), *in camera*).

} (CX

2143. {

} (Bhargava, Tr. 2959, *in camera*).

2144. {

} (Bhargava, Tr. 2956-2957, *in camera*).

2145. Star learned of McWane's Exclusive Dealing Policy immediately after McWane sent the letter announcing the policy to the market. (McCutcheon, Tr. 2300-2301; CX 0010).

2146. {

} (Bhargava, Tr. 2958-2960, *in camera*).

{

(Bhargava, Tr. 2960, *in camera*).

}

2147. Star believed that HD Supply would not buy Domestic Fittings from Star because of McWane's Exclusive Dealing Policy. (McCutcheon, Tr. 2329-2330<sup>29</sup>) (testifying that when Joe Antico, a branch manager at HD Supply, tried to give a Domestic Fittings job

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<sup>29</sup> The cited trial testimony regarding the out of court statement of Mr. Anderson is cited to prove its effect on Mr. McCutcheon and Star, and is not cited to prove the truth of the matter asserted in the statement. (*See* McCutcheon, Tr. 2323).

to Star, Darrin Anderson told Mr. McCutcheon and Mr. Antico that HD Supply could not buy Domestic Fittings from Star because of McWane’s Exclusive Dealing Policy and HD Supply’s corporate position); *see also* CX 2537 (McCutcheon, IHT (Vol. 1) at 168); *see also* Bhargava, Tr. 2976-2977,<sup>30</sup> *in camera* {

}

2148. {

(McCutcheon, Tr. 2326-2327 ; CX 2537 (McCutcheon, IHT (Vol.1) at 166-167, 171, *in camera* {

*in camera*) { }; *see also* (Bhargava, Tr. 2976-2977,

}

2149. {

(McCutcheon, Tr. 2321-2324 {

}

(McCutcheon, IHT at 160-161), *in camera* { }; *see also* CX 2537

}

2150. {

2326 {

(McCutcheon, Tr. 2324-

*in camera*). }; *see also* CX 2537 (McCutcheon, IHT at 161),

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<sup>30</sup> The cited trial testimony regarding the out of court statement of { } is cited to prove its effect on Star, not to prove the truth of the matter asserted in the statement. (*See* Bhargava, Tr. 2976).

<sup>31</sup> The cited trial testimony regarding the out of court statements of { } is cited to prove their effect on Mr. McCutcheon and Star, not to prove the truth of the matters asserted in the statements. (*See* McCutcheon, Tr. 2323).

<sup>32</sup> The cited trial testimony regarding the out of court statement of { } is cited to prove its effect on Mr. McCutcheon and Star, not to prove the truth of the matter asserted in the statement. (*See* McCutcheon, Tr. 2322).

<sup>33</sup> The cited trial testimony regarding the out of court statement of { } is cited to prove its effect on Mr. McCutcheon and Star, not to prove the truth of the matter asserted in the statement. (*See* McCutcheon, Tr. 2323).

2151. {  
Tr. 2326 {  
IHT at 162), *in camera*).  
}; *see also* CX 2537 (McCutcheon,  
IHT at 162), *in camera*).
2152. {  
} (McCutcheon, Tr. 2327-2328 {  
}; *see also* CX 2537 (McCutcheon, IHT at 163, 166), *in camera*).
2153. Star believed that Distributor WinWater would not buy Domestic Fittings from Star because of McWane's Exclusive Dealing Policy. (McCutcheon, Tr. 2329<sup>36</sup> (Eddie Gibbs, an employee at Distributor WinWater, told Mr. McCutcheon that WinWater could not buy Domestic Fittings from Star because of McWane's Exclusive Dealing Policy, and that he had instructed his employees not to purchase Domestic Fittings from Star)).
2154. Star believed that Distributors Western Water Works and Wells Supply would not purchase Domestic Fittings from Star because of McWane's Exclusive Dealing Policy. (McCutcheon, Tr. 2330-2333 (Star Territory Manager John Ristine reported to his superiors that Distributor Western Water Works reported that if it purchased Star's Domestic Fittings, McWane would cut them off, and that Distributor Wells Supply reported that if it purchased Star's Domestic Fittings either double the price to Wells for shorts or cut them off altogether); CX 0011).<sup>37</sup>
2155. {

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<sup>34</sup> The cited trial testimony regarding the out of court statement of { } is cited to prove its effect on Mr. McCutcheon and Star, not to prove the truth of the matter asserted in the statement. (*See* McCutcheon, Tr. 2323).

<sup>35</sup> The cited trial testimony regarding the out of court statements of { } is cited to prove their effect on Mr. McCutcheon and Star, not to prove the truth of the matters asserted in the statements. (*See* McCutcheon, Tr. 2322).

<sup>36</sup> The cited trial testimony regarding the out of court statement of Mr. Gibbs is cited to prove its effect on Mr. McCutcheon and Star, not to prove the truth of the matter asserted in the statement. (*See* McCutcheon, Tr. 2323).

<sup>37</sup> The cited trial testimony and exhibit regarding the out of court statements of the Distributors are cited to prove the effect if the statements on Mr. McCutcheon and Star, not to prove the truth of the matters asserted in the statements. (*See* McCutcheon, Tr. 2336-2337).

(McCutcheon, Tr. 2648-2650, *in camera*). }

2156. Based on information received from customers and reflected in Star's Domestic Quote Log, Star believed that McWane's Exclusive Dealing Policy foreclosed Star from selling to both HD Supply and to Ferguson, cutting its potential sales of Domestic Fittings in half. (McCutcheon, Tr. 2315-2317; CX 2294). Because it perceived a diminished opportunity for sales of Domestic Fittings, Star did not believe that purchasing a Domestic Fittings foundry made sense. (McCutcheon, Tr. 2317; Bhargava, Tr. 2977, *in camera*) {

}

2157. {

} (CX 2535 (Bhutada, Dep. at 137), *in camera* {

Bhargava, Tr. 2957, *in camera* {

};

}; Bhargava, Tr. 2958, *in camera* {

}; Bhargava, Tr. 3020, *in camera* {

}

2158. {

*in camera* {  
}

} (Bhargava, Tr. 2964-2965, 3022,

2159. {

} (Bhargava, Tr. 2964-2965, *in camera* {

}

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<sup>38</sup> The cited trial testimony regarding the out of court statements of { } is cited to prove their effect on Mr. McCutcheon and Star, not to prove the truth of the matters asserted in the statements. (*See* McCutcheon, Tr. 2649).



### 10.9.3 McWane's Exclusive Dealing Policy Made Star Unable to Effectively Compete with McWane in Domestic Fittings

2160. As a result of McWane's Exclusive Dealing Policy, Star was unable to lower its prices enough to effectively constrain McWane's monopoly prices in the Domestic Fittings market. (*Infra* ¶¶ 2161-2166).
2161. McWane's policy kept Star from driving down prices of Domestic Fittings. {  
 } (McCutcheon, Tr. 2343, 2348-2350; Bhargava, Tr. 2963-2964, *in camera* {  
 }; CX 2480 (Napoli, Dep. at 71-72)  
 (explaining that he is not concerned about Star driving down the prices of Domestic Fittings); *see also supra* §§ 10.1.2.3, 10.9.2.1 (Star would have had lower cost of production at its own plant)).
2162. In the few instances in which Star was able to obtain Domestic Fittings business, it had to reduce its prices significantly in an effort to compensate customers for the risks they confronted in McWane's Exclusive Dealing Policy. For one project (Walton Road), Mr. McCutcheon approved additional discounts to Groeniger below Star's Domestic Fittings multipliers by 3% (24" and below) and by 10% (30" - 36") to compensate Groeniger for taking risk by buying Star. (CX 2328 at 001 ("Discounts necessary to take risk buying Star. Negotiated with Mike Groeniger.")).
2163. In 2009 and 2010, about half of Star's Domestic Fittings sales were at lower prices than McWane's sales, by an average of 5%. (CX 2537 (McCutcheon, IHT (Vol. 1) at 195-196) ("I would say the pricing is approximately 5 percent better."); McCutcheon, Tr. 2339-2342 (noting that Star offers special prices, cash discounts, terms and freight)).
2164. Despite Star's presence in the market, Star did not observe McWane responding to Star's discounted prices for Domestic Fittings in 2009 and 2010. (CX 2537 (McCutcheon, IHT (Vol. 1) at 196)).
2165. Distributors were unable to use the availability of Star Domestic Fittings to negotiate lower prices of Domestic Fittings with McWane. (CX 2489 (Morrison, IHT at 82) ("They have shown no willingness to deviate from the multiplier price under any circumstances, not that I've seen.")).
2166. With Star's Domestic Fittings cost structure – outsourcing its Domestic Fittings manufacturing to independent foundries – it could not lower its Domestic Fittings prices further. (McCutcheon, Tr. 2344; CX 2537 (McCutcheon, IHT (Vol. 1) at 145)).

## 11 McWane Entered the MDA with Sigma to Further Secure Its Monopoly Position in the Domestic Fittings Market

2167. McWane entered into the MDA with Sigma in order to reduce competition in the Domestic Fittings and Fittings markets by averting Sigma's independent entry into the

Domestic Fittings market and further hindering Star's attempt at entry. (*Infra* ¶¶ 2168-2465).

2168. On September 17, 2009, McWane entered into an OEM Distribution Agreement (commonly referred to as the "Master Distribution Agreement," or "MDA") for the supply of Domestic Fittings by McWane to Sigma. (CX 1194 (signed MDA)).
2169. Among other things, McWane and Sigma agreed that Sigma would source its Domestic Fittings exclusively from McWane and that Sigma would enforce McWane's Exclusive Dealing Policy. (CX 1194 at 001-002 §§ 1(b), 1(c); *see also infra* ¶¶ 2372-2440 (describing MDA terms and implementation)).
2170. Sigma and McWane publicly announced the MDA on September 22, 2009. (CX 1606 at 002).

### **11.1 Sigma Considered Two Options for Meeting Its Number One Priority: Domestic Fittings Sourcing**

2171. After ARRA was enacted, staying on the sidelines of the Domestic Fittings market was not an option for Sigma because it felt it needed to defend its market share by offering Domestic Fittings. (CX 2524 (Box, Dep. at 22); *see also* CX 2524 (Box, Dep. at 61, 82) (Sigma needed to do something to supply its customers with Domestic Fittings in all size ranges); CX 2530 (Rona, Dep. at 39-40) (Sigma felt ARRA would shut it out of a portion of the Fittings business); CX 2530 (Rona, Dep. at 240) ("Q. And I understand that you believe that Sigma needed to be in this [Domestic Fittings] market one way or the other; correct? A. Correct."); Rona, Tr. 1457 (Sigma believed demand for Domestic Fittings would increase as a result of ARRA and that Sigma therefore "needed to explore the option of being in a position to produce fittings for ourself [*sic*]"); CX 0219 at 001 (Rona writing in May 2009 that the ARRA Buy American requirement was an "extremely real threat" and that "[i]t is quite clear now that we need a credible plan"); *see supra* § 8.2).
2172. Sigma considered two potential avenues for entering the Domestic Fittings market: (1) purchasing "private label" Domestic Fittings from McWane (*i.e.*, Fittings manufactured by McWane for Sigma and branded as Sigma); or (2) producing Domestic Fittings using the same "virtual manufacturing" model that it used for imported Fittings (*i.e.*, contracting with independent, domestic foundries). (Pais, Tr. 1752; CX 2528 (Pais, Dep. at 184-185) (discussing "two viable options: one is to produce under our own tutelage and our own funding, and, secondly, to develop access to McWane's, because they are the only ones") (referring to the first option as "virtual manufacturing"); Rona, Tr. 1630 (explaining meaning of "private label"))).
2173. Sigma pursued both private label and virtual manufacturing options for entering the Domestic Fittings market simultaneously because "the conditions were just so urgent." (Pais, Tr. 1758; CX 0231; CX 2530 (Rona, Dep. at 211-212) (describing parallel paths pursued by Sigma)).
2174. Sigma pursued the virtual manufacturing option for Domestic entry by forming a SIGMA Domestic Production ("SDP") plan and assembling a team of executives responsible for

investigating and exploring the possibility of Sigma producing Fittings domestically. (Rona, Tr. 1457; Rona, Tr. 1470 (defining “SDP”)).

2175. In a May 4, 2009 memorandum to the Sigma Board, Mr. Pais described the ARRA “Buy-American” threat and declared that “it behooves SIGMA to review the feasibility of producing a line of ‘domestic’ Fittings, to meet this growing need, in order to reassure our customer base and retain their loyalty and their business at the current levels.” (CX 0214 at 005; Pais, Tr. 1751-1752).
2176. By May 26, 2009, according to Mr. Florence, Sigma’s majority shareholder Frontenac, Domestic Fittings sourcing was Sigma’s “#1a priority.” (CX 1076 at 001; Pais, Tr. 1856-1857).

### **11.2 McWane Rejected Sigma’s Initial Request for “Private Label” Domestic Fittings**

2177. Mr. Pais made a series of personal pleas to McWane’s CEO Mr. Page for McWane to supply Sigma with “private label” Domestic Fittings. (CX 1986 at 002, 003 (Pais draft letter to Page describing request and four meetings); CX 1225 at 003, 004 (same in final version of letter); Tatman, Tr. 615 (sometime after ARRA was signed into law and before McWane became aware of Star’s Domestic Fittings program, Sigma approached McWane seeking private label Domestic Fittings.); Pais, Tr. 1744-1745 (in the first half of 2009, Mr. Pais approached Mr. Page about a private label arrangement)).
2178. For example, on March 17, 2009, Mr. Page and Mr. Pais had a lunch meeting at Morimoto restaurant in New York City where they discussed the possibility of McWane providing “private label” Domestic Fittings to Sigma. (CX 2061; CX 1269; Pais, Tr. 1745, 1756-1757).
2179. On April 2, 2009, Mr. Page and Mr. Pais met again in person, (CX 2093), and on April 6, 2009, Mr. Pais sent an email to Mr. Page asking to speak later that afternoon. (CX 2094).
2180. As of April 25, 2009, McWane had decided not to sell Domestic Fittings to Sigma. (CX 1289; CX 2479 (McCullough, Dep. at 76)).
2181. In a May 4, 2009 memorandum to the Sigma Board, Mr. Pais reported that Sigma had initially received agreement of McWane’s top management to a “private label” Domestic Fittings supply agreement, but that the McWane operational/sales team persuaded McWane’s management not to do this. (CX 0214 at 004; *see also* Pais, Tr. 1744-1745 (Mr. Page was initially receptive to Sigma’s private label request, but ultimately decided not to sell Domestic Fittings to Sigma); CX 0908 (April 9, 2009 email from Page to Pais stating that “after significant internal discussion,” McWane’s Fittings team had “decided not to sell Sigma private label product from our domestic foundries”); Rona, Tr. 1481 (McWane turned down Sigma’s request to produce private label Domestic Fittings)).

### 11.3 In Response to Sigma's Continued Pursuit of Private Label Fittings, McWane Made an Offer That Sigma Could Not Accept: McWane Branded Fittings for Only 5% off Published Prices

#### 11.3.1 Sigma Continued to Appeal to McWane for Private Label Domestic Fittings

2182. {  
} (CX 1997 at 008, *in camera* {  
}; Rona, Tr. 1489 (after  
 McWane turned down Sigma's initial request to produce private label fittings for Sigma in April 2009, Sigma renewed that request in the spring of 2009)).
2183. After being initially turned down, Sigma's Mr. Pais traveled to two separate meetings with top McWane executives in an effort to convince them to offer private label Fittings to Sigma. Mr. Pais spoke with Mr. McCullough in Iowa on April 28, 2009, and then after Mr. McCullough denied his request, with Mr. Page in Birmingham, Alabama. (Pais, Tr. 1756-1757, 2035 (McCullough declined to entertain request for private label); CX 0209 at 001, 004 (Pais email regarding upcoming meeting with McCullough); CX 0728 (email between Pais and McCullough planning meeting); CX 0314 (Pais email referring to May 1, 2009 meeting among Pais, Rybacki and Page)).
2184. In his May 4, 2009 memorandum to the Sigma Board reporting on his meeting with Mr. McCullough, Mr. Pais reported that he had revealed to Mr. McCullough Sigma's plan to develop a Korean ARRA-compliant manufacturing capability. (CX 0214 at 004).
2185. Despite Mr. Pais's continued efforts, Mr. Page and Mr. McCullough continued to refuse to provide Sigma with private label Domestic Fittings. (Pais, Tr. 1757).

#### 11.3.2 McWane Considered Whether to Provide Domestic Fittings to Sigma

2186. In May 2009, Mr. Tatman opposed selling private label Domestic Fittings to Sigma in part because he believed based on recent experience that Sigma did not live up to its agreements:
- A healthy and constructive relationship with Sigma could be beneficial [*sic*] to both parties and the industry in general .. [but that] *there's a general trust issue based upon recent experience that they don't seem too consistently stay within the Spirit of agreements.*
- (CX 0456 at 001 (May 18, 2009 email from Mr. Tatman to Messrs. Page, McCullough and Walton)).
2187. Mr. Tatman nevertheless suggested that continued exploration of a limited Domestic Fittings supply arrangement with Sigma may be worthwhile, informing Mr. Page directly in a May 18, 2009 email that "we could still continue to creatively explore whether or not

- there could be a healthy relationship structure established between McWane, ACIPCO, and Sigma.” (CX 0456 at 001).
2188. At Mr. Pais’s request, Mr. Page and Mr. Pais had two days of meetings on May 20 and 21, 2009. (CX 2100; CX 1271; CX 1076 at 004; CX 2101).
2189. Messrs. McCullough, Walton, and Tatman scheduled a meeting on May 26, 2009 to discuss “supplying Domestic product to our competitors.” (CX 0067 at 001).
2190. In preparation for that meeting, on or about May 26, 2009, Mr. Tatman circulated a PowerPoint presentation setting forth discussion points that weighed the advantages and disadvantages of supplying Domestic Fittings to Sigma. (CX 0067 at 003; Tatman, Tr. 621, 623).
2191. Specifically, in his May 26, 2009 presentation, Mr. Tatman explained that if McWane choose *not* to sell Domestic Fittings to Sigma, it would “Retain the full margin for Domestic product within McWane.” However, if McWane agreed to supply Sigma, then it would “Eliminate the probability they will secure another domestic source option.” (CX 0067 at 003; Tatman, Tr. 621, 623).
2192. In his May 26, 2009 presentation, Mr. Tatman estimated that Sigma would need a 20% discount from McWane’s published prices to be “viable,” *i.e.*, to be able to resell the Fittings profitably. (CX 0067 at 004 (“I suspect to be viable on their end they’ll need at least 20% off published and will probably want 25%-30%. On our end . . . [i]n rough numbers our “simple” break even point is around 12% off published.”); Tatman, Tr. 624-626 (referring to the calculations as “back of the envelope”)).
2193. The 20% minimum discount required by Sigma that Mr. Tatman estimated in his May 26, 2009 presentation included matching McWane’s 8% rebate, 2% payment terms, and 4% on freight, to arrive at 14% with zero absorption of any operating expenses. (CX 0067 at 004; Tatman, Tr. 632; *see also* CX 0069 at 001 (“15% probably overstates the breakeven point for Sigma.”)).
2194. In his May 26, 2009 presentation, Mr. Tatman also estimated that the “break even” point for McWane selling Domestic Fittings to Sigma would be a 12% discount from published prices, *i.e.*, McWane would earn the same profits selling Domestic Fittings to Sigma at a 12% discount as it would from selling at full price to Distributors in light of freight and Distributor rebate savings. (CX 0067 at 004; Tatman, Tr. 624-626, 634-636 (referring to the calculations as “back of the envelope”); *see also* CX 0069 at 001 (concluding McWane’s breakeven point was 13% discount from published prices and that, “From our perspective anything more than about 13% is transfer of margin from our business to Sigma.”)).
2195. Mr. Tatman concluded his May 26, 2009 presentation with a statement that, “plumbing factors aside,” *i.e.*, putting aside the possibility that Star would retaliate against a McWane/Sigma Fittings alliance by cutting prices as they had in the separate plumbing/soil pipe market, “this probably comes down to two factors:

1. How legitimate of a risk is there with a competitor successfully introducing a Domestic product line?

2. Do we believe that in the bigger picture, supporting competitors with Domestic product would result in a healthier industry on the non-Domestic side of the business?"

(CX 0067 at 004, 002; Tatman, Tr. 627-629).

2196. McWane made two “core assumptions” in its decision to sell Domestic Fittings to Sigma: “Tyler/Union would remain the only truly viable source for domestically produced [Fittings]...” and neither Sigma nor McWane “would be significantly underselling the other.” (CX 0070 at 001).
2197. Mr. McCullough always “took for granted” that any arrangement with Sigma would involve McWane being the exclusive supplier of Domestic Fittings for Sigma. (CX 2479 (McCullough, Dep. at 107-108, 110-111) (discussing CX 0070)).
2198. Mr. McCullough then tasked Mr. Tatman to prepare a list of “all the potential reasons to not sell domestic product to Sigma.” (CX 0070 (emphasis in original); Tatman, Tr. 634).
2199. McWane’s main reason for not selling Domestic Fittings to Sigma was because doing so would require McWane to share its Domestic Fittings profit margin with Sigma. In other words, any incremental margin gained by Sigma on the sale of Domestic Fittings would be incremental loss of margin for McWane. (CX 0067 at 003; CX 0070 at 001; CX 2479 (McCullough, Dep. at 87-88, 94-95)).
2200. Subject to McWane’s two core assumptions (*see supra* ¶ 2196), the reasons identified by Mr. Tatman for McWane to not sell to Sigma included:
- a. Loss of margin because “any incremental margin \$ retained by Sigma would be incremental margin \$ lost by McWane;”
  - b. Loss of business growth opportunities as ARRA and Domestic Fittings sales could be a “foot in the door” to regain former customers;
  - c. Upsetting McWane’s most loyal customers, particularly if they lost an ARRA-funded job to a competitor who obtained Domestic Product from Sigma;
  - d. The possible erosion of blended Fittings sales as Distributors placed import Fittings orders to fill the truck for a Domestic Fittings order with Sigma; and
  - e. Losing the ability to leverage its position in Domestic Fittings to benefit its other business lines, including non-Domestic Fittings.

(CX 0070 at 001-002 (also noting other lesser reasons, such as losing McWane’s identity as “the Domestic supplier,” and placement of Domestic Fittings in regional yards could backfire if McWane has less responsive service); Tatman, Tr. 635-637; CX 2479

(McCullough, Dep. at 98-99); CX 1209 (McCullough February 2009 email suggesting need to “leverage our domestic position” to require Distributors to acquire non-Domestic Fittings from McWane)).

2201. According to Mr. McCullough:

ultimately the decision [of whether to sell Domestic Fittings to SIGMA] was SIGMA has the ability to get into domestic made manufacturing of waterworks fittings, just as Star did. If we had the choice between their not [*sic*] being in it and us selling them, or them being in it and us not selling them, that ultimately, we made the decision it’s under our best interest to sell them.

CX 2479 (McCullough, Dep. at 104-105); *see also* CX 0076 at 008 (“The decision on Sigma is probably the same as before... If they are truly committed to make the investment level required to be a viable competitor regardless of our actions, then producing for them is probably of greater financial benefit to our business than having them source elsewhere.”)).

2202. One reason for McWane to sell Domestic Fittings to Sigma was to “eliminate the probability” that Sigma would secure another domestic source option. (CX 0067 at 003; CX 2479 (McCullough, Dep. at 86-87); *see also* CX 2479 (McCullough, Dep. at 81-82 (explaining that CX 0067 is a presentation created by Rick Tatman that discusses the pro’s and con’s of selling Domestic Fittings to Sigma))).

### **11.3.3 McWane Offered McWane Branded Domestic Fittings to Sigma at 5% Discount off of Published Pricing**

2203. On June 5, 2009, Mr. Tatman sent Mr. Rona an email attaching an offer from McWane to sell Domestic Fittings to Sigma at 5% off its published prices. (CX 1434 at 001; CX 0225 at 003; Rona, Tr. 1490; Pais, Tr. 1760-1761).

2204. At the time of McWane’s June 5, 2009 offer to Sigma of a Domestic Fittings at a 5% discount, Mr. Tatman believed that Sigma would need a 12% or 13% discount to break even. (Tatman, Tr. 642, CX 0067; CX 0069 at 001).

2205. On June 8, 2009, Mr. Rona responded to Mr. Tatman’s June 5, 2009 offer, “Is this really the final deal????” (CX 1243; Tatman, Tr. 643; Rona, Tr. 1490).

2206. Sigma was not satisfied with McWane’s offer, and considered the offer to be an insult as it would not allow enough margin to cover operating costs. (CX 0909 (Rybacki July 17, 2009 letter to Page describing “McWane’s decision to ignore the spirit of co-operation between the companies and insult us with a private labeling offer of Customer Multiplier less 5%”); CX 2531 (Rybacki, Dep. at 307-308) (“[I]t was an insult to me, the 5 percent.”) (discussing CX 0909); CX 2531 (Rybacki, Dep. at 149-150) (“5 percent wouldn’t even cover the freight, let alone handling; and not only would we not make money, we would lose money; and we couldn’t afford to lose money for two years on a deal. It was a terrible deal.”); CX 0225 at 001 (Pais referring to offer as “little more than

a patronizing accommodation”); Pais, Tr. 1760-1761 (describing offer as “nominal” because it did not provide Sigma the opportunity to make any margin off the resale of Domestic Fittings); Rona, Tr. 1492; Rona, Tr. 1489-1490 (Sigma was not satisfied with McWane’s offer); CX 2523 (Bhattacharji, Dep. at 182-184) (McWane’s offer did not afford Sigma enough margin to cover its costs; Sigma would have “absolutely” lost money); CX 2531 (Rybacki, Dep. at 175) (“I was insulted by that offer.”)).

2207. Sigma did not accept McWane’s offer. (Pais, Tr. 1761).

2208. {

} (CX 1997 at 008, *in camera*).

2209. {

} (CX 1997 at 008, *in camera*).

#### **11.4 Sigma Developed and Implemented Its Own Domestic Production Plan**

##### **11.4.1 Sigma Was a Potential Entrant into the Domestic Fittings Market Until It Signed the MDA with McWane**

2210. In 2009, before Sigma and McWane signed the MDA, Sigma devoted substantial time and resources to developing and carrying out a comprehensive plan for entry into Domestic Fittings production, and took numerous substantial and concrete steps toward entry. (*Infra* ¶¶ 2211-2281).

##### **11.4.1.1 Sigma Formed a Team of Top Executives to Move Forward with Its Plan to Enter the Domestic Fittings Market by Producing Fittings Through Independent, Domestic Foundries**

2211. In early 2009, Sigma formed a team of top executives to move forward with its plan to enter the Domestic Fittings market by producing fittings through independent, domestic foundries. (*Infra* ¶¶ 2212-2220).

2212. Sigma had key personnel who would be needed to supervise a virtual manufacturing operation for Domestic Fittings. For example, Stuart Box had extensive experience in U.S. foundry work and Fittings manufacturing before joining Sigma, and Gopi Ramanathan also had extensive foundry experience. (CX 2530 (Rona, Dep. at 213-214); Rona, Tr. 1469-1470).

2213. Sigma formed an “SDP” team consisting of Messrs. Pais, Bhattacharji, Rona, Box, and Ramanathan. (Rona, Tr. 1462, 1468 (Messrs. Rybacki and Brakefield were not involved in the efforts of Sigma’s SDP team); Brakefield, Tr. 1408-1409; Pais, Tr. 1751-1752).



2214. Mr. Box's role on the Sigma SDP team was primarily to identify independent domestic foundries and manufacturing strategies that would allow Sigma to produce Domestic Fittings. (Rona, Tr. 1474-1475).
2215. Mr. Ramanathan's role on the Sigma SDP team was to provide leads for potential foundries and to collect the information required for a capital investment and tooling budget. (CX 2530 (Rona, Dep. at 213-214)).
2216. The purpose of the SDP team's efforts was to determine the costs, foundry capabilities, and time it would take for Sigma to produce Domestic Fittings in response to ARRA. (Rona, Tr. 1462-1463).
2217. Sigma's SDP plan was to use factories and independent foundries to produce Domestic Fittings based on Sigma's drawings and tooling, similar to Sigma's existing methods of producing Fittings overseas. Sigma planned to do the finishing, or lining and painting, of its Domestic Fittings itself. (Rona, Tr. 1469-1470; CX 2524 (Box, Dep. at 41)).
2218. From February to May 2009, Sigma's SDP team engaged in strategic planning for producing Domestic Fittings. (CX 0282 (Box September 2009 presentation recounting history of Sigma SDP efforts); CX 2530 (Rona, Dep. at 228) (Box presentation is a fair representation of what occurred)).
2219. By May 20 2009, Mr. Pais had asked the SDP team to prepare a project plan, including economical, logistical and financial plans, including the cost of production. (Pais, Tr. 1759; CX 0307 at 001 ("I have now advised [Mr. Box] to prepare a complete Project Plan – with economical, logistical and financial parts outlined in some detail, so we can evaluate the cost/benefit aspects of the investment plan . . . .")).
2220. Sigma's SDP team held meetings, circulated and carried out action plans, visited foundries, secured offers to produce Domestic Fittings, and conducted a series of production trials. (*See infra* ¶¶ 2231-2248).

#### 11.4.1.2 Sigma Developed a Viable Plan for Domestic Entry

2221. Sigma's plan for entry into the Domestic Fittings market was viable and would have allowed it to begin shipping Domestic Fittings by February 2010. (*Infra* ¶¶ 2222-2228).
2222. Sigma planned to enter Domestic Fittings production incrementally, increasing the number of Fittings available each month. (Rona, Tr. 1555-1556).
2223. Sigma's initial intention was the first Domestic Fittings would become available in early 2010, and that additional items would become available every month over the course of 2010. (RX-689 (Rona, Dep. at 60-61)).
2224. Sigma anticipated McWane's "all or nothing" policy, and believed that it would need to offer a "critical mass" of Domestic Fittings to combat that policy. (Rona, Tr. 1505-1507 (Rona developed a model that suggested Sigma should offer about 700 types of fittings); Rona, Tr. 1672 (approximately 730 items needed); CX 0231 (Bhattacharji, June 16: "I

feel we will need a good range of domestic, otherwise we will fall hostage when the distributor says he cannot give just the large size because McWane wants all or nothing.”)).

2225. For any particular Domestic Fitting, Sigma could have Fittings available for sale four to five months from first commissioning the tooling for that Fitting. (Rona, Tr. 1676 (“From the day you would issue a tooling order to a tooling supplier, it could take 60 to 90 days to get the tooling here. And then it would take 60 days to set it up, produce it, qualify it, get it ready, finish it.”)).
2226. If Sigma had begun ordering patterns in September 2009, it could have begun shipping completed Fittings by as early as February 2010. (Rona, Tr. 1676).
2227. Sigma expected to have completed its roll out of all of the approximately 700 Fittings needed to offer a full line of Domestic Fittings within 18 to 24 months. (Rona, Tr. 1673-1674 (noting that it would take approximately 400 patterns to produce 730 Fittings)).
2228. Sigma could have sold Domestic Fittings “as they came off the line.” (CX 2523 (Bhattacharji, Dep. at 247)). Sigma would have had a “wide range of produced Fittings in” in stocking inventory within 18-24 months. (CX 2523 (Bhattacharji, Dep. at 57, 247)).

#### 11.4.1.3 Sigma Invested Significant Resources and Took Concrete Steps in Pursuit of Domestic Production

2229. Sigma invested substantial time and resources in pursuing Domestic Fittings production, including investigating the patterns and machinery necessary for Domestic Fittings production, identifying, interviewing, and visiting domestic foundries, and performing production tests. (*Infra* ¶¶ 2230-2248).
2230. Sigma invested significant resources in pursuing Domestic Production. (CX 2523 (Bhattacharji, Dep. at 30)).
2231. Sigma investigated all aspects of the processing steps necessary to make Fittings, from beginning to end: casting, machining, transportation and finishing. (CX 2524 (Box, Dep. at 28) (describing how Sigma “looked at all aspects of the processing steps necessary from the beginning to the end; casting, machining, transportation, finishing.”)).
2232. For example, on or about June 5, 2009, Mr. Box summarized the results of SDP planning meetings held on June 3 and 4, 2009, which included detailed action plans for identification of top Fittings, foundries, molding machines, cost modeling, testing of lost foam production technology, and visits to potential foundry partners. (CX 0963 at 001; Rona, Tr. 1482-1486 (Sigma identified top Fittings for production, identified and visited foundries, identified machinery, prepared to produce a sample Fitting for the AWWA show, and purchased equipment)).
2233. As of June 5, 2009, Sigma was identifying the top Fittings that it needed to produce in order to supply the market. (Rona, Tr. 1483-1484; CX 0963 at 001).

2234. As of June 5, 2009, Sigma was identifying “DISA” molding machines in the Southern and Southeastern United States. (Rona, Tr. 1484-1485; CX 0963 at 001).
2235. As of June 5, 2009, Sigma identified over 50 potential foundries in the United States as potential sources of domestic production capacity. (Rona, Tr. 1484; CX 0963 at 001); CX 2524 (Box, Dep. at 27-28) (Sigma investigated over 50 foundries); CX 0964 at 001) (detailing Stuart Box’s efforts as of May 15, 2009, to identify domestic production capacity and noting that Eureka foundry has capacity and interest)).
2236. For example, Sigma met with Glidewell foundry regarding producing Domestic Fitting castings, or unfinished Fittings, for Sigma. Mr. Pais and Mr. Hendrix met with Glidewell Foundry’s president once or twice about whether Glidewell could produce Domestic Fitting castings for Sigma, and subsequently, Mr. Glidewell provided Sigma with quotes for Domestic Fitting castings. (CX 2507 (Glidewell, Dep. at 131-132, 134-135); CX 1451).
2237. By June 18, 2009, Sigma’s SDP team was working on obtaining patterns for producing Domestic Fittings from Metalfit, and had placed orders for foam patterns and other equipment, such as cope and drag patterns, flasks and vibration tables, to be used in Domestic Fittings production. (Rona, Tr. 1507-1511; CX 0978 at 002).
2238. By June 18, 2009, Sigma’s SDP team had identified at least two possibilities for the machining work required for their Domestic Fittings – Metalfit or Davis Machine. (Rona, Tr. 1488-1489, 1513-1514 (ultimately choosing Metalfit to machine Sigma’s Domestic Fittings); CX 0978 at 002).
2239. By June 18, 2009, Sigma was taking the next steps in identifying domestic foundries by arranging foundry site visits by Mr. Rona. (Rona, Tr. 1508, 1511-1512 (also considering potential advantages of sourcing Domestic Fittings through a foundry affiliated with Sigma’s OEM customer, ACIPCO); CX 0978 at 002 (summarizing June 17, 2009 SDP meeting).
2240. Mr. Rona visited at least five different domestic foundries as a part of Sigma’s investigation of the production of Domestic Fittings: Pryor Foundry, Quality Foundry, Eureka Foundry, and two foundries in Eastern Pennsylvania. (Rona, Tr. 1508-1509; *see also* CX 2530 (Rona, Dep. at 81-82) (estimating that SDP work took up 10% to 30% of his time from April to August of 2009, and that others at Sigma also were spending a considerable amount of their time on the project)).
2241. Stuart Box also provided to Sigma’s SDP team reports on his detailed site visits to potential domestic production partners Mueller in Albertville, Alabama (CX 0090 at 002) and American Castings in Pryor, Oklahoma. (CX 1536 at 001).
2242. Sigma visited American Castings foundry in Pryor, Oklahoma, which offered Sigma attractive pricing for the production of domestic mechanical and flanged Fittings from 14” to 24”. Mr. Box reported that “The American team is very eager to help us in as many ways as possible,” and that they had been encouraged by ACIPCO to work with

- Sigma. (Rona, Tr. 1532-1533; CX 1536 at 001; CX 2486 (Burns, Dep. at 15) (ACIPCO casts products at its American Castings foundry in Tulsa)).
2243. Sigma also evaluated the Mueller Albertville foundry favorably when testing the production of ductile iron at their sister company, Anvil, for the production of Sigma's Domestic Fittings. (Rona, Tr. 1533-1534; CX 0090).
2244. Sigma also visited Eureka Foundry, which was "very willing" to work with Sigma. (Rona, Tr. 1485-1486; CX 0963 at 001). Sigma performed lost foam trials for the production of 30" to 48" Domestic Fittings at Eureka foundry. (Rona, Tr. 1529-1531 (considering proportion of Domestic Fittings produced via lost foam versus cope and drag process for most efficient production); CX 0237 at 002-003).
2245. Sigma was capable of cement-lining and coating Fittings itself. (Rona, Tr. 1488-1489; CX 0963 at 001; Brakefield, Tr. 1419 (Sigma had domestic facilities that could coat and cement-line Fittings); Rona, Tr. 1495-1496 (Sigma's Alexander City, Alabama warehouse had the ability to cement-line and coat Domestic Fittings in 2009)).
2246. The "lost foam" production method tested by Sigma, which involves using styrofoam replicas of Fittings that are placed in casting sand, would have allowed Sigma flexibility to produce a wide array of Fittings items more quickly and less expensively than the traditional pattern methods. (Rona, Tr. 1510, 1513; CX 0978 at 002 (describing foam plans as a "more complete product offering plan"))).
2247. Sigma purchased two large flasks for large Domestic Fittings production trials. (Rona, Tr. 1485-1486; CX 0963 at 001).
2248. Sigma spent between \$50,000 and \$75,000 investigating domestic production options. (CX 2529 (Rona, IHT at 142-143); CX 0958 at 001 (request to establish accounting mechanism for Sigma's SDP expenses)).

11.4.1.4 Sigma Had Domestic Fittings Samples Ready for Display at the June 2009 AWWA Show

2249. By the time of the June 2009 AWWA conference, Sigma had produced two or three sample Domestic Fittings at the Eureka Foundry in Tennessee, using patterns supplied by Metalfit. Sigma was very happy with the quality of the Domestic Fittings. (CX 0282 at 006 (Box September 2009 presentation); CX 2530 (Rona, Dep. at 228) (Box presentation is a fair representation of what occurred); CX 1993 at 001-002 (SDP team emails describing process of finishing sample Fittings for AWWA show); *see also* Rona, Tr. 1480, 1485; CX 0963 at 001 (noting, in item 1(f), preparation of sample Fitting for "AWWA show"))).
2250. Sigma considered bringing the sample Fittings to the June 2009 AWWA in order to reassure customers that Sigma was "determined to have an option for them for their domestic fittings." (Pais, Tr. 1765-1766).

2251. Ultimately, Sigma decided not to display its sample Domestic Fittings at the AWWA show due to concerns about McWane's reaction. (Pais, Tr. 1765-1766; CX 0228 at 001-003 (Pais email discussing several strategic implications of displaying Domestic Fittings samples at AWWA, and recommending not doing so); Pais, Tr. 1901)).
2252. Three of the Domestic Fittings Sigma made as part of its plans for Domestic Production were sold for use in waterworks projects. (CX 2524 (Box, Dep. at 15-16)).

11.4.1.5 Sigma Redoubled Its Domestic Production Efforts in Early June 2009

2253. In early June, Sigma redoubled its domestic production efforts. (*See supra* ¶¶ 2232-2239 (describing intensive SDP efforts); CX 0225 at 001 (Pais: “[I]t’s time we seriously went ahead with our SDP plans. . . . Let’s re-group and get serious to develop a thorough and detailed ‘SDP’ plan.”); CX 2531 (Rybacki, Dep. at 307-308) (discussing SDP Plan)).
2254. After Star announced its entry into the Domestic Fittings market at the June 2009 AWWA show, Mr. Rona admitted that he “was fixated on [the fact] that Sigma had to have an answer because I felt there was some percentage of longevity and damage that could go to our existing business.” (CX 2530 (Rona, Dep. at 231)).
2255. Sigma’s SDP efforts also became more urgent after the “insulting” June 5, 2009 McWane offer (*supra* ¶ 2206), because it became apparent that McWane was unwilling to accommodate Sigma’s requests for Domestic Fittings supply. (CX 2523 (Bhattacharji, Dep. at 183-184) (after McWane’s unsatisfactory offer to Sigma in June 2009 of Domestic Fittings at 5% below published prices Sigma “went back to speeding up our review of how to make Fittings in the country”); Pais, Tr. 1761-1762 (“[S]omething like this made us even more to put somewhat more urgency if at all possible because it looked like they just were not keen to accommodate us at that point.”); CX 1993 at 002 (June 5, 2009 Bhattacharji email “I am glad the uncertainty is over and we can hit the untraveled road - once again!”); CX 2523 (Bhattacharji, Dep. at 171-172) (Sigma began looking “very seriously” at domestic production when it found out Mexico and Korea would not qualify and McWane offered it only a 5% discount off published prices)).

11.4.1.6 Sigma Actively Pursued Domestic Fittings Production Throughout the Summer of 2009 and Until It Signed the MDA with McWane

2256. Sigma actively pursued Domestic Fittings production throughout the summer of 2009 and until it signed the MDA with McWane (*Infra* ¶¶ 2257-2268).
2257. As of July 11, 2009, Sigma was still actively pursuing its “SDP” plan to produce Domestic Fittings, although it was proceeding more “deliberately and thoughtfully” as Sigma had renewed “meaningful” negotiations with McWane for Domestic supply by this point in time. (Rona, Tr. 1538; CX 0240 (Rona emailing model); *see also* Pais, Tr. 1780 (Sigma had not slowed its SDP plans as of July 16, 2009); CX 1505 at 001 (July 16, 2009 Pais email to Sigma’s top managers that, “[O]ur SDP plans are also proceeding –

- however more deliberately and thoughtfully – even as we also are negotiating for a meaningful buy-sell for the FTGs with Tyler.”)
2258. On August 11, 2009, Sigma received a quote from Metalfit for the production of tooling to be used in Sigma’s Domestic Fittings production. (CX 0257 at 001; Rona, Tr. 1593-1594).
2259. Mr. Box forwarded the Metalfit quote to members of Sigma’s SDP team, indicating that Metalfit could produce all of the tooling for Fittings in the 14” - 24” range for approximately \$500,000, and noting that “[t]his number from [Metalfit] looks much better than I expected.” (CX 0257 at 001). Mr. Box suggested that someone in Sigma’s headquarters might further analyze the quotation “if we see that the MDA is not going to happen.” (CX 0257 at 001; Rona, Tr. 1595-1596).
2260. As of August 17, 2009, Sigma was still actively pursuing entry into the Domestic Fittings market by production of its own Domestic Fittings. (Rona, Tr. 1705-1706). In an email to Sigma’s OEM customer U.S. Pipe, Mr. Rona wrote that Sigma “still ha[s] not finalized” its decision on whether to invest in its own Domestic production, and would “continue to try every option to make sure no stone is unturned” in pursuit of offering Domestic Fittings to its customers. (CX 0258 at 003; Rona, Tr. 1540-1542).
2261. By September 7, 2009, Sigma continued to pursue its Domestic Fittings production plan, but that plan had become a “backup plan” to McWane’s alternate approach of sourcing Domestic Fittings through McWane. (CX 0899 at 001 (Rona email regarding Sigma’s need to decide whether it is still pursuing Domestic production “as a long term backup plan for our MDA with McWane”); Rona, Tr. 1545-1547).
2262. Mr. Box continued pursuing Sigma’s production of Domestic Fittings, including production of large-diameter Domestic Fittings, until Sigma management decided to abandon the project in Fall of 2009. (CX 2524 (Box, Dep. at 47-48, 87)).
2263. Mr. Box had substantially completed his investigation of domestic production by September 2009. (CX 2524 (Box, Dep. at 86)).
2264. By September 21, 2009, Sigma had successfully completed a series of trials casting large-diameter Domestic Fittings using the “lost foam” method, and had actually cast several fittings in the United States using this method. (CX 0282 at 006-018; CX 2530 (Rona, Dep. at 228) (Box presentation is a fair representation of what occurred); Rona, Tr. 1475-1477 (Sigma successfully cast Domestic Fittings using the lost foam method)).
2265. Sigma was ready to enter domestic production “once the switch was flipped.” (CX 2523 (Bhattacharji, Dep. at 54); CX 0282 at 001 (September 21, 2009 email from Box to Rona attaching a report on the trials and asked, “Do we proceed with LF regular production?”)).
2266. Mr. Pais testified under oath that, absent an agreement with McWane, Sigma would have entered the domestic market. (CX 2527 (Pais, IHT at 179-180) (“[I]f [McWane] stuck

with that initial offer [of a 5% discount] . . . then we certainly would have gone another – to Plan B, which is our [domestic] production.”)).

2267. Mr. Pais’s sworn testimony that Sigma would have entered the Domestic Fittings market absent the MDA is confirmed by contemporaneous documents. In a letter announcing the MDA to its customers, Sigma stated, “[a]s a leading supplier of AWWA Fittings over the last 25 years, *Sigma has adequate engineering and production expertise and the needed resources* to develop and manufacture a competitive range of AWWA Fittings using a few quality foundries in USA,” and stated that although Sigma was “confident of the above [SDP] option.” (CX 0803 at 001 (emphasis added); Pais, Tr. 1820).
2268. The MDA is what caused Sigma to stop its pursuit of Domestic Production. (*See infra* § 11.8.1).

#### **11.4.2 Sigma’s Customers Supported Its Entry into the Domestic Fittings Market, and Sigma Provided Assurances to Customers**

2269. Sigma’s customers supported its entry into the Domestic Fittings market, and Sigma Provided assurances to its customers that it would provide them with a viable Domestic Fittings solution. (*Infra* ¶¶ 2270-2274).
2270. Sigma’s Distributor customers were demanding Domestic Fittings, and Sigma assured its customers that it would have Domestic Fittings available. (CX 2524 (Box, Dep. at 61-62)).
2271. Sigma’s OEM customers were supportive of Sigma entry plans. In a May 4, 2009 memorandum to the Sigma Board, Mr. Pais reported on Sigma’s review of the feasibility of Domestic Fittings production, and stated that Sigma had the “fullest support” from OEM partners ACIPCO and U.S. Pipe, and that Sigma was using its close relationship with Metalfit. (CX 0214 at 005).
2272. Mr. Rona also believed that ACIPCO would lend support to Sigma’s Domestic entry efforts by encouraging their affiliated foundries to “be expedient, be fair, work with us well” when they were approached by Sigma to produce Domestic Fittings. (Rona, Tr. 1511-1512; CX 0978 at 002 (noting the “ACIPCO factor”)).
2273. U.S. Pipe and ACIPCO were two important OEM customers that owned foundries and had expertise casting fittings domestically, and were working cooperatively with Sigma as part of its effort to set up domestic production. (CX 2527 (Pais, IHT at 140)).
2274. Sigma wanted to retain the loyalty of its customers, and reassured them, including its large OEM customers ACIPCO and U.S. Pipe, that it was “looking at different options” for Domestic Fittings supply and would “come up with a viable option.” (Pais, Tr. 1754-1756; CX 2527 (Pais, IHT at 144) (“We would keep telling them, look, we will have an answer”); CX 2527 (Pais, IHT at 145) (“Q. But you were testifying, sir, that you were assuring or telling your customers no matter what -- A. We’ll have a solution.”); CX 0511 at 001 (notes taken by Mr. Thees of Ferguson of a June 2009 meeting with Rybacki

in which Rybacki told him Sigma was looking to produce Domestic Fittings by spring of 2010); CX 2503 (Thees, IHT at 209-211) (discussing CX 0511)).

#### **11.4.3 The SDP Team Modeled Costs of Domestic Fittings Production and Determined That Sigma Could Earn Sufficient Profit Margins**

2275. Sigma's SDP team modeled costs of production and determined that Sigma could earn sufficient profit margins in the Domestic Fittings market. (*Infra* ¶¶ 2276-2281).
2276. The SDP team modeled the costs of producing Domestic Fittings using estimates of key variables, including the size of the Domestic-only market, production costs (based on quotes from numerous domestic foundries), and market prices, and arrived at estimated gross margins for the various size categories of Fittings. (CX 2529 (Rona, IHT at 22-23); Rona, Tr. 1522-1523, 1533-1534, 1535-1537; CX 0237 at 001, 002 (estimating margins); CX 0090 at 001 (discussing cost inputs for model); CX 0240 at 001, 003 (Rona transmitting July 11, 2009 version of model, listing estimated supplier costs)).
2277. Sigma developed a budget estimating the cost of tooling for Domestic Fittings production. Tooling costs represented the bulk of all capital expenditure associated with Sigma's entry into Domestic Fittings, and Sigma estimated that it could develop the tooling required for the full line of approximately 700 Domestic Fittings items for approximately \$3 to \$5 million. (Rona, Tr. 1517; CX 2530 (Rona, Dep. at 214-215) (“[T]he bulk of all the capital expenditure would be in actual tooling, so the budget of three to five million likely covered just tooling and equipment related to manufacturing the fittings and foundries.”)).
2278. As of July 3, 2009, Sigma concluded that it would be able to earn a 15-18% margin in the domestic production of small diameter Domestic Fittings, and that the Mueller Albertville foundry (a U.S. Pipe affiliate) would be a “strong and reliable” partner that “can be counted on” even when the industry volumes increase. (CX 0237 at 001 (email from Mr. Rona to SDP team updating on status of SDP activities following SDP meeting); Rona, Tr. 1522-1525).
2279. As of July 3, 2009, Sigma had concluded that it would be able to earn a 55% margin on the domestic production of medium diameter Domestic Fittings, and that American [ACIPCO] would be an “extremely willing” partner that can be “a very stable piece of the puzzle.” (CX 0237 at 002; Rona, Tr. 1526, 1528).
2280. As of July 3, 2009, Sigma had concluded that it would be able to achieve “good margins” on large diameter Domestic Fittings, regardless of whether Sigma produced them through the lost foam or the cope and drag method. (CX 0237 at 003; Rona, Tr. 1529-1530).
2281. Sigma recognized the risk that producing Domestic Fittings through independent foundries could subject Sigma to increased prices when the foundries became busier in the future. However, Sigma believed that its strong existing relationship with ACIPCO and the Mueller Albertville foundries would mitigate this risk. (Rona, Tr. 1525-1527 (ACIPCO would be “the same with Mueller Albertville . . . [t]hey would treat us fairly”));



CX 0237 at 001-002 (asserting that ACIPCO would be a reliable partner because their corporate directive was “to roll out the red carpet to make the project work”).

#### 11.4.4 Sigma Had the Financial Resources to Enter Domestic Fittings Production

2282. Sigma had access to sufficient financial resources to enable it to enter the production of Domestic Fittings. (*Infra* ¶¶ 2283-2297).
2283. In the 2009 time period, Ares Capital was the second lien holder of Sigma’s debt. (CX 2523 (Bhattacharji, Dep. at 198)). Ares Capital attended Sigma’s quarterly BOD meetings. (CX 2523 (Bhattacharji, Dep. at 200)).
2284. Sigma was well positioned to finance its Domestic Fittings sourcing initiative. (CX 0313 at 004 (Pais February 9, 2009 letter to Ares Capital: “Our [Gross Margins] have continued to be strong, throughout the year, even as the volumes have been weak.”); Pais, Tr. 2230)).
2285. {  
} (Pais, Tr. 2206-2207, *in camera*; CX 1749 at 005, *in camera*).
2286. {  
} (Pais, Tr. 2211, *in camera*; CX 1749 at 014, *in camera*).
2287. {  
} (Rybacki, Tr. 3730-3731, *in camera* {  
}; Pais, Tr. 2212-2213, *in camera* {  
}; CX 2523 (Bhattacharji, Dep. at 258-259, 163) (Sigma was aware of its debt covenants and that it may have issues meeting them in January 2009 when it began planning domestic production)).
2288. {  
}  
(Pais, Tr. 2211, *in camera*; CX 1749 at 015, *in camera*; CX 2523 (Bhattacharji, Dep. at 169-171); CX 1998 at 002 (Sigma April 2009 board minutes)).
2289. In April 2009, Mr. Bhattacharji suggested that Sigma consider acquiring Neenah Foundry despite his knowledge of Sigma’s debt covenant status. (CX 2523 (Bhattacharji, Dep. at 172-173)).

2290. In the summer of 2009 Sigma began discussions with Ares Capital about buying back debt; Sigma investors and Frontenac bought back debt from Ares in 2010. (CX 2523 (Bhattacharji, Dep. at 200); RX-682 (Bhattacharji, Dep. at 255-256).
2291. { } (Pais, Tr. 2185, *in camera*).
2292. { } (Pais, Tr. 2212, *in camera*).
2293. At the same time it was pursuing its SDP plans in 2009, Sigma also entered into more serious discussions about acquiring Star. Acquiring Star would have been much more expensive than implementing Sigma's SDP plan, but Sigma's financial situation did not prevent Sigma from pursuing that possibility. (Rybacki, Tr. 3596-3597 (Sigma discussed a merger or acquisition transaction between Sigma and Star with its equity investor, Frontenac around the end of 2008 or during 2009)).
2294. If debt financing were not available to execute the SDP plan, Sigma's shareholders would have provided the necessary equity financing. (CX 2527 (Pais, IHT at 180-181) (Frontenac and Mr. Pais himself would have provided the financing -- "I believe in Sigma so I would definitely invest"; "If we did not have any alternative to the McWane route, we certainly would have, as I said, stumbled along with domestic production. We would have brought in the finances"); Pais, Tr. 1782-1785; *see also* Pais, Tr. 2221, *in camera*).
2295. On July 27, 2009, following the July 15, 2009 Sigma board meeting, Walter Florence sent an email to Sigma management regarding strategy for upcoming lender meetings. In this email, he noted that Sigma's liquidity was fine, that it had recently received an injection of capital from investors and shareholders, and that these investors and shareholders – which included Mr. Pais himself – were prepared to invest \$7.5 million more to fund the SDP program and other initiatives:
- Investors and rollover shareholders invested \$5.5m in March 2009 to help with liquidity. This time, liquidity is fine. Investors and rollover shareholders are prepared to invest up to \$7.5m in equity but not to pay down debt and add to liquidity but rather to fund domestic sourcing initiative and to fund the strategic Business additions which will enhance credit quality and help Sigma grow and build equity value.
- (CX 0099 at 007; Pais, Tr. 1783-1785 (“[T]here was general consensus from all shareholders to try and help the business any way we could.”)).
2296. Sigma investors were prepared to invest \$7.5 million in equity into Sigma to ease capital concerns. The investors preferred that Sigma use that capital to grow Sigma – such as through the production of Domestic Fittings – rather than to pay off debt. (Pais, Tr. 1782-1785; CX 0099 at 007; CX 2528 (Pais, Dep. at 387-390)).

2297. The reason that Sigma’s investors preferred Sigma to invest equity into growth projects like the production of Domestic Fittings was that production of Domestic Fittings, unlike paying down debt, was a growth opportunity for Sigma. (Pais, Tr. 1786-1787; CX 0099).

#### **11.4.5 Sigma’s Domestic Production Plan Had the Support of Sigma’s Board, Investors, and Lenders**

2298. Sigma’s Board, investors, and lenders supported its plan to enter Domestic Fittings production. (*Infra* ¶¶ 2299-2311).

2299. Sigma knew of the challenges involved in domestic production as early as May 2009, and continued to pursue it. (CX 2523 (Bhattacharji, Dep. at 101-102)).

2300. Sigma’s new ownership and board approved of Sigma’s “SDP” plan and were “highly supportive and . . . motivated by the strategic value – of targeting the ‘domestic’ segment.” (CX 0978 at 001).

2301. For example, on May 16, 2009, Walter Florence of Sigma’s shareholder Frontenac wrote of Sigma’s SDP plan: “As an investor, I am all for your approach.” (CX 0308 at 001; Pais, Tr. 1753-1754 (“They wanted to support us whatever the most pragmatic and feasible option was.”); CX 2528 (Pais, Dep. at 342) (noting that Sigma never sought board approval of the SDP plan because it signed the MDA)).

2302. As Sigma worked on developing its SDP plan in May 2009, there were no discussions about any upper or lower investment limits from Sigma’s shareholders. Sigma was “just desperately looking at whatever options that we could have and tried to shape them up.” (Pais, Tr. 1759-1760; CX 2527 (Pais, IHT at 135) (neither the Sigma board nor Frontenac set an upper limit on the amount of permissible capital investment for Domestic entry)).

2303. In May 2009, Sigma updated the Board of Directors with information about the time and expenditure that would be involved in entering domestic production, and the Board was still supportive of the SDP plans. (CX 2527 (Pais, IHT at 132) (“Well, they certainly endorse whatever is our recommendation, the best option. At this point really we were updating them as to various efforts of different level, six to seven levels, some sequential, how to meet this threat, the Buy America threat, and at that point in May, it looked like going to produce some domestic line was our only option, and so we were updating them that it would require a fair amount of capital expenditure and the time, et cetera.”)).

2304. Sigma’s board and its SDP team were aware of Sigma’s financial position throughout the summer of 2009 as Sigma pursued its plan for production of Domestic Fittings. (Pais, Tr. 1760).

2305. {  
}(CX 1997 at 008,  
*in camera*; CX 2523 (Bhattacharji, Dep. at 194) (\$5 million for SDP was “a placeholder for the board.”)).

2306. In July 2009, Sigma “came to the conclusion that it [Sigma Domestic production] would be a tough investment but something that we had to make if this is the only option that we would go ahead with.” (CX 2527 (Pais, IHT at 158); CX 0240 (July 11, 2009 SDP Domestic Fittings budget); CX 0246 (July 20, 2009 SDP Domestic Fittings budget); Pais, Tr. 1762-1765 (discussing CX 0240)).
2307. The SDP team was not given a budget, and was never told to stop its efforts because the project would be too expensive. (CX 2530 (Rona, Dep. at 217-218)). Frontenac never asked Sigma to stop its SDP plans or activities due to the expense involved. (CX 2530 (Rona, Dep. at 330); Rybacki, Tr. 3728 (Frontenac was kept apprised of Sigma’s SDP efforts, and never said “we shouldn’t go forward with this”)).
2308. On July 13, 2009, Mr. Pais sent an internal email responding to a customer’s inquiry regarding Sigma’s ARRA compliance:
- We are intensely pursuing our SDP plans for both FTGs and [restraints]. But, it’s a lot of work and Capex\$ too! In fact, we plan to present a brief outline during our BOD meeting 7/15.
- (CX 0241 at 001; Pais, Tr. 1768-1769).
2309. Mr. Bhattacharji discussed Sigma’s “SDP” plan at the Sigma Board of Directors meeting on July 15, 2009. (CX 2006 at 002 (draft minutes); CX 2523 (Bhattacharji, Dep. at 196-197)). Representatives from Ares Capital, Sigma’s secondary lender, attended that meeting. (CX 2523 (Bhattacharji, Dep. at 197-199)).
2310. Mr. Pais does not recall Sigma’s secondary lender Ares Capital or its senior lenders ever advising Sigma that it would not approve Sigma’s investment in the production of Domestic Fittings. (Pais, Tr. 1774-1778; CX 0957 (July 24, 2009 email from McGivern to Pais advising Pais to inform lenders that Sigma would need to invest \$2.5 million to \$4 million in Domestic production)).
2311. { }  
(CX 1745 at 017, *in camera*).

## **11.5 McWane Decided to Sell Domestic Fittings to Sigma as an Alternative to Sigma Entering the Domestic Fittings Market**

### **11.5.1 Sigma Communicated Its SDP Plans for Independent Entry to McWane**

2312. In Spring 2009, Mr. Pais told Mr. McCullough and Mr. Page that Sigma would pursue its own Domestic Production if McWane did not supply it with Domestic Fittings. (CX 2527 (Pais, IHT at 105-106)).
2313. Mr. McCullough met with Mr. Pais in April 2009. After that meeting, Mr. McCullough believed that Sigma had the ability to enter the Domestic Fittings market. Specifically, Mr. McCullough believed that Sigma “did have access to the needed capital, but they also

had the contacts and the talent and they've been importing for a very long time.” (CX 2479 (McCullough, Dep. at 76-78); *see also supra* ¶ 1520 (describing April 28, 2009 meeting between McCullough and Pais)).

2314. In mid-July 2009, Mr. Pais reported that he had directly informed Mr. Page of Sigma's plans to develop its own Domestic Fittings capability. (CX 1018 at 001) (July 13, 2009 email from Mr. Pais to Mr. McGivern explaining that Mr. Pais's negotiations included “My own with the CEO announcing our ‘SDP’ plans...”).
2315. Mr. Rona also communicated directly to McWane that Sigma was prepared to enter the Domestic Market absent an agreement, telling Mr. Tatman in mid-July that “Sigma's preference is to work something out with McWane but we are committed and have the financial backing to move forward either way.” (CX 0568 at 003 (Tatman presentation recounting Rona statements); Tatman, Tr. 760-761; CX 2530 (Rona, Dep. at 218-220) (“I'm sure I made it clear to McWane”)).

**11.5.2 McWane Entered into the MDA with Sigma Because McWane Believed That Otherwise Sigma Would Independently Enter the Domestic Fittings Market**

2316. McWane entered into the MDA with Sigma because McWane believed that Sigma would otherwise enter the Domestic Fittings market independently. (*Infra* ¶¶ 2317-2335).
2317. Even before Star's announced entry into the Domestic Fittings market, McWane viewed Sigma as being in a “much better position” to enter the Domestic Fittings market than Star, in part because of its existing OEM relationships (with ACIPCO and U.S. Pipe) and its access to financial backing. (CX 0067 at 003 (May 2009 McWane presentation on McWane's potential strategic reactions to potential new entry in the Domestic Fittings market); Tatman, Tr. 618-619).
2318. McWane viewed Sigma's entry into the Domestic Fittings market to be more likely after Star announced its entry at the June 15, 2009 AWWA conference. (CX 0076 at 008 (“Sigma is now in a position where they will feel the need to react. . . . Rybacki said at AWWA their program would announce[] in 4 weeks”); CX 2479 (McCullough, Dep. at 103-104) (explaining that McWane believed Sigma would announce entry plans within four weeks of AWWA)).
2319. After Star announced its intended entry into Domestic Fittings, McWane believed that Sigma would either enter on its own as Star had done, or push to be set up as a master distributor of McWane's Domestic Fittings. (CX 2479 (McCullough, Dep. at 100)).
2320. McWane believed that Sigma wanted to enter the Domestic Fittings market. (Response to RFA at ¶ 34 (McWane “believed Sigma wished to obtain access to domestically-manufactured fittings after ARRA's enactment, either by manufacturing, through sourcing, or pursuant to a purchasing arrangement with McWane”); (CX 1179 at 002 (Tatman October 2009 Q&A document circulated to McWane's sales force: “in the absence of the MDA with TylerUnion, Sigma was going to develop their own domestic

sourcing options to the extent they could”); Tatman, Tr. at 810 (confirming that he communicated Sigma’s imminent entry to his sales staff)).

2321. The likelihood of Sigma entering the Domestic Fittings market was part of the discussion within McWane as it considered whether to sell Domestic Fittings to Sigma. (CX 2485 (Walton, Dep. at 72); CX 0329 at 001 (McWane email stating that Mr. Tatman’s main intent in discussion with Mr. Rona of Sigma was “to flush out where SIGMA is in their process of securing domestic production sources.”); Response to RFA at ¶ 35 (in deciding whether to sell Domestic Fittings to Sigma, McWane considered the possibility of Sigma entering the Domestic Fittings market by manufacturing its own Domestic Fittings or sourcing them from a third-party foundry)).
2322. Mr. Walton, McWane’s former senior vice president, admitted that there “probably were” discussions within McWane that Sigma was more likely to enter the Domestic Fittings market after Star announced its entry. (CX 2485 (Walton, Dep. 60-61) (explaining that Star’s announcement “stimulated discussions” regarding selling Domestic Fittings to Star); CX 0074 at 002 (June 24, 2009 email from Mr. McCullough to Mr. Tatman and Mr. Walton seeking Mr. Tatman’s thoughts on “Sigma’s reaction to [Star’s entry] and their future positioning, develop their own line as Star does? Align with McWane? Establish buy/sell relationship with Star that is better than our last offer?”)).
2323. For example, in a June 24, 2009 email, Mr. McCullough asked for Mr. Tatman’s opinion on Sigma’s likely reaction to Star’s announced entry into the Domestic Fittings market:

Sigma’s reaction to [Star’s entry] and their future positioning,  
develop their own line as Star does? Align with McWane?  
Establish buy/sell relationship with Star that is better than our last  
offer?

(CX 0074 at 002).

2324. Mr. Tatman believed that there was a “probability” that Sigma would enter the Domestic Fittings market because Sigma communicated that intention to McWane. (CX 2483 (Tatman, IHT at 175) (“[Y]ou’ve got SIGMA coming in saying that they’re going to do something, and it’s a little bit of chest-beating. I think SIGMA even sent us some information about it’s not good for the Industry with over capacity if that happens. They say that they’re coming in. We don’t know if they’re really doing it. So it’s a probability. Is what they’re saying true? Are they going to execute on that? Yes or no, I don’t know.”)).
2325. Mr. Tatman observed that McWane selling Domestic Fittings to Sigma would “[e]liminate the probability they will secure another domestic source option.” (CX 0067 at 003 (Tatman May 26, 2009 strategy presentation also noting that McWane would “[r]etain the full margin for Domestic product within McWane” if McWane chose not to supply Sigma).

2326. Mr. Tatman further believed that McWane selling Domestic Fittings to Sigma was a “greater financial benefit” than allowing Sigma to independently enter the Domestic Fittings market:

[if Sigma is] truly committed to make the investment level required to be a viable competitor regardless of our actions, then producing for [Sigma] is probably of greater financial benefit to our business then having them source elsewhere.

(CX 0076 at 008 (Tatman June 29, 2009 strategy presentation)).

2327. Mr. Tatman noted on July 27, 2009, “the correct decision really depends on whether on their own Sigma truly does have the resolve and financial backing to make a long term strategic commitment to being a supplier of domestic products.” (CX 0465 at 010).
2328. After MDA negotiations were restarted in July 2009, Mr. Pais had observed that McWane’s “assessment that Star and hence SIGMA may indeed succeed with domestic production, after all, may be prompting them to relent and work with us.” (CX 0241 at 001 (Pais email, July 13, 2009)).
2329. Mr. Pais believed that McWane was more amenable to offering Sigma a buy-sell agreement in part because McWane knew that Sigma had brought a Domestic Fitting to the June 2009 AWWA show in San Diego, and because Star had announced its Domestic Fittings plans at the show as well. (Pais, Tr. 1770-1771; CX 0241 at 001).
2330. On July 13, 2009, Mr. Pais informed Mr. McGivern that he believed McWane would be motivated to enter an agreement with Sigma to avoid having Sigma add new capacity to the Domestic Fittings market:

[T]he high profile publicity by Star as to their domestic plans and our own (low key) plans may have finally convinced [McWane] that addition of new capacity isn’t good for them or the industry . . . . It’s wait and see . . . one step at a time, chess play . . . .”

(CX 1018 at 001; Pais, Tr. 1774 (“[I]t was just my assessment that all these factors would finally sort of persuade them to come up with an agreement to accommodate us.”)).

2331. On July 16, 2009, in response to an update of Star’s progress in entering the Domestic Fittings market, Mr. Pais wrote to Sigma’s M20 team that Star’s very public entry strategy “may induce McWane to think that they may have long term competition even in the BA segment and may create some unique market realignment and hence opportunities for us.” (CX 1505 at 001; Pais, Tr. 1779-1780).
2332. Both Mr. Tatman and Mr. McCullough viewed the MDA as an “insurance policy” against potential Sigma entry, and it was on this basis that Mr. McCullough approved McWane’s proposed MDA terms. (CX 1184 at 001 (Tatman August 18 email); CX 2353 at 004

(McCullough statements at August 20 meeting); CX 2484 (Tatman, Dep. at 211) (admitting that he communicated that the MDA was an “insurance policy” against Sigma’s domestic entry)).

2333. As Mr. Tatman had observed in his May 26, 2009 presentation, one of the two key factors in considering whether to sell to Sigma was “[h]ow legitimate of a risk is there” of Sigma “successfully introducing a Domestic product line.” (CX 0067 at 004, 002; Tatman, Tr. 627-629; *supra* ¶ 2195).
2334. By August 2009, Mr. Tatman had some reservations about the likelihood of Sigma entering the Domestic Fittings market, but Mr. McCullough believed “what Star is able to do, Sigma is able to do, also.” (CX 2479 (McCullough, Dep. 131-132); CX 1184).
2335. In October 2009, after reaching agreement with Sigma on the MDA, Mr. Tatman admitted in a Q&A document circulated to his sales force that “the reality of the situation is that in the absence of the MDA with [McWane], Sigma was going to develop their own domestic sourcing options to the extent they could.” (CX 1179 at 002; Tatman, Tr. 807, 810).

#### **11.6 Sigma and McWane Negotiated the MDA to Supplant Sigma’s Independent Entry**

2336. In late June and early July 2009, after Star announced its entry into the Domestic Fittings market, McWane and Sigma resumed discussions regarding a Domestic Fittings supply agreement. (Tatman, Tr. 747-749).
2337. Between June 30 and July 2, 2009, Mr. Tatman suggested to Mr. Rona that he make a counterproposal to McWane’s June 5, 2009 Domestic Fittings supply offer. Mr. Tatman also communicated that McWane would require two conditions: First, McWane would have to be Sigma’s exclusive supplier of Domestic Fittings; and second, the Domestic Fittings would have to be branded Tyler/Union, not Sigma (*i.e.*, it would not be a private-label arrangement). (CX 0329 at 001 (Tatman email to McCullough and Walton reporting on conversation); Tatman, Tr. 747-748).
2338. On July 2, 2009, Mr. Tatman reported to Mr. McCullough and Mr. Walton regarding his conversation with Mr. Rona of Sigma:

Mitchell Rona called and we had a fairly lengthy discussion. I can fill in the details if needed but the takeaway is that Mitchell/Sigma will come back to us with a counter proposal under the conditions that we would be their exclusive supplier of Domestic fittings and the product would be branded Tyler/Union not Sigma. My main intent was to flush out where Sigma is in their process of securing Domestic production sources and I was somewhat surprised by his non-resistance to those two conditions. If Sigma’s counter does comply with those two conditions it would be pretty good indication that at present they don’t have a very strong hand to play.



(CX 0329 at 001; Tatman, Tr. 747).

2339. On July 14, 2009, Mr. Rona transmitted Sigma's counterproposal to Mr. Walton and Mr. Tatman, and noted, "As promised please find a simple but straight forward proposal from Sigma for master distribution of your domestic fittings. I hope McWane will find this offer favorable and respond with further discussions about how we can move this forward." (CX 0243 at 001; Rona, Tr. 1560-1561).
2340. Sigma's counterproposal consisted of a one-page term sheet titled "Master Distributor Agreement for AWWA domestic pipe fittings" and described an agreement under which "Sigma would have access to Tyler, Union, and Clow branded domestically produced fittings for a minimum of 3 years beginning August 1st 2009." (CX 0243 at 002; Rona, Tr. 1560-1561). The counterproposal specified price multipliers at which McWane would sell the Domestic Fittings to Sigma, and included an exclusivity provision that provided as follows:

Sigma in turn *will not seek any other sources either directly or through 3rd party for the production or distribution of domestic fittings* with the following exceptions -- Sigma shall have the right to produce or purchase fittings which are outside the McWane domestic range or which cannot be provided by McWane within a reasonable and customary time frame.

(CX 0243 at 002 (emphasis added); Rona, Tr. 1560-1561).

2341. In a July 21, 2009 email to McWane's CFO Mr. Nowlin, Mr. Tatman described the ongoing discussions with Sigma as a "choice of evils":

We are having some discussions with Sigma as to providing them with Domestic fittings as an alternative to them securing their own source option such as Star has done.

*This is certainly a choice of evils as having more Domestic suppliers doesn't really increase the size of the pie.* Our ultimate decision will be based upon:

- If we say No, would Sigma really spend the \$ required to execute a domestic product option
- Would providing Sigma with access to Tyler/Union domestic [product] help us either better protect our brand/share against Star or promote more stable market prices

(CX 0729 at 001 (emphasis added); Tatman, Tr. 754-756; CX 2481 (Nowlin, Dep. at 138-139) (calling the idea of having more domestic suppliers does not really increase the size of the pie "a fairly obvious statement.")).

2342. In the July 27, 2009 draft presentation sent to Messrs. McCullough and Walton, Mr. Tatman summarized “Recent Sigma updates,” which included, among others, the fact that Sigma recognizes the market issues that can occur from over capacity in the market:

Sigma recognizes the market issues that can result from over capacity.

Sigma’s preference is to work something out with McWane but we are committed and have the financial backing to move forward either way.

(CX 0568 at 001, 003; Tatman, Tr. 759-761).

2343. In the July 27, 2009 draft presentation, Mr. Tatman also listed “other inputs,” including the fact that Sigma was now aware of McWane’s intent to require Sigma to enforce its pending Exclusive Dealing Policy through the MDA:

Mitchell [Rona] now understands that we will most likely require “all” distributor customers to be exclusive to the Tyler/Union brand for Domestic fittings. That seemed to catch him by surprise. He said he understood and would discuss internally.

...

My sense is they don’t yet have a cost-competitive option for the below 24”. The DISA product quote from last year is probably a concern for them as to our cost position.

(CX 0568 at 003; Tatman, Tr. 761-762).

2344. In an updated presentation emailed to Mr. McCullough and Mr. Walton and titled “Sigma Domestic Review Session - 7/28/09,” Mr. Tatman recommended selling McWane’s Domestic Fittings to Sigma on an exclusive basis at a 20% discount off published multipliers. (CX 0170 at 010; CX 0122 at 001 (draft McWane counterproposal to supply Sigma at a 20% discount off published multipliers, with Sigma to procure exclusively from McWane and only sell to customers that are in an exclusive supply relationship with McWane Domestic Fittings)).

2345. On July 29, 2009, McWane formally responded to Sigma’s July 14, 2009 counterproposal for the sale of McWane’s Domestic Fittings to Sigma. McWane’s offer letter:

- Offered to sell Domestic Fittings to Sigma at a 20% discount off published multipliers, rather than its initial offer of 5%;
- Included an exclusivity requirement and the prohibition on sales to Distributors who are not in an exclusive supply relationship with McWane;

- Required Sigma to agree to sell at McWane’s suggested published price levels; and
- Had a term of three years unless earlier terminated by agreement or for cause.

(CX 1805 at 002; CX 0565 at 001, 002).

2346. On August 4, 2009, Mr. Rona responded to Mr. Tatman’s July 29, 2009 offer letter by proposing a price compromise and objecting to the provision that required Sigma to enforce McWane domestic exclusivity on Distributors because it was “vague and worrisome!” (CX 0461 at 001, 002)).
2347. In mid-July 2009, Sigma and McWane had considered a three year term for the MDA. (CX 0566 at 001-002 (“SIGMA would have access to Tyler, Union, and Clow branded domestically produced fittings for a minimum of three years beginning August 1st, 2009”); CX 0122 at 001 (draft letter identifying McWane’s core terms to include 3 year term of agreement); CX 2479 (McCullough, Dep. at 113, 124-125)).
2348. By August 17, 2009, however, Mr. Tatman recommended “not firmly locking ourselves into a long term agreement,” and only pursuing a one year term. (CX 2479 (McCullough, Dep. at 133-134); CX 1184 at 002).
2349. On August 18, 2009, Mr. Tatman sent an email to Mr. McCullough and Mr. Walton with an attached presentation that provided an update on the status of negotiations with Sigma. Mr. Tatman was “leaning towards not throwing too much money” at what he referred to as an “insurance policy” against Sigma’s entry, noting that he is “not picking up any strong sense that they have a strong alternate path at this point that they’d be willing to invest significant \$ into.” (CX 1184 at 001; Tatman, Tr. 771-772, 783-785).
2350. In his August 18, 2009 cover email to his presentation, Mr. Tatman reported that he and Mr. Rona were near final agreement, with the discount percentage and duration of the agreement being the final issues. (CX 1184 at 001-002; Tatman, Tr. 771-772).
2351. In Mr. Tatman’s August 18, 2009 presentation, Mr. Tatman reported on a “pro forma” analysis that had concluded that McWane would lose approximately 5% of gross profit margin by selling Domestic Fittings to Sigma under the MDA. (CX 1184 at 003; Tatman, Tr. 778).
2352. Mr. Tatman’s August 18, 2009 presentation also provided an update on two conversations Mr. Tatman had with Mr. Rona after Sigma received McWane’s July 29, 2009 offer letter:
- Sigma has now agreed in principle to our requirement for Distributor exclusivity . . .
  - Sigma has agreed in principle to selling at Published pricing . . .

- Sigma has agreed to be exclusive to [McWane] for all sales to Distributors . . .
- I sense our distributor exclusivity requirement might have rocked them back a bit on what would be required to enter this market on their own

(CX 1184 at 004; Tatman, Tr. 778-783).

2353. Mr. Tatman's August 18, 2009 presentation also made the following recommendations to Sigma's August 3, 2009 proposal:

- Counter Sigma's Aug 3rd response to our July 29th proposal with the following general elements:
  - Master Distributor relationship for McWane branded products
  - Retain 20% discount across the entire product line (3"-48");
  - Retain Brand exclusivity requirement for any of Sigma's distribution customers;
  - Exclusive supply for all (3"-48") items sold into "non OEM customers," defined as a foundry manufacture of pipe and/or pipe and fittings;
  - State that the recommended annual rebate is 8%; and
  - 1-year term with automatic 1-year extensions unless notification provided within 120 days of expiration date.

(CX 1184 at 002).

2354. At an August 20, 2009 meeting attended by Messrs. McCullough, Walton, Tatman, and Jansen, Mr. McCullough decided that McWane should sell Domestic Fittings to Sigma as an "insurance policy" against another Domestic Fittings entrant and "to continue to put pressure on Star." Mr. McCullough then approved Mr. Tatman's recommended response. (CX 2353 at 001, 004 (Walton meeting notes recording McCullough statements and approval); CX 2485 (Walton, Dep. at 37-43) (reviewing notes)).

2355. The next day, on August 21, 2009, Mr. Tatman sent Mr. McCullough a modified "recommendation" slide at Mr. McCullough's request for forwarding to Mr. Page. (CX 0117 at 001). The modified recommendation slide contained an additional proposed term – that Sigma's resale market pricing should be within 98% of published pricing on a weighted average basis – and contained a recommendation that McWane "remain very

firm” on the proposed terms unless “we uncover new evidence as to Sigma truly having an executable competitive option.” (CX 0117 at 002).

2356. On August 24, 2009, Mr. Tatman sent an MDA letter of intent to Mr. Rona. (Rona, Tr. 1571-1572; CX 1806 at 001; Pais, Tr. 1787 (confirming that Sigma had an agreement in principle with McWane based on the letter of intent)). McWane’s letter of intent followed most of McWane’s July 29, 2009 proposal, and had the following “core agreement elements:”

- “McWane shall be Sigma’s exclusive source of supply;”
- Sigma may only sell McWane’s Domestic Fittings to Distributors that are “in an exclusive relationship with McWane branded Product for all of their domestic requirements where McWane branded Products are available;”
- McWane will sell its Domestic Fittings to Sigma at an effective 20% discount from McWane’s published pricing;
- Disputes will be handled through non-binding dispute resolution process; and
- The agreement will have a 1 year term, with automatic 1 year extension, unless either party provides 90 days notice prior to the anniversary date or McWane has cause.

(CX 1806 at 002).

2357. Additionally, in order to for Sigma to “maintain its Master Distributorship,” McWane’s August 24, 2009 letter of intent stated that Sigma was “expected” to:

- Support any pending or existing Buy American legislation;
- “Independently adhere” to McWane’s published pricing, and maintain prices at or above 98% of McWane’s published pricing on a weighted average basis;
- Provide significant Sigma customers with an appropriate rebate program, with the “expectation is an 8% annual rebate for customers with annual purchases of greater than \$100,000;” and
- “Not introduce your own domestic product while the Master Distributorship is active.”

(CX 1806 at 003 (also adding payment terms, minimum order requirements, and other general agreement terms)).

2358. Later on August 24, 2009, Mr. Rona expressed his concern to Mr. Tatman regarding the short duration of the MDA and the 20% pricing term. Because Mr. Tatman did not perceive Sigma as currently having viable alternative source of supply, Mr. Tatman did not see any “reason for any further concessions.” (CX 2354; CX 2485 (Walton, Dep. at 86-87) (discussing CX 2354)).
2359. The August 24, 2009 letter of intent represented an agreement in principle that the parties then had to finalize and document in a formal agreement. (Pais, Tr. 1788; CX 1806).
2360. By August 27, 2009, Mr. Pais believed that Sigma and McWane were close to an agreement. (Pais, Tr. 1792-1793; CX 0923 at 002 (draft internal Sigma update on the negotiations). On August 28, 2009, Mr. Pais transmitted comments on the letter of intent to Mr. McCullough, who forwarded them to Mr. Tatman. (CX 0486 at 001).
2361. Mr. Rona and Mr. Tatman continued to negotiate the MDA terms, and by August 31, 2009, they had exchanged comments on the terms outlined in the August 24 letter of intent. (CX 1046 at 001-002 (noting “core agreement elements” including (a) “McWane shall be Sigma’s exclusive source of supply,” (b) “Sigma may only sell McWane Product to [Distributors] that are in an exclusive relationship with McWane”)).
2362. As of August 31, 2009, a formal MDA contract was drafted and near completion. (CX 1046 at 001).
2363. Sigma proceeded with the MDA despite its view that McWane was taking an unduly aggressive negotiating position. After reviewing the draft agreement, Mr. Bhattacharji wrote on September 1, 2009, “I am deeply disturbed by some of the clauses which seem such an over reach and written by people who are showing total disinterest in helping us and themselves to improve the market thru this move.” (CX 2005 at 001; CX 2523 (Bhattacharji, Dep. at 228-230) (“I had a concern, and I met with my lawyer, he gave me advice.”) (witness instructed not to answer further)).
2364. Sigma also proceeded with the MDA in the face of concerns regarding the legality of certain terms regarding the maintenance of prices at 98% of published rates and the joint implementation of McWane’s Exclusive Dealing Policy, which Sigma understood would be enforcing a “blacklist” of any Distributors that did business with Star. (CX 1045 at 001; CX 2523 (Bhattacharji, Dep. at 232-237) (basing his understanding of McWane’s Exclusive Dealing Policy and its enforcement of a “blacklist” on Sigma’s MDA negotiations with McWane)).
2365. As of September 7, 2009, Mr. Pais expected the MDA to be finalized by the end of that week – September 11, 2009. (Pais, Tr. 1794-1795; CX 0269 at 003 (“We should be able to fully launch this MDA plan to the market/SST by week’s end . . . by 9/11/09 -- of course, a historic day!”)).
2366. Mr. McCullough made the final decision on behalf of McWane to enter into the MDA with Sigma. (CX 2482 (Page, Dep. at 61, 64) (testifying that Mr. Page was in favor of signing the MDA in part to address the concern that McWane was “the only available source for domestic fittings at that point in time.”)).

### 11.7 McWane Would Have Earned Higher Margins Selling to Distributors Itself

2367. The MDA transferred profits from McWane to Sigma, because McWane would have earned higher margins selling Domestic Fittings to Distributors than it earned selling them to Sigma. (*Infra* ¶¶ 2368-2371).
2368. McWane always considered that supplying Sigma with Domestic Fittings would transfer profit margin from McWane to Sigma. (CX 0067 at 003 (May 26, 2009 presentation noting that if McWane choose *not* to sell Domestic Fittings to Sigma, it would “Retain the full margin for Domestic product within McWane.”); Tatman, Tr. 621, 623; *see also supra* ¶¶ 2191-2194).
2369. In an August 14, 2009 email to Mr. McCullough, Mr. Walton estimated that the Sigma MDA as then contemplated would result in \$1.68 million annual loss of gross profit for McWane. (CX 0111 at 001-002). Mr. Walton summarized the then-current state of the potential MDA as follows:

As I understand where we are at now we are going to give SIGMA a 20% discount off of our current published domestic multipliers. Since we would not pay them a 10% rebate on this sale, as we would our regular distribution customers, then we are only giving them 10% of our current gross margin for domestic fittings we sell that we will lose to them when they sell those domestic tons. So for every 1000 tons of domestic fitting that they sell, that WWF [McWane’s Water Works Fittings business] would have sold, WWF will lose approximately \$350,000 in gross margin, this was calculated from WWF sales and gross July 09. It is probably a fair assumption that we will lose some nondomestic tons as well as domestic when SIGMA tries to package deals, etc. So if we assume that for every 1000 domestic tons they sell they will sell an additional 500 tons of non-domestic that would have been WWF’s that would translate into a loss of approximately \$210,000 in gross margin for a combined total of approximately \$560,000 lost in gross margin. If I remember from one of our conference calls it was estimated that Sigma might sell around 3000 domestic tons per year, if so this would produce a gross profit loss for WWF of approximately \$1,680,000 per year from the current numbers.

(CX 0111 at 002; Tatman, Tr. 767-769).

2370. According to a September 25, 2009 margin analysis of the MDA prepared by Mr. Tatman, assuming no erosion of published prices, McWane would earn approximately 29.5% margins on its sales to Sigma, and Sigma would earn approximately 5.7% margins on its sales of Fittings procured from McWane, with McWane earning an 82% share of the overall margin. (CX 0631 at 003).

2371. Mr. Jansen and Mr. Tatman received a report from Mark Willett that two customers in the Northeast had switched to Sigma from McWane, and noting the loss of \$300-\$350 per ton in margin for everything sold through Sigma. (CX 0572 at 001).

### **11.8 The Terms of the MDA Severely Restricted Competition in the Domestic Fittings Market**

2372. The MDA's terms and implementation prevented Sigma from independently entering the Domestic Fittings market, enlisted Sigma in McWane's efforts to exclude Star from the market, and eliminated price competition between Sigma and McWane. (*Infra* ¶¶ 2373-2448).

2373. On or about September 17, 2009, Mr. Tatman on behalf of McWane and Mr. Pais on behalf of Sigma signed the MDA. (CX 1194 at 001, 013, 014; Tatman, Tr. 791; Pais, Tr. 1807-1808; CX 0278 at 001, 015 (Pais transmitting to Tatman copy of MDA with Sigma signature); CX 0950 at 001 (Tatman informing Pais he will sign on September 17, 2009, and Pais informing Tatman that he has signed and original should arrive at McWane on the September 17, 2009)).

2374. McWane publicly announced the MDA on September 22, 2009, in the same letter that articulated McWane's new Exclusive Dealing Policy. (CX 1606 at 002).

2375. Sigma also announced the MDA on September 22, 2009 (CX 0803 at 002; Pais, Tr. 1821).

2376. Before Sigma's announcement, Mr. Pais invited Mr. Tatman to comment on Sigma's customer letter, (CX 0950 at 001), and Mr. Tatman requested that Sigma not portray the MDA as having been initially proposed by McWane. (CX 0951 at 001 (Tatman email to Pais attaching redline of Sigma draft customer letter)).

2377. On September 24, 2009, subsequent to signing the MDA, McWane provided Sigma with "rules of play" for day-to-day execution that would "capture both the language within the MDA and the spirit and intent under which it was constructed." (CX 1436; Rona, Tr. 1568-1571).

2378. Unlike an ordinary buy-sell transaction, the MDA contained detailed conditions relating to Sigma's conduct in the Domestic Fittings market. (CX 2530 (Rona, Dep. at 235-237) (Rona noted "some of the conditions which became part of the agreement . . . versus just hey, we'll sell it to you and you can do whatever you want to do" with the Fittings)).

#### **11.8.1 Sigma Was Required to Source Domestic Fittings Only from McWane, and Abandoned Its Domestic Production Initiative**

##### **11.8.1.1 The MDA Required Sigma to Source Domestic Fittings Exclusively from McWane**

2379. The MDA expressly precluded Sigma from entering the Domestic Fittings market in competition with McWane, requiring that, with limited exceptions, "McWane shall be



Sigma's sole and exclusive source for Domestic Fittings." (CX 1194 at 001 § 1(b); Tatman, Tr. 793 ("Sigma needs to purchase their products from us, with exceptions.")).

2380. The only three exceptions to this "sole source" provision were the following: (1) Sigma was permitted to source Domestic Fittings in the 30"-48" diameter range from other manufacturers under certain circumstances; (2) Sigma was permitted to source a Fitting from an alternative source so long as McWane did not own patterns for such Fitting; (3) Sigma was permitted to source Domestic Fittings from alternative sources on an order by order basis if McWane was unable to make timely delivery. (CX 1194 at 001 § 1(b)).
2381. Sigma understood that McWane would not enter the MDA without such assurances. (CX 2523 (Bhattacharji, Dep. at 238) (Sigma understood that McWane would only enter into the MDA if Sigma provided assurances that it would not source Domestic Fittings from anywhere else); CX 2530 (Rona, Dep. at 242-251) (discussing Sigma's July 14, 2009 MDA proposal (CX 0243), Rona stated that "Sigma felt in order to try to get the [MDA] deal that we wanted, that there were things that we would have to agree to do, and we felt this condition was one that they [McWane] would review as understanding that we weren't going to be able to buy from them as a distributor and then leave every option open to do other things"))).
2382. The exclusivity provision of the MDA read in its entirety as follows:

Exclusivity. Sigma agrees that McWane shall be Sigma's sole and exclusive source for Domestic Fittings, with the exception that: (1) Sigma may purchase Domestic Fittings in the 30"- 48" diameter size range from other manufacturers so long as Sigma is the sole owner of the patterns for such Domestic Fittings, but only for resale to other domestic foundry manufacturers of ductile iron pipe and fittings; (2) If McWane does not own patterns for a particular Domestic Fitting, Sigma may purchase that Domestic Fitting from an alternative source, but only until such time as McWane acquires the pattern for that Domestic Fitting; and (3) Sigma may purchase Domestic Fittings from alternative sources on an order by order basis only if McWane cannot deliver McWane Domestic Fittings to the designated delivery point by the time specified in the order or within 30 days after the order has been received and processed by McWane, whichever occurs later.

(CX 1194 at 001 § 1(b)).

2383. The MDA's exclusivity provision is consistent with the letter of intent (CX 1806), which stated that, to maintain its "Master Distributorship," Sigma was "expected . . . [to] Not introduce your own domestic product while the Master Distributor Agreement is active." (CX 1806 at 003; CX 1194 at 001 § 1(b) (final MDA: "Sigma agrees that McWane shall be Sigma's sole and exclusive source for Domestic Fittings"); Pais, Tr. 1789 (discussing letter of intent)).

2384. Sigma understood that the MDA prevented Sigma from producing its own Domestic Fittings. (CX 2529 (Rona, IHT at 173-175) (“As part of our agreement with McWane for the MDA, we agreed that we wouldn’t produce – it’s in the agreement that we wouldn’t produce other small-diameter fittings -- again, I think it’s 24” and down.”); CX 0278 at 002 (“Sigma agrees that McWane shall be Sigma’s sole and exclusive source for Domestic Fittings”)).
2385. As Mr. Rona explained at trial, pursuing its own domestic production would be a breach of the MDA agreement:

[O]nce the MDA was signed, we did not pursue [Sigma’s SDP efforts] at that point to go ahead. And we knew that, again, understanding the agreement as it was written, if we decided to continue to go ahead, we technically could go ahead and could, but we would then be in breach of the contract.

(Rona, Tr. 1581-1582; CX 0278-002 (“Sigma agrees that McWane shall be Sigma’s sole and exclusive source for Domestic Fittings”)).

11.8.1.2 Sigma Abandoned Its Domestic Production Initiative as a Result of the MDA

2386. Sigma abandoned its Domestic Fittings production initiative as a result of the MDA. (*Infra* ¶¶ 2387-2393).
2387. Sourcing Domestic Fittings through McWane replaced Sigma’s “SDP” effort to develop its own Domestic Fittings production capability. (CX 1018 at 001 (Pais writing to Mr. McGivern on July 13, 2009, “If we get a wholesome agreement [with McWane], yes, it will replace our SDP plans – and save huge Capex\$!”); Pais, Tr. 1773; CX 2524 (Box, Dep. at 81) (Mr. Box recommended that Sigma not go forward with domestic production of small Fittings in light of the availability of Fittings from McWane via the MDA); CX 2527 (Pais, IHT at 154-155)).
2388. In late August and early September 2009, before the MDA was finalized, Sigma continued to work on its SDP efforts. (Rona, Tr. 1580-1581; *supra* ¶¶ 2256-2267).
2389. Sigma continued to investigate manufacturing Domestic Fittings until immediately before signing the MDA, and ceased its Domestic development efforts only after it knew it had an agreement on the MDA. (Rybacki, Tr. 3729 (Sigma continued to investigate domestic production until shortly before it signed the MDA, and backed away from the investigation of Domestic Fittings manufacturing once it knew it would have the MDA); Rona, Tr. 1548 (“Q. And once you reached an agreement on the MDA, did your domestic plans take a backseat to the MDA? A. Yes. With the exception that we had stayed developing and still develop and make domestic pipe restraints, but on fittings we did not continue.”); CX 2523 (Bhattacharji, Dep. at 221-222) (Sigma stopped pursuing SDP when it signed the MDA); CX 2530 (Rona, Dep. at 296-297) (“[O]nce we had the MDA, we were satisfied we were satisfied that we had a source of domestic fittings for ARRA, period.”)).

2390. On October 3, 2009, Mr. Bhattacharji informed Sigma's China production manager that Sigma's "development plans for domestic fittings are taking a back seat for the moment. This is because we have an MDA (Master Distributor Agrmt) deal with McWane for the fittings." (CX 0934 at 001; Pais, Tr. 1853-1856).
2391. On September 28, 2009, Stuart Box wrote to Frank Ross of Penn-Mar Castings, explaining that Sigma's Domestic Fittings production plan had been replaced by the MDA: "We have also decided to not pursue the domestic fitting production in lieu of another option that materialized at the last hour." (CX 1532 at 001).
2392. Sigma continued to develop domestic products that were not prevented under the terms of the MDA. For example, after signing the MDA, Sigma continued its development of domestic restraints, and today, Sigma makes and sells domestic restraints. (Rona, Tr. 1548).
2393. Additionally, after signing the MDA, Sigma continued its development of larger-sized Domestic Fittings because McWane did not provide larger-sized Domestic Fittings. (Pais, Tr. 1804; CX 1166; CX 1194 at 001 § 1(b) (excepting from exclusive source position Fittings for which McWane does not have the patterns)).

### **11.8.2 Sigma Was Required to Enforce McWane's Exclusive Dealing Policy**

#### **11.8.2.1 The MDA Required Sigma to Enforce McWane's Exclusive Dealing Policy**

2394. The MDA required Sigma to enforce McWane's Exclusive Dealing Policy. With the exception of ACIPCO, to which Sigma would be permitted to resell McWane's Domestic Fittings without restriction, Sigma was only permitted to resell McWane Domestic Fittings to Distributors that had "agreed to purchase McWane Domestic Fittings as their sole source of Domestic Fittings when McWane Domestic Fittings are available at the time of order." (CX 1194 at 001 § 1(c); Tatman, Tr. 797-798).
2395. Sigma agreed not to sell McWane Domestic Fittings to any customer identified by McWane as having "purchased Domestic Fittings from a source other than McWane at any time during the previous 60 days." (CX 1194 at 001-002 § 1(c); Tatman, Tr. 798; Pais, Tr. 1816-1819).
2396. This provision of the MDA read in its entirety as follows:

Markets. Sigma may only resell McWane Domestic Fittings to: (1) American Cast Iron Pipe Company; and (2) Other customers, including distributors, contractors and fabricators, but excluding manufacturers of ductile iron pipe that have agreed to purchase McWane Domestic Fittings as their sole source of Domestic Fittings when McWane Domestic Fittings are available at the time of order. McWane shall from time to time provide Sigma with a list of customers who have not agreed to source their Domestic Fittings solely from McWane. Sigma agrees not to sell McWane

Domestic Fittings to any customer so listed by McWane, or to any other customer who Sigma actually knows has purchased Domestic Fittings from a source other than McWane at any time during the previous 60 days. McWane reserves the unconditional right in its sole discretion to (i) call upon and sell McWane Domestic Fittings directly to any prospective customers or existing customers, (ii) investigate and resolve customer complaints, (iii) distribute sales and advertising information and (vii) perform other services. McWane reserves the right in its sole discretion to appoint or designate other distributors or representatives other than Sigma to sell McWane Domestic Fittings.

(CX 1194 at 001-002 § 1(c)).

2397. The MDA further provided that Sigma would assist McWane in the enforcement of McWane’s Exclusive Dealing Policy:

Sigma shall . . . take reasonable efforts to monitor its customer’s sources of supply of Domestic Fittings, and shall notify McWane as soon as possible if Sigma becomes aware of any purchases of non-McWane Domestic Fittings by any such customer.

(CX 1194 at 004 § 3(c)(v); *see also* (CX 2479 (McCullough, Dep. 108-109) ((McWane required Sigma through the MDA to not sell Domestic Fittings to Distributors that were not exclusive to the Tyler/Union brand))).

2398. Mr. Pais testified that he understood that under McWane’s Exclusive Dealing Policy, as implemented under the MDA, a Distributor that chose to purchase any Domestic Fittings from Star would need to buy all of its Domestic Fittings from Star. (Pais, Tr. 1817-1819) (“McWane’s policy was to give the customer a choice. . . . [T]hey would require a customer, once they make a choice, to follow their choice for all their needs for domestic fittings.”)).
2399. McWane informed its major Distributor customers that Sigma would be enforcing McWane’s Exclusive Dealing Policy. (CX 0725 (McCullough September 2, 2009 letter to Mr. Webb of HD Supply); CX 2479 (McCullough, Dep. at 142) (CX 0725 accurately describes the Sigma MDA as it pertained to Sigma not being able to sell to Distributors who also bought from Star); CX 2479 (McCullough, Dep. 142-144) (testifying that he “probably” delivered the same message to the Distributors Ferguson, Groeniger, and WinWater); CX 2477 (Jansen, Dep. 179-180) (testifying to his understanding that Sigma could not sell Domestic Fittings to Distributors that bought any Domestic Fittings from Star); CX 0108).

#### 11.8.2.2 Sigma Implemented and Enforced McWane’s Exclusive Dealing Policy

2400. Sigma implemented and enforced McWane’s Exclusive Dealing Policy. (*Infra* ¶¶ 2401-2409).

2401. Sigma was concerned about “how customers would take” McWane’s requirement in the MDA that Sigma would enforce McWane’s Exclusive Dealing Policy because, “[i]n Sigma, we sold everybody anything they wanted.” (CX 2523 (Bhattacharji, Dep. at 228-230)).
2402. Sigma has a significant investment in its own broad line of imported Fittings, but does not have a rule against Distributors “cherry-picking” by buying some but not all of their Fittings from Sigma. (CX 2530 (Rona, Dep. at 255-258)).
2403. In Sigma’s September 22, 2009 announcement to its customers, Sigma informed its customers that it would be enforcing the McWane Exclusive Dealing Policy:

As per this MDA, we are now Master Distributors of [McWane] domestic Fittings. As such, we will follow [McWane’s] distribution and pricing policies as they are announced from time to time. As mentioned in their own letter from [McWane] to their customers, which you too may have received, we wish to supply the [McWane] domestic Fittings to any customers who elect to commit to fully support [McWane] branded Fittings for their requirements of domestic Fittings, purchased thru [McWane] or SIGMA. We appeal to you to accept this requirement of exclusive choice, as a fair and reasonable one, in light of the considerable investment by [McWane] to provide this range of domestic production, which is now being expanded to offer domestic Fittings up to 48”. Please note that customers who elect not to fully support this program may forgo any unpaid volume incentive rebates applicable to only the domestic Fittings and delivery of domestic Fittings up to 12 weeks.

(CX 0803 at 002; Pais, Tr. 1821).

2404. In the Q & A document that he prepared and circulated to the McWane sales force after execution of the MDA, Mr. Tatman described Sigma’s participation in McWane’s Exclusive Dealing Policy in response to a hypothetical customer question:

Question: Can I utilize another domestic fitting and accessory brand other than Tyler Union or Clow Water products and then still purchase Tyler Union or Clow Water products through Sigma?

Answer: No, Sigma will be adhering to the same distribution program and policies as the Tyler Union and Clow Water divisions of McWane.

(CX 1179 at 004; Tatman, Tr. 807).

2405. On September 25, 2009, Sigma regional sales manager Mike Walsh emailed Mr. Rona asking for clarification of – and expressing concern about – the McWane exclusivity policy to be implemented by Sigma:

MR1 ... Just for clarification ... can you check with your Tyler contact and find out exactly what it means to be on death row, or probation, or on double secret probation with Tyler? I did not think it was possible to ‘not sell’ a customer unless it was a credit issue. I thought they separated the good customer from the bad customers by the volume rebate. Are there actual customers that Tyler will not sell to at all? This topic is only an issue because of the other Tyler and Sigma customers that are demanding that we do not sell any customers that Tyler has cut off. We need to know what does ‘cut off’ mean because I don’t think we can legally tell a customer we will not sell them. Any info is appreciated. MW

(CX 1471; Rona, Tr. 1604).<sup>39</sup>

2406. On August 17, 2010, Sigma regional sales manager Mike Walsh emailed Ken Stephenson of Sigma reminding him about the Exclusive Dealing Policy: “Remember . . . if customers are buying from Star . . . we cannot sell them domestic any more.” (CX 1746).
2407. On December 14, 2009, McWane informed Sigma that it was cutting off Hajoca under its Exclusive Dealing Policy and that Sigma must do the same. Mr. Tatman told Mr. Rona: “Per the terms of our MDA I need you to acknowledge that Sigma will also not supply *any* Hajoca branch with *Domestic fittings or accessories* until further notice.” (CX 1801 at 001 (emphasis added)).
2408. Mr. Rona forwarded the email to Sigma’s CEO, who responded that Sigma had “no choice but to agree to abide by the rules of the MDA.” (CX 0940; Rona, Tr. 1606, 1608 (Rona forwarded to Sigma’s distribution group the instruction not to sell McWane-produced domestic fittings to any Hajoca branch); CX 2530 (Rona, Dep. at 258) (McWane told Sigma that it could not sell to Hajoca)).
2409. As requested by McWane, on December 15, 2009, Mr. Rona confirmed to McWane that Sigma was “clear about Hajoca” and would not sell Domestic Fittings to any branch. (CX 1801 at 001 (“Sigma confirms we are clear about Hajoca.”); Rona, Tr. 1606; *see also supra* ¶¶ 1850-1892 (describing McWane cut-off of Hajoca)).

### **11.8.3 McWane and Sigma Agreed on Domestic Fittings Prices Under the MDA**

2410. Through the MDA’s terms and implementation, McWane and Sigma agreed to, and did, charge substantially identical prices for Domestic Fittings. (*Infra* ¶¶ 2411-2434).

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<sup>39</sup> Mr. Walsh’s out of court statements are cited for their effect on Mr. Rona and not to prove the truth of the matters asserted in the statements. (*See* Rona, Tr. 1605).

11.8.3.1 The MDA Expressly Limited the Prices at Which Sigma Could Sell Domestic Fittings

2411. The MDA provided that McWane would sell McWane Domestic Fittings to Sigma at a discount of 20% off McWane's published pricing. (CX 1194 at 002 § 1(d); CX 2479 (McCullough, Dep. at 121) (McWane agreed to sell Domestic Fittings to Sigma under the MDA at a 20% discount off McWane's published multiplier terms for truckload shipments)).
2412. The MDA required that Sigma resell McWane Domestic Fittings at a weighted average of no less than 98% of McWane's published prices during any given quarterly period, before rebates, freight and prompt payment discounts (the "Suggested Resale Price"). (Tatman, Tr. 798-803; Pais, Tr. 1829-1830; CX 1194 at 002§ 1(d)). The 98% restriction was at McWane's behest. (CX 2530 (Rona, Dep. at 262)).
2413. Sigma's failure to resell at the Suggested Resale Price would result in immediate termination of the MDA without notice. (CX 1194 at 002 § 1(d); Tatman, Tr. 802-803).
2414. The MDA also required Sigma to offer an 8% or greater volume rebate program for customers purchasing more than \$200,000 annually of McWane Domestic Fittings. (CX 1194 at 002 § 1(d); Tatman, Tr. 803).
2415. This provision of the MDA read in its entirety as follows:

Pricing. McWane will sell McWane Domestic Fittings to Sigma at a discount of twenty percent (20%) off McWane's published distributor pricing in effect at the time the order is received by McWane. While Sigma may resell McWane Domestic Fittings at any price it deems appropriate, it is the unilateral policy of McWane not to appoint or continue any OEM distributor who resells McWane Domestic Fittings at a price less than 98% of McWane's published pricing on a weighted average basis for all customers and items sold during any given quarterly period, before rebates, freight and prompt payment discounts (the "Suggested Resale Price"), or who fails to establish a rebate program of 8% or greater for customers, excluding manufacturers of ductile iron pipe, who purchase more that [*sic*] \$200,000 annually of McWane Domestic Fittings or who stock McWane Domestic Fittings in the normal course of business. The determination of whether an OEM distributor has met these requirements shall be made in accordance with the formulas and method set forth in the attached Exhibit A. This agreement shall terminate immediately and without notice in the event that Sigma resells McWane Domestic Fittings at a price below the Suggested Resale Price, or fails to implement and maintain the Suggested Rebate for eligible customers; provided, however, that the Suggested Rebate shall not apply to customers who are domestic manufacturers of ductile iron pipe. McWane

reserves the right to audit Sigma's compliance with this paragraph at any time through a third party chosen by auditor chosen by McWane.

(CX 1194 at 002 § 1(d)).

2416. As described by Mr. Pais, "with the pricing, we are obliged to be as close to the published multiplier as possible. Our hands are not tied - but we cannot sell below, because it will undermine McWane's own sales." (CX 0997 at 004 (September 22, 2009 message dictated by Pais)).
2417. Sigma would have preferred to have pricing discretion under the MDA. (CX 2530 (Rona, Dep. at 263-264); CX 2527 (Pais, IHT at 196)).

11.8.3.2 Sigma and McWane Both Agreed to sell Domestic Fittings at or Above 98% of Published Multipliers and Raise Published Prices

2418. McWane and Sigma each understood that both parties' Domestic Fittings pricing was subject to the pricing restrictions set forth in the MDA, and they set their Domestic Fittings prices accordingly. (*Infra* ¶¶ 2418-2434).
2419. Under the MDA, Sigma had to sell McWane Domestic Fittings at or above 98% weighted average of McWane's published prices. (CX 2523 (Bhattacharji, Dep. at 236-237)).
2420. Under the MDA, McWane was able to change its prices and rebate terms – and impose those terms on Sigma – at any time. (Pais Tr. 1828-1829; CX 0953 ("Please be very careful in NOT offering any VR [volume rebate] plans for 2010 for DOM [Domestic] Fittings – as Tyler may reduce the VR% for 2010. As you know, they have been trying to improve this area of the market pricing for a while."); *see also* CX 0089 at 003 (Pais noting that Sigma was "obliged to offer the same [as McWane] VR incentive of 8% for all customers who would purchase over \$200,000/per year of domestic Fittings")).
2421. A Sigma salesman was hesitant to discount even imported Fittings "due to the trust agreement we have with [McWane]." (CX 1514).
2422. On December 21, 2009, McWane announced multiplier increases for Domestic Fittings effective January 22, 2010. (CX 1544 at 002).
2423. Mr. Tatman forwarded McWane's December 21, 2009 price increase announcement to Mr. Rona: "Per our Master Distribution Agreement this will impact Sigma orders as of the effective date." (CX 1662 at 001; *see also* Rona, Tr. 1602-1604 (discussing CX 1662)).
2424. Greg Fox of Sigma forwarded the McWane December 21, 2009 price increase announcement within Sigma, noting,



Under the terms and agreements of our Master Distribution Agreement with [McWane], we will mirror the multiplier and implementation dates of this letter. We have no latitude for exceptions.

(CX 1519 at 002; *see also* CX 1544 at 001 (Rona forwarding McWane price announcement within Sigma); CX 2530 (Rona, Dep. at 300)).

2425. Sigma enacted the same price increase, effective January 22, 2010. (CX 1519 at 001 (Pais email December 29: “I am glad to comply” with McWane price increase); CX 1852 at 001-002 (Pais December 30 email attaching “our version of the Customer Letter to announce the price increase”); CX 0786 (same letter as produced from Star’s files)).
2426. In the October 2009 MDA Q&A document that Mr. Tatman circulated to his sales force, Mr. Tatman expressed the expectation that the MDA would make the market “more stable.” (CX 1179 at 002; Tatman, Tr. 807-808).
2427. Although the pricing provision of the MDA by its terms only regulated the prices to be charged by Sigma for Domestic Fittings, in the course of negotiating the MDA, Sigma asked McWane to follow the same 98% rule. (CX 0271 (noting Sigma request to McWane that McWane follow “the same rules on pricing . . . that they are imposing on [Sigma]”); Pais, Tr. 1796 (not recalling CX 0271 or Sigma’s request); CX 2523 (Bhattacharji, Dep. at 241-242) (Sigma’s CEO Jim McGivern brought up the point that McWane should also have to charge its customers at least 98% of its published prices for Domestic Fittings); CX 0098 at 003 (draft MDA agreement reflecting requirement that McWane be required to follow the MDA’s “policy on suggested retail pricing and rebates”); CX 0272 at 001-002 (cover email)).
2428. Mr. Pais and Mr. Tatman discussed the MDA on September 14, 2009, and the next day Mr. Pais emailed a signed copy of the agreement to Mr. Tatman, noting in the cover email, “I agree completely with your observation that in the end, it’s the right spirit and sensible reason rather than just the legal document that will determine the outcome of this initiative.” (CX 0278 at 001; Pais, Tr. 1806-1807).
2429. McWane and Sigma agreed that they would both price Domestic Fittings at no lower than 98% of McWane’s published multipliers. (CX 2531 (Rybacki, Dep. at 165-166) (when the MDA was in place, Rybacki’s understanding was that Sigma had to sell McWane’s Domestic Fittings at 98% of published pricing and that McWane had to sell at a similar price)).
2430. Mr. Tatman’s business understanding of the agreement between Sigma and McWane was that McWane – and not just Sigma – also had to sell within 98% of McWane’s published prices. In a December 13, 2009 email to Mr. McCullough and Mr. Walton, Mr. Tatman described the MDA pricing requirement as follows:

Per our MDA with Sigma . . . Sigma (and in theory [McWane]) is supposed to sell within 98% of the published levels.

(CX 0347 at 001; Tatman, Tr. 806-807).

2431. After the signing of the MDA, McWane understood that it could not offer Distributors lower “domestic numbers with our MDA with Sigma. We need to stay stable . . . .” (CX 0110 at 001 (Jansen October 4, 2009 email to regional managers); *see also* CX 0106 at 002 (Jansen: “[W]e need to make sure all domestic is right down the line since Sigma is involved”); CX 0107 at 001 (Jansen: “[W]e won’t move the numbers on the package due to the Sigma deal.”)).
2432. Mr. Jansen testified that his understanding was that there was a provision in the MDA that limited Sigma’s and McWane’s ability to discount on Domestic Fittings. (CX 2477 (Jansen, Dep. at 172-173)).
2433. At one point, Mr. Rona contacted McWane when he heard that McWane had deviated below the agreed upon price for Domestic Fittings:

I believe I had one conversation with Tyler. We were under the -- as bound by the MDA, we were to understand that they were supposed to sell at the same price, meaning that was my understanding from the agreement.

(CX 2529 (Rona, IHT at 212-214); *see also* CX 2529 (Rona, IHT at 214-216) (further describing call to Tatman regarding McWane’s Domestic Fittings pricing)).

2434. On November 3, 2009, Mr. Schapiro emailed Mr. Rybacki reporting that he had recently noticed some items with “VERY poor GMs” based on McWane list prices, and had “pointed them out to the right people, and they have been changed by McWane.” (CX 1024 at 001).

#### **11.8.4 Sigma Agreed Not to Oppose Buy American Legislation**

2435. McWane was aware that Sigma and Star had lobbied against the Buy American provision of ARRA. (Tatman, Tr. 614).
2436. The MDA required Sigma to stop lobbying against Buy American laws. (CX 1194 at 004 § 3(c)(iv); Pais, Tr. 1788-1789).
2437. This provision of the MDA provided as follows:

Sigma . . . shall not oppose the inclusion of Buy American and other similar domestic content requirements that could affect sales of waterworks fittings in pending or existing legislation or regulations. Sigma will also not take any action designed to encourage the revocation or reduction of domestic content requirements in any existing laws, regulations, or specifications adopted by any federal, state or local governmental entity or any subdivision or affiliate thereof.

(CX 1194 at 004 § 3(c)(iv)).

2438. Sigma stopped lobbying against Buy American laws as a result of the MDA. (CX 2523 (Bhattacharji, Dep. 243-246) (“Q. But at the bigger level of government Buy America provisions, you no longer tried to change those rules? A. That’s what we had signed, so no.”)).

2439. In early November of 2009, the U.S. Chamber of Commerce planned a conference call with its “resident Buy America Policy Expert,” and invited Mr. Florence of Frontenac, who forwarded the invitation along to Mr. Pais, Mr. McGivern, and Mr. Bhattacharji of Sigma. (CX 0935 at 002). Mr. McGivern cautioned that participating in lobbying activities directed against Buy American legislation:

I would suggest that if they are looking for quotes it should come under the Frontenac name and not Sigma in order to protect the MDA. I could be introduced as a Frontenac investor as well as Sigma Chairman.

(CX 0935 at 001). Mr. Bhattacharji was even more concerned:

Adding to VP’s caution, please be very careful while talking to US COC. Even if we are ‘technically’ not violating the MDA by speaking as investors and not SIG, we cannot afford to antagonize [McWane] who can pull the MDA off the table using some other excuse if they feel strongly about our attempts to beat back the BA laws related to pipe fittings.

(CX 0935 at 001). Mr. Florence responded that he would attend alone, and that “I knew there was some sensitivity but was not clear.” (CX 0935 at 001; Pais, Tr. 1831-1833 (testifying that he was unaware of any such “sensitivity”)).

2440. On January 19, 2010, Mr. Bhattacharji of Sigma terminated Sigma’s retention of SDA, the public relations firm it had previously engaged to lobby against “Buy American” legislation, writing that,

In light of our decision to become a master distributor for Tyler Fittings and the decision to start our domestic manufacturing of pipe restraints, we are handicapped in terms of taking a vocal and visible position against the Buy American rules that have or are being enacted in the Congress.”

(CX 1000; Pais, Tr. 1834-1837; *see also* CX 2523 (Bhattacharji, Dep. at 244-246 (the MDA required Sigma to stop its opposition to Buy American laws, and Sigma did so)).

### **11.8.5 Sigma Was Not Permitted to Sell to U.S. Pipe**

2441. The MDA precluded Sigma from selling McWane’s Domestic Fittings to U.S. Pipe. (CX 2203 at 001; Morton, Tr. 2850-2851).

2442. McWane agreed to permit Sigma to re-sell McWane Domestic Fittings to one non-Distributor customer, ACIPCO, but not to U.S. Pipe. As Mitchell Rona explained in the course of the MDA negotiations:

McWane will not amend to formally include U.S. Pipe. [Tatman] is firm that they will not share their profit here too and feel they already did so with Acipco who is formally in the agreement now.

(CX 1046 at 001; Rona, Tr. 1587-1590).

2443. U.S. Pipe ceased investigating its own potential manufacturing of Domestic Fittings as a result of assurances from Sigma in June 2009 that Sigma would produce Domestic Fittings. (Morton, Tr. 2876-2877).

2444. At his October 13, 2009 meeting in Birmingham, Alabama with Mr. Morton of U.S. Pipe, Mr. Tatman conveyed to Mr. Morton that under the MDA between McWane and Sigma, U.S. Pipe would not be able to source its Domestic Fittings through Sigma, but would instead have to purchase directly from McWane. (Morton, Tr. 2842; CX 2203 at 001 (“Tatman informed me that Sigma was forbidden from selling to USP as per the Master Distribution Agreement signed between Union and Sigma.”)).

2445. Mr. Morton previously met with Sigma about procuring Domestic Fittings, and understood that Sigma expected to be able to provide U.S. Pipe with Domestic Fittings pursuant to the MDA. (Morton, Tr. 2852-2853).

2446. At their October 13 meeting, Mr. Tatman quoted Domestic Fittings price multipliers of .43 (4” - 12”) and .53 (14” - 24”). (Morton, Tr. 2851; CX 2203 at 001).

2447. Sigma had previously offered lower Domestic Fittings price multipliers to U.S. Pipe, offering .38 (4” - 12”) and .48 (14” - 24”). (Morton, Tr. 2852; CX 2203 at 001).

2448. Mr. Morton mentioned the prior Sigma quote to Mr. Tatman, and told Mr. Tatman that U.S. Pipe needed the same multiplier in order to be competitive with ACIPCO. Mr. Tatman responded that the multipliers Sigma had quoted were from earlier in the MDA negotiation, and that U.S. Pipe would be competitive with ACIPCO at the higher multipliers. (CX 2203 at 001).

### **11.9 The MDA Did Not Increase Output or Expand the Market for Domestic Fittings**

2449. The MDA did not increase output or expand the size of the market for Domestic Fittings. (*Infra* ¶¶ 2450-2453).

2450. McWane had not expected that entry by Sigma – through the MDA or independently – would increase the size of the Domestic Fittings market. (CX 0729 at 001 (Tatman July 21, 2009 email: “having more Domestic suppliers doesn’t really increase the size of the pie”); CX 2481 (Nowlin, Dep. at 138-139) (calling the idea having more domestic suppliers does not really increase the size of the pie “a fairly obvious statement.”)).

2451. In a June 2009 presentation, Mr. Tatman noted that having multiple domestic suppliers would not significantly increase the overall Domestic Fittings market size and that a net tonnage gain scenario for McWane was unlikely. (CX 0076 at 006; Tatman, Tr. 656).
2452. Mr. Walton advocated against the MDA because he viewed every sale that Sigma made as a lost sale for McWane, and could also lead to the loss of business on non-Domestic Fittings. (CX 0111; CX 2485 (Walton, Dep. at 34-35 (explaining that he made this recommendation to Mr. McCullough))).
2453. The MDA did not, in fact, increase the size of the Domestic Fittings market. (CX 2527 (Pais, IHT at 232-233) (McWane's sales would have been the same without the MDA: "Q. But by and large, you think the vast majority of customers would have purchase[d] those domestic fittings [that Sigma sold under the MDA] from McWane? A. Yes."); CX 2531 (Rybacki, Dep. at 160-161) ("The fact that Sigma had access to McWane fittings under the MDA, that didn't cause there to be more domestic jobs; is that right? A. Correct." "Q. . . . By having access to those fittings, you didn't expand the size of the pie, if you will, you expanded Sigma's ability to service a piece of that pie, is that fair? A. Yes.")).

#### **11.10 McWane and Sigma Entered into the MDA with Specific Intent to Monopolize the Domestic Fittings Market**

2454. McWane and Sigma entered into the MDA with specific intent to monopolize the Domestic Fittings market. (*Infra* ¶¶ 2455-2465).
2455. McWane's Exclusive Dealing Policy, as implemented through the MDA, was calculated to put financial pressure on Star and to prevent it from gaining credibility with customers. (CX 0997 at 003).
2456. As early as February 20, 2009, in assessing Sigma's option for private label supply of Domestic Fittings from McWane, Mr. Pais informed Walter Florence, a Sigma Board Member, that Sigma may be able to use its "relationship with McWane" to enter into a supply relationship that would "marginalize Star." (CX 1003 at 004).
2457. Messrs. McCullough, Tatman, Willett, Jansen, Brown and Walton had a meeting on or about August 20, 2009 at which they discussed, among other things, the decision to sell Domestic Fittings to Sigma through the MDA. (CX 2353 (Mr. Walton's handwritten notes from that meeting); (CX 2485 (Walton, Dep. at 37-38))).
2458. At the August 20, 2009 meeting, Mr. McCullough made the following points about selling Domestic Fittings to Sigma through the MDA:

*\* LM want to sell SIGMA to put pressure on Star. LM hopefully to drive Star out of business. Would rather have competition other than Star.*

LM thinks that we should sell SIGMA as an insurance policy and to continue to put pressure on Star.... LM approved Rick's

recommendation page of his PowerPoint presentation on selling SIGMA.”

(CX 2353 at 004 (emphasis added) (Mr. Walton handwritten notes of August 20, 2009 meeting); (CX 2485 (Walton, Dep. 42-43 (“I wrote down that Leon said that . . . I remember it more as comments that Leon made towards the end of the meeting.”))).

2459. In evaluating the decision to sell Domestic Fittings to Sigma, Mr. Tatman wrote that he did not think that Sigma would be “willing to generate little to no incremental margin \$ just to help us block Star.” (CX 0076 at 008; CX 2485 (Walton, Dep. at 67-69) (Mr. Walton had asked Mr. Tatman to state his recommendations for responding to the potential Star and Sigma entry)).
2460. In a July 27, 2009 presentation titled “Sigma - Domestic Review Session,” Mr. Tatman concluded that having Sigma sell McWane branded product should (1) “reduce Star’s ability to grow share,” (2) “keep[] additional overcapacity from being added to the industry,” and (3) “help drive some additional level of price stability.” (CX 0465 at 010; *see also* CX 0170 at 009 (subsequent version of same presentation sent to McCullough and Walton)).
2461. {  

} (CX 1022 at 003, *in camera*).

2462. As Mr. Pais explained in a September 22, 2009 dictated message: “[I]f we do our job right, it might isolate Star and make them suffer with their investment even more, because they may not be able to gain credibility . . . . We need to develop an exclusive agreement arrangement with each customer . . . or we will end up strengthening Star.” (CX 0997 at 003-004; Pais, Tr. 1842-1846).

2463. Mr. Rona also recognized that the McWane Exclusive Dealing Policy in which Sigma agreed to participate under the MDA would make Star’s entry more difficult. (CX 2529 (Rona, IHT at 195-196 (“[T]here’s no question for any entrant that requiring exclusivity on those parts would be inherently more difficult than without it”))).

2464. Mr. Tatman’s budget for 2010, prepared after the MDA was signed and the Exclusive Dealing Policy was announced, noted that Domestic pricing would erode if Star emerged as a legitimate competitor, but assumed that the competitive threat from Star had been neutralized. (CX 0102 at 001 (2010 Budget narrative, assuming that Domestic Fittings pricing would remain flat, and that there would be no loss of Domestic Fittings market share to Star); CX 0102 at 002 (noting risk of “erosion of domestic pricing if Star emerges as a legitimate competitor”); Tatman, Tr. 982-988, 1046; *see also* CX 0454 (Tatman emailing budget narrative to Walton and McCullough on October 30, 2009, and noting that “Star’s impact is still unknown, but they do represent some risk in market pricing if they indeed are able to become a viable competitor for domestic fittings.”))).

2465. In addition to marginalizing Star, Sigma also believed that the MDA could benefit Sigma by improving pricing in the non-Domestic Fittings market. Sigma thought that “a healthy

business relationship between us [Sigma] buying from them [McWane] and meeting the spirit of the [MDA] agreement,” could lead to “an increase in the price in the market, then the market would come to a better price” for imported Fittings. (CX 2529; Rona, IHT at 200-202) (discussing CX 0266 at 003); CX 0266 at 003 (Rona August 31, 2009 internal MDA negotiation comments noting possibility that a healthy relationship with McWane could lead to higher blended Fittings multipliers: “We have a better chance the a healthy relationship leads to a X =.30 on the blended . . . .”); CX 0278 at 001 (Mr. Pais email referring to the “spirit of the agreement”); CX 0997 at 003 (Mr. Pais expressing the hope that the MDA would “stabilize the market”).

## **12 As a Result of Its Exclusive Dealing Policy and the MDA, McWane Was Able to Maintain Its Monopoly Power in the Domestic Fittings Market**

2466. As a result of its Exclusive Dealing Policy and the MDA, McWane was able to maintain its monopoly power in the Domestic Fittings market. (*Infra* ¶¶ 2467-2472).
2467. If Sigma had independently entered the market for domestically manufactured Fittings, competition would have been enhanced and consumer welfare increased, resulting in lower prices. (CX 2260-A (Schumann Rep. at 80, 82-83)).
2468. McWane’s Exclusive Dealing Policy lowered the degree of competition that otherwise would have existed between McWane and Star, resulting in lower consumer welfare and higher prices. (CX 2260-A (Schumann Rep. at 78-79); Schumann, Tr. 3770).
2469. McWane’s Exclusive Dealing Policy eliminated the competition in the Domestic Fittings market for day-to-day bids and erected a barrier to entry that impeded Star’s growth and its ability to efficiently manufacture Domestic Fittings in the long run. (CX 2260-A (Schumann Rep. at 78-79)).
2470. By using its market power to impede Star’s growth, McWane managed to maintain a level of monopoly power that Star otherwise would have diminished. (CX 2260-A (Schumann Rep. at 78)).
2471. By denying Star the services of Distributors that represented such a large share of the U.S. market, McWane through its full support policy erected a barrier to entry that impeded Star’s growth and its ability to most efficiently manufacture Domestic Fittings. (CX 2260-A (Schumann Rep. at 78)).
2472. By unilaterally imposing an exclusive dealing form of vertical restraint on waterworks Distributors, McWane acted to maintain its monopoly position and monopoly power whenever local, state, or federal regulations required that waterworks projects use only domestically manufactured Fittings and when customers otherwise exhibited a strong preference for domestically produced Fittings. (CX 2260-A (Schumann Rep. at 57)).

### 12.1 McWane Was Able to Maintain Its Dominant Share of Domestic Fittings in 2010

2473. Despite Star's entry, McWane maintained a dominant market position in Domestic Fittings, with a market share of { } in 2010 and { } in 2011. (CX 2260 at 021 (Schumann Rep. at 19 tbl. 2), *in camera*).
2474. Distributors can purchase Domestic Fittings from only two manufacturers, Star and McWane, since they are the only Domestic Fittings suppliers. (McCutcheon, Tr. 2259; Webb, Tr. 2748-2749 (HD Supply purchases Domestic Fittings primarily from McWane, and only from Sigma when Sigma was selling McWane Fittings); Thees, Tr. 3118-3119, 3084-3085 (Ferguson currently purchases approximately 95 percent of its Domestic Fittings from McWane, and a "little bit" from Star, and only purchased McWane-manufactured Domestic Fittings from Sigma when Sigma was selling McWane Fittings); Sheley, Tr. 3406 (Illinois Meter purchases Domestic Fittings from McWane only)).

### 12.2 McWane Was Able to Increase Prices of Domestic Fittings in 2010

2475. As a result of its Exclusive Dealing Policy and the MDA, McWane was able to increase prices of Domestic Fittings in 2010. (*Infra* ¶¶ 2476-2484).
2476. In a November 3, 2009 email, Mr. Jansen instructed the McWane sales team to use the Exclusive Dealing Policy to protect the price of Domestic Fittings: "when you have someone say that we need to match pricing due to the other guys we need to take a firm stance and ask who is going to use them. **There can be a price out there but if no one uses it then it becomes a mute [sic] point.**" (CX 0108 at 001 (emphasis in original)).
2477. McWane was able to refuse to offer Project Pricing for Domestic Fittings in a local market "unless Star is an issue." (CX 2199 (rejecting request for Project Pricing in August 2010); CX 2480 (Napoli, Dep. 87-88)).
2478. For example, in response to an HD Supply request for a volume pricing quote for Domestic Fittings, Mr. Napoli declined to lower the price: "No. We are the only one who makes the full line of 24" and down. No need to drop the price unless Star is an issue." (CX 2199 at 001; CX 2480 (Napoli, Dep. at 87-88)).
2479. Distributors believe that if Sigma had entered the Domestic Fittings market Domestic Fittings prices would have been lower. (CX 2489 (Morrison, IHT at 92-93) ("Now, if there's three players in the domestic market, there's no reason to think that the same situation wouldn't be occurring, that there'd be people wanting to deviate from the so-called standard cost to get an order."); CX 2515 (Sheley, IHT at 144-145) ("I think – with three players in the market, I believe Tyler's position would have folded immediately. . . . It would have put a negotiable position in the marketplace. . . . If Sigma would have made the same move [entered the Domestic Fittings market], I think there would have been a very minimal price increase at best.")).



2480. Mr. Tatman has specifically refused to lower Domestic Fittings prices in response to competition from Star unless McWane saw evidence that it was starting to lose business. (CX 2192; CX 2480 (Napoli, Dep. 88-90)).
2481. McWane was able to increase its prices for Domestic Fittings following the passage of ARRA. (CX 2544 (Coryn, Dep. at 88-89); Webb, Tr. 2736-2738 (prices for McWane's Domestic Fittings increased during the ARRA period)).
2482. On December 21, 2009, Mr. Tatman sent out customer letters announcing multiplier increases for Domestic Fittings (amounting to a 7% net increase across all sizes), effective January 22, 2010. (CX 1663 at 001-002; *see also* CX 1656 at 001-003; CX 1657 at 001-003; Tatman, Tr. 811).
2483. {
- } (RX-632 at 027, *in camera*; Tatman, Tr. 1004, *in camera*).
2484. McWane has reduced the rebates it offers for Domestic Fittings. (*E.g.*, CX 2513 (Webb, IHT at 98-100)).

### **12.3 There Were Delays and Quality Shortfalls in McWane's Supply of Domestic Fittings to Sigma Under the MDA**

2485. There were delays and quality shortfalls in McWane's supply of Domestic Fittings to Sigma under the MDA. (*Infra* ¶¶ 2486-2491).
2486. Having implemented its plan to keep Sigma and Star out of the Domestic Fittings market, McWane was unable to keep up with demand for Domestic Fittings. (CX 1521 at 001 (during the MDA, McWane was "backed up in EVERYTHING including 4"-24" A items"); Rona, Tr. 1565-1566 (describing McWane "backlog" and "ramp up" issues, and other "teething pains" in implementing the MDA); CX 2529 (Rona, IHT at 222-223) (noting McWane's "manufacturing problems as a result of the added volume"); CX 2530 (Rona, Dep. at 304-306); CX 2527 (Pais, IHT at 201); *see also* CX 1853 at 001 (Mr. Pais writes to the M20 management group "I am aware of the various – yours and others – concerns about [McWane's] deliveries."); CX 1460 at 002 (Sigma's "customers are becoming very impatient with [Sigma] on the flow of information and material from [McWane]."))).
2487. Sigma received "constant complaints" about the McWane Domestic Fittings it sold, even before the execution of the MDA. (CX 2524 (Box, Dep. at 93-94)).
2488. Sigma received complaints from its OEM customers about the quality of the McWane Fittings it sold. (CX 2524 (Box, Dep. at 88)). Sigma received Domestic Fittings through the MDA that were not up to Sigma's quality standards, and Sigma had to repair those Fittings. (CX 2524 (Box, Dep. at 89)).

2489. McWane refused to change its internal quality control measures in order to meet Sigma's standards. (CX 1537 at 001 (Box writing on September 29, 2009 that Tatman was "making sure we understood they would not change their internal acceptance criteria as a result of the MDA"))).
2490. Sigma sometimes had to return bad Fittings to McWane, which could double the lead time from 4 weeks to 8 weeks, causing serious delays on the projects. (CX 2524 (Box, Dep. at 90-91)).
2491. McWane did not improve their attention to quality after they signed the MDA with Sigma. (CX 2524 (Box, Dep. at 95-96)).

**12.4 McWane Terminated the MDA After It Received Notice of the FTC Investigation, but Has Continued to Sell Domestic Fittings to Sigma**

2492. McWane terminated the MDA after it received notice of the FTC investigation, but has continued to sell Domestic Fittings to Sigma. (*Infra* ¶¶ 2493-2496).
2493. The MDA was in effect from approximately September 2009 through August 2010. (Rona, Tr. 1704; CX 1435 at 002; Pais, Tr. 1826 (Sigma received a notice of termination of the MDA from McWane in early 2010)).
2494. On February 17, 2010, Mr. Tatman delivered to Mr. Pais a notice of termination under the MDA, to be effective 180 days thereafter. (CX 1435 at 001-002).
2495. The Federal Trade Commission notified McWane of its antitrust concerns about McWane's Exclusive Dealing Policy in January 2010. (Letter dated January 22, 2010, from Christopher G. Renner, Attorney, Federal Trade Commission, to G. Ruffner Page, Jr., President, McWane, Inc. (Attachment B)<sup>40</sup>).
2496. After McWane terminated the MDA, it supplied Sigma with Domestic Fittings throughout 2010 and continues to do so today. (CX 2530 (Rona, Dep. at 298-299); CX 1472 (February 16, 2011 Rona email stating "I received a call from Tyler related to our agreement for domestic fittings"); CX 1747 at 003 (showing Sigma Domestic Fitting sales in each month of 2010); *see also* CX 2026 at 029, *in camera*)).

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<sup>40</sup> *See* Fed. R. Evid. 201(c)-(d).

**PROPOSED CONCLUSIONS OF LAW****A. GENERAL**

1. The Federal Trade Commission (“FTC”) has jurisdiction over the subject matter of this proceeding and over Respondent, McWane, Inc. (“McWane”).
2. McWane is, and at all relevant times has been, a corporation as “corporation” is defined by Section 4 of the FTC Act, 15 U.S.C. § 44, as amended.
3. McWane’s acts and practices with respect to Fittings are in or affect commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. Section 5 of the FTC Act prohibits “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1) (2008).
5. Conduct that violates Section 1 or 2 of the Sherman Act is deemed to constitute an unfair method of competition and hence a violation of Section 5 of the FTC Act as well. *FTC v. Cement Inst.*, 333 U.S. 683, 694 (1948); *Fashion Originators’ Guild v. FTC*, 312 U.S. 457, 463-64 (1941).

**B. MARKET DEFINITION**

6. The standards for defining a relevant antitrust market under the Sherman Act are the same as those developed for the analysis of mergers under the Clayton Act. *United States v. Grinnell Corp.*, 384 U.S. 563, 572-73 (1966); *Image Tech. Servs. v. Eastman Kodak Co.*, 125 F.3d 1195, 1204 n.3 (9th Cir. 1997).
7. A well-defined antitrust market consists of “any grouping of sales whose sellers, if unified by a hypothetical cartel or merger, could profitably raise prices significantly above the competitive level.” *Coastal Fuels Inc. v. Caribbean Petroleum Corp.*, 79 F.3d 182, 197 (1st Cir. 1996), *cert. denied*, 519 U.S. 927 (1996); *Brown Shoe Co., v. United States*, 370 U.S. 294, 325-26 (1962); 2010 Horizontal Merger Guidelines at § 4.1.1. A relevant market is comprised of a relevant product market and a relevant geographic market. *Brown Shoe*, 370 U.S. at 325-26 (1962).
8. A relevant product market includes all products or services that are reasonable substitutes for the same purpose or use from a buyer’s point of view. *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 394-95 (1956); *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1435 (9th Cir. 1995); *see also In re R.R. Donnelley & Sons Co.*, 120 F.T.C. 36, 153 (1995).

9. The key factors in identifying the bounds of a relevant product market are “(1) the reasonable interchangeability of use” by consumers and “(2) the cross-elasticity of demand between the product itself and substitutes for it.” *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 119 (D.D.C. 2004) (quoting *Brown Shoe*, 370 U.S. at 325); *FTC v. Swedish Match*, 131 F. Supp. 2d 151, 157 (D.D.C. 2000); *FTC v. Staples*, 970 F. Supp. 1066, 1074 (D.D.C. 1997).
10. The relevant geographic market is “the ‘area of effective competition . . . in which the seller operates, and to which the purchaser can practicably turn for supplies.’” *United States v. Philadelphia Nat’l Bank*, 374 U.S. 321, 359 (quoting *Tampa Elec. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961)); *Morgenstern v. Wilson*, 29 F.3d 1291, 1296 (8th Cir. 1994); 2010 Horizontal Merger Guidelines at § 4.2.2; *In re Polypore*, 2010 FTC LEXIS 17, at \*492.
11. The supply of ductile iron pipe fittings 24” or less in diameter (“Fittings”) for use on waterworks projects with Open Specifications in the United States is a relevant market (the “Fittings market”).
12. The supply of Domestic Fittings for use on waterworks projects with Domestic-only specifications in the United States is a relevant market (“the Domestic Fittings market”).

### C. MONOPOLY AND MARKET POWER

13. Monopoly power is “the power to control prices or exclude competition.” *E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956); *accord Eastman Kodak Co. v. Image Tech. Servs.*, 504 U.S. 451, 481 (1992).
14. Market shares in excess of 90% are sufficient to establish the presumption of monopoly power and market power in markets characterized by high barriers to entry. *Jacobs v. Tempur-Pedic Int’l, Inc.*, 626 F.3d 1327, 1339-1340 (11th Cir. 2010); *see also E.I. DuPont de Nemours & Co.*, 351 U.S. 377, 379, 391 (1956); *Grinnell Corp.*, 384 U.S. at 567; *Eastman Kodak Co. v. Image Tech. Servs.*, 504 U.S. 451, 481 (1992); *United States v. Microsoft Corp.*, 253 F.3d 34, 51-56; *Graphic Prods. Distribs. v. Itek Corp.*, 717 F.2d 1560, 1570 (11th Cir. 1983); *Staples*, 970 F. Supp. at 1081-82, 1086.
15. Market shares sufficient to support a monopolization claim are also sufficient to support attempted monopolization. *See, e.g., Defiance Hosp. v. Fauster-Cameron, Inc.*, 344 F. Supp. 2d 1097, 1112-13 (N.D. Ohio 2004); *see also McGahee v. N. Propane Gas Co.*, 858 F.2d 1487, 1506 (11th Cir. 1988); *Arthur S. Langenderfer, Inc. v. S.E. Johnson Co.*, 917 F.2d 1413, 1443 (6th Cir. 1990).
16. Market power is the collective “ability [of firms] to significantly affect prices and other outcomes in the [] market.” *Cal. ex rel. Harris v. Safeway, Inc.*, 651 F.3d 1118, 1154 (9th Cir. 2011). Collective market shares sufficient to establish monopoly power under Section 2 are sufficient to establish market power under Section 1. *Id.* at 1154 n.7.

17. McWane has, and at all relevant times has had, monopoly power or the dangerous probability of achieving monopoly power in the Domestic Fittings market.
18. McWane, Sigma and Star collectively have, and at all relevant times have had, market power in the relevant Fittings market.

**D. COUNT ONE: MCWANE ORCHESTRATED A CONSPIRACY WITH ITS COMPETITORS TO RESTRAIN PRICE COMPETITION BY LIMITING PROJECT PRICING**

19. Agreements among horizontal competitors to raise, lower, stabilize, or otherwise restrain price competition are *per se* illegal under Section 1 of the Sherman Act and Section 5 of the FTC Act. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224 n.59 (1940); *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 648 n.10 (1980) (per curiam); *United States v. Gen. Motors Corp.*, 384 U.S. 127, 148 (1966).
20. An antitrust agreement is established when two or more firms share “a unity of purpose or a common design and understanding, or a meeting of the minds,” or in other words, share a “conscious commitment to a common scheme designed to achieve an unlawful object.” *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 771 (1984); *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 768 (1984).
21. An antitrust agreement is established by evidence of the conspirators’ parallel pricing conduct along with various “plus” factors that tend to exclude the possibility that the alleged conspirators acted independently. *See In re Travel Agent Comm’n Antitrust Litig.*, 583 F.3d 896, 907 (6th Cir. 2009); *Cason-Merenda v. Detroit Med. Ctr.*, 2012-1 Trade Cas. (CCH) ¶ 77,893 (E.D. Mich. Mar. 22, 2012).
22. An antitrust agreement may also be established by evidence of a *quid pro quo* arrangement or mutual assurances regarding price, which can be communicated verbally or via conduct alone. *Sugar Inst. v. United States*, 297 U.S. 553, 601 (1936); *Gen. Motors Corp.*, 384 U.S. at 142-43; *see also Isaksen v. Vt. Castings, Inc.*, 825 F.2d 1158, 1164 (7th Cir. 1987); Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶¶ 1404, 1410c (Supp. 2012).
23. McWane, Sigma and Star agreed to stabilize and increase Fittings prices by curtailing Project Pricing and increasing price transparency.

**E. COUNT TWO: MCWANE AND ITS COMPETITORS PARTICIPATED IN AN ILLEGAL INFORMATION EXCHANGE**

24. The elements of a Section 1 violation are: (1) the existence of a contract, combination, or conspiracy among two or more separate entities (*i.e.*, concerted action), that (2) unreasonably restrains trade. *E.g.*, *Law v. NCAA*, 134 F.3d 1010, 1016 (10th Cir. 1998).

25. The reciprocal exchange of information among competitors constitutes concerted action under Section 1. *Container Corp.*, 393 U.S. 333, 335 (1969); *see also Todd v. Exxon Corp.*, 275 F.3d 191, 196 (2d Cir. 2001); Areeda & Hovenkamp, *Antitrust Law* ¶ 1409a; *see also In re N. Tex. Specialty Physicians*, 140 F.T.C. 715, 738 (2005).
26. A *prima facie* case that an information exchange will likely harm competition is satisfied by showing that the structure of the market is susceptible to coordination, and that the nature of the information exchanged has the potential or tendency to facilitate coordination. *See McWane*, slip op. at 21; *Gypsum*, 438 U.S. at 441 n. 16; *Todd v. Exxon*, 275 F.3d at 207-08.
27. Complaint Counsel has established a *prima facie* case that the DIFRA Information Exchange caused competitive harm because the structure of the Fittings market is susceptible to coordination and the nature of the DIFRA Information Exchange has the potential and tendency to facilitate coordination.
28. To rebut a *prima facie* case of competitive harm, horizontal restraints must be (1) reasonably necessary to achieve a procompetitive efficiency that is (2) legitimate (*i.e.*, “cognizable” and “plausible”) and (3) supported by evidence in the record. *In re Realcomp*, slip op. at 16 (Nov. 2, 2009); *see also Broadcast Music, Inc. v. CBS, Inc.*, 441 U.S. 1 (1979); *FTC v. Indiana Fed’n of Dentists*, 476 U.S. 447 (1986); *In re Polygram Holding, Inc.*, 136 F.T.C. 310 (2003); Areeda & Hovenkamp, *Antitrust Law*, ¶1505.
29. *McWane* has not shown that the DIFRA Information Exchange is reasonably necessary to achieve any cognizable, plausible and valid efficiency justification.

**F. COUNT THREE: MCWANE INVITED ITS COMPETITORS TO JOIN A PER SE UNLAWFUL CONSPIRACY**

30. An invitation to collude on price constitutes an unfair method of competition in violation of Section 5 of the FTC Act. *McWane*, slip op. at 20-22. *See also Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012); Areeda & Hovenkamp, *Antitrust Law* ¶ 1419; Stephen Calkins, *Counterpoint: The Legal Foundation of the Commission’s Use of Section 5 to Challenge Invitations to Collude is Secure*, ANTITRUST 69 (2000).

31. Invitations to collude need not be private communications and “can occur in speeches at industry conferences, announcements of future prices, statements on earnings calls, and in other public ways.” *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 733 F. Supp.2d 1348, 1360 (N.D. Ga. 2010) (citing complaint in *In re Valassis Commc’ns, Inc.*, 2006 FTC LEXIS 25 (April 19, 2006)); *see also In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 906 F.2d 432, 445-47 (9th Cir. 1990); *Standard Iron Works v. ArcelorMittal USA, Inc.*, 639 F. Supp. 2d 877, 892-95 (N.D. Ill. 2009); *In re Travel Agency Comm’n Antitrust Litig.*, 898 F. Supp. 685, 690 (D. Minn. 1995); *In re U-Haul Int’l Inc.*, FTC File No. 081 0157 (2010).

**G. COUNT FOUR: MCWANE ENLISTED ITS COMPETITOR SIGMA AS A MASTER DISTRIBUTOR TO PREVENT COMPETITION IN THE DOMESTIC FITTINGS MARKET**

32. Under Section 1 of the Sherman Act “concerted action may be amply demonstrated by an express agreement.” *See, e.g., United States v. Delta Dental*, 943 F. Supp. 172, 174-174 (D.R.I. 1996).
33. The Master Distribution Agreement (“MDA”) between McWane and Sigma constitutes concerted action under Section 1 of the Sherman Act.
34. For purposes of Section 1 analysis, a firm is considered a potential competitor “if there is evidence that entry by the firm is reasonably probable in the absence of the relevant agreement.” *McWane*, slip op. at 22 n.18 (citing *Yamaha Motor Co. v. FTC*, 657 F.2d 971, 977-79 (8th Cir. 1981); *United States v. Siemens Corp.*, 621 F.2d 499, 506-07 (2d Cir. 1980); *Engine Specialties, Inc. v. Bombardier, Ltd.*, 605 F.2d 1 (1st Cir. 1979); *DOJ/FTC Guidelines*, § 1.1 n.6 (2000).
35. Sigma was a potential competitor in the Domestic Fittings market prior to signing the MDA with McWane.
36. Agreements among actual and potential competitors to allocate markets unreasonably restrain trade and are *per se* unlawful. *See, e.g., Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46 (1990) (per curiam); *United States v. Topco Assocs.*, 405 U.S. 596, 608, 612 (1972); *Blue Cross & Blue Shield United v. Marshfield Clinic*, 65 F.3d 1406 (7th Cir. 1995); *Engine Specialties, Inc. v. Bombardier, Ltd.*, 605 F.2d 1 (1st Cir. 1979); *Eli Lilly & Co. v. Zenith Goldline Pharm., Inc.*, 172 F. Supp. 2d 1060 (S.D. Ind. 2001).
37. The MDA between McWane and Sigma is analogous to an agreement to allocate the Domestic Fittings market to McWane and is *per se* unlawful under Section 1 of the Sherman Act.

38. Alternatively, Complaint Counsel has established a *prima facie* case that the MDA unreasonably restrained trade in Domestic Fittings in two separate ways: (i) the inherently suspect nature of the restraint has been shown; (ii) the anticompetitive nature of the restraint has been shown together with evidence of McWane and Sigma's market power. *See, e.g., Realcomp II, Ltd. v. FTC*, 635 F.3d 815, 825-826 (6th Cir. 2011); *In re Polygram Holding, Inc.*, 136 F.T.C. 310 (2003); *United States v. Realty Multi-List, Inc.*, 629 F.2d 1351 (5th Cir. 1980).
39. McWane has not shown that the MDA is reasonably necessary to achieve any cognizable, plausible and valid efficiency justification. *Broadcast Music, Inc. v. CBS, Inc.*, 441 U.S. 1 (1979); *In re Polygram Holding, Inc.*, 136 F.T.C. 310 (2003); Areeda & Hovenkamp, *Antitrust Law*, ¶1505.

**H. COUNT FIVE: MCWANE AND SIGMA CONSPIRED TO MONOPOLIZE THE DOMESTIC FITTINGS MARKET BY EXCLUDING STAR**

40. The elements of a conspiracy to monopolize claim under Section 2 of the Sherman Act are (1) concerted action, with (2) the specific intent to monopolize, and (3) an overt act in furtherance of the conspiracy. *Levine v. Cent. Fla. Med. Affiliates*, 72 F.3d 1538, 1556 (11th Cir. 1996); *Thompson v. Metro. Multi-List, Inc.*, 934 F.2d 1566, 1582 (11th Cir. 1991).
41. The MDA agreement, executed by McWane and Sigma, satisfies the concerted action element of a conspiracy to monopolize claim. *See, e.g., Fraser v. Major League Soccer*, 284 F.3d at 68; *Futurevision Cable Sys. of Wiggins, Inc. v. Multivision Cable TV Corp.*, 789 F. Supp. 760, 766 (S.D. Miss. 1992); *Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc.*, 602 F.3d 237, 254 n.7 (3d Cir. 2010); *U.S. Anchor Mfg., Inc. v. Rule Indus., Inc.*, 7 F.3d 986, 1001-1002 (11th Cir. 1993).
42. The standard for proving specific intent under a conspiracy to monopolize claim is the same as it is for attempted monopolization: the intent to exclude competition or control prices. *Am. Tobacco Co.*, 328 U.S. at 788-789; *United States v. Consol. Laundries Corp.*, 291 F.2d 563, 573 (2d Cir. 1961); *Robert's Waikiki U-Drive, Inc. v. Budget Rent-A-Car Systems*, 491 F. Supp. 1199, 1223 (D. Haw. 1980).
43. Specific intent may be established by direct evidence or inferred from "conduct that has no legitimate business justification but to destroy or damage competition." *GTE New Media Servs., Inc. v. Ameritech Corp.*, 21 F. Supp. 2d 27, 45 (D.D.C. 1998) (citing *Ass'n for Intercollegiate Athletics for Women v. NCAA*, 735 F.2d 577, 585 (D.C. Cir. 1984)); *see also Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 318 (3d Cir. 2007).
44. "Specific intent in the antitrust context may be inferred from a defendant's unlawful conduct." *Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc.*, 602 F.3d 237, 257 (3d Cir. 2010).



45. McWane and Sigma entered into the MDA with the specific intent to monopolize the Domestic Fittings market.
46. McWane and Sigma took overt acts in furtherance of their conspiracy to monopolize the Domestic Fittings market. *See Fraser v. Major League Soccer*, 284 F.3d at 68; *United States v. Hickok*, 77 F.3d at 1005-1006.

**I. COUNTS SIX AND SEVEN: MCWANE MONOPOLIZED OR ATTEMPTED TO MONOPOLIZE, THE MARKET FOR DOMESTIC FITTINGS**

47. The offense of monopolization has two elements: “the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of superior product, business acumen or historic accident.” *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966).
48. Attempted monopolization requires proof “(1) that the defendant has engaged in predatory or anticompetitive conduct, with a (2) specific intent to monopolize, and (3) a dangerous probability of achieving monopoly power.” *Spectrum Sports v. McQuillan*, 506 U.S. 447, 456 (1993); *Lorain Journal Co. v. United States*, 342 U.S. 143, 148-152 (1951).
49. The respondent’s “specific intent to destroy competition or build monopoly,” may be proven by direct evidence, or inferred from conduct alone where the defendant’s conduct is sufficiently egregious. *See Times-Picayune Publ’g Co. v. United States*, 345 U.S. 594, 626 (1953); *accord Spectrum Sports v. McQuillan*, 506 U.S. 447, 454-456 (1993).
50. Under Section 2, a *prima facie* case that exclusive dealing likely harms competition can be established with a showing that (1) there is a significant degree of market foreclosure, and (2) the ability of one or more significant rivals to compete is thereby impaired. *ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 2012 U.S. App. LEXIS 20342, at \*28 (3d Cir. 2012); *United States v. Dentsply*, 399 F.3d 181 (3d Cir. 2005); *Microsoft*, 253 F.3d 34; *McWane*, slip op. at 25.
51. Complaint Counsel has established that McWane’s Exclusive Dealing Policy caused a significant degree of market foreclosure, thereby impairing the ability of one or more significant rivals to compete.
52. McWane has not rebutted Complaint Counsel’s *prima facie* case of competitive harm because McWane’s Exclusive Dealing Policy is not a form of competition on the merits and does not involve greater efficiency or enhanced consumer appeal.

**J. CONCLUSION**

53. The Order entered herein is necessary and appropriate to remedy and prevent the violations of law found to exist. *FTC v. Nat'l Lead Co.*, 352 U.S. 419 (1957); *FTC v. Ruberoid Co.*, 343 U.S. 470 (1952); *Jacob Siegal & Co. v. FTC*, 327 U.S. 608 (1946); *In re Polygram Holding, Inc.*, 136 F.T.C. 310 (2003).

Dated: December 19, 2012

Respectfully submitted,

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ATTACHMENT A – SUMMARY OF TELEPHONE RECORD EVIDENCE

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ATTACHMENT B – JANUARY 22, 2010 FTC LETTER TO McWANE





UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

January 22, 2010

**VIA FEDERAL EXPRESS**

G. Ruffner Page, Jr.  
President  
McWane Inc.  
2900 Highway 280, Suite 300  
Birmingham, AL 35223

Re: McWane/Sigma

Dear Mr. Page:

The Bureau of Competition of the Federal Trade Commission is conducting a non-public investigation to determine whether McWane Inc. (“McWane”), Sigma Corporation (“Sigma”) or others have engaged in, or are engaging in, unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, through pricing or marketing policies for ductile iron pipe fittings, including but not limited to exclusive dealing with distributors of those products. Neither this letter nor the existence of the nonpublic investigation indicates that the Federal Trade Commission has concluded that McWane, Sigma or anyone else has violated Section 5.

Starting today, and throughout the pendency of this investigation, we ask that McWane take affirmative steps to preserve all potentially relevant materials, including electronic documents and computer files, and cease the destruction or recycling of any backup tapes or other media containing relevant materials. McWane has an obligation to preserve and not destroy evidence that may be relevant to a government investigation from the time that it becomes aware of the investigation. *See generally* 15 U.S.C. § 50 and 18 U.S.C. § 1505.

As used in this letter, “McWane” means McWane Inc., its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures. The words “subsidiary,” “affiliate,” and “joint venture” refer to any firm in which there is a partial (10 percent or more) or total ownership or control between the corporations. The term “Sigma” means Sigma Corporation, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures. The words “subsidiary,” “affiliate,” and “joint venture” refer to any firm in which there is a partial (10

percent or more) or total ownership or control between the corporations.

Also as used in this letter, the term “materials” means all written, recorded, transcribed, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, including, but not limited to, documents, analyses, letters, telegrams, memoranda, reports, bills, receipts, telexes, contracts, invoices, books, accounts, statements, studies, surveys, pamphlets, notes, charts, maps, plats, tabulations, graphs, tapes, data sheets, data processing cards, printouts, net sites, microfilm, indices, calendar or diary entries, manuals, guides, outlines, abstracts, histories, and agendas, minutes, or records of meetings, conferences, electronic mail and telephone or other conversations or communications, as well as films, tapes or slides and all other data compilations in the possession, custody or control of McWane as defined above, or to which McWane has access. The term “documents” also includes drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of McWane. The term “other data compilations” includes information stored in, or accessible through, computer or other information retrieval systems, together with instructions and all other material necessary to use or interpret such data compilations.

Relevant materials include all materials relating to the distribution, pricing or sale of any ductile iron pipe fitting or accessory, including but not limited to materials relating to:

1. All documents relating to the Master Distributor Agreement between McWane and Sigma announced on September 22, 2009, including without limitation all documents relating to (i) the origin, purpose, objective, rationale, or intent of the Master Distributor Agreement; (ii) the negotiation, development, structure or terms of the Master Distributor Agreement; (iii) the actual, contemplated, forecasted or intended effect of the Master Distributor Agreement on the marketing, competition, prices, sales, output, profits, or costs of any ductile iron pipe fitting; (iv) any actual or potential alternatives to the execution of the Master Distributor Agreement; and (v) the actual, contemplated, forecasted or intended effect of the Master Distributor Agreement on any consumers of ductile iron pipe fittings;
2. All documents relating to the policy announced by McWane on September 22, 2009, of making its “domestic fittings and accessories available to customers who elect to fully support McWane branded products for the domestic fitting and accessory requirements” (the “Policy”), including without limitation all documents relating to (i) the origin, purpose, objective, rationale, or intent of the Policy; (ii) the negotiation, development, structure or terms of the Policy; (iii) the actual, contemplated, forecasted or intended effect of the Policy on the marketing, competition, prices, sales, output, profits, or costs of any ductile iron pipe fitting; and (iv) the actual, contemplated, forecasted or intended effect of the Policy on any consumers of ductile iron pipe fittings;
3. All documents relating to competition or supply and demand conditions in the distribution, pricing or sale of any ductile iron pipe fittings, including, but not limited to, market studies, market research, forecasts, or surveys, whether created by McWane or any other entity;
4. All documents relating to any practice by McWane of offering discounts or rebates

conditioned on a customer's purchase of a fixed percentage or volume of their ductile iron pipe fittings from McWane;

5. All documents relating to the terms and conditions under which McWane or Sigma will deal with a distributor or end user of McWane's ductile iron pipe fittings; and

6. All documents relating to the effect of any statutory or regulatory "Buy America" preference adopted by any state or federal government on the marketing, competition, prices, sales, output, profits, or costs of any ductile iron pipe fitting.

At this time, we do not request that McWane voluntarily submit any documents. We may request or compel the production of documents or information at a later date.

If you have any questions concerning this matter, please contact me at (202) 326-3173.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Christopher G. Renner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Christopher G. Renner  
Attorney

COMPLAINT COUNSEL'S EXHIBIT INDEX

**IN THE MATTER OF MCWANE, INC.  
DOCKET NO. 9351**

**COMPLAINT COUNSEL'S EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>	<b>Date</b>	<b>Also Referenced As</b>	<b>Admissibility</b>	<b>In Camera</b>	<b>Trial Transcript Citation</b>
CX 0001 - CX 0002	Intentionally Not Used			N/A		
CX 0003	Bharat Agarwal's 2009 Calendar	5/21/2010		JX 0002-A	Ordered 8/17/2012	
CX 0004	E-mail from Robert Marr to Bharat Agarwal re: DI Fitting Usage	9/10/2009		JX 0002-A	Ordered 8/17/2012	
CX 0005	E-mail from Tilak Agarwal to Bharat Agarwal and Laxman Agarwal re: Visit	7/16/2009		JX 0002-A	Ordered 8/17/2012	
CX 0006 - CX 0008	Intentionally Not Used			N/A		
CX 0009	E-mail from Dan McCutcheon to Utility Division Managers, Susan Schepps, Pam Garey et al. re: Tyler Letter	9/23/2009		JX 0002-A		Tr. 2588:1; 4426:13
CX 0010	Letter from Jerry Jansen (Tyler/Union) and Scott Frank (Clow Water) to Valued Customer re: Products Available through Sigma	9/22/2009		JX 0002-A		Tr. 2300:19; 3456:9,14; 5468:7,9,14,17; 5469:2,6; 5470:2,14,25; 5472:22; 5476:24
CX 0011	E-mail from Michael Berry to Dan McCutcheon re: Tyler statements in John Ristine's territory	9/21/2009		JX 0002-A		Tr. 2330:11,18; 2332:23
CX 0012	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Dan McCutcheon to Kirthi Jain re: FTC - 10,11,12	3/29/2010	RX-601	JX 0002-A		
CX 0013	E-mail from Dan McCutcheon to Jerry Webb re: HD/Sterling VA - Hot Lanes orders w/Attach: Acknowledgement1.pdf, Acknowledgement2.pdf, Acknowledgement.pdf	9/28/2009		JX 0002-A		Tr. 2307:12; 2311:18,19; 2623:4; 4390:8; 4391:15; 4392:11,25; 4393:7,9; 4394:5,21,22; 4395:20
CX 0014	E-mail from Chuck Carrigan to Dan McCutcheon, Shaun Smith and Ramon Prado re: Jerry Webb Memo w/Attach: 090924 Jerry Webb Memo.pdf	9/24/2009		JX 0002-A		Tr. 2306:1
CX 0015 - CX 0016	Intentionally Not Used			N/A		
CX 0017	Spreadsheet: DIPF Estimated Profitability	00/00/2010		JX 0002-A	Ordered 8/31/2012	
CX 0018	Intentionally Not Used			N/A		
CX 0019	Star 2010 Internal In-House Survey	00/00/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0020	Spreadsheet: DIPF - Estimated Profitability w/Handwritten Notes	00/00/2010		JX 0002-A	Ordered 8/31/2012	
CX 0021	E-mail from Roy Pitts to Sean Kelly and Rick Fantham re: Tyler Union Announcement	9/22/2009		JX 0002-A		
CX 0021-A	E-mail from Roy Pitts to Sean Kelly and Rick Fantham re: Tyler Union Announcement w/Attach: McWane Announcement Sept 22nd 2009.pdf	9/22/2009		Tr. 3301:14-16		Tr. 3300:18; 3301:12,14,15; 3311:18
CX 0022	E-mail from Rick Tatman to Roy Pitts re: Tyler Union Announcement	10/2/2009		JX 0002-A		Tr. 3306:15; 3330:5,7
CX 0023	E-mail from Rick Tatman to Roy Pitts, Sean Kelly and Jerry Jansen re: MIXHAJOC.XLS w/Attach: MIXHAJOC.XLS	10/5/2009		JX 0002-A		
CX 0024	E-mail from Jerry Jansen to Sean Kelly, Rick Tatman and Roy Pitts re: McWane Domestic Fittings	11/7/2009		JX 0002-A		Tr. 3308:11,18; 3311:21; 3313:2,13; 3364:7,9
CX 0025	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Rick Tatman to Roy Pitts, Sean Kelly, Susan Welch et al. re: Hajoca Open Domestic fitting orders - TylerUnion	11/26/2009	RX-237	JX 0002-A		Tr. 3315:3
CX 0026	Intentionally Not Used			N/A		
CX 0027	E-mail from Roy Pitts to Sean Kelly, Jeff Kinsey, Rick Fantham et al. re: Tyler Union	3/10/2010		JX 0002-A		Tr. 3317:23
CX 0028	E-mail from Rick Fantham to Paul Weinstein, Sean Kelly, Jeff Kinsey et al. re: Tyler Union Fittings	4/1/2010		JX 0002-A		
CX 0029	E-mail from Roy Pitts to Rick Fantham and Sean Kelly re: 2010-2012 McWane Corporate Rebate Program	3/23/2010		JX 0002-A		
CX 0030	E-mail from Sean Kelly to Rick Fantham and Roy Pitts re: McWane WW Org Chart	4/13/2010		JX 0002-A		Tr. 3324:24
CX 0031 - CX 0033	Intentionally Not Used			N/A		
CX 0034	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Mult Change plan for your review	1/23/2008		JX 0002-A		Tr. 2397:16; 2510:19; 3177:18
CX 0035	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Tyler Map Import/Blended Multipliers w/Attach: Tyler Map	1/29/2008		JX 0002-A		Tr. 2408:1; 3184:17
CX 0036	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Casting Prices	4/7/2008		JX 0002-A		
CX 0037	E-mail from Dan Dan McCutcheon to Ramesh Bhutada re: Star - Multiplier Change (California)	5/6/2008		JX 0002-A		Tr. 2419:16; 2554:21

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0038	E-mail from Dan McCutcheon to Matt Minamyler, Susan Schepps, Neil McGillivray et al. re: Tyler increase letter from Ramon w/Attach: January 2008 Tyler Union Letter	1/14/2008		JX 0002-A		Tr. 2380:23,24; 2390:15; 2391:6; 2392:8; 2505:17; 3156:16,17
CX 0039	E-mail from Matt Minamyler to Bud Leider, Michael Berry, Neil McGillivray et al. re: JR and Casting prices	4/7/2008		JX 0002-A		
CX 0040	Intentionally Not Used			N/A		
CX 0041	E-mail from Dan McCutcheon to Navin Bhargava, Ravi Pallod and Bhagwan Bhutada re: E-mailing www.electrosteel.com w/Attach: www.eletrosteel.com.url	2/22/2008		Tr. 2370:20-22		Tr. 2369:16; 2370:17,20,21
CX 0042	E-mail from Kirthi Jain to Dan McCutcheon, Navin Bhargava, Matt Minamyler et al. re: Sales & Margin Report - Jan 2008 w/Attach: Jan Margin Report.xls	2/4/2008		JX 0002-A	Ordered 8/31/2012	Tr. 2500:5
CX 0043	Intentionally Not Used			N/A		
CX 0044	E-mail from Shaun Smith to Dan McCutcheon and Matt Minamyler re: Tulsa Bid Sleeves	4/2/2008		JX 0002-A		Tr. 2448:20; 2468:19; 2471:3,7; 3204:6,14; 3256:1
CX 0045	Intentionally Not Used			N/A		
CX 0046	E-mail from Dan McCutcheon to Navin Bhargava and Ramesh Bhutada re: Market Master-Fittings 150k tons in U.S.	7/13/2006		JX 0002-A		Tr. 2357:9
CX 0047	Letter from Jerry Jansen to Tyler/Union Utility Customers in AL, FL, GA, PR re: July 14, 2008 Price Change for Utility Fittings and Accessories	6/17/2008		JX 0002-A		Tr. 2447:5; 3215:25; 3216:2
CX 0048	Summary of Third Meeting to Establish Trade Association for Ductile Water Works Fittings	11/21/2006		JX 0002-A		Tr. 1138:21; 1226:1; 1266:4
CX 0049	E-mail from Dan McCutcheon to Margaret Powell and Navin Bhargava re: DIFRA report - Star Pipe w/Attach: DIFF_06Short0708_short_lg_lcan.xls	6/5/2008		JX 0002-A		Tr. 2427:22
CX 0050	Intentionally Not Used			N/A		
CX 0051	E-mail from Rick Tatman to Leon McCullough, Thomas Walton, Mike Vore et. al. re: RST Comments rebates	7/22/2008		JX 0002-A		
CX 0052	E-mail from Bree Holland to Rick Tatman, tb2@sigmaco.com, Crawford et al. re DIFRA reports w/Attach: DIFRA Reports.pdf	6/17/2008		JX 0002-A		Tr. 534:08; 935:25; 949:9; 1055:18; 1297:7; 1319:10,20; 1383:12; 2110:10,12; 2444:6,18; 2561:22
CX 0053 - CX 0066	Intentionally Not Used			N/A		
CX 0067	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Notes for Sigma - Domestic Discussion w/Attach: Sigma and Domestic DIWF.doc	5/26/2009		JX 0002-A		Tr. 617:19-21

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0068	Intentionally Not Used			N/A		
CX 0069	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Additional Inputs Sigma and Domestic	5/27/2009		JX 0002-A		Tr. 633:25
CX 0070	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Reasons to not sell Sigma	5/9/2009		JX 0002-A		Tr. 634:11-13
CX 0071 - CX 0073	Intentionally Not Used			N/A		
CX 0074	E-mail from Rick Tatman to Thomas Walton re: Competition	6/24/2009	CX 2355 (TU-FTC-0031436 - TU-FTC-0031437)	JX 0002-A		Tr. 646:14; 651:18; 3975:2,19; 3977:4; 3978:6; 5576:2,5; 5610:21,25;
CX 0075	Intentionally Not Used			N/A		
CX 0076	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: RST Response Competition w/Attach: Star Review June 29th.ppt	6/29/2009		JX 0002-A		Tr. 653:3,4; 672:6; 5612:25; 5613:7; 5614:2,6
CX 0077	Intentionally Not Used			N/A		
CX 0078	E-mail from Siddharth Bhattacharji to Tom Brakefield, Larry Rybacki, Victor Pais et al. re: thoughts on plant work	6/11/2009				Tr. 3475:4-10
CX 0079	Intentionally Not Used			N/A		
CX 0080	E-mail from Siddharth Bhattacharji to George Liu, Mitchell Rona, Victor Pais et al. re: yr discussions with XPF	5/23/2009				Tr. 3475:4-10
CX 0081	E-mail from Gopi Ramanathan to Stuart Box, Victor Pais, Siddharth Bhattacharji et al. re: Response on your Korea sourcing plan with strategic look @ other options	5/15/2009				Tr. 3475:4-10
CX 0082	E-mail from Siddharth Bhattacharji to Victor Pais re: pusan flash	5/7/2009		JX 0002-A		
CX 0083	E-mail from Siddharth Bhattacharji to Victor Pais re: anything to add to this draft for BOD? w/Attach: BOD note on BA draft 040909.doc	4/9/2009		JX 0002-A		Tr. 3973:21
CX 0084	Intentionally Not Used			N/A		
CX 0085	E-mail from Victor Pais to Ryan Cardin re: Our appeal for help with the BA provision in the ARRA bill w/Attach: Appeal Letter to Sen Menendez-020109.pdf; ARRA-BA Amendment-012709.pdf; WASMA-Amendment-ARRA-Modification-012809.doc; Customer Letter-for-Open Choice-020109.pdf	2/1/2009				Tr. 3475:4-10

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0086	Letter from Victor Pais to SIG-BOD re: BOD Update with an Important MAP	6/5/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 0087	E-mail from Victor Pais to Cindy Dayotas and Adam Warren re: E-mails LR may have missed w/Attach: Victor Victor Pais to M20_Urgent_Final Customer Letter for Sigma Pricing plan.msg; VP to M20_Important_Sales_GM_PBT \$ Impact of Tyler Price Revision.msg; Victor Victor Pais (Sigma) to Perry Fowler (AGC)_Thank you for your support with EPA and BA Issue.msg	4/27/2009		Tr. 3475:4-10		
CX 0088	Intentionally Not Used			N/A		
CX 0089	Sigma MDA FAQ	9/23/2009		Tr. 3475:4-10		
CX 0090	E-mail from Stuart Box to Billie Sue Atkinson, Mitchell Rona, Gopi Ramanathan et al.re: SDP trip report to Mueller Albertville	7/9/2009		Tr. 1533:13,16-17		Tr. 1533:10,13,16,20
CX 0091	E-mail from Victor Pais to Siddharth Bhattacharji re: Powerpoint Presentation for Mtg with Frontenac w/Attach: Stuart Box 122309 Revised.pptx	11/20/2009		Tr. 3475:4-10		
CX 0092	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Rick Tatman to Laura Alvey, Debbie Vinson, Susan Welch et al. re: Announcement Letter and Q&A document for today's Conference Call Tuesday 9-22, @ 10:30 am EST w/Attach: McWane Announcement Sept 22nd 2009.pdf; Sept 22nd Announcement Q&A.doc	9/22/2009	CX 1606	JX 0002-A		
CX 0093	Intentionally Not Used			N/A		
CX 0094	E-mail from Rick Tatman to Thomas Walton and Leon McCullough re: ACIPCO - Star and Sigma	10/16/2009		JX 0002-A		
CX 0095	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Jerry Burns Call - ACIPCO Domestic Arrangement	10/22/2009		JX 0002-A		
CX 0096	Intentionally Not Used			N/A		
CX 0097	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Large Dia Fittings ACIPCO - TylerUnion	11/5/2009		JX 0002-A		
CX 0098	OEM Distribution Agreement (Draft edited 9/7/09)	9/7/2009		Tr. 3475:4-10		
CX 0099	E-mail from Jim McGivern to Walter Florence, Jeff Marcus, Victor Pais et al. re: conf. call	7/28/2009		JX 0002-A		Tr. 1782:23; 2175:17,19

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0100	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Draft 2010 Hajoca Corporate Rebate Program.doc w/Attach: Draft 2010 Hajoca Corporate Rebate Program.doc	11/17/2009		JX 0002-A		Tr. 741:7
CX 0101	E-mail from Walter Florence to Siddharth Bhattacharji, Victor Pais, James P. Smith et al. re: BA Update	3/17/2009		JX 0002-A		
CX 0102	TylerUnion (USA) 2010 Budget	00/00/2010		JX 0002-A		Tr. 982:25; 1043:13; 1045:7
CX 0103	Pages from Rick Tatman's Composition Book	12/1/2009		JX 0002-A		
CX 0104	Intentionally Not Used			N/A		
CX 0105	Domestic Market Strategy	00/00/2009		JX 0002-A		
CX 0106	E-mail from David Henrie to Scott Frank and Shavel Traver re: HD Wichita	10/5/2009		JX 0002-A		
CX 0107	E-mail from Greg Adams to Jerry Jansen re: Urgent domestic job issue	11/3/2009		JX 0002-A		
CX 0108	E-mail from Jerry Jansen to Aaron Huttel, Dan Todd, Greg Adams et al. re: Domestic Stance	11/3/2009		JX 0002-A		
CX 0109	Intentionally Not Used			N/A		
CX 0110	E-mail from Greg Adams to Jerry Jansen re: Weekly for Greg Adams ending 10-3-09	10/4/2009		JX 0002-A		
CX 0111	E-mail from Leon McCullough to Thomas Walton and Rick Tatman re: No Subject	8/17/2009		JX 0002-A		Tr. 762:25; 5564:20,23; 5565:10; 5567:18
CX 0112	Intentionally Not Used			N/A		
CX 0113	E-mail from Rick Tatman to Dennis Charko re: McWane Domestic Fittings 2010 brand/market protection	8/24/2009		JX 0002-A		Tr. 686:9
CX 0114	Intentionally Not Used			N/A		
CX 0115	E-mail from Thomas Walton to Rick Tatman and Kent Brown re: No Subject w/Attach: Prices Reduction and Rebate Analysis 081409.xls	8/18/2009		JX 0002-A		
CX 0116	Intentionally Not Used			N/A		
CX 0117	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Updated Sigma Review August 20th 2009.ppt w/Attach: Updated Sigma Review August 20th 2009.ppt	8/21/2009		JX 0002-A		
CX 0118	Presentation: Domestic DIWF Program & Policy Review	1/28/2010		JX 0002-A		Tr. 704:24; 705:16; 706:23; 725:20
CX 0119	TylerUnion Presentation: Key Market Communications	9/22/2009		JX 0002-A		Tr. 704:1,4; 725:20,21
CX 0120	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Oct 21st Information.ppt w/Attach: Oct 21st Information.ppt	10/20/2008		JX 0002-A		Tr. 222:1,5; 223:18; 834:1,3

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0121	Intentionally Not Used			N/A		
CX 0122	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Rough Draft Sigma Letter w/Attach: Sigma - Domestic Product Agreement 7292009.doc	7/28/2009		JX 0002-A		
CX 0123 - CX 0125	Intentionally Not Used			N/A		
CX 0126	E-mail from Leon McCullough to Rick Tatman, Thomas Walton and Mike Vore re: 2010 Programs	12/8/2009		JX 0002-A		
CX 0127	E-mail from Mike Vore to Leon McCullough re: No Subject w/Attach: 2010-2012 HDS Corporate Rebate Program-Final.doc; 2010-2012 Hajoca Corporate Rebate Program-Final.doc; 2010-2012 Ferguson Corporate Rebate Program-Final.doc; WinWholeSale 2009 Corporate Rebate Estimate.xls; 2010-2012 WinWholeSale Corporate Rebate Program-Final-Plan A. doc	11/20/2009		JX 0002-A		
CX 0128	E-mail from Leon McCullough to Harry Kirk re: ACT 2010 Program Feb 19 2010.doc w/Attach: 2010 ACT-McWane Corporate Rebate Program Updated Feb 19.docx; ACT 2010 Program Feb 19 2010.doc	2/19/2010		JX 0002-A		
CX 0129	2010-2012 McWane Corporate Rebate Program for WinWholeSale	00/00/2010		JX 0002-A		
CX 0130	Intentionally Not Used			N/A		
CX 0131	E-mail from Michael Lowe to Leon McCullough, Allan Boscacci, Kurt Winter et al. re: Final Corporate Rebate Programs w/Attach: 2009 WinWholesale Corporate Rebate Program(2).doc; 2009 Ferguson Corporate Rebate Program(2).doc; 2009 Hajoca Corporate Rebate Program(2).doc; 2009 HDS Corporate Rebate Program(2).doc; 2009 MainLine Corporate Rebate Program(2).doc	12/12/2009		JX 0002-A		
CX 0132	E-mail from Michael Lowe to Leon McCullough, Mike Vore and Kip Wixson re: Ferguson Corporate Rebate Program w/Attach: 2010 Ferguson Corporate Rebate Program-Final.doc	3/20/2010		JX 0002-A		
CX 0133	Intentionally Not Used			N/A		
CX 0134	OEM Distribution Agreement signed by Victor Pais for Sigma	09/00/2009		JX 0002-A		
CX 0135 - CX 0136	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Confidential

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0137	E-mail from Rick Tatman to Leon McCullough to Thomas Walton re: Draft Announcement letter w/Attach: May Price Increase Draft C.doc; Sigma Increase.pdf; Current map 4 14 08.ppt; Map #4 Conservative.ppt; Map #5 Aggressive.ppt	5/5/2008		JX 0002-A		Tr. 492:14;
CX 0138	Letter from Jerry Jansen to All Tyler Union Distribution Customers re: Pricing for Utility Fittings and Accessories	5/7/2008		JX 0002-A		Tr. 2782:15,17; 2783:7; 3423:10; 3441:8; 3552:9,10; 3568:14; 3640:21; 3932:8
CX 0139	E-mail from Leon McCullough to Ruffner Page re: Initial DIFRA Output reports w/Attach: Initial DIFRA Output Reports 2006 2007 Apr 2008.pdf; Initial DIFRA Output Analysis.xls	6/18/2008		JX 0002-A		Tr. 536:10
CX 0140 - CX 0150	Intentionally Not Used			N/A		
CX 0151	E-mail from Bree Holland to Rick Tatman, Gary Crawford, Dan McCutcheon et al. re: DIFRA June report w/Attach: Fittings Report June 2008.ppt	7/31/2008		JX 0002-A		
CX 0152	E-mail from Bree Holland to Rick Tatman, Gary Crawford, Dan McCutcheon et al. re: DIFRA Report August 2008 w/Attach: Fittings Report August 2008.pdf	10/1/2008		JX 0002-A		
CX 0153 - CX 0154	Intentionally Not Used			N/A		
CX 0155	E-mail from Bree Holland to Rick Tatman, Gary Crawford, Dan McCutcheon et al. re: DIFRA reports w/Attach: DIFRA May-October 2008.pdf	11/8/2008		JX 0002-A		
CX 0156	E-mail from Walter Florence to Jim McGivern re: EPA eases stimulus 'Buy American' rule	8/11/2009		JX 0002-A		
CX 0157	Intentionally Not Used			N/A		
CX 0158	E-mail from Thad G. Long to Rick Tatman, David Green, Tom Brakefield et al. re: DIFRA Bylaws w/Attach: Articles of incorporation of Ductile Iron Fittings Research Association.DOC, BHM-#15234103-v6-Ductile Fittings Research Association (DIFRA) - Bylaws.DOC	2/12/2008		JX 0002-A		Tr. 574:12; 575:22; 1260:18
CX 0159	E-mail from Tom Brakefield to Thad G. Long, Victor Pais, Dan McCutcheon et al. re: [no subject]	5/5/2008		JX 0002-A		
CX 0160	E-mail from Rick Tatman to Thad G. Long, Tom Brakefield, Victor Pais et al. re: DIFRA	5/5/2008		JX 0002-A		Tr. 485:16
CX 0161	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0162	E-mail from Victor Pais to Alex and Gopi Ramanathan re: My mtg with LMZ -- and a XINDIA/XXP Review w/Attach: XINDIA-XXP-MAJOR REVIEW-08408.doc, VP to Mr Fang_CONFIDENTIAL--Opportunities for Sigma and XXP in India and ME.msg, Victor to Ruffner_Response to your interest in ISO Fittings and Summary of Global opportunities....msg	8/5/2008		Tr. 3475:4-10		
CX 0163	<b>REMOVED -- DUPLICATE EXHIBIT</b> TylerUnion (USA) 2010 Budget	12/11/2009	CX 0102	JX 0002-A		
CX 0164	TylerUnion Presentation: General Manager's Meeting April 7th 2009	4/7/2008		JX 0002-A		Tr. 4210:23; 4215:18,19; 4682:23,25; 4684:24; 4685:10; 4686:3; 4688:2; 4689:1
CX 0165	TylerUnion Presentation: Blended DIWF Published Multipliers Against New List LP-5091	4/10/2009		JX 0002-A		
CX 0166 - CX 0168	Intentionally Not Used			N/A		
CX 0169	DRAFT "MINUTES" McWane Sales Managers Conference Call Agenda 1-12-2010	1/12/2010		JX 0002-A		
CX 0170	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Updated Sigma Review Slide for Tuesday w/Attach: Sigma Review July 28th 2009 Rev B.ppt	7/27/2009		JX 0002-A		
CX 0171	E-mail from Rick Tatman to Jerry Jansen re: Tyler/Union New List Price & Multipliers w/Attach: Multiplier Change Analysis.xlsm, _AVG certification_.txt	4/12/2009		JX 0002-A		
CX 0172	E-mail from Jerry Jansen to Dan Todd re: Facts	2/14/2010		JX 0002-A		
CX 0173	E-mail from Jerry Jansen to Bruce Mcloughlin, Napoliand Tom Frank re: Tyler/Union	1/19/2010		JX 0002-A		
CX 0174 - CX 0175	Intentionally Not Used			N/A		
CX 0176	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Sigma Price Increase Letter 5-19-08 w/Attach: Sigma Price Inc 5-19-08.pdf	4/25/2008		JX 0002-A		Tr. 488:17
CX 0177	E-mail from Rick Tatman to Thomas Walton re: New List and Multipliers w/Attach: Multiplier Change Analysis April 24 2009.xls	4/27/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0178	E-mail from Ruffner Page to Leon McCullough re: Star following Tyler Maps	1/31/2008	CX 0341 (TU-FTC-0249236 - TU-FTC-0249237); CX 2315 (TU-FTC-0261470 - TU-FTC-0261471)	JX 0002-A		Tr. 412:13; 4231:1,6,18; 4257:11
CX 0179	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Restarting Activity on a Fittings Trade association	2/7/2008		JX 0002-A		
CX 0180 - CX 0208	Intentionally Not Used			N/A		
CX 0209	E-mail from Victor Pais to Victor Pais re: Various BA options	4/23/2009		Tr. 2025:15-17		Tr. 2019:6; 2025:1,10,15,16,19
CX 0210	Intentionally Not Used			N/A		
CX 0211	E-mail from Victor Pais to Siddharth Bhattacharji re: QRR Meeting with YBH	4/26/2009		Tr. 2027:23-25		Tr. 2027:11,13,20,23,24;
CX 0212	E-mail from Victor Pais to M20 re: Urgent Final Customer Letter for Sigma Pricing plan w/Attach: Customer Letter - Pricing Review-Fittings-042709.pdf	4/27/2009		Tr. 2013:25-2014:2		Tr. 2012:24,25; 2013:22,25; 2014:1; 2022:4
CX 0213	E-mail from Victor Pais to Michelle McNamee re: Thank you -- I will see you Friday morning @ 9 am	4/29/2009		Tr. 3475:4-10		
CX 0214	E-mail from Victor Pais to Walter Florence, Fang Gang, Jim McGivern et al. re: A Comprehensive Market and Plan Review w/ Attach: BOD-UPDATE-MARKET REVIEW-50409.doc, Victor Pais to Shanaghan_A formal appeal to EPA for waiver consideration.msg, CUSTOMER LETTER - PRICING REVIEW-FITTINGS-042709, PIR-709-50109.xls	5/4/2009		Tr. 1750:14-16		Tr. 1749:21; 1750:2-4,9,14-15; 2162:2
CX 0215 - CX 0218	Intentionally Not Used			N/A		
CX 0219	E-mail from Mitchell Rona to liuguang re: Need for your help to work with XPF to get some foam pieces for trial casting in USA	5/21/2009		JX 0002-A		Tr. 1460:16
CX 0220	E-mail from Victor Pais to Siddharth Bhattacharji re: Response to Bruce/Metafit... w/Attach: RESPONSE-to-BRUCE-METALFIT-052209.doc	5/23/2009		Tr. 3475:4-10		
CX 0221 - CX 0224	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0225	E-mail from Victor Pais to OEMS re: McWane's Agreement to See Sigma Domestic Product w/Attach: Sigma - Domestic Product Agreement 6.4.2009.pdf	6/5/2009		Tr. 1491:9-11		Tr. 1491:6,9,10,13,16; 1760:22,23
CX 0226 - CX 0227	Intentionally Not Used			N/A		
CX 0228	E-mail from Mitchell Rona to Victor Pais re: Display of SDP samples @ AWWA and SDP/BA review	6/11/2009		JX 0002-A		Tr. 1497:10
CX 0229 - CX 0230	Intentionally Not Used			N/A		
CX 0231	E-mail from Siddharth Bhattacharji to Stuart Box re: development plans for SDP	6/16/2009		Tr. 1500:14-16		Tr. 1500:10,14,15,19; 1666:19
CX 0232 - CX 0236	Intentionally Not Used			N/A		
CX 0237	E-mail from Mitchell Rona to Stuart Box and Gopi re: Updated with GR1 comments...excel spreadsheet to follow	7/3/2009		Tr. 1521:13-15		Tr. 1521:10,13,14,18
CX 0238	E-mail from Bob Leggett to Victor Pais re: AWWA Follow Up	7/8/2009		Tr. 3475:4-10		
CX 0239	Intentionally Not Used			N/A		
CX 0240	E-mail from Mitchell Rona to Stuart Box and Gopi Ramanathan re: Updated File w/Attach: SDPcompiledlist-V2.xls	7/11/2009		Tr. 1535:4,6-7		Tr. 1535:1,4,6,10; 1762:23,24; 1764:12,19
CX 0241	E-mail from Greg Fox to Victor Pais, Al Richardson, Siddharth Bhattacharji et al. re: ARRA compliance/SDP update	7/13/2009		Tr. 1767:23-25		Tr. 1766:20,22; 1767:2,20,23,24
CX 0242	Intentionally Not Used			N/A		
CX 0243	E-mail from Mitchell Rona to Thomas Walton re: Sigma Proposal to McWane for Domestic Fittings w/Attach: McWane-Sigma-07-13-09.doc	7/14/2009		JX 0002-A		Tr. 1560:12,15
CX 0244 - CX 0245	Intentionally Not Used			N/A		
CX 0246	E-mail from Gopi Ramanathan to Siddharth Bhattacharji re: QRR Tooling cost for SDP w/Attach: Final Tooling - Sigma Board - Fittings - V2=SDP.xls	7/20/2009		JX 0002-A		
CX 0246-A	E-mail from Gopi Ramanathan to Siddharth Bhattacharji re: QRR Tooling cost for SDP w/Attach: Final Tooling - Sigma Board - Fittings - V2=SDP.xls	7/20/2009		JX 0002-A		
CX 0247	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0248	E-mail from Mitchell Rona to OEM5 re: My Discussion with Rick Tatman concerning our proposal to McWane w/Attach: McWane-Sigma-07-13-09-reply.doc	7/23/2009		Tr. 3475:4-10		
CX 0249 - CX 0256	Intentionally Not Used			N/A		
CX 0257	E-mail from Stuart Stuart Box to Mitchell Rona, Gopi Ramanathan, Siddharth Bhattacharji et al. re: MFT tooling cost for duplication of existing c153 tooling w/Attach: 09-08-04QuotationMetaliftMJTooling.xls	8/12/2009		Tr. 1595:7,9-10		Tr. 1590:19; 1593:22; 1594:13; 1595:3,5,7,9
CX 0258	E-mail from Victor Pais to Mitchell Rona, OEM5 re: Sigma Plans for BA sourcing	8/18/2009		Tr. 1539:25-1540:2		Tr. 1539:22,25; 1540:1,5; 1692:10; 1694:19
CX 0259 - CX 0264	Intentionally Not Used			N/A		
CX 0265	E-mail from Victor Pais to OEMS re: Email from RT saying no to us selling USP thru our Master Distribution Agreement	8/30/2009		Tr. 3475:4-10		
CX 0266	E-mail from Victor Pais to OEM5, Jim McGivern re: few comments on the terms and conditions from Tyler	9/1/2009		Tr. 3475:4-10		
CX 0267 - CX 0268	Intentionally Not Used			N/A		
CX 0269	E-mail from Mitchell Rona to Siddharth Bhattacharji, Victor Pais, Jim McGivern et al. re: update from SB1	9/7/2009		Tr. 1793:13-15		Tr. 1792:13,16; 1793:10,13,14
CX 0270	Intentionally Not Used			N/A		
CX 0271	E-mail from Jim McGivern to Victor Pais, Siddharth Bhattacharji, Mitchell Rona et al. re: Master Distribution Agreement	9/9/2009		JX 0002-A		Tr. 1795:12,13
CX 0272	E-mail from Joseph W. Spransy to James M. Proctor re: Sigma Corp.-Tyler Union agreement respecting domestic fittings w/Attach: McWane SIGMA_MDA-090809-sigma version.JWS.(3).doc	9/9/2009		Tr. 3475:4-10		
CX 0273 - CX 0277	Intentionally Not Used			N/A		
CX 0278	E-mail from Victor Pais to Rick Tatman re: Signed Master Distribution Agreement document	9/15/2009		Tr. 1806:12-14		Tr. 1804:23,25; 1806:5,12,13
CX 0279 - CX 0281	Intentionally Not Used			N/A		
CX 0282	E-mail from Stuart Box to Mitchell Rona re: Final LF casting poured and cleaned at EF this week w/Attach: Sigma SDP Fittings LF trails.pptx	9/21/2009		JX 0002-A		Tr. 1470:24; 1471:9,11; 1548:21

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0283 - CX 0290	Intentionally Not Used			N/A		
CX 0291	E-mail from Victor Pais to SST-ALL re: IMPORTANT- A review of 09 + a POA for Planning for 2010... w/Attach: RST-2010-GUIDELINE-VP&LRV1-110509.xls	11/6/2009		Tr. 3475:4-10		
CX 0292 - CX 0293	Intentionally Not Used			N/A		
CX 0294	Intentionally Not Used			N/A		
CX 0295 - CX 0299	Intentionally Not Used			N/A		
CX 0300	E-mail from Mitchell Rona to Rick Tatman re: AWWA fittings 4" thru 64" w/Attach: pricing for tyler-122909.xls	12/28/2009		Tr. 3475:4-10		
CX 0301 - CX 0306	Intentionally Not Used			N/A		
CX 0307	E-mail from Victor Pais to OEM5 re: Our disc on our SDP (Sigma Dom Prodn) plan	5/20/2009		Tr. 1759:4-6		Tr. 1758:12,15; 1759:1,4,5
CX 0308	E-mail from Walter Florence to Victor Pais and Gopi Ramanathan re: Response on your Korea sourcing plan -- with strategic look @ other options...	5/16/2009		JX 0002-A		Tr. 1753:13,15
CX 0309 - CX 0311	Intentionally Not Used			N/A		
CX 0312	Letter from Victor Pais to WF re: A likely acquisition opportunity...at the right time and the right fit	2/24/2009		Tr. 3475:4-10		
CX 0313	Letter from Victor Pais to ARES Capital Corporation re: Advance Responses to Lender Questions	2/9/2009		JX 0002-A		Tr. 1988:14; 1992:13; 2154:9; 2226:14; 3916:14
CX 0314	E-mail from Al Richardson to Victor Pais re: I will be away on a quick visit to Birmingham Friday 5/1/09	4/30/2009		JX 0002-A		
CX 0315 - CX 0316	Intentionally Not Used			N/A		
CX 0317	E-mail from Victor Pais to sina-GL re: TL mtg YBH on 5/14	5/13/2009		Tr. 3475:4-10		
CX 0318	Intentionally Not Used			N/A		
CX 0319	E-mail from Victor Pais to M20 re: reviewing DIFRA-08 further... w/Attach: DIFRA-SIGMA-SMS-1208.xls	5/10/2009		JX 0002-A		Tr. 1998:12
CX 0320 - CX 0327	Intentionally Not Used			N/A		
CX 0328	Intentionally Not Used			N/A		
CX 0329	E-mail from Rick Tatman to Thomas Walton and Leon McCullough re: Star Review June 29th Rev A.ppt	7/2/2009		JX 0002-A		Tr. 747:7; 1557:23

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0330 - CX 0335	Intentionally Not Used			N/A		
CX 0336	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: HDS TylerUnion Program Rev 3 for presentation Dec 16th w/Attach: 2010-2012 HD Supply Corporate Rebate Program -Draft 2.doc, HDS 2010 TylerUnion DIWF Program Rev3.doc	12/10/2009		JX 0002-A		
CX 0337	E-mail from Rick Tatman to Leon McCullough and Mike Vore re: 2009 HDS Corporate Rebate Program.doc w/Attach: 2009 HDS Corporate Rebate Program.doc	9/24/2008		JX 0002-A		
CX 0338	Intentionally Not Used			N/A		
CX 0339	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: VMA data compared to Tyler/Union YTD fitting sales	3/10/2008	CX 1567 (McWane-002071)	JX 0002-A		Tr. 418:18-22;
CX 0340	E-mail from Rick Tatman to Leon McCullough re: Jerry Webb to send out communication on Domestic fittings and Accessories.	9/8/2009		JX 0002-A		Tr. 690:23; 691:1
CX 0341	Intentionally Not Used			N/A		
CX 0342	E-mail from Tom Crawford to Dennis Charko and Leon McCullough re: ACT 2101 McWane Corporate Rebate-Vore Revision w/Attach: 2010 ACT-McWane Corporate Rebate Program Mike Vore revision I.docx, Total Value of ACT Program Based on 2009 Business.xlsx	2/10/2010		JX 0002-A		
CX 0343	Intentionally Not Used			N/A		
CX 0344	E-mail from Rick Tatman to Leon McCullough re: ACT Program in .pdf File w/Attach: McWane ACT Rebate Program 2010_2_.pdf, 2010 McWane Corp Program ACT Rev 1 29 2010.doc	1/29/2010		JX 0002-A		
CX 0345 - CX 0346	Intentionally Not Used			N/A		
CX 0347	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Price Increase DIWF w/Attach: Util Mult Map-BLENDED LP509.pdg, Util Mult Map-Domestic LP5091 3-12.pdf, Util Mult Map-DOMESTIC LP5091 14-24.pdf, DIWF Non-Domestic Pricing Nov Report.XLS	12/13/2009		JX 0002-A		Tr. 804:1; 806:2
CX 0348	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0349	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: 2010 HDS & FEI Program w/Attach: FEI 2010 TylerUnion DIWF Program Nov 12th.doc, Amended TylerUnion DIWF 12th.doc, 2009 TylerUnion DIWF Program March 11th.doc	11/13/2009		JX 0002-A		
CX 0350 - CX 0353	Intentionally Not Used			N/A		
CX 0354	E-mail from Leon McCullough to Kent Brown, Rick Tatman, Thomas Walton et al. re: Clow Valve 24 Body Cover Wedge Quote Analysis (4).xls	8/5/2009		JX 0002-A		
CX 0355	Intentionally Not Used			N/A		
CX 0356	E-mail from Leon McCullough to Tom McDowell, Jim Wakefield and Kent Brown re: Clow Valve 24 Body Cover Wedge Quote Analysis (4).xls	8/4/2009		JX 0002-A		
CX 0357	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Ruffner Page to Leon McCullough re: Star & Domestic	6/16/2009	RX-431	JX 0002-A		
CX 0358 - CX 0361	Intentionally Not Used			N/A		
CX 0362	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Nov DIFRA report w/Attach: DIFRA_2008_11.xls	12/17/2008		JX 0002-A		
CX 0363	Intentionally Not Used			N/A		
CX 0364	E-mail from Rick Tatman to Ruffner Page re: Tyler/Union July financials & FBE w/Attach: WWorksSP.xls	8/13/2008		JX 0002-A		
CX 0365 - CX 0366	Intentionally Not Used			N/A		
CX 0367	E-mail from Rick Tatman to Leon McCullough re: American Price Increase Letter May 2008.doc w/Attach: American Price Increase Letter May 2008.doc	5/13/2008		JX 0002-A		Tr. 509:17;
CX 0368 - CX 0374	Intentionally Not Used			N/A		
CX 0375	E-mail from Rick Tatman to Leon McCullough re: Draft Z...or it just feels like it.	1/8/2008		JX 0002-A		Tr. 371:15; 384:25
CX 0376	Intentionally Not Used			N/A		
CX 0377	E-mail from Rick Tatman to Mike Vore re: ACT w/Attach: ACT 2010 Program Nov 13 2009.pdf	2/17/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0378 - CX 0381	Intentionally Not Used			N/A		
CX 0382	E-mail from Mike Vore to Leon McCullough re: ACT Program in .pdf File w/Attach: 2010 McWane Corp Program ACT Rev 1 29 2010.doc	2/2/2010		JX 0002-A		
CX 0383 - CX 0385	Intentionally Not Used			N/A		
CX 0386	E-mail from Michael Lowe to Leon McCullough, Allan Allan Boscacci, Dennis Charko et al. re: Documents for Monday and Tuesday w/Attach: Agenda Ferguson & McWane Meeting January 2010.doc, Ferguson Rebates from Divisions - 12-31-09 FINAL.xls, 2010 WinWholesale Corporate Repate Program - Final.doc, From WinWholesale - McWane Purchases 2009.xls	1/15/2010		JX 0002-A		
CX 0387 - CX 0389	Intentionally Not Used			N/A		
CX 0390	E-mail from Michael Lowe to Dennis Charko re: w/Attach: 2010-2012 WinWholesale Corporate Rebate Program - Final - Plan A doc	1/4/2010		JX 0002-A		
CX 0391 - CX 0396	Intentionally Not Used			N/A		
CX 0397	E-mail from Rick Tatman to Leon McCullough re: HDS FEI Rebate Accrual.XLS w/Attach: HDS FEI Rebate Accrual.XLS	12/9/2009		JX 0002-A		
CX 0398	E-mail from Leon McCullough to Allan Boscacci re: Hajoca	11/23/2009		JX 0002-A		
CX 0399	Intentionally Not Used			N/A		
CX 0400	E-mail from Mike Vore to Leon McCullough and Rick Tatman re: McWane VALVE HYD FITTING.pdf - Adobe Reader w/Attach: MCWANEVALVE HYD FITTING.pdf	4/10/2009		JX 0002-A		
CX 0401	Intentionally Not Used			N/A		
CX 0402	E-mail from Andy Payant to Dennis Charko, Leon McCullough, Allan Allan Boscacci et al. re: 2007 Rebates - Consolidated w/Attach: 2007 Division Rebates.xls	9/9/2008		JX 0002-A		
CX 0403 - CX 0406	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0407	E-mail from Barry Patterson to Susan Welch, Ruffner Page, Rick Tatman et al. re: Daily Activity Summary II Report - Tyler Final May 2008 w/attach: newdlyincludesUnion.xls	6/2/2008		JX 0002-A		
CX 0408 - CX 0410	Intentionally Not Used			N/A		
CX 0411	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Tonnage Spike Daily Activity Summary II Report - Combined May 8th w/Attach: newdlyincludesUnion.xls	5/9/2008		JX 0002-A		
CX 0412 - CX 0419	Intentionally Not Used			N/A		
CX 0420	E-mail from Barry Patterson to Tim Douty, Ruffner Page, Rick Tatman et al. re: Daily Combined TylerUnion April 7th w/Attach: newdlyincludesUnion.xls	4/8/2008		JX 0002-A		
CX 0421	E-mail from Barry Patterson to Tim Douty, Ruffner Page, Rick Tatman et al. re: Daily Activity Summary II - Combined Tyler/Union April 4th w/Attach: newdlyincludesUnion.xls	4/7/2008		JX 0002-A		
CX 0422	Intentionally Not Used			N/A		
CX 0423	E-mail from Leon McCullough to Ruffner Page re: Star 300 Patterns	12/4/2009		JX 0002-A		
CX 0424	E-mail from John Springer to Leon McCullough, Rick Tatman and Thomas Walton re: Waterworks Fittings Division +\$493,000 Pre Reserve for Jan	2/4/2010		JX 0002-A		
CX 0425	Intentionally Not Used			N/A		
CX 0426	E-mail from Leon McCullough to Brenda Netten re: Price Increase DIWF w/Attach: Util Mult Map-BLENDED LP5091.pdf, Util Mult Map-DOMESTIC LP5091 3-12.pdf, Util Mult Map-DOMESTIC LP5091, 14-24.pdf, DIWF Non-Domestic Pricing Nov Report.XLS	12/14/2009		JX 0002-A		
CX 0427 - CX 0430	Intentionally Not Used			N/A		
CX 0431	E-mail from Rick Tatman to Leon McCullough re: Star - Multiplier Change (Alabama)	5/13/2008		JX 0002-A		Tr. 506:16;
CX 0432 - CX 0436	Intentionally Not Used			N/A		
CX 0437	General Notes [re: McWane & Star]	9/25/2009		JX 0002-A		
CX 0438 - CX 0439	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0440	Sigma Review August 20th 2009.ppt	8/20/2009		JX 0002-A		
CX 0441	Sigma Review July 28th 2009 Rev B.ppt	7/28/2009		JX 0002-A		
CX 0442 - CX 0444	Intentionally Not Used			N/A		
CX 0445	E-mail from Jerry Jansen to Rick Tatman re: Hajoca Sean Sean Kelly Response	11/19/2009		JX 0002-A		
CX 0446 - CX 0453	Intentionally Not Used			N/A		
CX 0454	E-mail from Rick Tatman to Thomas Walton and Leon McCullough re: TylerUnion (USA) 2010 Budget w/Attach: TylerUnion 2010 Budget Narrative Final.pdf; TylerUnion 2010 Budget Cash Flow.pdf; TylerUnion 2010 Budget Income Statement.pdf	10/30/2009		JX 0002-A		
CX 0455	Intentionally Not Used			N/A		
CX 0456	E-mail from Rick Tatman to Ruffner Page re: Sigma/Victor	5/18/2009		JX 0002-A		
CX 0457 - CX 0459	Intentionally Not Used			N/A		
CX 0460	E-mail from Kent Brown to Rick Tatman re: TylerUnion (USA) 2010 Budget	11/2/2009		JX 0002-A		
CX 0461	E-mail from Mitchell Rona to Rick Tatman re: Draft for Discussion w/Attach: MCWANE-SIGMA MDA-080309.doc	8/4/2009		JX 0002-A		
CX 0462	E-mail from Leon McCullough to Rick Tatman and American RD re: Ferguson service levels	5/19/2009		JX 0002-A		
CX 0463	E-mail from Jerry Jansen to McCallister, Scott Frank, Mark Niewodowski et al. re: Large diameter Domestic Fittings	4/15/2009		JX 0002-A		
CX 0464	E-mail from Leon McCullough to Rick Tatman re: List Price Change Final draft.doc	4/14/2009		JX 0002-A		
CX 0465	E-mail to Leon McCullough and Thomas Walton re: Sigma Review July 27th 2009.ppt w/Attach: Sigma Review July 27th 2009.ppt	7/27/2009		JX 0002-A		
CX 0466	E-mail from Rick Tatman to Leon McCullough re: Rick Tatman Call : Victor	8/25/2009		JX 0002-A		
CX 0467	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0468	E-mail from Mike Vore to Leon McCullough, Dennis Charko, Allan Allan Boscacci et al. re: ACT 2101 McWane Corporate Rebate-Vore Revision w/Attach: 2010 ACT-McWane Corporate Rebate Program Mike Vore revision 1.docx; Total Value of ACT Program Based on 2009 Business.xlsx	2/2/2010		JX 0002-A		
CX 0469	Intentionally Not Used			N/A		
CX 0470	E-mail from Jerry Jansen re: Domestic Program w/Attach: 2010 TDG Domestic Ftg Program.doc	1/11/2010		JX 0002-A		
CX 0471	E-mail from Darryl Case to Rick Tatman re: Farnsworth wholesale/Tyler	11/13/2009		JX 0002-A		
CX 0472	E-mail from Greg Adams to Rick Tatman and Marla Drake re: UCANE Stimulus Update	10/24/2009		JX 0002-A		
CX 0473	E-mail from Kent Brown to Leon McCullough re Lg. Diam. Ftgs.	8/5/2009		JX 0002-A		
CX 0474	E-mail from Rick Tatman to Thomas Walton re: TylerUnion Monthly Report.doc w/Attach: TylerUnion Monthly Report.doc	3/7/2010		JX 0002-A		
CX 0475	E-mail from Rick Tatman to Jennifer Heys, Jerry Jansen and Mike Snyder re: 2010 Stocking Distributor Rebate Program	2/19/2010		JX 0002-A		
CX 0476	E-mail from Rick Tatman to Leon McCullough re: ACT 2010 Program Feb 19 2010.doc w/Attach: ACT 2010 Program Feb 19 2010.doc; 2010 ACT-McWane Corporate Rebate Program Updated Feb 19.docx	2/19/2010		JX 0002-A		
CX 0477	E-mail from Rick Tatman to Scott Frank re: Hajoca	12/15/2009		JX 0002-A		
CX 0478 - CX 0479	Intentionally Not Used			N/A		
CX 0480	E-mail from Rick Tatman to Randy Alexander, Debbie Vinson, Gwen Jackson et al. re: Rick Tatman Response FEI Eight Stocking locations	11/30/2009		JX 0002-A		
CX 0481	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Hajoca share	11/19/2009		JX 0002-A		
CX 0482 - CX 0483	Intentionally Not Used			N/A		
CX 0484	E-mail from Rick Tatman to Rick Tatman re: Jerry Burns - Notes 10/15/09	10/15/2009		JX 0002-A		
CX 0485	E-mail from Rick Tatman to Leon McCullough, Thomas Walton and Kent Brown re: RST Response Lg. Diam. Ftgs.	8/10/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0486	E-mail from Leon McCullough to Rick Tatman re: Our Responses to your 'Master Distribution Agreement' outline... w/Attach: MDA-RESPONSE-082809.doc	8/29/2009		JX 0002-A		
CX 0487 - CX 0488	Intentionally Not Used			N/A		
CX 0489	2009-2010 Production & Inventory Planning Tyler/Union	9/13/2009		JX 0002-A		
CX 0490	Intentionally Not Used			N/A		
CX 0491	McWane Corporate Rebate Program for Ferguson	00/00/2009		JX 0002-A		
CX 0492	McWane Corporate Rebate Program for Hajoca (USA)	00/00/2009		JX 0002-A		
CX 0493	McWane Corporate Rebate Program for HD Supply	00/00/2009		JX 0002-A		
CX 0494	McWane Corporate Rebate Program for Mainline	00/00/2009		JX 0002-A		
CX 0495	McWane Corporate Rebate Program for WinWholesale	00/00/2009		JX 0002-A		
CX 0496	Letter from Rick Tatman to Mitchell Rona re: ACIPCO	5/21/2009		JX 0002-A		
CX 0497	Letter from Jerry Jansen to Customers re: New List Price for Utility Fittings and Accessories Effective July 2, 2007 w/Attach: DIWF List Price History	6/4/2007		JX 0002-A		
CX 0498	E-mail from Debbie Vinson to Rick Tatman re: UNTIL PRICE CHANGES 02' TO PRESENTdoc.doc	9/18/2007		JX 0002-A		
CX 0499	Intentionally Not Used			N/A		
CX 0500	E-mail from Bill Thees to Ruffner Page re: follow up	6/15/2010		JX 0002-A	Ordered 8/17/2012	
CX 0501	Intentionally Not Used			N/A		
CX 0502	Spreadsheet: Blended/Import \$	00/00/0000		JX 0002-A	Ordered 8/17/2012	
CX 0503	Intentionally Not Used			N/A		
CX 0504	Spreadsheet: 2010 MJ Ftg Programs	00/00/2010		JX 0002-A	Ordered 8/17/2012	
CX 0505	Intentionally Not Used			N/A		
CX 0506	E-mail from Butch J. Doane to Bill Thees re: Tyler Union Announcement w/Attach: McWane Announcement Sept 22nd 2009.pdf	9/22/2009		JX 0002-A		Tr. 3086:13,16; 3096:7; 3109:4; 3115:7
CX 0507	Intentionally Not Used			N/A		
CX 0508	Handwritten notes: AWWA	6/21/2010		JX 0002-A		
CX 0509	<b>REMOVED -- DUPLICATE EXHIBIT</b> McWane Corporate Rebate Program for Ferguson	00/00/2009	CX 0491	JX 0002-A	Ordered 8/17/2012	
CX 0510	2010 McWane Corporate Rebate Program for Ferguson	00/00/2010		JX 0002-A	Ordered 8/17/2012	
CX 0511	Handwritten notes: Sigma	6/4/2009		JX 0002-A		
CX 0512 - CX 0513	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0514	E-mail from Thad G. Long to Rick Tatman, tb2@sigmaco.com, Dan McCutcheon et al. re: Draft of certain possible Agenda Items for DIFRA Meeting 3/27/2008	3/19/2008		JX 0002-A		
CX 0515	E-mail from Thad G. Long to Rick Tatman, gcrawford@uspipe.com, tb2@sigmaco.com et al. re: Ductile Iron Fittings Research Association w/Attach: 1594_001.pdf	3/19/2008	CX 1483 (DIFRA-000253 - DIFRA-000254)	JX 0002-A		
CX 0516	E-mail from Wood Herren to Thad G. Long, Tom Brakefield, tb2@sigmaco.com et al. re: No Subject w/Attach: DIFRA Input Output Format Rev 2.xls	5/28/2008		JX 0002-A		
CX 0517 - CX 0524	Intentionally Not Used			N/A		
CX 0525	E-mail from Matt Minamyer to Michael Berry, Ramon Prado, Bud Leider et al. re: Price Increase	5/6/2008		JX 0002-A		Tr. 2544:3; 3257:21; 3282:21; 3283:9; 3284:4,6
CX 0526	<b>REMOVED -- DUPLICATE EXHIBIT</b> Letter from Jerry Jansen to All Tyler/Union Distribution Customers re: Pricing for Utility Fittings and Accessories	5/7/2008	CX 0138	JX 0002-A		
CX 0527	E-mail from Ramon Prado to Chuck Carrigan, Clay Galloway and Michael Berry re: Fitting Mult. Changes on Hold w/Attach: Memo re: Pricing for Utility Fittings & Accessories	5/12/2008		JX 0002-A		Tr. 3214:14
CX 0528	E-mail from Vinod Mantri to Ramesh Bhutada, Dan McCutcheon, Navin Bhargava et al. re: Sales & Margin Report - April 2008 w/Attach: Sales & Margin Report - Apr 2008.xls	5/2/2008		JX 0002-A	Ordered 8/31/2012	Tr. 2501:11
CX 0529	Intentionally Not Used			N/A		
CX 0530	E-mail from Navin Bhargava to Dan McCutcheon re: please call me on this	5/19/2008		JX 0002-A		Tr. 2426:5; 2558:10
CX 0531	Intentionally Not Used			N/A		
CX 0532	E-mail from Dan McCutcheon to Dan McCutcheon re: fittings market 2006 w/Attach: Book1 (2).xls	11/3/2006		JX 0002-A		Tr. 2585:5
CX 0533	Intentionally Not Used			N/A		
CX 0534	E-mail from Dan McCutcheon to Ramesh Bhutada re: Tyler South Plant Announcement	10/17/2008		Tr. 2455:11-13		Tr. 2453:21,25; 2454:17; 2455:10,11,12
CX 0535 - CX 0540	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0541	E-mail from Ramesh Bhutada to Dan McCutcheon re: Market share calculation w/Attach: Market share projections (1).xls	5/30/2009		JX 0002-A	Ordered 8/31/2012	
CX 0542	E-mail from Sachin Jakhotia to Navin Bhargava, Gautam Basu and Narendra Zamwar re: Emailing: Project X-2009 Meeting Minutes w/Attach: Project X-2009 Meeting Minutes.doc	5/6/2009		JX 0002-A	Ordered 8/31/2012	
CX 0543 - CX 0544	Intentionally Not Used			N/A		
CX 0545	E-mail from Kirthi Jain to Ramesh Bhutada and Rishi Bhutada re: Company A- Proforma EBITDA statement w/Attach: Sigma Analysis 24th Jul 2009.xls	8/3/2009		JX 0002-A	Ordered 8/31/2012	
CX 0546	E-mail from Kirthi Jain to Ramesh Bhutada, Dan McCutcheon, Rishi Bhutada et al. re: Presentation to US Bank-draft w/Attach: US Bank visit Jun 1st 2009.ppt, Market share projections.xls	5/31/2009		JX 0002-A	Ordered 8/31/2012	
CX 0547	Intentionally Not Used			N/A		
CX 0548	E-mail from Sean Kelly to Roy Pitts re: Emailing: Tyler Union.pdf w/Attach: Tyler Union.pdf	9/27/2010		JX 0002-A		
CX 0549	Intentionally Not Used			N/A		
CX 0550	E-mail from Victor Pais to Jerry Webb, Larry Rybacki and Siddharth Bhattacharji re: Victor to Jerry: Thank you for your support with EPA and BA issue w/Attach: Victor Pais to Peter Shanaghan: A formal appeal to EPA for waiver consideration	4/27/2009		JX 0002-A		
CX 0551	E-mail from Glenn Fielding to Jerry Webb and Darrin Anderson re: Support of Domestic Specs	5/12/2009		JX 0002-A		
CX 0552	Memo from Jerry Webb to District Managers, Branch Managers & Operations Managers re: American Made Fittings	9/23/2009		JX 0002-A		Tr. 2763:17,25; 2764:14
CX 0553 - CX 0554	Intentionally Not Used			N/A		
CX 0555	E-mail from Jason O'Nan to Vince Roach, Jeremy Blackhurst and Dan McCutcheon re: Tyler Northeast Letter dated 7/30/08 w/Attach: 33.PDF	8/5/2008		JX 0002-A		
CX 0556	E-mail from Sachin Jakhotia to Dan McCutcheon re: ARRA - Development Plan w/Attach: ARRA - Development Plan.xls	6/10/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0557	E-mail from Dan McCutcheon to Pam Garey and Roger Johnson re: Buy USA - Development Plan update 6/12 w/Attach: ARRA - Development Plan.xls	6/12/2009		JX 0002-A		
CX 0558	Intentionally Not Used			N/A		
CX 0559	E-mail from Ramon Prado to Dan McCutcheon re: Tyler Letter w/Attach: ScanSeptember-22-2009.pdf	9/22/2009		JX 0002-A		Tr. 2305:5,6
CX 0560	E-mail from Pam Garey to Kirthi Jain re: Domestic quote log w/Attach: Domestic Quote Log.xls	3/29/2010		JX 0002-A		
CX 0561	Intentionally Not Used			N/A		
CX 0562 - CX 0564	Intentionally Not Used			N/A		
CX 0565	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Sigma Proposal - Initial Feedback w/Attach: Sigma - Domestic Product Agreement 7 29 2009.pdf	7/30/2009		JX 0002-A		
CX 0566	E-mail from Thomas Walton to Leon McCullough re: Sigma Proposal to McWane for Domestic Fittings w/Attach: McWane-Sigma-07-13-09.doc	7/15/2009		JX 0002-A		
CX 0567	Intentionally Not Used			N/A		
CX 0568	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Material for Sigma discussion 9:00am Monday w/Attach: Sigma Review July 27th 2009.ppt	7/26/2009		JX 0002-A		Tr. 756:24; 5558:20,22; 5559:6,11,15,19; 5560:21; 5561:11; 5562:1; 5564:15,17
CX 0569	E-mail from Rick Tatman to Thomas Walton re: List Price Change Final draft.doc w/Attach: List Price Change Final draft.doc	4/13/2009		JX 0002-A		Tr. 596:25; 972:16
CX 0570	Intentionally Not Used			N/A		
CX 0571	E-mail from Thomas Walton to Leon McCullough re: Material for Sigma discussion w/Attach: McWane-Sigma-07-13-09.doc; Proforma Sigma Offer July 2009.xls	7/21/2009		JX 0002-A		
CX 0572	E-mail from Mark Willett to Jerry Jansen re: Impact of Sigma w/Attach: SALEX.XLS	10/14/2009		JX 0002-A		
CX 0573 - CX 0574	Intentionally Not Used			N/A		
CX 0575	E-mail from Craig Schapiro to Scott Frank re: Sigma ANNOUNCEMENT w/Attach: CUSTOMER LETTER - PRICING REVIEW -FITTINGS-042709.pdf	4/27/2009		JX 0002-A		
CX 0576	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0577	E-mail from Jerry Jansen to Rick Tatman re: Northwest DC w/ Attach: DC Seattle or Portland.doc	11/11/2009		JX 0002-A		
CX 0578	E-mail from Rick Tatman to Thomas Walton re: Proforma Sigma Offer July 25th 2009.xls w/Attach: Proforma Sigma Offer July 25th 2009.xls	7/27/2009		JX 0002-A		
CX 0579 - CX 0582	Intentionally Not Used			N/A		
CX 0583	E-mail from Pete Lisowski to Dan McCutcheon and Bud Leider re: Week Ending 3-14-10	3/15/2010		JX 0002-A		
CX 0584	Intentionally Not Used			N/A		
CX 0585	E-mail from Todd Karren to Dan McCutcheon and Michael Berry re: Star	3/15/2010		Tr. 2613:12-14		Tr. 2612:3; 2613:11,12,13; 4411:14
CX 0586 - CX 0590	Intentionally Not Used			N/A		
	<b>REMOVED -- DUPLICATE EXHIBIT</b>					
CX 0591	E-mail from Navin Bhargava to Narendra Zamwar, Ravi Pollardand Manoj Rathi re: Status Update on Domestic Project	1/29/2010	RX-256	JX 0002-A		
CX 0592	E-mail from Bhargava to Rathi re: Star Purchase of US Domestic	1/28/2010		Tr. 2908:11-13		Tr. 2905:19,22; 2908:2,6,11,12
CX 0593	E-mail from Navin Bhargava to Dan McCutcheon and Susan Schepps re: 12-14-09 US Pipe meeting	12/17/2009		JX 0002-A	Ordered 8/31/2012	
CX 0594	E-mail from Navin Bhargava to Dan McCutcheon re: Tyler Patterns Development - China	11/28/2009		JX 0002-A		
CX 0595	E-mail from Dan McCutcheon to Navin Bhargava re: US PIPH	11/17/2009		JX 0002-A		
CX 0596 - CX 0601	Intentionally Not Used			N/A		
CX 0602	Meeting Minutes for Project Name: X-2009	5/8/2009		JX 0002-A	Ordered 8/31/2012	
CX 0603	Intentionally Not Used			N/A		
CX 0604	E-mail from Navin Bhargava to Narendra Zamwar re: Emailing: www.backmanfoundry.com - for domestic MJ foundry	3/4/2009		JX 0002-A	Ordered 8/31/2012	
CX 0605 - CX 0606	Intentionally Not Used			N/A		
	<b>REMOVED -- DUPLICATE EXHIBIT</b>					
CX 0607	Letter from Larry Rybacki to Valued Sigma Customers re: List Price Increase January 2, 2008 / Multiplier Increase November 5, 2007	10/23/2007	RX-015	JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0608 - CX 0610	Intentionally Not Used			N/A		
CX 0611	Letter from Rick Tatman to Mitchell Rona re: McWane terms to Sigma to become a Master Distributor	8/24/2009		JX 0002-A		
CX 0612	Intentionally Not Used			N/A		
CX 0613	Letter from Rick Tatman to Mitchell Rona re: McWane's terms for Alan Master Distributor for Sigma to service ACIPCO account	7/27/2009		JX 0002-A		
CX 0614	Intentionally Not Used			N/A		
CX 0615	TylerUnion 2008 Budget Waterworks Division Tyler Pipe South Plant	2/8/2010		JX 0002-A		
CX 0616	TylerUnion 2010 Budget Waterworks Division	12/00/2009		JX 0002-A		
CX 0617	Composition Book 3/30/09 - 11/30/09	03/30/2009 11/30/2009		JX 0002-A		
CX 0618	TylerUnion Presentation: Star announcement of domestic product line. Analysis of response, SWOT Analysis, Risk analysis.	6/29/2009		JX 0002-A		
CX 0619	Intentionally Not Used			N/A		
CX 0620	TylerUnion Presentation: Anniston December 2009.	12/00/2009		JX 0002-A		
CX 0621	Intentionally Not Used			N/A		
CX 0622	TylerUnion Presentation: Sales Meeting January 19, 2009.	1/19/2009		JX 0002-A		Tr. 851:12,20,24; 853:20; 4126:1,4; 4129:12; 5682:10,12,19,21,24; 5683:4,18; 5768:25; 5769:5; 5770:8
CX 0623	TylerUnion Presentation: General Managers Meeting Apr. 7, 2009.	4/7/2009		JX 0002-A		
CX 0624	TylerUnion Presentation: Leon McCullough Lake House Sept 29 2009.ppt	9/29/2009		JX 0002-A		
CX 0625	Intentionally Not Used			N/A		
CX 0626	Tyler Union Presentation: TDG Session Sept 15th 2009	9/15/2009		JX 0002-A		
CX 0627	DIWF 1Q Price Review 01 06 08.ppt	1/6/2008		JX 0002-A		Tr. 48:7; 344:17,19,21; 364:20; 373:21; 379:20; 384:19; 426:10,14; 450:4-10; 1068:3,9; 3155:12,14; 3889:9; 3955:2
CX 0628 - CX 0630	Intentionally Not Used			N/A		
CX 0631	Spreadsheet: Performance Sigma Offer July 25th 2009	9/25/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0632	Price List: ACIPCO Mechanical Joint & Flange Fittings Price List	11/1/2009		JX 0002-A		
CX 0633	Spreadsheet: 2009 Domestic Only Specifications	00/00/2009		JX 0002-A		
CX 0634	E-mail from Jerry Jansen to Rick Tatman re: Increase letter	1/5/2008		JX 0002-A		
CX 0635	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Sean Kelly to Jerry Jansen re: McWane Domestic Fittings	11/16/2009	RX-233	JX 0002-A		
CX 0636 - CX 0639	Intentionally Not Used			N/A		
CX 0640	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Rick Tatman to Thomas Walton, Leon McCullough and Jerry Jansen re: Hajoca Sean Kelly Response	11/16/2009	RX-436	JX 0002-A		
CX 0641	E-mail from Rick Tatman to Thomas Walton and Leon McCullough re: WinWholesale to Support McWane brands for their domestic DIWF needs - Hajoca still open w/Attach: McWane Announcement Sept 22nd 2009.pdf	11/2/2009		JX 0002-A		
CX 0642 - CX 0643	Intentionally Not Used			N/A		
CX 0644	E-mail from Rick Tatman to Leon McCullough re: Victor's Call	10/7/2009		JX 0002-A		
CX 0645	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Summary Notes from Sigma LOI discussion with Mitchell Mitchell Rona 6pm Monday	8/24/2009		JX 0002-A		
CX 0646	E-mail from Rick Tatman to Thomas Walton re: McWane Corporate Program revision w/Attach: 2009 Ferguson Corporate Rebate Program.doc, 2009 Ferguson Corporate Rebate Program (2).doc	1/8/2009		JX 0002-A		
CX 0647 - CX 0648	Intentionally Not Used			N/A		
CX 0649	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Competitive Inputs from AWWA Show	6/17/2009		JX 0002-A		
CX 0650	Intentionally Not Used			N/A		
CX 0651	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Sigma Response - Tyler/Union New List and Multipliers	4/27/2009		JX 0002-A		Tr. 599:2; 2109:15; 2021:1

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0652 - CX 0655	Intentionally Not Used			N/A		
CX 0656	E-mail from Rick Tatman to Thomas Walton, Leon McCullough and Jerry Jansen re: December DIFRA Report w/Attach: DIFRA_2008_12.xls	1/21/2009		JX 0002-A		Tr. 560:11; 592:24; 4316:18
CX 0657	Intentionally Not Used			N/A		
CX 0658	E-mail from Rick Tatman to Thomas Walton and Leon McCullough re: Groeniger Update	1/25/2010		JX 0002-A		
CX 0659	Intentionally Not Used			N/A		
CX 0660	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Hajoca on hold	11/23/2009	CX 1800	JX 0002-A		
CX 0661	E-mail from Mark Willett to Kent Brown re: Proposal w/Attach: Inventory and Scheduling Alan Master Plan.docx	2/9/2010		JX 0002-A		
CX 0662	E-mail from Jerry Jansen to Rick Tatman and Kent Brown re: Groeniger Domestic Purchasing Violation w/Attach: Domestic Purchasing Violation, IMG00269.jpg, IMGP1411.JPG, IMGP1413.JPG, IMGP1414.JPG, IMGP1415.JPG, IMGP1417.JPG, IMGP1422.JPG, Shipping info	12/28/2009		JX 0002-A		
CX 0663	E-mail from Jerry Jansen to Kent Brown re: out of office	3/28/2010		JX 0002-A		
CX 0664	E-mail from Thomas Walton to Kent Brown re: WW Fittings	12/13/2009		JX 0002-A		
CX 0665	E-mail from Rick Tatman to Kent Brown re: Northwest DC w/Attach: DC Seattle or Portland.doc	11/11/2009		JX 0002-A		
CX 0666 - CX 0670	Intentionally Not Used			N/A		
CX 0671	Spreadsheet: Tyler Pipe Company Daily Activity Summary II	06/00/2009		JX 0002-A		
CX 0672 - CX 0679	Intentionally Not Used			N/A		
CX 0680	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Scott Frank to Rick Tatman re: Hajoca	12/15/2009	CX 1802	JX 0002-A		
CX 0681	E-mail from Bruce Duncan to Jeff Otterstedt and Scott Frank re: Announcement Letter Draft 2 McWane Only.doc w/Attach: Announcement Letter Draft 2 McWane Only.doc	9/18/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0682	E-mail from Brenda Netten to Jerry Jansen, Terry Christjohn, Mark Niewodowski et al. re: Distributor Preference Report 2009 Chad's Form.Goodxls.xls w/Attach: Distributor Preference Report 2009 Chad's Form.Goodxls.xls	4/5/2010		JX 0002-A		
CX 0683	Intentionally Not Used			N/A		
CX 0684	E-mail from Rick Tatman to Scott Frank and Jeff Otterstedt re: ACIPCO 30" - 48" MJ and FLG Fitting Prices w/Attach: American's Price List 30-48 Inch.pdf	11/19/2009		JX 0002-A		
CX 0685 - CX 0687	Intentionally Not Used			N/A		
CX 0688	E-mail from murphydip@aol.com to Scott Frank re: Sigma deal	10/9/2009		JX 0002-A		
CX 0689	E-mail from Jerry Jansen to Scott Frank, Vince Napoli, David Henrie et al. re: HD Wichita	10/5/2009		JX 0002-A		
CX 0690	E-mail from Jerry Jansen to Scott Frank and Vince Napoli re: HD Wichita	10/5/2009		JX 0002-A		
CX 0691 - CX 0692	Intentionally Not Used			N/A		
CX 0693	E-mail from Jennifer Heys to Jerry Jansen, re: Order Hold Hajoca Domestic Fittings & Accessories	11/23/2009		JX 0002-A		
CX 0694	E-mail from Roger Dunning to Kent Brown, Mark Vess, Marla Drake et al. re: Copy of DOMESTIC FITTING ACTIVITY 30 AND ABOVErevised.xls w/Attach: Copy of DOMESTIC FITTING ACTIVITY 30 AND ABOVErevised.xls	11/11/2009		JX 0002-A		
CX 0695	E-mail from Marla Drake to Greg Adams and Ryan Anderson re: Announcement Letter and Q&A document for today's Conference Call Tuesday, 9-22, @ 10:30 am CST w/Attach: McWane Announcement Sept 22nd 2009.pdf, Sept 22nd Announcement Q&A.doc	9/22/2009		JX 0002-A		
CX 0696 - CX 0697	Intentionally Not Used			N/A		
CX 0698	E-mail Patrick Gleeson to Jerry Jansen and Douglas Allen re: DomainBlackList - FW: DomainBlackList - Star - New Multipliers w/Attach: _AVG certification_.txt	6/25/2009		JX 0002-A		
CX 0699	E-mail Roger Dunning to Christopher Bruntz re: Buy America - ARRA projects w/Attach: JAN COC REV.pdf, 23UC153Compact_002.pdf, 22UC110FullBody_001.pdf, 28FlangedC110_001.pdf, 26UUni	3/23/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0700	E-mail from Jerry Jansen to Richard Gardner re: Domestic Program w/Attach: 2010 TDG Domestic Ftg Program.doc	1/12/2010		JX 0002-A		Tr. 5599:19; 5706:5;14,15; 5707:5; 5708:8; 5709:2
CX 0701	Intentionally Not Used			N/A		
CX 0702	E-mail from Jerry Jansen to Jennifer Heys re: Order Hold Hajoca Domestic Fittings & Accessories	11/24/2009		JX 0002-A		
CX 0703 - CX 0704	Intentionally Not Used			N/A		
CX 0705	E-mail from Bruce Curtis to Jerry Jansen re: Sigma / Tyler	9/3/2009		JX 0002-A		
CX 0706	E-mail from Jerry Jansen to Rick Tatman re: Ruffner Requests Sigma/Star	2/25/2009		JX 0002-A		
CX 0707	Intentionally Not Used			N/A		
CX 0708	E-mail from Jerry Jansen to Bo Camposano re: Survey w/Attach: Cust Survey 2009 (date).xls	1/10/2010		JX 0002-A		
CX 0709	Intentionally Not Used			N/A		
CX 0710	E-mail from Jennifer Heys to Nikki Dolick, Justin Connor and Rick Ruffner re: Conference Call w/Attach: Call.doc	8/29/2009		JX 0002-A		Tr. 698:21; 753:21,24; 754:7; 3986:6
CX 0711	E-mail from Jerry Jansen to Rick Tatman re: Market Multipliers April 2009.ppt	4/9/2009		JX 0002-A		
CX 0712	E-mail from Patrick Gleeson to Jerry Jansen re: Domestic Fittings	11/19/2009		JX 0002-A		
CX 0713	Intentionally Not Used			N/A		
CX 0714	E-mail from Jerry Jansen to Aaron Huttel, Dan Todd, Glenn Miller et al. re: 2010 Stocking Distributor Rebate Program w/Attach: 2010 Stocking Distributor Rebate Program.doc	2/24/2010		JX 0002-A		
CX 0715	Intentionally Not Used			N/A		
CX 0716	E-mail from Jerry Jansen to Justin Connor re: ARRA projects for ME	2/16/2010		JX 0002-A		
CX 0717	Intentionally Not Used			N/A		
CX 0718	E-mail from Jerry Jansen to Mark Niewodowski, re: Electrosteel	7/22/2009		JX 0002-A		
CX 0719	E-mail from Jerry Jansen to Rick Tatman and Mike Snyder re: Star Domestic Rebate	3/30/2010		JX 0002-A		
CX 0720	E-mail from Nikki Dolick to Jerry Jansen re: Powerpoint Presentation w/Attach: 2010 Sales Meeting Presentation.ppt	1/29/2010		JX 0002-A		
CX 0721	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0722	E-mail from Larry Ruffin to Jerry Jansen re: Tyler Reports	1/19/2010		JX 0002-A		
CX 0723	E-mail from Jerry Jansen to Douglas Allen re: Consolidated Supply	5/19/2009		JX 0002-A		
CX 0724	E-mail from Leon McCullough to Rick Tatman and Thomas Walton re: Draft 2010 Hajoca Corporate Rebate Program.doc	11/18/2009		JX 0002-A		
CX 0725	E-mail from Leon McCullough to Jerry Webb re: Domestic Only	9/2/2009		JX 0002-A		
CX 0726	Intentionally Not Used			N/A		
CX 0727	E-mail from Ruffner Page to Leon McCullough re: BCH ownership - patterns	5/23/2009		JX 0002-A		
CX 0728	E-mail from Victor Pais to Leon McCullough re: Thank you...see you Tuesday...Have a great weekend!	4/24/2009		JX 0002-A		
CX 0729	E-mail from Rick Tatman to Charlie Nowlin re: Pro forma Sigma Offer July 2009.xls w/Attach: Performa Sigma Offer July 2009.xls	7/21/2009		JX 0002-A		Tr. 753:16,21; 754:9; 4008:7; 5553:18,19; 5557:7,8; 5558:16; 5563:19; 5564:5,7
CX 0730	Intentionally Not Used			N/A		
CX 0731	E-mail from Susan Schepps to Dan McCutcheon re: McWane Domestic Fittings	11/17/2009		JX 0002-A		
CX 0732 - CX 0735	Intentionally Not Used			N/A		
CX 0736	Spreadsheet: Housing Starts Trend	00/00/2009		JX 0002-A	Ordered 8/31/2012	
CX 0737 - CX 0738	Intentionally Not Used			N/A		
CX 0739	Spreadsheet: Market Share Analysis	5/29/2008		JX 0002-A	Ordered 8/31/2012	
CX 0740	Star Presentation: State of the Company	1/10/2010		JX 0002-A		
CX 0741	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Dan McCutcheon to Navin Bhargava re: Sigma - Tyler	9/23/2008	RX-098	JX 0002-A		
CX 0742	Intentionally Not Used			N/A		
CX 0743	Star Spreadsheet: Domestic Fittings (10-6-09)	10/6/2009		JX 0002-A		
CX 0744 - CX 0745	Intentionally Not Used			N/A		
CX 0746	E-mail from Pam Garey to Donna Beyer, Sean Kelly Walker, Kerrie Iluisel et al. re: Pricing Strategy Changes	11/25/2008		JX 0002-A		Tr. 4340:7

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0747 - CX 0749	Intentionally Not Used			N/A		
CX 0750	E-mail from Dan McCutcheon to Ramon Prado re: Proof of Sigma Pricing in Florida As of Today	11/20/2008		JX 0002-A		
CX 0751	Intentionally Not Used			N/A		
CX 0752	E-mail from Matt Minamyer to Bud Leider, Neil McGillivray et al. re: McWane/Tyler Multipliers and our Plan	1/22/2008		JX 0002-A		Tr. 2387:18; 2388:6; 3159:19; 3242:2; 3894:2; 4223:61
CX 0753	2010-2012 McWane Corporate Rebate Program for Hajoca	00/00/2010		JX 0002-A		
CX 0754 - CX 0756	Intentionally Not Used			N/A		
CX 0757	E-mail from Roy Pitts to Rick Fantham and Sean Kelly re: McWane Pipe	1/6/2010		JX 0002-A		
CX 0758	E-mail from Sean Kelly to Roy Pitts re: MIXHAJOC.XLS	10/9/2009		JX 0002-A		
CX 0759 - CX 0772	Intentionally Not Used			N/A		
CX 0773	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Managing Rebates	6/2/2008	RX-066	JX 0002-A	Ordered 8/31/2012	
CX 0774	Intentionally Not Used			N/A		
CX 0775	E-mail from Dan McCutcheon to Ravi Pallod re: ARRA - Development Plan.xls w/Attach: ARRA - Development Plan.xls	6/11/2009		JX 0002-A		
CX 0776	E-mail from Dan McCutcheon to Dan McCutcheon re: Star - Domestic Development Plan 11/20/2009 to MainLine	11/23/2009		JX 0002-A		
CX 0777	Intentionally Not Used			N/A		
CX 0778	Regarding TylerUnion's Sept 22 Announcement	9/22/2009		JX 0002-A		
CX 0779	Spreadsheet: Untitled (project list)	00/00/0000		JX 0002-A		
CX 0780	Intentionally Not Used			N/A		
CX 0781	E-mail from Dan McCutcheon to Dan McCutcheon re: Star - Domestic Development Plan 11/20/2009	11/20/2009		JX 0002-A		
CX 0782	E-mail from Ramon Prado to Dan McCutcheon, Utility Division Managers re: please send me TylerUnion's domestic multiplier letters that you can get that were out before the 5/12 announcement w/ Attach: TylerIncrease071408.pdf	10/23/2009		JX 0002-A		
CX 0783	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0784	Handwritten Notes: Basic Information	9/28/2009		JX 0002-A	Ordered 8/31/2012	
CX 0785	Intentionally Not Used			N/A		
CX 0786	Letter from Larry Rybacki to Sigma Customers in the Midwestern region of: OH, IN, IL, MI, WI, MN, SD, ND, WV, KY re: Price Increase effective January 22, 2010	12/30/2009		JX 0002-A		
CX 0787 - CX 0793	Intentionally Not Used			N/A		
CX 0794	Domestic Production DIWF Fittings-Start Up Investment	3/5/2010		JX 0002-A	Ordered 8/31/2012	
CX 0795 - CX 0800	Intentionally Not Used			N/A		
CX 0801	E-mail from Eddie Gibbs re: Tyler Union	9/24/2009		JX 0002-A		
CX 0802	Intentionally Not Used			N/A		
CX 0803	Letter from Larry Rybacki and Victor Pais to All Sigma Customers Re: 'MDM' A practical option to meet your Domestic requirements of AWWA fittings	9/22/2009	CX 0008 (no bate number)	JX 0002-A; Tr. 1821:9-11		Tr.1820:6,11,20; 1821:9,10
CX 0804 - CX 0810	Intentionally Not Used			N/A		
CX 0811	E-mail from Shaun Smith to Matt Minamyler and Dan McCutcheon re: TDG	1/16/2008		JX 0002-A		
CX 0812 - CX 0813	Intentionally Not Used			N/A		
CX 0814	E-mail from Matt Minamyler to Bud Leider, Michael Berry, Neil McGillivray et al. re: Pricing in the market	8/25/2008		JX 0002-A		Tr. 2452:18; 2568:24; 2569:8; 3262:12; 3263:14,17
CX 0815	E-mail from Matt Minamyler to Bud Leider, Michael Berry, Neil McGillivray et al. re: Special Pricing	2/23/2008		JX 0002-A		Tr. 2540:14; 3249:24; 3265:17
CX 0816	E-mail from Star Pipe Products to Outside Sales re: Star - Multiplier Change (Arizona)	5/7/2008		JX 0002-A		
CX 0817	E-mail from Star Pipe Products to Outside Sales re: Star - Multiplier Change (Arkansas)	5/7/2008		JX 0002-A		
CX 0818	E-mail from Star Pipe Products to Outside Sales re: Star - Multiplier Change (Colorado)	5/7/2008		JX 0002-A		
CX 0819	E-mail from Star Pipe Products to Outside Sales re: Star - Multiplier Change (Georgia)	5/7/2008		JX 0002-A		Tr. 3209:5; 3212:7
CX 0820	E-mail from Star Pipe Products to Outside Sales re: Star - Multiplier Change (Iowa)	5/7/2008		JX 0002-A		
CX 0821	E-mail from Star Pipe Products to Outside Sales re: Star - Multiplier Change (Kansas)	5/7/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0822	E-mail from Star Pipe Products to Outside Sales re: Star - Multiplier Change (Louisiana)	5/7/2008		JX 0002-A		
CX 0823	E-mail from Star Pipe Products to Outside Sales re: Star - Multiplier Change (Michigan)	5/7/2008		JX 0002-A		
CX 0824	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Fitting Mult. Changes on Hold	5/12/2008		JX 0002-A		
CX 0825	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: END OF MONTH SPECIAL	8/26/2008		JX 0002-A		
CX 0826	E-mail from Matt Minamyer to Michael Berry, Shaun Smith, Pete Lisowski et al. re: No subject	9/18/2008		JX 0002-A		
CX 0827	E-mail from Matt Minamyer to Susan Schepps, Bud Leider, Michael Berry et al re: 30" and up fittings	10/22/2008		JX 0002-A		
CX 0828	E-mail from Matt Minamyer to Susan Schepps, Bud Leider, Michael Berry et al. re: 30" and up fittings	11/4/2008		JX 0002-A		
CX 0829	E-mail from Dan McCutcheon to Ramon Prado re: Proof of Sigma Pricing in Florida As of Today	11/25/2008		JX 0002-A		
CX 0830	E-mail from Matt Minamyer to Pam Garey re: Pinks	11/25/2008		JX 0002-A		
CX 0831	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray, et al. re: Pricing Strategy Changes	11/25/2008		JX 0002-A		Tr. 3226:8,9; 3273:22; 4335:10
CX 0832	Intentionally Not Used			N/A		
CX 0833	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Tyler Nov'07 Utility Price Increase letter w/Attach: Outlook.jpg	10/10/2007		JX 0002-A		
CX 0834 - CX 0835	Intentionally Not Used			N/A		
CX 0836	E-mail from Niki Sparks to Barry Foster, Bill Paynter, Blake Wegener et al. re: Multiplier Increase Effective November 5, 2007	10/18/2007		JX 0002-A		
CX 0837	E-mail from Shaun Smith to Matt Minamyer re: National Multiplier increase	10/12/2007		JX 0002-A		
CX 0838	E-mail from Ramon Prado to Matt Minamyer re: Weekly Activity Report for Week Ending 10/05/07	10/16/2007		JX 0002-A		
CX 0839	E-mail from Matt Minamyer to Susan Schepps, Bud Leider, Michael Berry et al. re: Multiplier Increase	10/17/2007		JX 0002-A		
CX 0840	E-mail from Ramon Prado to Dan McCutcheon, Bud Leider, Matt Minamyer et al. re: Sigma Price Increase Letter w/Attach: 9002.pdf	10/26/2007		JX 0002-A		Tr. 2380:3,4; 3149:4; 3151:14,19

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0841	E-mail from Matt Minamyer to Shaun Smith, Ramon Prado, Bud Leider et al. re: Multiplier Price Changes w/Attach: Multiplier Report 10-17-2007.xls	10/29/2007		JX 0002-A		
CX 0842	E-mail from Matt Minamyer to Ramon Prado, Bud Leider, Shaun Smith et al. re: Multiplier Increase on Accessories	11/3/2007		JX 0002-A		
CX 0843	Intentionally Not Used			N/A		
CX 0844	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Special Project Pricing Report - Oct 07 w/Attach: Special Project Pricing Report - Oct 07.xls	11/28/2007		JX 0002-A		
CX 0845	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: DM Meeting Minutes and Action Assignments.	12/10/2007		JX 0002-A		
CX 0846	Intentionally Not Used			N/A		
CX 0847	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Project Pricing Report w/Attach: Project Pricing Report 1.22.08.xls	1/23/2008		JX 0002-A		Tr. 3180:6
CX 0848	E-mail from Michael Berry to Ramon Prado and Matt Minamyer re: Sigma's FL Letter w/Attach: Sigmaincrease2_18_08.pdf	2/7/2008		JX 0002-A		Tr. 3196:1; 4221:25; 4222:6,11
CX 0849	E-mail from Shaun Smith to Matt Minamyer re: A.R.2.8.08	2/12/2008		JX 0002-A		
CX 0850	Intentionally Not Used			N/A		
CX 0851	E-mail from Matt Minamyer to Ramon Prado re: Weekly Activity Report for week Ending 02/15/08	2/28/2008		JX 0002-A		
CX 0852	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Matt Minamyer to Shaun Smith, Pete Lisowski, Ramon Prado et al. re: Special Pricing	3/3/2008	RX-036	JX 0002-A		
CX 0853	E-mail from Matt Minamyer to Shaun Smith, Pete Lisowski, Michael Berry et al. re: Sigma and Mult Increase	3/4/2008		JX 0002-A		
CX 0854 - CX 0855	Intentionally Not Used			N/A		
CX 0856	E-mail from Shaun Smith to Matt Minamyer re: Sigma Handling the Mult Increase	3/11/2008		JX 0002-A		Tr. 3197:17
CX 0857	E-mail from Ramon Prado to Matt Minamyer re: Sigma Handling the Mult increase	3/11/2008		JX 0002-A		
CX 0858	E-mail from Shaun Smith to Matt Minamyer, Meiersand Lena Martin re: Chris Antos	3/18/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0859 - CX 0860	Intentionally Not Used			N/A		
CX 0861	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Push On fitting sales w/Attach: PO Sales by Wt - Jan07 to Mar 08.xls	4/14/2008		JX 0002-A		
CX 0862	E-mail from Michael Berry to Ramon Prado re: Sigma Fitting Increase Letter 5/19/08 w/Attach: SigmaFittings051908.pdf	4/25/2008		JX 0002-A		Tr. 2418:25; 3208:10
CX 0863	E-mail from Shaun Smith to Matt Minamyer re: Tyler/Union Pricing Letter w/Attach: TylerUnion Announcement May 7 2008.pdf	5/7/2008		JX 0002-A		Tr. 2420:13; 2421:14; 3209:20,21
CX 0864	E-mail from Shaun Smith to Bob Sheehan re: Tyler/Union Announcement Regarding pending price action on Fittings and Accessories	5/12/2008		JX 0002-A		
CX 0865	E-mail from Michael Berry to Ramon Prado, Shaun Smith, Pete Lisowski et al. re: Sigma Increase Announcement for Fittings & Accessories w/Attach: Sigmaincrease07142008.pdf	7/8/2008		JX 0002-A		
CX 0866	E-mail from Shaun Smith to Matt Minamyer re: budget meetings	9/3/2008		JX 0002-A		
CX 0867	E-mail from Ramon Prado to Matt Minamyer re: budget meetings	9/3/2008		JX 0002-A		
CX 0868	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Ramon Prado to Matt Minamyer re: South East - Aug 08 - Division.xls	9/17/2008	CX 1691	JX 0002-A		
CX 0869	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: CONFIDENTIAL -MARKET SHARE INFO	10/20/2008		JX 0002-A	Ordered 8/31/2012	
CX 0870	Intentionally Not Used			N/A		
CX 0871	E-mail from Shaun Smith to Matt Minamyer re: Sigma Antics	10/30/2008		JX 0002-A		
CX 0872	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Bud Leider to Matt Minamyer re: Sigma antics.	10/31/2008	RX-109	JX 0002-A		
CX 0873	E-mail from Neil McGillivray to Matt Minamyer re: Sigma Antics	11/3/2008		JX 0002-A		
CX 0874	E-mail from Ramon Prado to Matt Minamyer re: Sigma Antics	11/3/2008		JX 0002-A		
CX 0875	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0876	E-mail from Bud Leider to Matt Minamyre re: Tyler Rebate on Sigma Fittings	11/4/2008		JX 0002-A		
CX 0877	E-mail from Ramon Prado to Matt Minamyre re: Weekly Activity Report for Week Ending 11/21/08	11/26/2008		JX 0002-A		
CX 0878	E-mail from Matt Minamyre to Dan McCutcheon and Ramon Prado re: Sigma INCREASE LETTER w/Attach: Sigma Increase letter.pdf	1/20/2009		JX 0002-A		
CX 0879 - CX 0880	Intentionally Not Used			N/A		
CX 0881	E-mail from Matt Minamyre to Bud Leider, Michael Berry, Neil McGillivray et al. re: Tyler Begging Letter w/Attach: 0391_001.pdf	1/30/2009		JX 0002-A		
CX 0882	E-mail from Matt Minamyre to Ramon Prado, Pete Lisowski, Shaun Smith et al. re: Mult Report - Exceptions for CA, AZ, NV - Export Multiplier Exceptions for 2-9-09 w/Attach: KIHO 104489 Exception FEB 09.xls,	1/30/2009		JX 0002-A		
CX 0883	E-mail from Matt Minamyre to Bud Leider, Michael Berry, Neil McGillivray et al. re: Multiplier increases	2/2/2009		JX 0002-A		
CX 0884	E-mail from Matt Minamyre to Bud Leider, Michael Berry, Neil McGillivray et al. re: Pink Approval Procedure	2/3/2009		JX 0002-A		Tr. 3232:5,6; 3277:2; 3279:14; 3279:14
CX 0885	Intentionally Not Used			N/A		
CX 0886	E-mail from Ramon Prado to Matt Minamyre, Dan McCutcheon re: Sigma increase list price MJ Accessories w/Attach: SigmaIncreaseMJaccess2009.pdf	4/15/2009		JX 0002-A		
CX 0887	E-mail from Matt Minamyre to Bud Leider, Michael Berry, Neil McGillivray et al. re: Multipliers, List Price and Stimulus Info.	4/23/2009		JX 0002-A		
CX 0888	Intentionally Not Used			N/A		
CX 0889	E-mail from Matt Minamyre to Bud Leider, Michael Berry, Neil McGillivray et al. re: Price Increase	4/29/2009		JX 0002-A		Tr. 2462:3,4
CX 0890	E-mail from Matt Minamyre to Bud Leider, Michael Berry, Neil McGillivray et al. re: Tyler PL and mult change Strategy	5/1/2009		JX 0002-A		Tr. 2463:18,19
CX 0891 - CX 0892	Intentionally Not Used			N/A		
CX 0893	E-mail from Matt Minamyre to Craig Schapiro re: New Multipliers - Star Pipe Products	2/7/2008		Tr. 3195:8-10		Tr. 3194:10,12; 3195:5,8,9; 4229:5,20; 4257:7

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0894	Intentionally Not Used			N/A		
CX 0895	E-mail from Stuart Box to SDP re: trip report to XXP for LF	10/31/2009		Tr. 3475:4-10		
CX 0896	Letter from Jerry Jansen to Tyler/Union Utility Customers in CA re: Pricing Multiplier Adjustment Effective February 18, 2008	1/18/2008		Tr. 411:16-19 JX 0002-A		Tr. 407:1; 407:22; 411:6-19; 753:24
CX 0897	E-mail from Mitchell Rona to Tom Morton re: McWane Domestic Prices thru Sigma	8/27/2009		Tr. 3475:4-10		
CX 0898	Intentionally Not Used			N/A		
CX 0899	E-mail from Mitchell Rona to Siddharth Bhattacharji re: Lost Foam next step	9/7/2009		Tr. 1544:15-17		Tr. 1544:12,15,16,19
CX 0900 - CX 0904	Intentionally Not Used			N/A		
CX 0905	Sigma's Regional Management Review (RMR)	10/27/2009		Tr. 3475:4-10		
CX 0906	E-mail from Mike Hays to Mitchell Rona re: Fittings Summary w/Attach: Sigma domestic fittings summary.doc	9/15/2009		Tr. 3475:4-10		
CX 0907	Intentionally Not Used			N/A		
CX 0908	E-mail from Victor Pais to OEM5 re: unwelcome reversal by McWane about Pvt Label!	4/9/2009		JX 0002-A		Tr. 1481:3,5,6
CX 0909	E-mail from Victor Pais to Mitchell Rona re: Larry to Ruffner w/Attach: Ruffner Page letter 7-17-09.doc	7/17/2009		JX 0002-A		
CX 0910	E-mail from Victor Pais to OEM5 re: QRR to resp from McW to new 'SDP (Shared Dom Prodn)' Plan!	7/23/2009		Tr. 3475:4-10		
CX 0911	E-mail from Victor Pais to OEM5 re: Review of McW-SIGMA Master Distribution Agreement offer w/Attach: MCWANE-SIGMA MDA-080309.doc	8/3/2009		Tr. 3475:4-10		
CX 0912 - CX 0913	Intentionally Not Used			N/A		
CX 0914	Letter from Victor Pais to Sigma BOD Team re: BOD Update ... Market Review	5/4/2009		Tr. 3475:4-10		
CX 0915	Letter from Victor Pais to Larry Rybacki re: HTN Visit	5/17/2009		Tr. 1868:4-6		Tr. 1865:9,12; 1867:25; 1868:4,5; 3591:21
CX 0916	Letter from Victor Pais to PNC Team Attn: Craig Stillwagon and Pat McConnell re: An interesting NEW opportunity...the 'P2' Plan	12/12/2008		Tr. 3475:4-10		
CX 0917	Letter from Victor Pais to Walter Florence, Jim McGivern re: Your visit to HTN...'S2' review	12/10/2009		Tr. 3475:4-10		
CX 0918 - CX 0919	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0920	E-mail from Mitchell Rona to Victor Pais and OEM5 re: Alan Master Distributor Agreement with McWane	7/14/2009		Tr. 3475:4-10		
CX 0921	E-mail from Stuart Box to Victor Pais and OEM5 re: Continuing to review Tyler offer letter w/Attach: IMG_0544.JPG	7/31/2009		Tr. 3475:4-10		
CX 0922	E-mail from Mitchell Rona to OEM5 re: Email from RT saying no to us selling USP thru our Master Distribution Agreement	8/29/2009		Tr. 3475:4-10		
CX 0923	E-mail from Ion a Shenoy to Victor Pais re: - SOS - Birmingham Activity update.. w/Attach: SOS Update VM-M20 082709.doc	9/2/2009		Tr. 1791:4-6		Tr. 1789:12; 1790:22; 1791:4-6
CX 0924	E-mail from Siddharth Bhattacharji to Dave Pietryga re: contact at AGC to support the de-minimums ruling	11/4/2009		Tr. 3475:4-10		
CX 0925	E-mail from Siddharth Bhattacharji to Victor Pais, Jim McGivern, Larry Rybacki et al. re: here is my redline and clean copy versions of the customer letter w/Attach: BA-MDA-Customer letter 090809	9/9/2009		Tr. 3475:4-10		
CX 0926 - CX 0928	Intentionally Not Used			N/A		
CX 0929	E-mail from Dave Pietryga to Victor Pais re: ARRA	9/18/2009		Tr. 3475:4-10		
CX 0930 - CX 0933	Intentionally Not Used			N/A		
CX 0934	E-mail from Siddharth Bhattacharji to George Liu re: need your help with SDP of PRP	10/3/2009		Tr. 1856:11-13		Tr. 1853:10,23; 1856:4,11,12
CX 0935	E-mail from Walter Florence to Siddharth Bhattacharji, McGivernand Victor Pais re: call with US COC	11/3/2009		JX 0002-A		Tr. 1831:25;
CX 0936 - CX 0937	Intentionally Not Used			N/A		
CX 0938	Sigma's Monthly Financial Report For the Period Ended October 31, 2009	11/25/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 0939	E-mail from Mitchell Rona to Jim McGivern and OEM5 re: Hajoca	12/15/2009		Tr. 3475:4-10		
CX 0940	E-mail from Jim McGivern to Mitchell Rona, OEM5 re: Hajoca	12/15/2009		Tr. 3475:4-10		
CX 0941 - CX 0942	Intentionally Not Used			N/A		
CX 0943	E-mail from Victor Pais to Mitchell Rona re: Follow up of McWane dialog...	8/5/2009		Tr. 3475:4-10		
CX 0944	Letter from Victor Pais to Ruffner Page re: Personal	6/9/2009		Tr. 3475:4-10		
CX 0945	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0946	E-mail from Victor Pais to Siddharth Bhattacharji re: URGENT meeting this mrg...	8/24/2009		Tr. 3475:4-10		
CX 0947	E-mail from Victor Pais to OEM5 re: Draft of the proposed Customer Letter about BA/MDA	9/9/2009		Tr. 3475:4-10		
CX 0948	E-mail from Victor Pais to Mitchell Rona re: Master Distribution Agreement follow up	9/9/2009		Tr. 1816:3-5		Tr. 1808:6; 1809:2,11; 1815:25; 1816:3,4,7
CX 0949	Intentionally Not Used			N/A		
CX 0950	E-mail from Victor Pais to Rick Tatman re: Signed Master Distribution Agreement document and draft customer letter... w/Attach: BA-MDA-CUSTOMER LETTER-091509.doc	9/17/2009		Tr. 3475:4-10		
CX 0951	E-mail from Victor Pais to OEM5 re: RT's resp to draft of BA-MDA-CUSTOMER LETTER-091509.doc w/Attach: BA-MDA-CUSTOMER LETTER-091509.doc	9/17/2009		Tr. 3475:4-10		
CX 0952	E-mail from Victor Pais to Mitchell Rona and OEM5 re: Master Distribution Agreement vs. De Minimis (which way to play the game) w/Attach: MDA-GM COMP-092309.xls	9/23/2009		Tr. 3475:4-10		
CX 0953	E-mail from Victor Pais to Larry Rybacki re: Caution about VR on Master Distribution Agreement --> Sigma Rebate on Domestic Fittings	9/24/2009		Tr. 1827:23-25		Tr. 1826:24; 1827:16,23,24; 1828:2
CX 0954	E-mail from Victor Pais to Walter Florence and M5 re: ARRA/BA & Chamber of Commerce	10/31/2009		Tr. 3475:4-10		
CX 0955	Intentionally Not Used			N/A		
CX 0956	E-mail from Mark Meyer to Victor Pais re: Response to your update abt Star's deliveries (guys, see bel...	6/25/2009		Tr. 3475:4-10		
CX 0957	E-mail from Walter Florence to Victor Pais and Jeff Marcus re: Ares call	6/24/2009		Tr. 1775:11-13		Tr. 1774:16,18; 1775:8,11,12
CX 0958	E-mail from Siddharth Bhattacharji to Jeff Marcus and Victor Pais re: capturing the SDP expenses	6/18/2009		Tr. 3475:4-10		
CX 0959	E-mail from Stuart Box to Siddharth Bhattacharji re: development plans for SDP	6/17/2009		Tr. 3475:4-10		
CX 0960	Intentionally Not Used			N/A		
CX 0961	E-mail from Siddharth Bhattacharji to Siddharth Bhattacharji re: step-by-step-waiver-ARRA w/Attach: step-by-step-waiver-ARRA	6/13/2009		Tr. 3475:4-10		
CX 0962	E-mail from Siddharth Bhattacharji to Victor Pais, Rybacki and Tom Brakefield re: mtg distributors to discuss ARRA and BA in AWWA	6/7/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0963	E-mail from Stuart Box to Siddharth Bhattacharji, Gopi Ramanathan, Victor Pais et al. re: notes from our meeting 6/03 & 04	6/5/2009		Tr. 1482:9-11		Tr. 1482:5,9,10,13
CX 0964	E-mail from Stuart Box to Victor Pais and Siddharth Bhattacharji re: Response on your Korea sourcing plan -- with strategic look @ other options... w/Attach: slide cost analysis using domestic quotes.xls	5/15/2009		Tr. 3475:4-10		
CX 0965	E-mail from Michael Walsh to Mike Roy, Kevin Flanagan, Ken Stephenson et al. re: Multiplier & List Change w/Attach: Price Multipliers for May 12 2009.doc	5/11/2009		Tr. 3475:4-10		
CX 0966	E-mail from Siddharth Bhattacharji to liuguang, Liuand Pramod Neotia re: an update on our ftgs pricing strategy w/Attach: CUSTOMER LETTER - PRICING REVIEW-FITTINGS-042709.pdf	4/28/2009		Tr. 3475:4-10		
CX 0967	Intentionally Not Used			N/A		
CX 0968	E-mail from Stuart Box to Victor Pais and OEM5 re: BA Options	4/24/2009		Tr. 3475:4-10		
CX 0969	E-mail from Mitchell Rona to Victor Pais and Siddharth Bhattacharji re: QRR-->KO	4/23/2009		JX 0002-A		
CX 0970 - CX 0973	Intentionally Not Used			N/A		
CX 0974	E-mail from Siddharth Bhattacharji to Jeff Marcus re: our appraisal (JM Request for file) w/Attach: response to your questions about the market and pricing.msg; response to your questions.msg	3/3/2009		JX 0002-A		Tr. 2006:21; 2122:1
CX 0975 - CX 0976	Intentionally Not Used			N/A		
CX 0977	E-mail from Tom Brakefield to Victor Pais, Siddharth Bhattacharji and Larry Rybacki re: Draft of 'OPEN CHOICE CUSTOMER LETTER' ... w/Attach: 'OPEN CHOICE' CUSTOMER LETTER-012809.doc	1/28/2009		Tr. 3475:4-10		
CX 0978	E-mail from Victor Pais to Mitchell Rona, Siddharth Bhattacharji, Gopi Ramanathan et al. re: Recap of SDP meeting from Wednesday June 17th	6/18/2009		Tr. 1507:13-15		Tr. 1507:10,13,14,17; 1515:14
CX 0979 - CX 0984	Intentionally Not Used			N/A		
CX 0985	E-mail from Victor Pais to M20 re: Reviving DIFRA w/Attach: DIFRA-SIGMA-SMS-1108.xls	5/4/2009		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 0986 - CX 0987	Intentionally Not Used			N/A		
CX 0988	E-mail from Victor Pais to Gary Crawford and Stephen Gables re: Our letter to EPA w/Attach: Victor Victor Pais to Peter [Deleted Object] formal appeal to EPA for waiver consideration.msg	4/24/2009		Tr. 3475:4-10		
CX 0989	E-mail from Victor Pais to M20: Tyler Price Increase	4/16/2009		Tr. 3475:4-10		Tr. 3581:10
CX 0990 - CX 0992	Intentionally Not Used			N/A		
CX 0993	E-mail from Victor Pais to Walter Florence, McGivernand Siddharth Bhattacharji re: US Chamber Conference Call - Confirm 11/4 @ 5pm EST (4pm Central)	3/11/2010		Tr. 3475:4-10		
CX 0994	Intentionally Not Used			N/A		
CX 0995	E-mail from Victor Pais to M20 re: URGENT --> A comprehensive MAP-1 : SALES STRATEGY for 09 w/Attach: RST-09-MAP1--SALES STRATEGY-M20-111108.doc	11/11/2008		Tr. 3475:4-10		
CX 0996	Letter from Victor Pais to Sigma Sales Team re: Follow up of our plans for BA-- Master Distribution Agreement with Tyler/Union and additional source for domestic Fittings in the 30 - 48"	9/30/2009		Tr. 3475:4-10		
CX 0997	E-mail from Ion a Shenoy to Victor Pais re: - SOS Update (from VM) - Master Distribution Agreement w/Attach: SOS Master Distribution Agreement VP-VM 090909.doc	9/22/2009		Tr. 1853:5-7		Tr. 1841:7; 1842:7; 1852:21; 1853:5,6
CX 0998 - CX 0999	Intentionally Not Used			N/A		
CX 1000	E-mail from Siddharth Bhattacharji to Jim re: SDA	1/19/2010		Tr. 1836:1-3		Tr. 1834:10,14; 1835:17,25; 1836:1,2
CX 1001	Letter from Victor Pais to ARES team re: Response to you queries	12/11/2008		Tr. 3475:4-10		
CX 1002	E-mail from Victor Pais to M20 re: Review of our FTG pricing -- by MULT + PER LB w/Attach: FTG PRIC REVIEW-MULT-PER LB-08.xls	1/27/2009		Tr. 3475:4-10	Ordered 11/8/2012	Tr. 3579:3; 3599:6; 3653:12; 3653:25; 3704:18; 3705:1,10; 3733:18; 3734:9; 3735:8; 5770:22,23; 5771:7
CX 1003	E-mail from Victor Pais to Walter Florence re: BA review and Response to your queries w/Attach: BA REVIEW-RESPONSES to WF-022009.doc	2/20/2009		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1004 - CX 1006	Intentionally Not Used			N/A		
CX 1007	E-mail from Andy Podner to Siddharth Bhattacharji re: MHCN and Sigma w/Attach: ARRA-Dodge Presentation(rev6-8-09).doc	6/10/2009		Tr. 3475:4-10		
CX 1008	Sigma ARRA Projects in the McGraw Hill / F.W. Dodge Network	6/8/2009		Tr. 3475:4-10		
CX 1009	E-mail from Walter Florence to M4-BFA and Jim McGivern re: follow up on yesterday	6/10/2009		Tr. 3475:4-10		
CX 1010 - CX 1013	Intentionally Not Used			N/A		
	<b>REMOVED -- DUPLICATE EXHIBIT</b>					
CX 1014	E-mail from Victor Pais to Larry Rybacki re: URGENT -- Need to stabilize market pricing w/Attach: PRICE INCREASE LETTER-112408.doc	11/24/2008	RX-116	JX 0002-A		
CX 1015	Intentionally Not Used			N/A		
CX 1016	E-mail from Victor Pais to Larry Rybacki re: draft of letter to Ruffner .... w/Attach: RP-McW 062309.doc	7/1/2009		Tr. 3475:4-10		
CX 1017	E-mail from to Mitchell Rona to Gopi Ramanathan and Stuart Box re: Updated SDP File w/Attach: SDPcompiledlist.xls	7/10/2009		Tr. 3475:4-10		
CX 1018	E-mail from Jim McGivern to Victor Pais re: Possible Master Distributor Agreement with McWane	7/13/2009		JX 0002-A		Tr. 1772:6,10
CX 1019	Intentionally Not Used			N/A		
CX 1020	E-mail from Stuart Box to Siddharth Bhattacharji, Mitchell Rona, Gopi Ramanathan et al. re: some questions on the MTF offer	8/12/2009		Tr. 3475:4-10		
CX 1021	Intentionally Not Used			N/A		
CX 1022	E-mail from Victor Pais to Gopi Ramanathan re: follow up of our lunch mtg 9/16 -- Confidential BOD update w/Attach: BOD-UPDATE-GL-091409.doc	9/18/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 1023	Letter from Victor Pais to Fang Gang re: A Strategic Update - State of Sigma and a few BIG Opportunities...	10/4/2009		Tr. 3475:4-10		
CX 1024	E-mail from Craig Schapiro to Larry Rybacki re: Pricing Corrections	11/3/2009		JX 0002-A		
CX 1025 - CX 1031	Intentionally Not Used			N/A		
CX 1032	E-mail from Michael Walsh to Larry Rybacki and Jim McGivern re: CRM domestic fitting business plan...a success story	1/15/2010		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1033 - CX 1035	Intentionally Not Used			N/A		
CX 1036	Sigma: Key Operational Highlights - January 2010	3/2/2010		Tr. 3475:4-10		
CX 1037 - CX 1041	Intentionally Not Used			N/A		
CX 1042	E-mail from Victor Pais to M20 re: Review of RST-09...PCA-09...PLAN-09 w/Attach: RST-GMT-09-050109-V6.xls	5/6/2009		Tr. 3475:4-10		
CX 1043 - CX 1044	Intentionally Not Used			N/A		
CX 1045	E-mail from Siddharth Bhattacharji to Jim McGivern and Victor Pais re: status on Master Distribution Agreement	9/4/2009		Tr. 3475:4-10		
CX 1046	E-mail from Mitchell Rona to OEM5 re: Completed negotiations with McWane.....please read carefully w/Attach: Terms and Conditions of Sale-Tyler.doc; MDA-RESPONSE-final-08-31-09.doc	8/31/2009		Tr. 1587:9-11		Tr. 1583:11,22; 1586:2; 1587:5,8-10
CX 1047	E-mail from Jim McGivern to Siddharth Bhattacharji re: recd latest email from James M. Proctor	9/4/2009		Tr. 3475:4-10		
CX 1048	Intentionally Not Used			N/A		
CX 1049	E-mail from Victor Pais to Siddharth Bhattacharji, Walter Florence and S. Goldblatt re: QRR on yours -- dilemma	2/27/2009		Tr. 3475:4-10		
CX 1050	Intentionally Not Used			N/A		
CX 1051	E-mail from Victor Pais to S. Goldblatt re: Update on EPA w/Attach: Victor Pais to Peter ShanaghanP_formal appeal to EPA for Waiver consideration.msg	4/24/2009		Tr. 3475:4-10		
CX 1052	E-mail from Gopi Ramanathan to Victor Pais and OEM5 re: Our disc on our 'SDP (Sigma Dom Prodn) plan	5/24/2009		Tr. 3475:4-10		
CX 1053	E-mail from Victor Pais to Walter Florence re: A few strategic Options for SIG...including a 'Big Plan'...'MAX'?	5/26/2009		Tr. 3475:4-10		
CX 1054 - CX 1057	Intentionally Not Used			N/A		
CX 1058	Letter from Larry Rybacki to Sigma's Valued Customer re: Pricing Review for AWWA MJ Fittings	4/24/2009		Tr. 3475:4-10		
CX 1059	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Confidential

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1060	Letter from Larry Rybacki to Sigma Utility Fittings Customers in ME, VT, NH et al. re: New Multipliers effective May 12, 2009 off New List Price Sheet dated the same.	5/8/2009		Tr. 3475:4-10		Tr. 3591:7
CX 1061 - CX 1062	Intentionally Not Used			N/A		
CX 1063	E-mail from Victor Pais to M4-BFA and Tom Brakefield re: Response to Ares questionnaire... w/Attach ARES-QUESTIONNAIRE RESPONSE-071609.doc	7/16/2009		Tr. 3475:4-10		
CX 1064 - CX 1065	Intentionally Not Used			N/A		
CX 1066	E-mail from Tom Brakefield to Michael Walsh re: CRM domestic fitting business plan...a success story	12/10/2009		Tr. 3475:4-10		
CX 1067	E-mail from Michael Walsh to Jim McGivern, Tom Brakefield, Al Richardson et al. re: Agenda items for TDG	1/13/2010		Tr. 3475:4-10		
CX 1068	Intentionally Not Used			N/A		
CX 1069	E-mail from Victor Pais to Walter Florence, Bhattacharjand S. Goldblatt re: Re-thinking 'BA' strategy -- an interesting dilemma	2/26/2009		Tr. 3475:4-10		
CX 1070	E-mail from Larry Rybacki to M20 re: Tyler Union Letter w/Attach: Tyler Union Letter 1-27-09.tif	1/27/2009		Tr. 3475:4-10		
CX 1071	Intentionally Not Used			N/A		
CX 1072	E-mail from Victor Pais to Dan McCutcheon and Larry Rybacki re: Thank you for your support... w/Attach WASMA-BA AMENDMENT to ARRA-012709.pdf, WASMA-AMENDMENT-ARRA-MODIFICATION #2-012809.doc, WASMA-FINAL WHITE PAPER-012609.doc, WASMA-COVER LETTER-012609.doc	1/30/2009		Tr. 3475:4-10		
CX 1073	Intentionally Not Used			N/A		
CX 1074	Sigma Letter to M5 re : '10-in-10' .. Top 10 goals for the 'M5' team for PLAN-10	12/7/2009		JX 0002-A		
CX 1075	Intentionally Not Used			N/A		
CX 1076	E-mail from Walter Florence to Victor Pais re: A few strategic Options for SIG...including a 'Big Plan'...'MAX'?	5/26/2009		Tr. 1857:11-13		Tr. 1856:15,18,20; 1857:8,11,12
CX 1077	E-mail from Michael Walsh to Victor Pais re: QRR --ECDA pricing	12/18/2008		Tr. 2005:16-18		Tr. 2005:5,13,16,17
CX 1078 - CX 1079	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1080	Agenda for DIFRA meeting - 3/27/2008	3/27/2008		JX 0002-A		Tr. 1362:21; 1363:9
CX 1081	E-mail from Tom Brakefield to Rick Tatman re: DIFRA	2/7/2008		JX 0002-A		Tr. 470:8; 1257:3,5; 1358:15
CX 1082	Intentionally Not Used			N/A		
CX 1083	E-mail from Tom Brakefield to Larry Rybacki re: Proposed Trade Association Meeting - Ductile Iron Fittings Research Association (DIFRA)	2/13/2008		JX 0002-A		
CX 1084	E-mail from Dan McCutcheon to Thad G. Long, Tom Brakefield, Rick Tatman et al. re: DIFRA Meeting	3/3/2008		Tr. 2416:14-16		Tr. 2415:21; 2416:11,14,15
CX 1085	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Dan McCutcheon to Tom Brakefield, Thad G. Long, Victor Pais et al. re: [no subject]	5/7/2008	RX-580 CX 2274 (DIFRA-000410 - DIFRA-000412)	JX 0002-A		Tr. 1282:17; 1286:22; 2423:10
CX 1086	E-mail from Tom Brakefield to Larry Rybacki re: DIFRA numbers	6/5/2008		JX 0002-A		Tr. 1292:24; 3565:22,23
CX 1087	Intentionally Not Used			N/A		
CX 1088	E-mail from Victor Pais to M20 re: An important Review of DIFRA (SRP) and SMS (Sigma Market Share) w/Attach: DIFRA-SIGMA-SMS-808.xls	10/13/2008		JX 0002-A		Tr. 1982:10,12,13
CX 1089	E-mail from Tom Brakefield to Larry Rybacki re: DIFRA	5/6/2008		JX 0002-A		Tr. 3547:2
CX 1090	E-mail from Tom Brakefield to Larry Rybacki re: response to the tonnage for DIFRA w/Attach re: DIFRA Input Output Format Rev 2 xls (3).xls	5/30/2008		Tr. 1291:10-12		Tr. 1289:1,17; 1291:6,10,11
CX 1091	E-mail from Dan McCutcheon to Tom Brakefield re: DIFRA numbers	6/5/2008		JX 0002-A		Tr. 2431:16
CX 1092	E-mail from Victor Pais to M20 re: DIFRA Data and Sigma Market Share (SMS) review w/Attach: DIFRA-SMS-408-SUMMARY.xls	6/19/2008		JX 0002-A		Tr. 1299:3; 1976:14; 2115:4; 2116:10
CX 1093 - CX 1094	Intentionally Not Used			N/A		
CX 1095	E-mail from Victor Pais to Walter Florence re: My quick trip to Birmingham	10/31/2008		Tr. 3475:4-10		
CX 1096	Letter from Victor Pais to Walter Florence re: response to your PLAN-09 inputs...	11/17/2008		Tr. 3475:4-10		
CX 1097	Intentionally Not Used			N/A		
CX 1098	E-mail from Bob Leggett to Victor Pais re: AWWA Follow Up	7/1/2009		Tr. 3475:4-10		
CX 1099	Intentionally Not Used			N/A		
CX 1100	E-mail from Victor Pais to Siddharth Bhattacharji re: your letter to WF with my edits w/Attach: response to walter 121009.doc	12/10/2009		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1101	E-mail from Fred Stevens to Victor Pais and Dave Pietryga re: Proposal for VR-09 for Michigan Pipe and Valve	1/22/2009		Tr. 3475:4-10		
CX 1102	E-mail from Victor Pais to Dan McCutcheon re: Follow up to discuss the stimulus bill/BA	2/2/2009		Tr. 3475:4-10		
CX 1103	E-mail from Al Richardson to Victor Pais and RM6 re: Pricing Alert in NTX and OK...	2/23/2010		Tr. 3475:4-10		
CX 1104	E-mail from Victor Pais to M20, Jim Stohr, Joel Wilmsmeyer et al. re: A New Opportunity to improve Pricing -- FAB... w/Attach: uvintl pricing.pdf	1/18/2010		Tr. 3475:4-10		
CX 1105 - CX 1107	Intentionally Not Used			N/A		
CX 1108	E-mail from Victor Pais to Greg Fox and Larry Rybacki re: Need to stabilize market pricing	11/4/2008		JX 0002-A		
CX 1109	E-mail from Victor Pais to Dick Williams re: PW Playing Field w/Attach: SIG-PW-Growth Strategy Update.doc	12/5/2008		Tr. 3475:4-10		
CX 1110	Intentionally Not Used			N/A		
CX 1111	E-mail from Victor Pais to Dan McCutcheon re: Lunch Thursday	12/9/2008		JX 0002-A		Tr. 2376:19
CX 1112	E-mail from Victor Pais to Dan McCutcheon re: mtg..	9/3/2009		Tr. 3475:4-10		
CX 1113	E-mail from Ruffner Page to Victor Pais re: Response to your feedback -- a strategic opportunity...	1/4/2008		Tr. 3475:4-10		Tr. 4670:22; 4671:2,9; 4672:9; 4673:2,22
CX 1114	E-mail from Siddharth Bhattacharji to Barry Keane re: price increase announcement by Tyler w/Attach: 20080114102950625.pdf	1/15/2008		Tr. 3475:4-10		
CX 1115 - CX 1116	Intentionally Not Used			N/A		
CX 1117	E-mail from Rick Tatman to Victor Pais re: 3"-8" DIWF from Tyler/Union	2/1/2008		JX 0002-A		Tr. 4181:4; 4666:14,15,20,23; 4667:4
CX 1118 - CX 1120	Intentionally Not Used			N/A		
CX 1121	E-mail from Raju Kakani to Victor Pais re: Tyler multiplier analysis w/Attach: 2007SalesWithTylerBlendedMult.xls	2/19/2008		Tr. 3475:4-10		
CX 1122	E-mail from Dan McCutcheon to Victor Pais re: Nit Noi Thai Restaurant & Nit Noi Cafe	2/19/2008		JX 0002-A		Tr. 1955:12; 2367:17
CX 1123	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1124	E-mail from Mitchell Rona to Siddharth Bhattacharji and Victor Pais re: 3"-8" DIWF from Tyler/Union	3/11/2008		Tr. 1609:8-10		Tr. 1609:6,8,9; 1618:19; 1620:10,15,16; 1621:6; 1622:22; 1632:8; 1633:23; 1647:14; 1706:12; 1715:18
CX 1125	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Dick Williams to Victor Pais and M20 re: Our pricing strategy for FTGs	4/11/2008	RX-045	JX 0002-A		
CX 1126	E-mail from Christopher King to Victor Pais and M20 re: Change To Price increase letter	4/18/2008		Tr. 3475:4-10		
CX 1127	E-mail from Greg Fox to Victor Pais, Larry Rybacki, Jeff Marcus et al. re: Regional Managers Review topics w/Attach: Regional Review April 2008.doc	4/26/2008		JX 0002-A		Tr. 3713:20
CX 1128	E-mail from Xal83@sprintspcs.com to M20 re: TylerUnion Price Increase w/Attach: TylerUnionAnnouncementMay72008.pdf	5/8/2008		JX 0002-A		Tr. 1294:13
CX 1129	E-mail from Tom Brakefield to Victor Pais and Larry Rybacki re: Star's tonnage data	5/17/2008		JX 0002-A		Tr. 3561:4
CX 1130	E-mail from Tom Brakefield to Victor Pais re: Star's tonnage data	5/30/2008		JX 0002-A		Tr. 3563:15
CX 1131	E-mail from Victor Pais to Walter Florence re: Following up on RED/D2H	5/8/2008		Tr. 3475:4-10		
CX 1132	E-mail from Victor Pais to M20 re: Revised Plant Work letter as discd @ RMR last week... w/Attach: Customer Letter-Plant Work Job Pricing 50508.pdf	5/6/2008		Tr. 3475:4-10		
CX 1133	Intentionally Not Used			N/A		
CX 1134	E-mail from Victor Pais to Larry Rybacki and M20 re: Change To Price increase letter	4/18/2008		JX 0002-A		Tr. 1938:22,25; 2092:24
CX 1135	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Victor Pais to Dave Pietryga, Rybacki and Siddharth Bhattacharji re: Our pricing strategy for FTGs	4/14/2008	RX-047	Tr. 3475:4-10		
CX 1136	Intentionally Not Used			N/A		
CX 1137	E-mail from Victor Pais to M20 re: Resp to your inputs on our Pricing Strategy...	4/11/2008		Tr. 1935:25-1936:2		Tr. 1935:7,21,25; 1936:1
CX 1138	E-mail from Victor Pais to M20 re: Our pricing strategy for FTGs w/Attach: Sigma-Multiplier Map-508.pdf; Customer Letter-Plant Work & Job Pricing -41008.doc	4/11/2008		JX 0002-A		Tr. 1926:1,13; 2077:10; 3542:4
CX 1139 - CX 1140	Intentionally Not Used			N/A		
CX 1141	E-mail from Victor Pais to Mitchell Rona and Siddharth Bhattacharji re: Follow up with Tyler	3/9/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1142	E-mail from Victor Pais to Siddharth Bhattacharji, Mitchell Rona, Tom Brakefield et al. re: QRR -- DG + FTG from Union	2/8/2008		JX 0002-A		
CX 1143	E-mail from Victor Pais to Dan McCutcheon re: our meeting	2/8/2008		Tr. 1954:25-1955:2		Tr. 1954:11,13,21,25; 1955:1; 2367:13
CX 1144	Intentionally Not Used			N/A		
CX 1145	E-mail from Victor Pais to M20 re: Multiplier Review w/Attach: Multiplier Review-by Terry-1207-12408.xls	1/24/2008		JX 0002-A		Tr. 1128:10; 1917:19,21; 2058:10; 3631:12; 4225:10
CX 1146	Intentionally Not Used			N/A		
CX 1147	E-mail from Steve Goodwyn to Victor Pais re: MCC Floor Price Revision w/Attachments (List Pricing)	10/20/2008		Tr. 3475:4-10		
CX 1148	Intentionally Not Used			N/A		
CX 1149	E-mail from Mitchell Rona to OEM5 re: Short talk with Rick Tatman	8/22/2008		Tr. 1613:19-21		Tr. 1613:15,19,20,23; 1655:1; 1717:7; 3577:3; 3715:12
CX 1150	Intentionally Not Used			N/A		
CX 1151	E-mail from Steve Goodwyn to M20 re: Fittings Multiplier Analysis w/Attach: Copy of FTG-PRC-MULT-608.xls, TYLER Feb 2008 Map-BLENDED.pdf, Tyler 08 Multiplier Revisions.ppt	7/25/2008		JX 0002-A		
CX 1152	E-mail from Victor Pais to M20 re: MCC Floor Price Revision	10/17/2008		Tr. 3475:4-10		
CX 1153	E-mail from Victor Pais to Siddharth Bhattacharji re: A few addl (may be even 2nd) thoughts on P2...	9/30/2008		Tr. 3475:4-10		
CX 1154	Intentionally Not Used			N/A		
CX 1155	E-mail from Victor Pais to M20 re: My visit to Concord 8/8/08...and a few recommendations...	9/2/2008		Tr. 3475:4-10		
CX 1156	E-mail from Victor Pais to Walter Florence and Siddharth Bhattacharji re: Your observations as to the scope of 'P2 (Power-of-2)' Plan	8/28/2008		Tr. 3475:4-10		
CX 1157	E-mail from Victor Pais to Walter Florence, Rybackand Siddharth Bhattacharji re: Conf call with Ruffner - Friday 8/29 @ 11am EDT/10am CDT	8/26/2008		Tr. 3475:4-10		
CX 1158	E-mail from Victor Pais to OEM5 re: My outline of Global opportunities to Ruffner... w/Attach: Re_VP to Ruffner_ISOPatterns & tooling.msg	7/10/2008		Tr. 3475:4-10		
CX 1159 - CX 1161	Intentionally Not Used			N/A		
CX 1162	E-mail from Victor Pais to Walter Florence, Fang Gang, Jim McGivern et al. re: Resending -- Presentation package for Acquisition Plan 'D2H' w/Attachments	7/30/2008		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1163	E-mail from Victor Pais to Bill Mitch re: Dutco update... w/Attach: Victor to Naga_Follow up with a promising J_V opportunity....msg; XINDIA-XXP-McWane Strategic Plan-80408.doc	8/15/2008		Tr. 3475:4-10		
CX 1164	Sigma: A Management Update	9/14/2009		Tr. 3475:4-10		
CX 1165	Intentionally Not Used			N/A		
CX 1166	E-mail from Victor Pais to OEM5 re: Draft of the proposed CUSTOMER LETTER about BA/MDA w/Attach: BA-MDA-CUSTOMER LETTER-090809	9/8/2009		Tr. 1799:3,5-6		Tr. 1797:14,17; 1798:2,22; 1799:3,5-6
CX 1167 - CX 1169	Intentionally Not Used			N/A		
CX 1170	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Mult Change plan for your review	1/23/2008	CX 0034	JX 0002-A		
CX 1171	Intentionally Not Used			N/A		
CX 1172	E-mail from Siddharth Bhattacharji to Mark Meyer and Mitchell Rona re: our plans for MTF ftgs	3/6/2009		Tr. 3475:4-10		
CX 1173	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Victor Pais to Bruce Ellenberger re: Our response to your follow about our interest in Metalfit...	5/26/2009	RX-153	JX 0002-A		
CX 1174	E-mail from Victor Pais to M20 re: DIFRA-SIGMA-SMS-1008 w/Attach: DIFRA-SIGMA-SMS-1008	12/7/2008		Tr. 2001:6-8		Tr. 2000:10,12; 2001:3,6,7
CX 1175	Intentionally Not Used			N/A		
CX 1176	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler/Union 2009 Narrative for Thad G. Long Range Plan	12/19/2008	RX-618	JX 0002-A		
CX 1177	Tyler/Union Executive Report for 1st Quarter 2008	4/16/2008		JX 0002-A		Tr. 4071:3,9; 4073:19; 4074:15; 4092:8
CX 1178	Letter from Jerry Jansen to Valued Customers re: Pending Price Change for Utility Fittings and Accessories	1/10/2008		JX 0002-A		Tr. 380:25; 870:20; 879:18; 892:7; 1065:12; 3098:16; 3099:18; 3515:11; 3880:10; 3881:9,18; 3884:16; 5425:23,25; 5429:16; 5432:22; 5435:6; 5844:19,21; 5845:6
CX 1179	E-mail from Rick Tatman to Laura Alvey re: Sept 22nd Announcement Q&A w/Attach: Sept 22nd Announcement Q&A Rev2.doc	10/6/2009		JX 0002-A		Tr. 807:13

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1180	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: RST is available @ 8:30 Inputs Sigma Response - Tyler/Union New List and Multipliers	4/28/2009	CX 0650 (TU-FTC-0031726 - TU-FTC-0031729)	JX 0002-A		Tr. 605:8; 811:22; 814:4; 815:18
CX 1181	E-mail from Rick Tatman to Jerry Jansen re: Market Multipliers April 2009 w/Attach: Market Multipliers April 2009.ppt	4/8/2009		JX 0002-A		
CX 1182	E-mail from Rick Tatman to Mitchell Rona re: ACIPCO Domestic Product w/ Attach: Sigma ACIPCO Domestic Product Letter 6.1.2009.pdf	6/1/2009		JX 0002-A		
CX 1183	E-mail from Ruffner Page to Craft O'Neal re: Q4/December EVA Performance	1/29/2008		JX 0002-A		
CX 1184	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Sigma Review August 17th 2009 w/Attach: Sigma Review August 17th 2009.ppt	8/18/2009		JX 0002-A		Tr. 770:22,24; 4008:16
CX 1185	Intentionally Not Used			N/A		
CX 1186	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Agree on Waiting until Data is available: DIFRA Data not available	5/24/2008		JX 0002-A		Tr. 517:16
CX 1187	E-mail from Rick Tatman to Walton Thomas and Leon McCullough re: DIFRA Reporting	6/4/2008		JX 0002-A		Tr. 525:19
CX 1188	E-mail from Rick Tatman to Leon McCullough re: TylerUnion State of Business Rev3.ppt w/Attach: TylerUnion State of Business Rev3.ppt	9/11/2008		JX 0002-A		
CX 1189	E-mail from Larry Rybacki to M20 re: Multiplier with Logo and Larry's Signature w/Attach: Sigma Multiplier Adjustment 2-25-08.doc	1/30/2008		JX 0002-A		Tr. 1124:8; 3518:23; 3693:19; 4220:2; 4221:1; 4257:2; 4257:19; 4258:22
CX 1190	Letter from Jerry Jansen and Scott Frank to Valued Customer re: domestic fittings and accessories	9/22/2009	CX 0006 (no bate number)	JX 0002-A		
CX 1191	Letter from Jerry Jansen to Glenn Fielding re: July 14, 2008 Price Change for Utility Fittings and Accessories	6/17/2008		JX 0002-A		
CX 1192	Letter from Jerry Jansen to Butch J. Doane re: July 14, 2008 Price Change for Utility Fittings and Accessories	6/17/2008		JX 0002-A		
CX 1193	Draft Letter from Jerry Jansen to contact for HDS, FEI, TDG re: June 16th Price Change for Utility Fittings and Accessories	5/29/2008		JX 0002-A		Tr. 516:17;
CX 1194	OEM Distribution Agreement between McWane and Sigma	9/17/2009		JX 0002-A		Tr. 791:7,10; 801:2; 802:12,15; 1807:20
CX 1195	TylerUnion Presentation: Waterworks Fittings Group	1/6/2008		JX 0002-A		
CX 1196	Jerry Jansen Utility Weekly Report	12/13/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1197	E-mail from Kent Brown to Thomas Walton re: Hajoca Open Domestic fitting orders - Tyler Union	12/2/2009		JX 0002-A		
CX 1198 - CX 1201	Intentionally Not Used			N/A		
CX 1202	E-mail from Bruce Duncan to Jeff Otterstedt and Scott Frank re: Announcement Letter Draft 2 McWane Only.doc w/Attach: Announcement Letter Draft 2 McWane Only.doc	9/18/2009		JX 0002-A		
CX 1203	E-mail from Marla Drake to Jerry Jansen re: 42" 48" MJ C153	11/28/2009		JX 0002-A		
CX 1204	E-mail from Thomas Walton to Leon McCullough re: Fittings	4/18/2008		JX 0002-A		
CX 1205	Intentionally Not Used			N/A		
CX 1206	2010 -2012 McWane Corporate Rebate Program for Ferguson	12/12/2009		JX 0002-A		
CX 1207	McWane, Inc. Sales \$ for Rebates Estimate for the year ending 12/31/2009	12/12/2009		JX 0002-A		
CX 1208	2010 - 2012 McWane Corporate Rebate Program for Winwholesale	12/12/2009		JX 0002-A		
CX 1209	E-mail from Rick Tatman to Leon McCullough, Walton Thomas and Jerry Jensen re: Buy American	2/23/2009		JX 0002-A		Tr. 612:20
CX 1210 - CX 1215	Intentionally Not Used			N/A		
CX 1216	E-mail from Rick Tatman to Thomas Walton, Leon McCullough and Jerry Jansen re: Star 300 Patterns	12/4/2009		JX 0002-A		
CX 1217	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Large Dia Fittings ACIPCO - TylerUnion	10/23/2009		JX 0002-A		
CX 1218	Intentionally Not Used			N/A		
CX 1219	E-mail from Rick Tatman to Darryl Case re: Tyler/ Union consignment w/Attach: Consignment.ppt	6/11/2009		JX 0002-A		
CX 1220	E-mail from Rick Tatman to Jerry Jansen re: BA Substitution Policy	6/5/2009		JX 0002-A		
CX 1221	Intentionally Not Used			N/A		
CX 1222	E-mail from Rick Tatman to Thomas Walton Jim Anderlik Leon McCullough re: HDS Supply & General market actions w/Attach: RevC 2009 TylerUnion DIWF Program Feb 23rd.doc, Elmira Announcement Draft.doc, List Price Change draft.doc, TuffGrip Special Price Draft.doc	2/24/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1223	E-mail from Rick Tatman to Jerry Jansen re: Rick	2/9/2009		JX 0002-A		Tr. 1072:24; 1074:23, 24
CX 1224	Intentionally Not Used			N/A		
CX 1225	E-mail from Ruffner Page to James M. Proctor re: A few personal thoughts ahead of our meeting tomorrow...	8/24/2009		JX 0002-A		
CX 1226	E-mail from Ruffner Page to Leon McCullough re: December DIFRA Report	1/23/2009		JX 0002-A		
CX 1227	E-mail from Rick Tatman to Chris Nichols re: Regional Yards w/Attach: 2006 Tonnage by State	2/5/2009		JX 0002-A		
CX 1228	E-mail from Laura Alvey to Jerry Jansen and Rick Tatman re: UTIL Annual 2009	1/26/2010		JX 0002-A		
CX 1229	E-mail from Gwen Jackson to Rick Tatman, Kirtley and Laura Alvey re: Utility Rebates w/Attach: UTILQ4	1/7/2010		JX 0002-A		
CX 1230	Intentionally Not Used			N/A		
CX 1231	E-mail from Rick Tatman to Roy Pitts re: Hajoca Rebates w/Attach: Hajoca REB Q4.XLS, Hajoca REB Annual	2/11/2010		JX 0002-A		
CX 1232 - CX 1233	Intentionally Not Used			N/A		
CX 1234	E-mail from Leon McCullough to Rick Tatman re: Rick Tatman Comments Revised Hajoca Corporate Rebate Proposal	1/8/2010		JX 0002-A		
CX 1235	E-mail from Rick Tatman to Gwen Jackson re: Alan Master 2010 Utility Rebate Log w/Attach: Alan Master 2010 Utility Rebate Log	1/29/2010		JX 0002-A		
CX 1236	E-mail from Rick Tatman to Jerry Jansen re: RST Response IWWG Proposal	11/23/2009		JX 0002-A		
CX 1237	E-mail from Leon McCullough to Rick Tatman and Thomas Walton re: Sigma Private Label	3/18/2009		JX 0002-A		
CX 1238	E-mail from Rick Tatman to Mark Willett re: Elmira Domestic Stocking Plan	10/12/2009		JX 0002-A		
CX 1239	E-mail from Kent Brown to Rick Tatman re: Help with revised Star costs	3/12/2010		JX 0002-A		
CX 1240	E-mail from Rick Tatman to Mark Willett re: Daily Activity Summary II Report March 18th w/Attach: WWorksboth	3/20/2010		JX 0002-A		
CX 1241	E-mail from Rick Tatman to Kent Brown re: UFCO financial model	1/21/2010		JX 0002-A		
CX 1242	E-mail from Victor Pais to Rick Tatman re: Draft of Customer Letter	9/17/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1243	E-mail from Mitchell Rona to Rick Tatman re: Agreement to Sell Sigma Domestic Product	6/8/2009		JX 0002-A		Tr. 643:6-8; 1490:10
CX 1244	E-mail from Jerry Jansen to Rick Tatman re: Pricing in Florida w/Attach: Live Oak Job - HD Supply Tallahassee	4/14/2009		JX 0002-A		
CX 1245	Intentionally Not Used			N/A		
CX 1246	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: HD Supply - Exclusivity	9/23/2009		JX 0002-A		Tr. 696:8
CX 1247	Intentionally Not Used			N/A		
CX 1248	E-mail from Rick Tatman to Mitchell Rona re: Sigma Pricing	8/6/2009		JX 0002-A		
CX 1249	E-mail from Rick Tatman to Susan Welch and Debbie Vinson re: Domestic Sigma Multipliers	5/11/2009		JX 0002-A		
CX 1250	E-mail from Rick Tatman to Susan Welch re: Sean to Sundra (Sigma Open Items at Tyler Union Anniston)	3/27/2009		JX 0002-A		
CX 1251	E-mail from Bob Sheehan to Rick Tatman re: ARRA Web cast ODF sideshow	6/25/2009		JX 0002-A		
CX 1252	E-mail from Mike Keel to Ruffner Page re: Lunch meeting tomorrow	6/8/2008		JX 0002-A		
CX 1253	E-mail from Victor Pais to Ruffner Page re: our mtgs	6/8/2008		JX 0002-A		
CX 1254 - CX 1255	Intentionally Not Used			N/A		
CX 1256	E-mail from Victor Pais to Ruffner Page re: Follow Up..	5/11/2008		JX 0002-A		
CX 1257	E-mail from Ruffner Page to Victor Pais re: our meeting this week	5/5/2008		JX 0002-A		
CX 1258	E-mail from Leon McCullough to Ruffner Page re: Final Results	10/7/2008		JX 0002-A		
CX 1259	E-mail from Nancy Israls to Ruffner Page re: Minutes of 8/15 Meeting, Action Step Spreadsheet, Org Charts w/Attach: 08_15 Conf Call Minutes, 2008StratPlanListByDate.xls, ABIPbgsalesOrgChart.pdf, PlumbingGroupSalesOrgChart.pdf, TomLeonardOrgChart.pdf	8/25/2008		JX 0002-A		
CX 1260 - CX 1262	Intentionally Not Used			N/A		
CX 1263	E-mail from Ruffner Page to Tom Leonard re: Corporate Rebate	2/5/2008		JX 0002-A		
CX 1264 - CX 1265	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1266	Unanimous written consent of the board of directors of DIFRA Board	01/00/2007		JX 0002-A		
CX 1267	E-mail from Michelle McNamee to Victor Pais re: request for Urgent mtg	4/29/2009		JX 0002-A		
CX 1268	E-mail from Mike Keel to Ruffner Page re: Follow up...	5/12/2008		JX 0002-A		
CX 1269	E-mail from Ruffner Page to Leon McCullough re: Sigma	3/17/2009		JX 0002-A		
CX 1270	E-mail from Leon McCullough to Ruffner Page re: Jerry Webb Letter on Domestic supply options and ARRA projects w/Attach: HDSWW American Made Fittings.pgf	9/26/2009		JX 0002-A		Tr. 694:3
CX 1271	E-mail from Ruffner Page to Victor Pais re: our meeting -- Wednesday/Thursday	5/20/2009		JX 0002-A		
CX 1272	E-mail from Allan Boscacci to Leon McCullough, Charkoand Ruffner Page re: McWane Mtg. Agenda	1/9/2010		JX 0002-A		
CX 1273	E-mail from Mike Keel to Ruffner Page re: Restraints	5/15/2009		JX 0002-A		
CX 1274 - CX 1275	Intentionally Not Used			N/A		
CX 1276	E-mail from Rick Tatman to Thomas Walton re: TvlerUnion 2010 Budget w/Attach: 2012 Budget Narrative Final.doc, Income Stmt Final.xls, 2012 Budget Final.xls	10/29/2009		JX 0002-A		
CX 1277	E-mail from Rick Tatman to Leon McCullough re: HDS Review July 2009 w/Attach: HDS Review July 2009.ppt	7/13/2009		JX 0002-A		
CX 1278	E-mail from Rick Tatman to Thomas Walton and Leon McCullough re: Jan DIFRA	2/19/2009		JX 0002-A		Tr. 571:21
CX 1279	Intentionally Not Used			N/A		
CX 1280	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Cost of excess inventory	8/15/2008		JX 0002-A		
CX 1281	Intentionally Not Used			N/A		
CX 1282	E-mail from Rick Tatman to Thomas Walton and Leon McCullough re: DIFRA Data not available	5/23/2008		JX 0002-A		
CX 1283	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: April DIFRA report	6/10/2008		JX 0002-A		
CX 1284	E-mail from Thomas Walton to Rick Tatman re: Restarting Activity on a Fittings Trade association	2/8/2008		JX 0002-A		Tr. 465:16; 3535:2
CX 1285	Intentionally Not Used			N/A		
CX 1286	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Sigma & Star	5/13/2008	RX-420	JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1287	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Rick Tatman to Leon McCullough re: TylerUnion State if Business Rev2 w/Attach: TylerUnion State of Business Rev2.ppt	9/9/2008	RX-616	JX 0002-A		
CX 1288	E-mail from Leon McCullough to Ruffner Page re: can we meet next week?	8/21/2009		JX 0002-A		
CX 1289	E-mail from Ruffner Page to Leon McCullough re: buy american	4/25/2009		JX 0002-A		
CX 1290	Intentionally Not Used			N/A		
CX 1291	E-mail from Walter Florence to M4-BFA re: From Craig: TYLER/UNION NEW price increase letter	1/14/2008		Tr. 3475:4-10		Tr. 3557:10
CX 1292	Intentionally Not Used			N/A		
CX 1293	E-mail from Rick Tatman to Wood Herren re: Jan DIFRA reports	2/19/2009		JX 0002-A		
CX 1294	E-mail from Rick Tatman to Leon McCullough re: McWane Oct DIFRA w/Attach.	11/17/2008		JX 0002-A		
CX 1295	Intentionally Not Used			N/A		
CX 1296	<b>REMOVED -- DUPLICATE EXHIBIT</b> Independent Accountant's Report on Applying Agreed-Upon Procedures by Sellers Al Richardson Holman & West LLP	1/15/2009	RX-127	JX 0002-A		
CX 1297	Independent Account's Report on Applying Agreed-Upon Procedures	7/13/2008		JX 0002-A		
CX 1298	Independent Accountant's Report on Applying Agreed-Upon Procedures	7/13/2008		JX 0002-A		
CX 1299	E-mail from Rick Tatman to Bree Holland re: McWane Oct DIFRA w/Attach: McWane Oct 2008 DIFRA.pdf	11/11/2008		JX 0002-A		
CX 1300	E-mail from Thad G. Long to Bree Holland re: 0608 DIFRA report status?	7/31/2008		JX 0002-A		
CX 1301	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Tom Brakefield to Bree Holland, Tatman and Wood Herren re: DIFRA	11/11/2008	RX-113	JX 0002-A		
CX 1302	Intentionally Not Used			N/A		
CX 1303	E-mail from Margaret Powell to Bree Holland re: McWane DIFRA data w/Attach: DIFRA Initial Data - McWane 2006-April 2008	6/11/2008		JX 0002-A		
CX 1304	E-mail from Rick Tatman to Bree Holland re: Jan McWane DIFRA Data w/Attach: McWane Jan DIFRA	2/9/2009		JX 0002-A		
CX 1305	E-mail from Dan McCutcheon to Bree Holland re: DIFRA Report - Dec 08	1/12/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1306	E-mail from Rick Tatman to Bree Holland re: McWane Dec DIFRA w/Attach: McWane December DIFRA	1/12/2009		JX 0002-A		
CX 1307	E-mail from Tom Brakefield to Bree Holland re: Raju to TB2: DIFRA Input Output Format-123108 w/Attach: DIFRA Input Output Format-123108	1/12/2009		JX 0002-A		
CX 1308	E-mail from Dan McCutcheon to Bree Holland re: DIFRA Report-Nov 08 w/Attach: DIFRA Report	12/12/2008		JX 0002-A		
CX 1309	E-mail from Rick Tatman to Bree Holland re: McWane Nov DIFRA w/Attach: McWane Nov DIFRA	12/10/2008		JX 0002-A		
CX 1310	E-mail from Tom Brakefield to Bree Holland re: Raju to TB2: DIFRA Input file-Nov'08 w/Attach: DIFRA Input Output Format-113008	12/5/2008		JX 0002-A		
CX 1311	E-mail from Dan McCutcheon to Bree Holland re: DIFRA Report-Oct 2008 w/Attach: DIFRA Report	11/13/2008		JX 0002-A		
CX 1312	E-mail from Tom Brakefield to Bree Holland re: Raju to TB: DIFRA Input Output Format-103108 w/Attach: DIFRA Input Output Format-103108	11/6/2008		JX 0002-A		
CX 1313	E-mail from Dan McCutcheon to Bree Holland re: DIFRA Report-Sept 08 w/Attach: DIFRA Report	10/13/2008		JX 0002-A		
CX 1314	E-mail from Rick Tatman to Bree Holland re: McWane Sept DIFRA w/Attach: DIFRA Data-McWane Sept 2008	10/7/2008		JX 0002-A		
CX 1315	E-mail from Tom Brakefield to Bree Holland re: Raju to TB2: DIFRA Sep'08 input w/Attach: DIFRA Input Output Format-93008	10/3/2008		JX 0002-A		
CX 1316	E-mail from Tom Brakefield to Bree Holland re: DIFRA input for Aug'08 w/Attach: DIFRA Input Output Format-83108	9/26/2008		JX 0002-A		
CX 1317	E-mail from Dan McCutcheon to Bree Holland re: DIFRA Report-Aug 2008 w/Attach: DIFRA Report	9/15/2008		JX 0002-A		
CX 1318	E-mail from Tom Brakefield to Bree Holland re: (1st) July,2008 DIFRA for Sigma w/Attach: DIFRA Input Output Format-73108	8/19/2008		JX 0002-A		
CX 1319	E-mail from Dan McCutcheon to Bree Holland re: DIFRA Report-July 08 w/Attach: DIFRA Report	8/15/2008		JX 0002-A		
CX 1320	E-mail from Rick Tatman to Margaret Powell re: DIFRA Data - McWane July 2008 w/Attach: DIFRA Data-McWane July 2008	8/14/2008		JX 0002-A		
CX 1321	E-mail from Dan McCutcheon to Bree Holland re: DIFRA data with May numbers w/Attach: DIFF_06short_0708short_lg_lcan	6/17/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1322	E-mail from Tom Brakefield to Bree Holland re: 04/08 DIFRA report approved w/Attach: DIFRA Input Output Format Rev 2	6/11/2008		JX 0002-A		
CX 1323	E-mail from Margaret Powell to Bree Holland re: DIFRA report - Star Pipe w/Attach: DIFF_06short_0708short_lg_lcan	6/11/2008		JX 0002-A		
CX 1324	E-mail from Bree Holland to Margaret Powell re: DIFRA	6/25/2009		JX 0002-A		
CX 1325	E-mail from Bree Holland to Margaret Powell re: DIFRA Input Output Format-043009	5/14/2009		JX 0002-A		Tr. 1419:24
CX 1326	E-mail from Bree Holland to Rick Tatman, Tom Brakefield, Gary Crawford, Dan McCutcheon et al. re: DIFRA Reports w/Attachs: Fittings Reports	7/18/2008		JX 0002-A		
CX 1327 - CX 1328	Intentionally Not Used			N/A		
CX 1329	E-mail from Wood Herren to Margaret Powell re: Ductile Iron Fittings Research Association - Reporting Monthly Sales of Ductile Iron Fittings w/Attach: DIFRA Input Output Format Rev 2	5/28/2008		JX 0002-A		
CX 1330	E-mail from Wood Herren to Margaret Powell re: Ductile Iron Fittings Research Association - Reporting Monthly Sales of Ductile Iron Fittings	3/13/2007		JX 0002-A		
CX 1331	E-mail from Laura Alvey to Margaret Powell re: 2006 McWane DIFRA Report w/Attach: 2006 McWane DIFRA Report	2/16/2007		JX 0002-A		Tr. 1423:24
CX 1332	E-mail from Margaret Powell to Rick Haley re: April DIFRA report	6/10/2008		JX 0002-A		
CX 1333	E-mail from Rick Haley to Margaret Powell re: Ductile Iron Fittings Research Association w/Attachs: DIFRA 2006 Draft WH	1/31/2007		JX 0002-A		Tr. 1237:19; 1240:15
CX 1334	E-mail from Rick Tatman to Margaret Powell re: April DIFRA report	6/10/2008		JX 0002-A		Tr. 528:24
CX 1335	E-mail from Rick Tatman to Margaret Powell re: DIFRA Reports	5/21/2008		JX 0002-A		Tr. 514:19; 515:5;
CX 1336	E-mail from Bree Holland to Margaret Powell re: DIFRA Input Output Format-043009 w/Attach: DIFRA Input Output Format-043009	5/11/2009		JX 0002-A		
CX 1337	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Bree Holland to Rick Tatman, Tom Brakefield and Gary Crawford et al. re: DIFRA Report August 2008 w/Attach: Fittings Report August 2008.pdf	10/1/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1338	E-mail from Rick Tatman to Margaret Powell and Bree Holland re: DIFRA Data-McWane Aug 2008 w/Attach: DIFRA Data-McWane Aug 2008	9/9/2008		JX 0002-A		
CX 1339	E-mail from Bree Holland to Rick Tatman, Tom Brakefield, Gary Crawford et al. re: DIFRA December 2008 Reports w/Attach: DIFRA Fittings Report Dec 2008	1/20/2009		JX 0002-A		
CX 1340	E-mail from Bree Holland to Rick Tatman, Tom Brakefield, Gary Crawford et al. re: DIFRA July Report w/Attach: Fittings Report JUL 2008	8/20/2008		JX 0002-A		Tr. 1319:10,19,22; 1394:22
CX 1341	E-mail from Bree Holland to Margaret Powell re: DIFRA Input Output Format-63008 w/Attach: DIFRA Input Output Format-063008	7/18/2008		JX 0002-A		
CX 1342	E-mail from Bree Holland to Margaret Powell re: DIFRA Data-McWane Jun 2008 w/Attach: DIFRA Data - McWane Jun 2008	7/18/2008		JX 0002-A		
CX 1343	E-mail from Courtney Courtney Davis to Bree Holland and Margaret Powell re: US Pipe Fittings Shipments - June 2010 w/Attach: DIPRA_Fittings_SRWHL_Report_2010	7/8/2010		JX 0002-A		
CX 1344	E-mail from Dan McCutcheon to Margaret Powell and Bree Holland re: DIFRA Reports-star June 08 w/Attach: DIFF_06short_0708short)	7/17/2008		JX 0002-A		
CX 1345	E-mail from Bree Holland to Margaret Powell re: DIFRA Reports w/Attach: DIFRA Reports	7/18/2008		JX 0002-A		
CX 1346	E-mail from Rick Tatman to Bree Holland and Margaret Powell re: McWane May DIFRA Data w/Attach: DIFRA Data-McWane May 2008	6/13/2008		JX 0002-A		
CX 1347	E-mail from Tom Brakefield to Margaret Powell re: DIFRA - May,2008 w/Attach: DIFRA Input Output Format Rev 2	6/13/2008		JX 0002-A		
CX 1348	E-mail from Bree Holland and Rick Tatman, Tom Brakefield, Gary Crawford et al. re: DIFRA November 2008 Report w/Attach: Fittings Report Nov 2008	12/17/2008		JX 0002-A		
CX 1349	E-mail from Bree Holland to Rick Tatman, Tom Brakefield, Gary Crawford et al. re: DIFRA Reports w/Attach: DIFRA reports May 2008-October 2008	11/18/2008		JX 0002-A		
CX 1350	E-mail from Bree Holland to Rick Tatman, Tom Brakefield, Gary Crawford et al. re: DIFRA September 2008 w/Attach: Fittings Report September 2008	10/15/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1351	E-mail from Bree Holland to Margaret Powell re: DIFRA w/Attach: Fittings Report June 2008	7/31/2008		JX 0002-A		
CX 1352	Intentionally Not Used			N/A		
CX 1353	E-mail from Rick Tatman to Rick Rick Fairbanks re: TylerUnion vendor proposal for TDG	9/27/2011		JX 0002-A		
CX 1354 - CX 1355	Intentionally Not Used			N/A		
CX 1356	E-mail from Rick Fairbanks to Steve Barnett et.al re: TylerUnion announcement	9/22/2009		JX 0002-A		
CX 1357	Intentionally Not Used			N/A		
CX 1358	E-mail from Larry Rybacki to Rick Fairbanks re: Sigma Rebate on Domestic Fittings	9/24/2009		Tr. 3475:4-10		
CX 1359 - CX 1360	Intentionally Not Used			N/A		
CX 1361	2007 TDG Vendor Profile	12/31/2007		JX 0002-A	Ordered 8/17/2012	Tr. 5706:9; 5710:2,3,8,9
CX 1362	TDG Member Companies	4/13/2012		JX 0002-A		
CX 1363	E-mail from Rick Fairbanks to Jerry Jansen re: TDG survey regarding Q1 purchases from Tyler	6/5/2008		JX 0002-A		
CX 1364	E-mail from Rick Tatman to Rick Fairbanks re: 2010 TDG Vendor Proposal Template Revised 9-25-09.doc w/Attach: 2010 TDG Vendor Proposal Template Revised 9-25-09.doc	9/25/2009		JX 0002-A		
CX 1365	Intentionally Not Used			N/A		
CX 1366	E-mail from Laura Alvey to Rick Fairbanks re: TylerUnion proposal 2010 w/Attach: 2010 TDG Vendor Proposal Template Aug 31st.pdg	9/1/2009		JX 0002-A		
CX 1367	Intentionally Not Used			N/A		
CX 1368	E-mail from Rick Tatman to Rick Fairbanks re: TylerUnion announcement	9/22/2009		JX 0002-A		
CX 1369	Google Map of Illionis	4/20/2012		JX 0002-A		
CX 1370	Intentionally Not Used			N/A		
CX 1371	Frazier and Frazier Product listing from Star	08/18/2009 12/30/2011		JX 0002-A		
CX 1372 - CX 1376	Intentionally Not Used			N/A		
CX 1377	E-mail from Michael Walsh to Jim McGivern re: One more topic for the Chicago meeting	5/7/2010		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1378	E-mail from Michael Walsh to Harry Bair, Dennis Loughead, Roy et al. re: price increase from Tyler?!	6/17/2010		Tr. 3475:4-10		Tr. 3506:2
CX 1379	E-mail from Michael Walsh to Victor Pais, Larry Rybacki, Siddharth Bhattacharji et al. re: Sigma Rebate on Domestic Fittings	9/24/2009		Tr. 3475:4-10		
CX 1380 - CX 1383	Intentionally Not Used			N/A		
CX 1384	E-mail from Ken Stephenson to Michael Walsh, Harry Bair, Dennis Loughead et al. re: price increase from Tyler?!	6/22/2010		Tr. 3475:4-10		
CX 1385	Intentionally Not Used			N/A		
CX 1386	E-mail from Victor Pais to Stuart Box & M20 re: SDP plan -- going down the road...	6/14/2009		Tr. 3475:4-10		
CX 1387 - CX 1394	Intentionally Not Used			N/A		
CX 1395	E-mail from Al Richardson to Victor Pais, M20, & Gopi Ramanathan re: Response on your Korea sourcing plan -- with strategic look @ other options...	5/15/2009		Tr. 3475:4-10		
CX 1396	E-mail from Michael Walsh to Mike Roy, Susan Van Hook, Kevin Flanagan et al. re: New Sigma Price Increase Letter w/Attach: Sigma Price Increase 6-24-2010.pdf	6/25/2010		Tr. 3475:4-10		Tr. 3503:25
CX 1397	E-mail from Michael Walsh to Craig Schapiro re: Tyler Price Increase w/Attach: Tyler Increase Letter.pdf	6/25/2010		Tr. 3475:4-10		
CX 1398 - CX 1400	Intentionally Not Used			N/A		
CX 1401	E-mail from Greg Fox to Al Richardson, Christopher King, Dave Pietryga et al. re: Southeast Multiplier Adjustment Announcement w/Attach: 20080131100925819.pdf	1/31/2008		Tr. 3475:4-10		
CX 1402	E-mail from Craig Schapiro to M20 re: Star Pipe MULT Increase Letter w/Attach: 20071022121727240.pdf	10/22/2007		Tr. 3475:4-10		
CX 1403	E-mail from Craig Schapiro to M20 re: Star - Utility Fittings Price List and Multiplier Change-FBE and P401	3/8/2011		Tr. 3475:4-10		
CX 1404	E-mail from Craig Schapiro to M20 re: Star - Utility Fittings List Price and Multiplier Change	2/25/2011		Tr. 3475:4-10		
CX 1405	Intentionally Not Used			N/A		
CX 1406	E-mail from Craig Schapiro to SIGALL re: Star - New Fitting Multipliers	6/18/2010		Tr. 3475:4-10		Tr. 3501:21

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1407	E-mail from Larry Rybacki to Al Richardson & Ion a Shenoy re: IS to above - Customer - Price Increase Letter from Larry..	6/24/2010		Tr. 3475:4-10		
CX 1408 - CX 1409	Intentionally Not Used			N/A		
CX 1410	E-mail from Victor Pais to M20 re: HDS-SRT-07-T2 (By Region) w/Attach: RST-07-HDS-22807.xls	3/18/2007		JX 0002-A		
CX 1411 - CX 1412	Intentionally Not Used			N/A		
CX 1413	E-mail from Victor Pais to M20 re: Price Increase Letter w/Attach: Mid-Year Price Increase Letter-060810.docx	6/8/2010		JX 0002-A		Tr. 2035:20,21; 3489:12,25
CX 1414 - CX 1416	Intentionally Not Used			N/A		
CX 1417	Chart Sales by Customer: STARPIPE 2010	3/23/2012		JX 0002-A		
CX 1418	Chart Sales by Customer: STARPIPE 2011	3/23/2012		JX 0002-A		
CX 1419	Chart Sales by Customer: STARPIPE 2012	3/23/2012		JX 0002-A		
CX 1420 - CX 1431	Intentionally Not Used			N/A		
CX 1432	Estimate Sheet: TylerUnion	8/26/2011		JX 0002-A		
CX 1433	Intentionally Not Used			N/A		
CX 1434	E-mail from Rick Tatman to Mitchell Rona re: Agreement to Sell Sigma Domestic Product w/Attach: Sigma - Domestic Product Agreement 6 4 2009.pdf	6/5/2009		Tr. 641:17-19 JX 0002-A		Tr. 637:16; 639:1,18; 641:9,17,18; 1489:13,22
CX 1435	E-mail from Rick Tatman to Victor Pais re: Notice of Termination Sigma Master Distribution Agreement w/Attach: Notice of Termination Sigma Master Distribution Agreement 2 17 2010.pdf	2/17/2010		JX 0002-A		
CX 1436	E-mail from Rick Tatman to Mitchell Rona re: TylerUnion Rules of Play - Sigma Master Distribution Agreement (2).doc w/Attach: TylerUnion Rules of Play - Sigma Master Distribution Agreement (2).doc	9/24/2009		Tr. 1568:16-18		Tr. 1568:14,16,17,20; 1598:21
CX 1437	E-mail from Larry Rybacki to Mitchell Rona, Jim McGivern, & OEM5 re: Hajoca	12/15/2009		JX 0002-A		
CX 1438	E-mail from Larry Rybacki to M20 re: January 2, 2008 Price Increase w/Attach: January 2 2008 Price Increase Revision.doc	12/21/2007		Tr. 3475:4-10		
CX 1439	E-mail from Victor Pais to M20 re: Our Pricing Strategy...	12/26/2007		JX 0002-A		Tr. 1902:14; 2055:2; 3868:7
CX 1440 - CX 1444	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Confidential

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1445	E-mail from Siddharth Bhattacharji to liuguang, Sunil Handa, Sean Salins et al. re: Cor-ten price	2/1/2007		Tr. 3475:4-10		
CX 1446	E-mail from Victor Pais to Jim McGivern, Walter Florence, BFA-M4 et al. re: An update on a couple of open issues...	3/15/2007		Tr. 3475:4-10		
CX 1447 - CX 1448	Intentionally Not Used			N/A		
CX 1449	E-mail from Mitchell Rona to Rick Tatman re: Request for pricing increase for the fittings we sell Tyler and Union from A-1 Foundry in China	4/10/2007		Tr. 3475:4-10		
CX 1450	E-mail from SZF to liuguang & Victor Pais re: An appeal about ISO Fittings business -- pricing and shipments...	9/16/2007		Tr. 3475:4-10		
CX 1451	Letter from David Glidewell to Ron Douglas re: proposal attached	9/8/2009		JX 0002-A		
CX 1452 - CX 1453	Intentionally Not Used			N/A		
CX 1454	Letter from Larry Rybacki to Valued Customers re: Pricing Review for AWWA MJ Fittings	4/27/2009		JX 0002-A		Tr. 2021:13,15,22; 2022:12; 3585:2
CX 1455	Google Map of West Virginia and Kentucky	4/27/2012		JX 0002-A		
CX 1456	E-mail from Michael Walsh to Tom Brakefield re: New List Price Sheet 2/12/07	1/16/2007		JX 0002-A		
CX 1457	Intentionally Not Used			N/A		
CX 1458	E-mail from Tom Brakefield to Christopher King & Dave Pietryga re: ARRA Compliance/SDP update	7/18/2009		Tr. 3475:4-10		
CX 1459	Intentionally Not Used			N/A		
CX 1460	E-mail from Tom Brakefield to Greg Fox, Michael Walsh, Christopher King et al. re: follow up of Domestic material po's with Tyler	2/11/2010		Tr. 3475:4-10		
CX 1461 - CX 1465	Intentionally Not Used			N/A		
CX 1466	E-mail from Tom Brakefield to Michael Walsh re: Home Depot meetings	1/3/2007		JX 0002-A		
CX 1467	E-mail from Tom Brakefield to Raju Kakani re: DIFRA report w/Attach: DIFRA 2006 Draft.xls	2/16/2007		JX 0002-A		Tr. 1245:4,6,7
CX 1468 - CX 1469	Intentionally Not Used			N/A		
CX 1470	E-mail from Mitchell Rona to OEM5 re: Master Distribution Agreement vs. De Minimis (which way to play the game) w/Attach: MDA_worksheet1.xls	9/23/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1471	E-mail from Mitchell Rona to Michael Walsh re: need further definition of Tyler death row inmates	9/28/2009		Tr. 1604:11-13		Tr. 1604:7,11,12,15
CX 1472	E-mail from Mitchell Rona to M20 re: Domestic Fittings Prices for Sigma	2/16/2011		Tr. 3475:4-10		
CX 1473	Summary of First Meeting to Establish Trade Association for Ductile Water Works Fittings	3/21/2005		JX 0002-A		Tr. 1222:13,16
CX 1474	Agenda: Second Meeting to Establish Trade Association for Ductile Iron Waterworks & Sewer Fittings	8/29/2005		JX 0002-A		
CX 1475	Summary of Third Meeting to Establish Trade Association for Ductile Water Works Fittings	11/21/2006		JX 0002-A		
CX 1476	Summary of Fourth Meeting to Establish Trade Association for Ductile Water Works Fittings	12/12/2006		JX 0002-A		
CX 1477	E-mail from Rick Tatman to Rick Tatman & Thad G. Long re: DIFRA Input Output Format.xls w/Attach: DIFRA Input Output Format.xls	4/4/2008		JX 0002-A		Tr. 478:12;
CX 1478	E-mail from Rick Tatman to Thad G. Long re: DIFRA Call 10:00am April 25th	4/25/2008		JX 0002-A		
CX 1479	E-mail from Thad G. Long to Tom Brakefield, Victor Pais, Dan McCutcheon et al. w/Attach: DIFRA Input Output Format Rev 2 xls (3).xls	4/25/2008		JX 0002-A		Tr. 1276:10; 1279:6,10
CX 1480	E-mail from Wood Herren to Duane Green, Gary Crawford, Tom Brakefield et al. re: Ductile Iron Fittings Research Association w/Attach: 1594_001.pdf	1/15/2007		JX 0002-A		Tr. 1228:19
CX 1481	E-mail from Thad G. Long to Tom Brakefield re: DIFRA	7/31/2007		JX 0002-A		
CX 1482	E-mail from Thad G. Long to T. Petermann re: Proposed Trade Association Meeting - Ductile Iron Fittings Research Association (DIFRA)	2/22/2008		JX 0002-A		
CX 1483	Intentionally Not Used			N/A		
CX 1484	E-mail from Thad G. Long to Larry Rybacki, Rick Tatman, Victor Pais et al. re: DIFRA w/Attach: 1528357-1-Articles of Incorporation of Ductile Iron Fittings Research Association.DOC; 1524103-6-Ductile Iron Fittings Research Association (DIFRA) - Bylaws.DOC; 1524103-doc-Ductile Iron Fittings Research Association (DIFRA) - Bylaws.DOC	3/19/2008		JX 0002-A		
CX 1485	E-mail from Rick Tatman to Thad G. Long re: Draft of certain possible Agenda Items for DIFRA Meeting 3/27/2008	3/20/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1486	E-mail from Thad G. Long to Rick Tatman, Gary Crawford, Victor Pais et al. re: DIFRA Meeting in Birmingham for 3/27/08 w/Attach: BHM#1683806-v1-Agenda for DIFRA Meeting 3 27 2008.DOC	3/24/2008		JX 0002-A		Tr. 1271:11
CX 1487 - CX 1501	Intentionally Not Used			N/A		
CX 1502	E-mail from Larry Rybacki to M20 re: Bruce Himes' letter forwarded	4/2/2007		Tr. 3475:4-10		
CX 1503	E-mail from Victor Pais to Walter Florence & Ronald W. Kuehl re: A Growth Strategy thru Acq in PW sector...w/Attach: SIG-Plant Work-ACQ Strategy-1127.doc	11/27/2007		Tr. 3475:4-10		
CX 1504	Intentionally Not Used			N/A		
CX 1505	E-mail from Victor Pais to M20 re: Star update	7/16/2009		Tr. 1799:16-18		Tr. 1778:16,21; 1779:13,16,17
CX 1506 - CX 1509	Intentionally Not Used			N/A		
CX 1510	E-mail from Mitchell Rona to Craig Schapiro, Dick Williams and Victor Pais re: Domestic multipliers..	9/23/2009		Tr. 3475:4-10		
CX 1511 - CX 1512	Intentionally Not Used			N/A		
CX 1513	E-mail from Larry Rybacki to Victor Pais and Greg Fox re: Sigma Rebate on Domestic Fittings	9/24/2009		Tr. 3475:4-10		
CX 1514	E-mail from Harry Bair to Michael Walsh re: HD Chantilly	9/24/2009		Tr. 3475:4-10		
CX 1515	E-mail from Craig Schapiro to Jim Stohr, Kane Connor, Joel Wilmsmeyer et al. re: old material that is in stock labeled Sigma from original purchase from Tyler/Union	9/28/2009		Tr. 3475:4-10		
CX 1516 - CX 1518	Intentionally Not Used			N/A		
CX 1519	E-mail from Victor Pais to Greg Fox, Tom Brakefield, Victor Pais et al. re: TylerUnion Price Increase	12/29/2009		Tr. 3475:4-10		
CX 1520	Intentionally Not Used			N/A		
CX 1521	E-mail from Craig Schapiro to Mitchell Rona and RM6 re: Tyler Domestic Business	2/23/2010		Tr. 3475:4-10		
CX 1522	E-mail from Victor Pais to Al Richardson, M20, Jim Stohr et al. re: Tyler -- domestic vs. import	4/9/2010		Tr. 3475:4-10		
CX 1523	Intentionally Not Used			N/A		
CX 1524	E-mail from Victor Pais to M20 re: Impact of McW's Price Chance w/Attach: FTG-ASP Impact Post-MCW Price Change-091109.xls	9/11/2009		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1525 - CX 1526	Intentionally Not Used			N/A		
CX 1527	E-mail from Dave Pietryga to Al Richardson, Christopher King, Greg Fox et al. re: Domestic Comparison w/Attach: Dom Comp.xls	12/18/2009		Tr. 3475:4-10		
CX 1528	E-mail from Stuart Box to Mitchell Rona and Craig Schapiro re: price increase	12/12/2007		JX 0002-A		
CX 1529	E-mail from Stuart Box to Mitchell Rona re: ACIPCO reaction to price increase letter from KF3#	12/6/2007		JX 0002-A		
CX 1530	E-mail from Stuart Box to Craig Schapiro re: from Craig - Domestic pricing structure effective 5/15/09	5/15/2009		Tr. 3475:4-10		
CX 1531	E-mail from Stuart Box to Mitchell Rona re: Leadtime?	10/1/2009		JX 0002-A		
CX 1532	E-mail from Stuart Box to Frank Ross and MC Sateesh re: First piece sample	9/28/2009		Tr. 3475:4-10		
CX 1533	E-mail from Stuart Box to Sreenivasa Rao re: Defective DFB2490	3/25/2010		JX 0002-A		
CX 1534	E-mail from Frank Ross to Stuart Box re: Budgetary Numbers	6/12/2009		Tr. 3475:4-10		
CX 1535	E-mail from Stuart Box to Tom Brakefield re: Domestic Fittings - Debary Project	6/24/2009		Tr. 3475:4-10		
CX 1536	E-mail from Stuart Box to Mitchell Rona and Gopi Ramanathan re: SDP trip report to Pryor OK to visit American foundry	7/4/2009		Tr. 1531:25-1532:2		Tr. 1531:21,25; 1532:1,5
CX 1537	E-mail from Stuart Box to Jim McGivern, Mitchell Rona and OEM5 re: TylerUnion Rules of Play - Sigma Master Distribution Agreement (2).doc	9/29/2009		JX 0002-A		
CX 1538	E-mail from Stuart Box to Starla Suttles re: Visit to Union Foundry	11/27/2009		Tr. 3475:4-10		
CX 1539	E-mail from Stuart Box to Victor Pais re: Need for serious 'SWOT' Review of Cost of Production and Options...	9/6/2007		Tr. 3475:4-10		
CX 1540	E-mail from Stuart Box to SDP re: follow up on Sales meeting at ALX w/Attach: PRPD commercial analysis with AF and TF 092609 sb2-1.xlsx	9/26/2009		Tr. 3475:4-10		
CX 1541	E-mail from Greg Fox to Stuart Box re: Update and Q&A info on Master Distribution Agreement...w/Attach: BA-MDA-Background Memo-to-SST-092009.doc; BA-MDA- Q & A-to-SST-092009.doc; SIGMA-BA-MDA-Customer Letter-092209-clean.doc; McWane Announcement Sept 22nd 2009.pdf	9/22/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1542	E-mail from Stuart Box to Fields and Craig Schapiro re: Clow fittings w/Attach: 20090313103333038.pdf	3/13/2009		Tr. 3475:4-10		
CX 1543	E-mail from Mitchell Rona to Stuart Box re: Sigma 08 Multiplier Map Ver 051908 w/Attach: Sigma 08 Multipliers Ver 051908.pdf	5/2/2008		JX 0002-A		Tr. 4268:14;
CX 1544	E-mail from Mitchell Rona to Stuart Box re: TylerUnion Price Increase w/Attach: MC - Domestic 1-22-10.doc	12/22/2009		JX 0002-A		
CX 1545	E-mail from Frank Ross to Stuart Box re: Pattern being shipped to PMC (DMB2445)	6/25/2009		Tr. 3475:4-10		
CX 1546	E-mail from Danny Swalley to Piush Lohia re: USA business w/Attach: Saluda Water Adden 1.pdf; Sales Territory Anlz 3.29.10.xls; Business plan 3.26.10.xls	3/30/2010		JX 0002-A	Ordered 8/17/2012	
CX 1547	E-mail from Danny Swalley to Jim LeCroy re: Joint Project	9/15/2010		JX 0002-A		
CX 1548	E-mail from Danny Swalley to Piush Lohia and Vikash Agrawal re: MJB2204	3/13/2012		JX 0002-A		
CX 1549	E-mail from Danny Swalley to Vikash Agrawal re: Fittings w/Attach: Urgent Fittings 2.7.12.xlsx	2/7/2012		JX 0002-A	Ordered 8/17/2012	
CX 1550	E-mail from Danny Swalley to Piush Lohia and Vikash Agrawal re: Napac Order	5/16/2011		JX 0002-A		
CX 1551	E-mail from Danny Swalley to Piush Lohia and Vikash Agrawal re: Okay maybe this will sweeten the deal	4/11/2011		JX 0002-A		
CX 1552	E-mail from Danny Swalley to Joyce Yager re: Multiplier/Price list	3/18/2011		JX 0002-A		
CX 1553	Spreadsheet: Quarterly Income Statements	07/00/2009		JX 0002-A	Ordered 8/17/2012	
CX 1554	E-mail from Danny Swalley to Matthew Vander Ark re: Fitting Weights w/Attach: EUSA Fittings - Code & WTS.XLS	3/5/2012		JX 0002-A		
CX 1555	E-mail from Danny Swalley to Jim LeCroy and Jamey Reynolds re: Joint Project	5/27/2010		JX 0002-A		
CX 1556	Intentionally Not Used			N/A		
CX 1557	E-mail from Elizabeth Stark to Danny Swalley re: Helpful information for Electrosteel India Trip w/Attach: Complying with the Made In the USA Standard.doc; Electrosteel Recommendation 052810.doc	6/1/2010		JX 0002-A		
CX 1558	Electrosteel Catalog: Compact MJ Fittings	00/00/2012		JX 0002-A		
CX 1559	Electrosteel Catalog: Flanged Fittings	00/00/2012		JX 0002-A		
CX 1560	E-mail from Rick Tatman to Leon McCullough re: Your V-mail on Consolidated	3/28/2008		JX 0002-A		Tr. 476:13;

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1561	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: April DIFRA report	6/11/2008		JX 0002-A		
CX 1562	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Revised DIFRA Numbers & 2nd Quarter Executive Report w/Attach: 2Q 2008 Fittings Dashboard.ppt, 2Q 2008 TylerUnion Executive Summary.doc, Revised DIFRA Output Analysis.xls	7/28/2008		JX 0002-A		Tr. 546:01; 557:17; 4244:13
CX 1563	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: List Price Change LP 5091	5/1/2009		JX 0002-A		
CX 1564	E-mail from Rick Tatman to Thomas Walton and Leon McCullough re: TylerUnion Quarterly Report w/Attach: 1Q 2008 Fittings Dashboard.ppt, 1Q 2008 TylerUnion Executive Summary.doc	4/16/2008		JX 0002-A		Tr. 422:11,25; 1061:7, 11, 14; 5390:20,22; 5391:8,12,17; 5402:12
CX 1565	E-mail from Rick Tatman to Leon McCullough, Thomas Walton re: Advantages and Disadvantages of selling Disa items to Sigma	1/30/2008		JX 0002-A		Tr. 438:20; 4175:13,16
CX 1566	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Star following Tyler Maps	1/31/2008		JX 0002-A		Tr. 2409:4; 3185:19
CX 1567	Intentionally Not Used			N/A		
CX 1568	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Rick Tatman to Leon McCullough re: American Price Increase Letter May 2008.doc w/Attach: American Price Increase Letter May 2008.doc	5/13/2008	CX 0367	JX 0002-A		
CX 1569	E-mail from John Springer to Thomas Walton, Rick Tatman, Leon McCullough et al. re: 2008 vs. 2007 - Waterworks w/Attach: variance analysis.xls, Variance Analysis	8/13/2008		JX 0002-A		Tr. 819:14
CX 1570	E-mail from Victor Pais to Rick Tatman re: Your offer for 3"-8" DIWF Iron TylerUnion	2/1/2008		JX 0002-A		Tr. 435:23;
CX 1571	E-mail from Rick Tatman to Leon McCullough re: RST Response on Two things	2/27/2008		JX 0002-A		Tr. 442:10; 452:13; 4177:16,24
CX 1572	E-mail from Rick Tatman to Jerry Jansen re: Market Pricing on Restraints	2/14/2009		JX 0002-A		
CX 1573	E-mail from Rick Tatman to Vince Napoli, Susan Welch and Kent Brown re: Sigma Response - TylerUnion New List and Multipliers	4/29/2009		JX 0002-A		
CX 1574	E-mail from John Combs to Rick Tatman re: Emailing: SIGMAPriceList w/Attach: SIGMAPri.pdf	3/25/2009		JX 0002-A		
CX 1575	E-mail from Rick Tatman to Mitchell Rona re: Glands	4/4/2008		JX 0002-A		Tr. 454:23;

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1576	E-mail from Rick Tatman to Butch J. Doane re: TylerUnion July 14th Price announcement w/Attach: Util Mult Map-Blended-7-14-08.pdf, TylerUnion price announcement July 14-FEI.doc, Util Mult Map-Accessories-7-14-08.pdf	6/17/2008		JX 0002-A		Tr. 537:25; 952:2
CX 1577	E-mail from Matt Minamyer to Shaun Smith, Ramon Prado and Pete Lisowski re: Special Pricing	5/7/2008		JX 0002-A		
CX 1578	Map: E. J. Prescott Company Locations	5/4/2012		JX 0002-A		
CX 1579 - CX 1580	Intentionally Not Used			N/A		
CX 1581	Marbry Casting, LTD Invoices by customers	3/29/2012		JX 0002-A		
CX 1582	Map: Dana Kepner Company Locations	00/00/2012		JX 0002-A		
CX 1583	Intentionally Not Used			N/A		
CX 1584	Ductile Fitting Sales 2007-2012	00/00/2007		JX 0002-A		
CX 1585	Intentionally Not Used			N/A		
CX 1586	E-mail from Deron_Johnson to Becky Guy re: star/domestic fittings	1/21/2010		JX 0002-A		
CX 1587	E-mail from Deron_Johnson to Becky Guy re: Domestic Fittings	4/15/2010		JX 0002-A		
CX 1588	Intentionally Not Used			N/A		
CX 1589	<b>REMOVED -- DUPLICATE EXHIBIT</b> Spreadsheet: Competitive Feedback	00/00/2008	RX-598	JX 0002-A		
CX 1590	Federal Register/Vol. 75, No. 185: Notice of a Regional Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lowell, MA	9/24/2010		JX 0002-A		
CX 1591	Federal Register/Vol. 75, No. 109: Notice of a Regional Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Richland, WA	6/8/2010		JX 0002-A		
CX 1592	Federal Register/Vol. 75, No. 185: Notice of a Regional Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lewiston, ME and the Auburn, Maine Water District	9/24/2010		JX 0002-A		Tr. 4607:17
CX 1593	Intentionally Not Used			N/A		
CX 1594	Weekly Activity Report: Region 20	3/13/2010		JX 0002-A		
CX 1595 - CX 1598	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1599	E-mail from Rick Tatman to Jerry Jansen re: Domestic stance	9/1/2009		JX 0002-A		
CX 1600	E-mail from Dan Todd to Laura Alvey and Jerry Jansen re: Domestic Report w/Attach: Contact Sheet for Star Domestic.xls	11/16/2009		JX 0002-A		
CX 1601	E-mail from Greg Adams to Jerry Jansen re: Domestic stance for Greg Adams w/Attach: Domestic Conversation with Customers.xls	11/17/2009		JX 0002-A		
CX 1602	E-mail from Marla Drake to Jerry Jansen and Laura Alvey re: Domestic Conversation with Customers w/Attach: Domestic Conversation with Customers.xls	11/4/2009		JX 0002-A		
CX 1603	E-mail from Jerry Jansen to Eddie Gibbs re: Missed appointment	7/8/2010		JX 0002-A		
CX 1604	E-mail from Jerry Jansen to Scott Frank re: Peru, IN Grisom Air Force Base	5/20/2009		JX 0002-A		
CX 1605	E-mail from Jerry Jansen to Glenn Miller re: Weekly Highlight 3-19-2010	3/21/2010		JX 0002-A		
CX 1606	E-mail from Rick Tatman to Laura Alvey, Debbie Vinson, Susan Welch et al. re: Announcement Letter and Q&A document for today's Conference Call Tuesday, 9-22 @ 10:30 am CST w/Attach: McWane Announcement Sept 22nd 2009.pdf; Sept 22nd Announcement Q&A.doc	9/22/2009		JX 0002-A		Tr. 659:10,24
CX 1607	E-mail from Vince Napoli to Harms re: RMA # MU39758 (42" Material)	5/6/2011		JX 0002-A		
CX 1608	E-mail from Jennifer Heys to Jerry Jansen re: Hajoca	11/16/2009		JX 0002-A		
CX 1609	E-mail from Jerry Jansen to Roger Wells re: Mt.Land Orem	7/20/2010		JX 0002-A		
CX 1610	E-mail from Jerry Jansen to Roger Wells re: Mt.Land Orem	7/15/2010		JX 0002-A		
CX 1611	E-mail from Vince Napoli to Matthew Gathman re: Star News - September 2010	10/6/2010		JX 0002-A		
CX 1612	E-mail from Jerry Jansen to PMason@atlanticplumbingsupply.net re: 2011 Tyler Union Program w/Attach: 2011 Stocking Distributor Rebate Program.docx	3/21/2011		JX 0002-A		
CX 1613	E-mail from Rick Tatman to Leon McCullough re: Sean Kelly	4/13/2012		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1614	E-mail from Scott Frank to Jeff Otterstedt and Rick Tatman re: Hajoca on order/shipment hold for Domestic fittings	11/23/2009		JX 0002-A		
CX 1615	E-mail from Ryan Andersen to Jerry Jansen re: Domestic Stance with Customers w/Attach: Domestic Conversation with Customers.xls	11/16/2009		JX 0002-A		
CX 1616	E-mail from Jennifer Heys to Jerry Jansen and Laura Alvey re: Star Domestic.xls w/Attach: Star Domestic.xls	11/4/2009		JX 0002-A		
CX 1617	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Tom Thagard to Michael Bloom re: Stipulation in McWane, Inc. Litigation	6/22/2012	RX-588	JX 0002-A		
CX 1618	<b>REPLACED WITH REDACTED VERSION</b> Verizon Wireless Phone Records: Tom Brakefield	7/5/2011		JX 0002-A		
CX 1618-A	Redacted Excerpts of Verizon Wireless Phone Records: Tom Brakefield			Tr. 3483:14-15	Ordered 9/17/2012	
CX 1619	Verizon Wireless Phone Records: Vince Napoli	00/00/2011		JX 0002-A	Ordered 12/14/2012	
CX 1620	Verizon Wireless Phone Records: Greg Fox	6/29/2011		JX 0002-A	Ordered 12/14/2012	
CX 1621	<b>REPLACED WITH REDACTED VERSION</b> Verizon Wireless Phone Records: Larry Rybacki	7/23/2011		JX 0002-A		Tr. 366:9,15; 1118:11, 12
CX 1621-A	Redacted Excerpts of Verizon Wireless Phone Records: Larry Rybacki			Tr. 3483:16-17; 3605:9; 3624:12	Ordered 9/17/2012	Tr. 2447:12; 2467:6; 3641:9
CX 1622	Verizon Wireless Phone Records: Leon McCullough	00/00/0000		JX 0002-A	Ordered 12/14/2012	
CX 1623	Verizon Wireless Phone Records: Siddharth Bhattacharji	00/00/2011		JX 0002-A	Ordered 12/14/2012	
CX 1624	Verizon Wireless Phone Records: Mitchell Rona	8/10/2011		JX 0002-A		
CX 1624-A	Redacted Excerpts of Verizon Wireless Phone Records: Mitchell Rona			Tr. 3483:18-19	Ordered 9/17/2012	
CX 1625	<b>REPLACED WITH REDACTED VERSION</b> Verizon Wireless Phone Records: Matt Minamyler	5/31/2011		JX 0002-A		
CX 1625-A	Redacted Excerpts of Verizon Wireless Phone Records: Matt Minamyler			Tr. 3483:20-21	Ordered 9/17/2012	

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1626	Verizon Wireless Phone Records: Subscriber: 903-941-0902	7/21/2011		JX 0002-A		
CX 1626-A	Redacted Excerpts of Verizon Wireless Phone Records: Subscriber: 903-941-0902			Tr. 3483:22-23	Ordered 9/17/2012	
CX 1627 - CX 1647	Intentionally Not Used			N/A		
CX 1648	Independent Accountant's Report on Applying Agreed-Upon Procedures for DIFRA	6/13/2008		JX 0002-A		
CX 1649	E-mail from Thomas Walton to Rick Tatman re: Star Review June 29th Rev A.ppt w/Attach: Star Review June 29th Rev A.ppt	7/2/2009		JX 0002-A		
CX 1650	E-mail from Leon McCullough to Brenda Netten re: Price Increase DIWF w/Attach: Util Mult Map-BLENDED LP5091.pdf, Util Mult Map-DOMESTIC LP5091 3-12.pdf, Util Mult Map-DOMESTIC LP5091, 14-24.pdf, DIWF Non-Domestic Pricing Nov Report.XLS	12/14/2009		JX 0002-A		
CX 1651	E-mail from Jeff Marcus to BOD re: BOD Call 122209 w/Attach: Board Call 122209.ppt; Board Call 122209.pdf	12/18/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 1652	E-mail from Leon McCullough to Rick Tatman & Thomas Walton re: Advantages and Disadvantages of selling Disa items to Sigma	1/30/2008		JX 0002-A		Tr. 4179:21; 4180:17
CX 1653	E-mail from Rick Tatman to Thomas Walton re: 5-star.ppt w/Attach: 5-star.ppt	2/9/2009		JX 0002-A		Tr. 230:8;
CX 1654	E-mail from Rick Tatman to Thomas Walton re: FTC Overview Rev 3.ppt w/Attach: FTC Overview Rev 3.ppt	2/24/2010		JX 0002-A		
CX 1655	Tyler Pipe/Union Foundry Utilities Blended Fittings Multiplier Map	7/11/2007		JX 0002-A		
CX 1656	E-mail from Rick Tatman to Butch J. Doane re: TylerUnion Price Announcement w/Attach: MC - Non Domestic 1-22-10.doc; MC - Domestic 1-22-10.doc	12/21/2009		JX 0002-A		Tr. 811:4
CX 1657	E-mail from Rick Tatman to Glenn Fielding re: TylerUnion Price Announcement w/Attach: MC - Non Domestic 1-22-10; MC - Domestic 1-22-10.doc	12/21/2009		JX 0002-A		
CX 1658	E-mail from Laura Alvey to Bryan V. Mokry, Kevin M Murphy, Bill Thees, et al., re: TylerUnion Price Announcement w/Attach: MC - Non Domestic 1-22-10.doc; MC - Domestic 1-22-10.doc	12/21/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1659	E-mail from Laura Alvey to Jerry Webb, Steve Benton, Joe Mack, et al. re: TylerUnion Price Announcement w/Attach: MC - Non Domestic 1-22-10.doc; MC - Domestic 1-22-10.doc	12/21/2009		JX 0002-A		
CX 1660	E-mail from Roger Wells to Kimberly Burgoyne re: TylerUnion Price Announcement	1/5/2010		JX 0002-A		
CX 1661	Memo from Jerry Jansen to Waterworks Sales Team re: Price Increase	12/21/2009		JX 0002-A		
CX 1662	E-mail from Rick Tatman to Mitchell Rona re: TylerUnion Price Increase w/Attach: MC - Domestic 1-22-10.doc	12/21/2009		JX 0002-A		Tr. 1602:12
CX 1663	E-mail from Rick Tatman to Thomas Walton re: TylerUnion Price Announcement w/Attach: MC - Non Domestic 1-22-10.doc; MC - Domestic 1-22-10.doc; Util Mult Map-NON DOMESTIC 1-22-10.pdf; Util Mult Map-Domestic 3-12 EFF 1-22-10.pdf; Util Mult Map - Domestic 14-24 EFF 1-22-10.pdf	12/21/2009		JX 0002-A		
CX 1664	Spreadsheet: Proposed Multipliers	1/18/2008		JX 0002-A		Tr. 390:15; 391:1; 885:5; 1049:5; 5428:19,22; 5429:3; 5432:11,24; 5433:7; 5839:24,25; 5840:12; 5841:6,24
CX 1665	E-mail from Laura Alvey to Rick Tatman re: Multiplier Maps Effective 1-22-09 w/Attach: Util Mult Map-Non Domestic 1-22-10.pdf; Util Mult Map-Domestic 3-12 EFF 1-22-10.pdf; Util Mult Map-DOMESTIC 14-24 EFF 1-22-10.pdf	12/21/2009		JX 0002-A		
CX 1666	E-mail from Susan Welch to Glenn Fielding re: 2008 w/Attach: Util Mult Map-Domestic-7-14-08.pdf; Util Mult Map-Accessories-7-14-08.pdf; Util Mult Map-Blended-7-14-08	10/12/2010		JX 0002-A		
CX 1667	E-mail from Victor Pais to liuguang re: our lunch mtg today w/Attach: BOD-Update-GL-091409.doc	9/15/2009				Tr. 3475:4-10
CX 1668	E-mail from Star Pipe Products to Outside Sales re: New Multipliers - Star Pipe Products	6/27/2008		JX 0002-A		
CX 1669	Letter from Jerry Jansen to Valued Customers re: New Price List effective May 1, 2009	4/13/2009		JX 0002-A		
CX 1670	<b>REMOVED -- DUPLICATE EXHIBIT</b> Letter from Jerry Jansen to Valued Customers re: Increased Pricing effective November 5, 2007	10/5/2007	RX-401	JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1671	<b>REMOVED -- DUPLICATE EXHIBIT</b> Letter from Jerry Jansen to Tyler/Union Utility Customers in FL re: Pricing Multiplier Adjustment Effective February 18, 2008	1/23/2008	RX-609	JX 0002-A		
CX 1672	Letter from Jerry Jansen to Tyler/Union Utility Customers in PA re: Pricing Multiplier Adjustment Effective February 18, 2008	1/18/2008		JX 0002-A		
CX 1673	<b>REMOVED -- DUPLICATE EXHIBIT</b> Letter from Jerry Jansen to Tyler/Union Utility Customers in IL re: Pricing Multiplier Adjustment Effective February 18, 2008	1/18/2008	RX-608	JX 0002-A		
CX 1674	E-mail from Rick Tatman to Leon McCullough & Thomas Walton re: Star & Domestic w/Attach: Star AWWA Banner.jpg	6/15/2009		JX 0002-A		Tr. 643:23,24;
CX 1675	E-mail from Leon McCullough to Mike Vore re: December DIFRA Report w/Attach: DIFRA_2008_12.xls	1/26/2009		JX 0002-A		
CX 1676	Tyler Pipe/Union Foundry Utilities Blended Fittings Multiplier Map	12/18/2006		JX 0002-A		
CX 1677	Blended Utility Fittings Multiplier Map LP-5072	7/14/2008		JX 0002-A		
CX 1678	Non-Domestic Utility Fittings Multiplier Map LP-5091	5/1/2009		JX 0002-A		
CX 1679	Non-Domestic Utility Fittings Multiplier Map LP-5091	7/1/2010		JX 0002-A		
CX 1680	Non-Domestic Utility Fittings Multiplier Map LP2011N	3/14/2011		JX 0002-A		
CX 1681	Non-Domestic Utility Fittings Multiplier Map LP2011N	2/10/2012		JX 0002-A		
CX 1682	Spreadsheet: Budget Worksheets	1/9/2009		JX 0002-A		
CX 1683	E-mail from Gregory Huffman to Thomas Brock re: Discovery	4/19/2012		JX 0002-A		
CX 1684	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Victor Pais to RM6 re: Priuce [sic] increase plan...	4/24/2008	RX-052	JX 0002-A		
CX 1685	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Al Richardson to Victor Pais & M20 re: DIFRA Data and Sigma Market Share (SMS) review	6/20/2008	RX-080	JX 0002-A		
CX 1686	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Victor Pais to Larry Rybacki re: URGENT -- Need to stabilize market pricing w/Attach: Price Increase Letter-112408.doc	11/24/2008	RX-116	JX 0002-A		
CX 1687	<b>REMOVED -- DUPLICATE EXHIBIT</b> Letter from Larry Rybacki to Valued Sigma Customers re: List Price Increase January 2, 2008/Multiplier Increase November 5, 2007	10/23/2007	RX-015	JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1688	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray, et al. re: Fitting Mult. Changes on Hold	5/12/2008	RX-060	JX 0002-A		Tr. 2423:23; 3213:3,4
CX 1689	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray, et al. re: McWane/Tyler Multipliers and our Plan	1/22/2008	CX 0752	JX 0002-A		
CX 1690	Map: Groeniger Company Locations	5/3/2012		JX 0002-A		
CX 1691	E-mail from Ramon Prado to Matt Minamyer re: South East Aug 08 - Division.xls	9/17/2008		JX 0002-A		Tr. 3221:18
CX 1692	E-mail from Ramon Prado to Matt Minamyer re: Weekly Activity Report for Week Ending 02/29/08	3/6/2008		JX 0002-A		Tr. 3199:13
CX 1693	E-mail from Ramon Prado to Matt Minamyer re: Weekly Activity Report for Week Ending 06/27/08	6/30/2008		JX 0002-A		Tr. 3218:8; 3269:4
CX 1694	E-mail from Chris Antos to Shaun Smith re: BPU Pricing	9/4/2008		JX 0002-A		Tr. 3221:7
CX 1695	E-mail from Shaun Smith to Mark Mcintire, Tomas Carlin, Matt Minamyer et. al. re: Weekly Report	8/18/2008		JX 0002-A		Tr. 3219:6
CX 1696	E-mail from Shaun Smith to Matt Minamyer re: A.R.4.18.08	4/21/2008		JX 0002-A		Tr. 3201:21; 3256:22
CX 1697	E-mail from Matt Minamyer to Shaun Smith and Mark Mcintire re: HD Omaha	9/10/2008		JX 0002-A		Tr. 3222:9; 3271:16
CX 1698	E-mail from Shaun Smith to Matt Minamyer and Dan McCutcheon re: QUOTE 10707007	10/22/2008		JX 0002-A		Tr. 4304:3; 4309:6,12
CX 1699	E-mail from Shaun Smith to Matt Minamyer re: A.R.10.24.08	10/28/2008		JX 0002-A		Tr. 3272:12
CX 1700 - CX 1701	Intentionally Not Used			N/A		
CX 1702	E-mail from Rick Tatman to Leon McCullough re: DIWF List Price Change	12/22/2007		JX 0002-A		Tr. 335:22;
CX 1703	E-mail from Rick Tatman to Mitchell Rona re: 3"-8" DIWF from TylerUnion	3/10/2008		JX 0002-A		
CX 1704 - CX 1705	Intentionally Not Used			N/A		
CX 1706	E-mail from Ramesh Bhutada to Pawan Sharda, McCutcheon and Navin Bhargava re: Star Pipe Market Analysis thru July 08	8/26/2008		JX 0002-A	Ordered 8/31/2012	

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1707	E-mail from Pawan Sharda to Ramesh Bhutada, McCutcheon and Navin Bhargava re: Star Pipe Market Share Analysis thru July 08 w/Attach: New Housing Starts Analysis thru Jul 08.xls	8/26/2008		JX 0002-A	Ordered 8/31/2012	Tr. 2491:7,8
CX 1708	E-mail from Dan McCutcheon to Pawan Sharda re: Star Pipe Market Share % Analysis thru Apr 08	7/8/2008		JX 0002-A		
CX 1709	E-mail to Pawan Sharda from Navin Bhargava and Dan McCutcheon re: Housing Data Summary thru Mar 08 w/Attach: New Housing Starts Analysis thru Dec'07/xls	5/16/2008		JX 0002-A	Ordered 8/31/2012	
CX 1710	E-mail from Ramesh Bhutada to Pawan Sharda, Kirthi Jain, Ramesh Bhutada re: DIFRA September 2008 w/Attach: Fittings Report September 2008.pdf, image001.git	10/17/2008		JX 0002-A	Ordered 8/31/2012	
CX 1711	E-mail from Pawan Sharda to Ramesh Bhutada, Dan McCutcheon and Navin Bhargava re: Star Pipe Housing Market Share thru Oct 08 w/Attach: New Housing Starts Analysis thru Oct 08.xls	11/30/2008		JX 0002-A	Ordered 8/31/2012	Tr. 2492:6,7
CX 1712	E-mail from Pawan Sharda to Dan McCutcheon re: Star Pipe Market Share % Analysis thru Apr 08 w/Attach: New Housing Starts Analysis thru Apr 08.xls	7/8/2008		JX 0002-A	Ordered 8/31/2012	Tr. 2477:11
CX 1713	Intentionally Not Used			N/A		
CX 1714	E-mail from Pawan Sharda to Kirthi Jain re: DIFRA subject to data from Manoj R w/Attach: DIFRA analysis.xlsx	4/13/2011		JX 0002-A	Ordered 8/31/2012	
CX 1715	E-mail from Pawan Sharda to Kirthi Jain re: Feb 2011 - Domestic Orders Trend.xlsx w/Attach: Feb 2011 - Domestic Orders Trend.xlsx	3/18/2011		JX 0002-A	Ordered 8/31/2012	
CX 1716	E-mail from Kirthi Jain to Dan McCutcheon, Bhutada and Rishi Bhutada re: DIWF Market Share Estimates and Projections w/Attach: Housing Market Share.xls	5/20/2010		JX 0002-A	Ordered 8/31/2012	
CX 1717	E-mail from Pawan Sharda to Kirthi Jain re: Yr 2010 - Housing Market & Star Pipe Market Share Analysis w/Attach: Yr2010 Housing Market data.xlsx	1/24/2011		JX 0002-A	Ordered 8/31/2012	
CX 1718 - CX 1721	Intentionally Not Used			N/A		
CX 1722	E-mail from Pawan Sharda to Kirthi Jain re: Domestic Order Trend w/Attach: Book3.xlsx	4/13/2011		JX 0002-A	Ordered 8/31/2012	
CX 1723 - CX 1725	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1726	E-mail from Greg Fox to Al Richardson re: HD in Arkansas pricing form Tyler	3/6/2008		JX 0002-A		Tr. 3528:3; 3697:23
CX 1727 - CX 1728	Intentionally Not Used			N/A		
CX 1729	E-mail from Stuart Box to Song Xinyang re: Need your opinion privately	5/31/2009		Tr. 3475:4-10		
CX 1730	Intentionally Not Used			N/A		
CX 1731	E-mail from Victor Pais to SIGALL re: Year in review...with a Look ahead and a modest year end sharing plan...	12/23/2009		Tr. 3475:4-10		
CX 1732 - CX 1733	Intentionally Not Used			N/A		
CX 1734	E-mail from Greg Fox to Greg Daniels, Kevin Stine, Debbie Baker et al. re: TylerUnion Price Increase w/Attach: TylerUnionAnnouncementMay72008.pdf	5/8/2008		Tr. 3475:4-10		
CX 1735	Intentionally Not Used			N/A		
CX 1736	E-mail from Michael Walsh to Jim McGivern re: Sigma price increase...story has changed	7/23/2010		Tr. 3475:4-10		
CX 1737	E-mail from Jim McGivern to Victor Pais and M20 re: Price Increase Letter	6/7/2010		Tr. 3475:4-10		
CX 1738	E-mail from Craig Schapiro to M20 re: Star News - June 2010	6/1/2010		Tr. 3475:4-10		
CX 1739	E-mail from Vinayak Bhandary to Craig Schapiro, Sean Salins, Victor Pais et.al re: TylerUnion service issues w/Attach: TYLER Receipts.xls	2/18/2010		Tr. 3475:4-10		
CX 1740	Intentionally Not Used			N/A		
CX 1741	E-mail from Tom Brakefield to tross@bradleyarant.com re: DIFRA billing for Sigma corp & Association billing	1/31/2007		Tr. 3475:4-10		
CX 1742	Intentionally Not Used			N/A		
CX 1743	E-mail from Billie Sue Atkinson to Tom Morton re: BSA to USP: Lacking SegmentILacking RingIPulling Head Price Update - Effective March w/Attach: POGRONCURRENCY.pdf, USPLSpricingMarch1.pdf	1/30/2008		Tr. 3475:4-10		
CX 1744	Letter from Victor Pais to BOD Team re: A Management update	1/7/2009		Tr. 2144:12-14		Tr. 2142:21; 2143:1; 2144:10,12,13
CX 1745	E-mail from Jeff Marcus to M4 re: SIG Mega Plan Sent to Ares w/Attach: MEGA PLAN-COVER LETTER to BANK PRESENTATION-080409.doc, ARES GROUP 080709.ppt	8/7/2009		JX 0002-A	Ordered 11/8/2012	

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1746	E-mail from Michael Walsh to Ken Stephenson re: Rates	8/17/2010		Tr. 3475:4-10		
CX 1747	E-mail from Raju Kakani to M5, RM6, Craig Schapiro et al. re: DomesticSales-2010-Data w/Attach: DomesticSales-2010-Data.xls	1/5/2011		Tr. 3475:4-10		
CX 1748	Sigma Consolidated Financial Statements and Supplementary Information 12/31/10 and 2009	12/31/2010		JX 0002-A	Ordered 8/17/2012	
CX 1749	Sigma Consolidated Financial Statements and Supplementary Information 12/31/09 and 2008	12/31/2009		Tr. 2205:25-2206:2	Ordered 8/17/2012	Tr. 2205:10,14,25; 2206:1; 2210:20
CX 1750	Intentionally Not Used			N/A		
CX 1751	E-mail from Dave Pietryga to Christopher King, Richardson and RM6 re: Price Increase Letter	5/11/2009		Tr. 3475:4-10		
CX 1752	Intentionally Not Used			N/A		
CX 1753	E-mail from Craig Schapiro to SST-ALL re: yet another PL2011 update	3/9/2011		Tr. 3475:4-10		
CX 1754	E-mail from Craig Schapiro to Dana Wax, Stohrand Scott Marlow re: our new DOM purchase pricing..	3/9/2011		Tr. 3475:4-10		
CX 1755	Intentionally Not Used			N/A		
CX 1756	E-mail from Michael Walsh to Greg Fox, Christopher King, Dave Pietryga et al. re: more info on Larry VM from yesterday on deal with Tyler	9/18/2009		Tr. 3475:4-10		
CX 1757	Intentionally Not Used			N/A		
CX 1758	E-mail from Michael Walsh to Jim McGivern, Al Richardson and Larry Rybacki re: Price Increase	7/6/2010		Tr. 3475:4-10		
CX 1759	Intentionally Not Used			N/A		
CX 1760	E-mail to Michael Walsh to Mike Roy, Susan Van Hook, James Funck et al. re: Couple of points of clarification on Domestic Fittings	12/2/2010		Tr. 3475:4-10		
CX 1761	E-mail from Michael Walsh to Ken Stephenson and Craig Schapiro re: Tyler	12/1/2010		Tr. 3475:4-10		
CX 1762 - CX 1763	Intentionally Not Used			N/A		
CX 1764	E-mail from Craig Schapiro to SIGALL re: important note regarding D- items	10/9/2009		Tr. 3475:4-10		
CX 1765	Intentionally Not Used			N/A		
CX 1766	E-mail from Victor Pais to M20 re: Sigma's BA plan	9/8/2009		Tr. 3475:4-10		
CX 1767	E-mail from Victor Pais to Michael Walsh and M20 re: Domestic Fittings	8/11/2009		Tr. 3475:4-10		
CX 1768 - CX 1769	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1770	E-mail from Al Richardson to Michael Walsh re: Tyler price increase policy	1/6/2010		Tr. 3475:4-10		
CX 1771	E-mail from Al Richardson to Jim McGivern, Paisand M20 re: clarification on Tyler price charge for Domestic FTGs	1/7/2010		Tr. 3475:4-10		
CX 1772	E-mail from Victor Pais to Al Richardson and M20 re: clarification on Tyler price change for Domestic FTGs	1/7/2010		Tr. 3475:4-10		
CX 1773	E-mail from Craig Schapiro to Steve McDonald re: Conference call on BA & DA options	5/15/2009		Tr. 3475:4-10		
CX 1774	E-mail from Greg Fox to Larry Rybacki, Paisand Siddharth Bhattacharji re: AWWA Sales Meeting Topics	6/12/2009		Tr. 3475:4-10		
CX 1775	Intentionally Not Used			N/A		
CX 1776	Metalfit Spreadsheet: Sales 2007	00/00/2007		JX 0002-A	Ordered 8/17/2012	
CX 1777	Spreadsheet: Sales Information by Customer - 2007	00/00/2007		JX 0002-A	Ordered 8/17/2012	
CX 1778	E-mail from Metalfit1@aol.com to Jeanine Balbach re: Addl. Sales File w/Attach: FTC Subpoena Documents.ods	4/3/2012		JX 0002-A		
CX 1779 - CX 1783	Intentionally Not Used			N/A		
CX 1784	Memorandum from James Hanlon and Cynthia Dougherty to Water Management Division Directors Regions 1 - X re: Implementation of Buy American provisions of P.L. 111-5, the "American Recovery and Reinvestment Act of 2009"	4/26/2009		JX 0002-A		
CX 1785	Intentionally Not Used			N/A		
CX 1786	Federal Register/Vol. 74, No. 77: Rules and Regulations Office of Management and Budget Requirements for implementing Sections 1512, 1605and 1606 of the ARRA	4/23/2009		JX 0002-A		
CX 1787 - CX 1790	Intentionally Not Used			N/A		
CX 1791	<b>REMOVED -- DUPLICATE EXHIBIT</b> Federal Register/Vol. 74, No. 152: EPA Notice of Revised Nationwide Waiver of Section 1605 of ARRA	8/10/2009	RX-195	JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1792	<b>REMOVED -- DUPLICATE EXHIBIT</b> Letter from Mark Meyer to Lisa Perez Gwen Jackson re: Request for Determination that Iron Pipe Fittings Manufactured by Metalfit, Inc. Are Not Subject to ARRA "Buy American" Provisions, Pursuant to Section 1605(d) or Section 1605(b)(1) of ARRA	6/29/2009	RX-180	JX 0002-A		
CX 1793 - CX 1799	Intentionally Not Used			N/A		
CX 1800	E-mail from Rick Tatman to Leon McCullough & Thomas Walton re: Hajoca on hold	11/23/2009		JX 0002-A		Tr. 728:7
CX 1801	E-mail from Mitchell Rona to Rick Tatman re: Hajoca	12/15/2009		JX 0002-A		Tr. 1606:14,15; 3018:13
CX 1801-A	Spreadsheet: Domestic DIPF Profitability based on Star Pipe having its own Foundry	03/00/2012		JX 0002-A	Ordered 8/31/2012	Tr. 2970:18,21; 2972:14; 3018:15
CX 1802	E-mail from Scott Frank to Rick Tatman re: Hajoca	12/15/2009		JX 0002-A		Tr. 736:18
CX 1803	E-mail from Rick Tatman to Roy Pitts and Jerry Jansen re: Hajoca 2009 Tyler Utility Rebates	2/4/2010	CX 0026 (HAJ000045)	JX 0002-A		Tr. 727:3; 733:1; 3322:17,18
CX 1804	Intentionally Not Used			N/A		
CX 1805	E-mail from Mitchell Rona to OEM5 re: MR to All Re:Tyler Offer w/Attach: Sigma - Domestic Product Agreement 7 29 2009.pdf	7/30/2009				Tr. 3475:4-10
CX 1806	E-mail from Mitchell Rona to OEM5 re: LOI for Master Distributorship w/Attach: Sigma - Domestic Product Agreement 8 24 2009.pdf	8/24/2009		JX 0002-A		Tr. 1571:12,15; 1788:2,4
CX 1807 - CX 1809	Intentionally Not Used			N/A		
CX 1810	E-mail from Ramon Prado to Matt Minamyre re: Weekly Activity Report for Week Ending 10/26/07	11/6/2007		JX 0002-A		
CX 1811	E-mail from Ramon Prado to Matt Minamyre re: Weekly Activity Report for Week Ending 01/11/08	1/17/2008		JX 0002-A		
CX 1812	E-mail from Ramon Prado to Matt Minamyre re: Weekly Activity Report for Week Ending 01/25/08	1/29/2008		JX 0002-A		
CX 1813	E-mail from Matt Minamyre to Ramon Prado re: Weekly Activity Report for Week Ending 03/14/08	3/19/2008		JX 0002-A		
CX 1814 - CX 1816	Intentionally Not Used			N/A		
CX 1817	E-mail from Ramon Prado to Matt Minamyre re: Weekly Activity Report for Week Ending 05/09/08	5/22/2008		JX 0002-A		
CX 1818	E-mail from Matt Minamyre to Ramon Prado re: Weekly Activity Report for Week Ending 08/08/08	8/15/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1819	E-mail from Matt Minamyer to Ramon Prado re: Weekly Activity Report for Week Ending 08/15/08	8/25/2008		JX 0002-A		
CX 1820 - CX 1821	Intentionally Not Used			N/A		
CX 1822	E-mail from Ramon Prado to Matt Minamyer re: Weekly Activity Report for Week Ending 01/23/00	1/29/2009		JX 0002-A		
CX 1823	Intentionally Not Used			N/A		
CX 1824	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 06/19/09 w/Attach Resume2009.doc	6/23/2009		JX 0002-A		
CX 1825	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 07/10/09	7/17/2009		JX 0002-A		
CX 1826	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 07/17/09	7/20/2009		JX 0002-A		
CX 1827	Intentionally Not Used			N/A		
CX 1828	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 08/14/09	8/20/2009		JX 0002-A		
CX 1829	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 09/11/09	9/15/2009		JX 0002-A		
CX 1830	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 9/18/09	9/22/2009		JX 0002-A		
CX 1831	E-mail from Dan McCutcheon to Ramon Prado re: Weekly Activity Report for Week Ending 10/2/09	10/7/2009		JX 0002-A		
CX 1832	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 10/09/09	10/14/2009		JX 0002-A		
CX 1833	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 10/16/09	10/19/2009		JX 0002-A		
CX 1834	E-mail from Ramon Prado to Bud Leider and Dan McCutcheon re: Weekly Activity Report for Week Ending 10/23/09	10/27/2009		JX 0002-A		
CX 1835	Intentionally Not Used			N/A		
CX 1836	E-mail from Bud Leider to Ramon Prado re: Weekly Activity Report for Week Ending 12/11/09	12/21/2009		JX 0002-A		
CX 1837	E-mail from Ramon Prado to Bud Leider re: Weekly Activity Report for Week Ending 02/12/10	2/19/2010		JX 0002-A		
CX 1838	E-mail from Bud Leider to Dan McCutcheon re: Weekly Activity Report Bud Leider Week Ending 2.19.2010	2/22/2010		JX 0002-A		
CX 1839	E-mail from Ramon Prado to Dan McCutcheon re: Weekly Activity Report for Week Ending 07/23/10	7/28/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1840	E-mail from Dan McCutcheon to Ramon Prado re: Weekly Activity Report for Week Ending 02/25/11	3/2/2011		JX 0002-A		
CX 1841	Intentionally Not Used			N/A		
CX 1842	E-mail from Larry Rybacki to Victor Pais & OEM5 re: My Response to Customer Letter about BA/MDA	9/8/2009		Tr. 3475:4-10		
CX 1843	E-mail from Thad G. Long to Rick Tatman, Victor Pais, Tom Brakefield et al., re: Ductile Iron Fittings Research Association w/Attach: DIFRA 2006 Draft.xls	3/19/2008		JX 0002-A		Tr. 1253:21; 1254:13
CX 1844	E-mail from Tom Brakefield to Larry Rybacki re: DIFRA - 508 w/Attach: DIFRA Input Output Format Rev 2.xls	6/13/2008		Tr. 3475:4-10		
CX 1845	E-mail from Tom Brakefield to Victor Pais, Siddharth Bhattacharji, & Larry Rybacki re: 2008 Summary Of Share By YTD Monthly And Projection (STR 04/08) --- w/Attach: DIFRA Input Output Format Rev 2.xls	6/18/2008		Tr. 3475:4-10		
CX 1846 - CX 1847	Intentionally Not Used			N/A		
CX 1848	E-mail from Victor Pais to Tom Brakefield & Siddharth Bhattacharji re: VP to RK2: DIFRA-SMS Report August 2008	10/1/2008		Tr. 1304:21-22		Tr. 1300:14; 1302:20; 1303:16; 1304:21
CX 1849	Intentionally Not Used			N/A		
CX 1850	E-mail from Victor Pais to Larry Rybacki re: VP to LR: HaaaaaIIIIIIloooooo.....	8/28/2008		Tr. 3475:4-10		
CX 1851	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Greg Fox to Linda Moen, Greg Daniels, Gloria Lamborne et al. re: Price Increase	6/16/2008	RX-076	Tr. 3475:4-10		
CX 1852	E-mail from Victor Pais to M11 re: VP to RM6: Our price increase letters to customers w/Attach: Price Increase Letters (123009-CHI.pdf; 123009-ONT.pdf; 123009-ALX.pdf; 123009-HTN.pdf; 123009-CRM.pdf)	12/30/2009		Tr. 1841:3-5		Tr. 1837:12,15,17; 1840:25; 1841:3,4; 3591:19
CX 1853	E-mail from Victor Pais to M20 re: VP to AR: McWane	2/16/2010		Tr. 3475:4-10		
CX 1854	Intentionally Not Used			N/A		
CX 1855	E-mail from Larry Rybacki to M20 re: LR to M20- Multiplier Increase Letter for May 19, 2008 w/Attach: Multiplier Increase For 5-19-08.tif	4/24/2008		JX 0002-A		Tr. 1278:9; 2094:21; 2095:9; 2098:16; 2099:22; 2100:17
CX 1856	E-mail from Larry Rybacki to M20 re: LR to M20-Multiplier Increase for May 30, 2008 w/Attach: Multiplier Increase for 5-30-08.tif	4/17/2008		Tr. 3475:4-10		
CX 1857	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1858	E-mail from Michael Walsh to Harry Bair, Ken Stephenson, Susan Van Hook et al. re: LR to M20- Multiplier Increase Letter for May 19, 2008 w/Attach: Multiplier Increase For 5-19-08.tif	4/25/2008		Tr. 1964:2-4		Tr. 1963:17,19,23; 1964:2,3; 2100:19; 3550:21; 3551:12; 3708:20; 3710:8
CX 1859	Intentionally Not Used			N/A		
CX 1860	Verizon Subscriber Report	00/00/2007		JX 0002-A		
CX 1860-A	Redacted Excerpts of Verizon Subscriber Report			Tr. 3483:24-25	Ordered 9/17/2012	Tr. 3647:5
CX 1861 - CX 1863	Intentionally Not Used			N/A		
CX 1864	E-mail from Victor Pais to Walter Florence re: VP to WF: your msg to talk about P2	9/10/2008		Tr. 3475:4-10		
CX 1865	Intentionally Not Used			N/A		
CX 1866	E-mail from Raju Kakani to Tom Brakefield re: Sigma's Draft DIFRA Input Reporting Instructions w/Attach: DIFRA Input Output Format Rev 2.xls	4/29/2008		Tr. 3475:4-10		
CX 1867	E-mail from Mitchell Rona to Siddharth Bhattacharji, Jim McGivern, Victor Pais et al. re: sb1 to jmg: your sugg to the Master Distribution Agreement	9/6/2009		Tr. 3475:4-10		
CX 1868 - CX 1869	Intentionally Not Used			N/A		
CX 1870	E-mail from Metalfit1@aol.com to Michael Bloom re: FTC Counsel Subpoena to Metalfit in McWane Litigation	4/22/2012		JX 0002-A		
CX 1871	Intentionally Not Used			N/A		
CX 1872	E-mail from Vinod Mantri to Ramesh Bhutada, Dan McCutcheon, Virendra Parikh et al. re: Sales & Margin Report - December 2007 w/Attach: Sales & Margin Report - Dec 07.xls	1/2/2008		JX 0002-A	Ordered 8/31/2012	Tr. 2496:10
CX 1873	Intentionally Not Used			N/A		
CX 1874	E-mail from Ramon Prado to Matt Minamyre re: Sigma antics	11/4/2008		JX 0002-A		
CX 1875 - CX 1879	Intentionally Not Used			N/A		
CX 1880	Map: Utility Equipment Company Locations	00/00/2012		JX 0002-A		
CX 1881	Intentionally Not Used			N/A		
CX 1882	Open Letter from Jim Keffer, President of EBAA Iron Sales, Inc.	3/27/2009		JX 0002-A		
CX 1883	E-mail from Rick Tatman to Keffer re: Sigma w/Attach: 01302009.pdf	1/30/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1884	E-mail from Rick Tatman to Keffer re: Sigma w/Attach: 01302009113142992.pdf	2/2/2009		JX 0002-A		
CX 1885	E-mail from Bruce Curtis to Jerry Jansen re: Sigma/Tyler	9/4/2009		JX 0002-A		
CX 1886	TylerUnion Notice to Valued Customers: Clarification on American Recovery and Reinvestment Act of 2009	4/8/2009		JX 0002-A		
CX 1887 - CX 1893	Intentionally Not Used			N/A		
CX 1894	Letter from Gary London to Christopher Renner re: 2009 and 2010 Fittings Sales Summary of ACIPCO	9/9/2010		JX 0002-A	Ordered 8/17/2012	
CX 1895	Letter from Gary London to Christopher Renner re: 2008 through 1st quarter 2011 Fittings Sales Summary of ACIPCO	4/7/2011		JX 0002-A	Ordered 8/17/2012	
CX 1896	Intentionally Not Used			N/A		
CX 1897	E-mail from Scott Summers to ADIP & ASWP Customer Service Dept. et al. re: Fittings Plan w/Attach: Fittings Plan 6-25-06.doc	10/6/2006		JX 0002-A		
CX 1898	E-mail from David Angell to Chris Robles, Dale Walls et al. re: Fittings	5/26/2009		JX 0002-A		
CX 1899	Intentionally Not Used			N/A		
CX 1900	Managers Conference Call Fittings	5/22/2009		JX 0002-A		
CX 1901	Intentionally Not Used			N/A		
CX 1902	E-mail from Starla Suttles to Mike Hays re: Transitional Fitting Plan w/Attach: Fitting Plan.doc	2/22/2011		JX 0002-A	Ordered 8/17/2012	
CX 1903 - CX 1904	Intentionally Not Used			N/A		
CX 1905	Sigma Memo: To: ACIPCO, Attn: Mike O'Brien from Victor Pais re: Revised Proposal #6 for Purchase ACIPCO's Inventory of MJ Fittings	5/15/2009		JX 0002-A		
CX 1906	Intentionally Not Used			N/A		
CX 1907	E-mail from Starla Suttles to Jerry Burns re: Fittings Negotiations with Sigma	3/17/2011		JX 0002-A	Ordered 8/17/2012	
CX 1908 - CX 1917	Intentionally Not Used			N/A		
CX 1918	American Recovery and Reinvestment Act of 2009 and What it Means to American [sic]	00/00/2009		JX 0002-A		
CX 1919	Letter from K. Scott Summers to Whom It May Concern re: American Ductile Iron Pipe Customer Service	11/16/2011		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1920 - CX 1923	Intentionally Not Used			N/A		
CX 1924	E-mail from Randy Densmore to Scott Summers re: Randy - purch ftgs 30-up.xls Price/Cost Comparison w/Attach: Randy - purch ftgs 30-up.xls	9/28/2009		JX 0002-A	Ordered 8/17/2012	
CX 1925 - CX 1932	Intentionally Not Used			N/A		
CX 1933	E-mail from John Springer to Leon McCullough, Thomas Walton and Rick Tatman et al. re: Waterworks Financial Statements w/Attach: Waterworks Financial Strmts.xls	5/6/2009		JX 0002-A		
CX 1934 - CX 1935	Intentionally Not Used			N/A		
CX 1936	E-mail from Tom Morton to Gary Crawford, Stephen Gables, & Steve Goodwyn re: Star w/Attach: img-928140510-0001.pdf	9/28/2009		JX 0002-A		Tr. 2835:8; 2897:17,19
CX 1937 - CX 1939	Intentionally Not Used			N/A		
CX 1940	Summary Fittings Purchases FY 2006	00/00/2006		JX 0002-A		
CX 1941	Summary Fittings Purchases FY 2007	00/00/2007		JX 0002-A		
CX 1942	Summary Fittings Purchases FY 2008	00/00/2008		JX 0002-A		
CX 1943	Summary Fittings Purchases FY 2009	00/00/2009		JX 0002-A		
CX 1944	Summary Fittings Purchases FY 2010	00/00/2010		JX 0002-A	Ordered 8/17/2012	
CX 1945	Fittings Sales FY 2003 - 2010	00/00/2003		JX 0002-A	Ordered 8/17/2012	
CX 1946 - CX 1947	Intentionally Not Used			N/A		
CX 1948	E-mail from Shaun Smith to Barry Foster re: Activity Report Week of 10-26-07	10/31/2007		JX 0002-A		
CX 1949	Intentionally Not Used			N/A		
CX 1950	E-mail from Shaun Smith to Matt Minamyre re: A.R.1.25.08	1/29/2008		JX 0002-A		
CX 1951 - CX 1954	Intentionally Not Used			N/A		
CX 1955	E-mail from Shaun Smith to Blake Wegener re: AR 3/17 - 3/21	3/25/2008		JX 0002-A		
CX 1956	E-mail from Shaun Smith to Matt Minamyre re: A.R.4.4.08	4/8/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1957	E-mail from Shaun Smith to Tomas Carlin re: Tomas Carlin A.R. for 4/21 - 4/25/08	4/29/2008		JX 0002-A		
CX 1958 - CX 1959	Intentionally Not Used			N/A		
CX 1960	E-mail from Shaun Smith to Matt Minamyre re: A.R. 8.22.08	8/26/2008		JX 0002-A		
CX 1961	Intentionally Not Used			N/A		
CX 1962	E-mail from Shaun Smith to Matt Minamyre re: A.R.9.19.08	9/22/2008		JX 0002-A		
CX 1963	E-mail from Shaun Smith to Matt Minamyre re: A.R.10.17.08	10/20/2008		JX 0002-A		
CX 1964	Intentionally Not Used			N/A		
CX 1965	E-mail from Matt Minamyre to Ramon Prado re: Sigma Antics	11/4/2008		JX 0002-A		
CX 1966	E-mail from Shaun Smith to Matt Minamyre re: A.R.11.07.08	11/11/2008		JX 0002-A		
CX 1967	E-mail from Shaun Smith to Matt Minamyre and Dan McCutcheon re: A.R.5.1.09	5/5/2009		JX 0002-A		
CX 1968	Intentionally Not Used			N/A		
CX 1969	E-mail from Chuck Carrigan to Shaun Smith re: act 7.10.9	7/13/2009		JX 0002-A		
CX 1970	Intentionally Not Used			N/A		
CX 1971	E-mail from Shaun Smith to Blake Wegener re: Domestic distributors w/Attach: image001.jpg, image001.jpg, image003.jpg, image004.jpg	10/9/2009		JX 0002-A	Ordered 8/31/2012	
CX 1972	E-mail from Blake Wegener to Shaun Smith re: Domestic distributors w/Attach: DOM Comitment.xls	10/9/2009		JX 0002-A		
CX 1973	E-mail from Shaun Smith to Dan McCutcheon re: customers signed up to distribute our Domestic fittings and JR w/Attach: Distributors Domestic - Star or Tyler 10-9-09.xls, image001.jpg, image003.jpg	10/9/2009		JX 0002-A		Tr. 2606:17
CX 1974	E-mail from Blake Wegener to Shaun Smith, Sue Palmer and Susan Schepps re: AR 11/2 - 11/6	11/9/2009		JX 0002-A		
CX 1975	E-mail from Dan McCutcheon to Shaun Smith re: Domestic Req Rural Pipe & Supply, Jasper, TX, City of Beaumont, Beaumont, Texas	1/8/2010		JX 0002-A		
CX 1976	Intentionally Not Used			N/A		
CX 1977	E-mail from Michael Berry to Dan McCutcheon re: domestic threats	3/11/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1978	E-mail from Shaun Smith to Dan McCutcheon and Pam Garey re: MainLine - Chris Antos	3/18/2010		JX 0002-A		
CX 1979	E-mail from Shaun Smith to Michael Berry and Dan McCutcheon re: A.R.3.19.10.doc	3/22/2010		JX 0002-A		
CX 1980	E-mail from Shaun Smith to Michael Berry and Dan McCutcheon re: A.R.3.26.10.doc	3/31/2010		JX 0002-A		
CX 1981	E-mail from Shaun Smith to Dan McCutcheon re: A.R.6.6.10.doc w/Attach: image001.jpg	8/9/2010		JX 0002-A		
CX 1982	E-mail from Shaun Smith to Michael Berry and Dan McCutcheon re: A.R.10.1.10.doc	10/6/2010		JX 0002-A		
CX 1983	Weekly Activity Report from Shaun Smith	4/18/2012		JX 0002-A		
CX 1984	E-mail from Siddharth Bhattacharji to James P. Smith, Bill Newman, Kit Lunney et al. re: update from san diego convention	6/15/2009		Tr. 3475:4-10		
CX 1985	E-mail from Siddharth Bhattacharji to Victor Pais and OEM5 re: Review of McW-Sigma Master Distribution Agreement offer	8/3/2009		Tr. 3475:4-10		
CX 1986	E-mail from Siddharth Bhattacharji to Victor Pais re: here it is - it was tough to edit! w/Attach: rp-personal letter-080509-sb1.doc	8/5/2009		Tr. 1874:20-22		Tr. 1873:3,6,18,20; 1874:16,20,21
CX 1987	Intentionally Not Used			N/A		
CX 1988	E-mail from Siddharth Bhattacharji to Fred Stevens re: volume rebates for domestic fgs	9/29/2009		Tr. 3475:4-10		
CX 1989 - CX 1990	Intentionally Not Used			N/A		
CX 1991	E-mail from Siddharth Bhattacharji to Victor Pais re: my edits on the white paper w/Attach: arra-ba-white-paper-020609-sb1.doc	2/6/2009		JX 0002-A		
CX 1992	Intentionally Not Used			N/A		
CX 1993	E-mail from Siddharth Bhattacharji to Stuart Box, Victor Pais and OEM5 re: Two GDMB2445 go to San Diego!	6/8/2009		JX 0002-A		Tr. 1494:7,9
CX 1994	E-mail from Siddharth Bhattacharji to Sue Love, Tom Brakefield, Victor Pais et al. re: draft petition letter for our customers w/Attach: customer petition.doc	2/4/2009		Tr. 3475:4-10		
CX 1995	Intentionally Not Used			N/A		
CX 1996	E-mail from Siddharth Bhattacharji to Jim re: monitoring the proposed changes to laws at state level	2/11/2009		Tr. 3475:4-10		
CX 1997	E-mail from Siddharth Bhattacharji to Victor Pais re: edited BOD letter w/Attach: bod-'sos'-Plan-Review-060509-sb1.doc	6/8/2009		JX 0002-A	Ordered 8/17/2012	

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 1998	E-mail from Siddharth Bhattacharji to Walter Florence, Ronald W. Kuehl, Troy Noard et al. re: minutes of BOD mtg held april 14th 2009 w/Attach: sig-boardmtg-041409.doc	4/14/2009		JX 0002-A		
CX 1999	E-mail from Siddharth Bhattacharji to Gopi Ramanathan re: Tooling cost for SDP w/Attach: Final Tooling - Sigma Board- - Fittings - SDP-sb1072009.xls	7/19/2009		Tr. 3475:4-10		
CX 2000 - CX 2001	Intentionally Not Used			N/A		
CX 2002	E-mail from Siddharth Bhattacharji to Jim McGivern, Victor Pais, Larry Rybacki et al. re: your sugg to the Master Distribution Agreement	9/5/2009		Tr. 3475:4-10		
CX 2003	E-mail from Siddharth Bhattacharji to Walter Florence, Troy Noard, Ronald W. Kuehl et al. re: minutes of Board Meeting held 7/15/09 w/Attach: sig-boardmtg-071509.doc	7/15/2009		Tr. 3475:4-10		
CX 2004	Intentionally Not Used			N/A		
CX 2005	E-mail from Siddharth Bhattacharji to OEM5 re: comments on tyler Master Distribution Agreement w/Attach: tyler MDA-sb1 comment090209.doc	9/1/2009		JX 0002-A		
CX 2006	Meeting of the Board of Directors of Sigma	7/15/2009		JX 0002-A		
CX 2007 - CX 2010	Intentionally Not Used			N/A		
CX 2011	E-mail from Tom Brakefield to Larry Rybacki and Siddharth Bhattacharji re: DIFRA June Report w/Attach: Fittings Report June 2008.pdf	7/31/2008		Tr. 3475:4-10		
CX 2012 - CX 2013	Intentionally Not Used			N/A		
CX 2014	E-mail from Siddharth Bhattacharji to Victor Pais and Mitchell Rona re: QRR on our alternative DG plans	3/14/2008		Tr. 1649:3-5		Tr. 1648:22; 1649:2-4,7
CX 2015	E-mail from Siddharth Bhattacharji to Mitchell Rona re: tyler	3/18/2008		Tr. 1651:25-1652:2		Tr. 1651:23,25; 1652:1,5
CX 2016 - CX 2017	Intentionally Not Used			N/A		
CX 2018	E-mail from Siddharth Bhattacharji to Victor Pais, Larry Rybacki, Tom Brakefield et al. re: QRR on McW	6/2/2008		Tr. 3475:4-10		
CX 2019	E-mail from Siddharth Bhattacharji to Sean Salins, Ronaand Victor Pais re: URGENT quote from tyler w/Attach: Sigma Quote.xls	6/11/2008		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2020 - CX 2021	Intentionally Not Used			N/A		
CX 2022	E-mail from Siddharth Bhattacharji to Victor Pais re: pl review the draft BOD minutes for 7/30 w/Attach: sig-boardmtg-073008-draft.doc	10/5/2008		Tr. 3475:4-10		
CX 2023	Intentionally Not Used			N/A		
CX 2024	E-mail from Siddharth Bhattacharji to Victor Pais re: yr em on D2H not sent to TB2?	9/17/2008		Tr. 3475:4-10		
CX 2025	E-mail from Siddharth Bhattacharji to SST-ALL re: introducing a new supplier for our DM ftgs	8/7/2008		Tr. 3475:4-10		
CX 2026	E-mail from Jeff Marcus to BOD re: SIG FINAL - BOD 102210 & Supplemental w/Attach: BOD 102210.ppt, BOD 102210 - Supplemental Pkg.ppt	10/20/2010		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2027	E-mail from Ruffner Page to Victor Pais re: our meeting next week	5/25/2007		JX 0002-A		
CX 2028	E-mail from Ruffner Page to Allan Boscacci re: R	6/29/2007		JX 0002-A		
CX 2029	E-mail from Ruffner Page to Victor Pais re: Follow up meeting...	8/1/2007		JX 0002-A		
CX 2030	Meeting organized by Ruffner Page re: Victor Pais?	8/13/2007		JX 0002-A		
CX 2031	E-mail from Ruffner Page to Victor Pais re: Metalfit	8/24/2007		JX 0002-A		
CX 2032	E-mail from Ruffner Page to Victor Pais re: mtg 9/13 Thursday mrg	9/6/2007		JX 0002-A		
CX 2033	Intentionally Not Used			N/A		
CX 2034	E-mail from Ruffner Page to Tom Leonard re: Mr. Yin	11/19/2007		JX 0002-A		
CX 2035	E-mail from Ruffner Page to Tom Leonard re: Mr. Yin	11/18/2007		JX 0002-A		
CX 2036	E-mail from Rick Tatman to Ruffner Page re: Ruffner letter regarding A1 Sigma BCH 11 21 2007.doc w/Attach: Ruffner Letter regarding A1 Sigma BCH 11 21 2007.doc	11/22/2007		JX 0002-A		
CX 2037	E-mail from Ruffner Page to Victor Pais re: req for mtg..	11/28/2007		JX 0002-A		Tr. 812:20; 1886:21,24
CX 2038	Meeting Organized by Ruffner Page re: Victor Pais	12/3/2007		JX 0002-A		
CX 2039	E-mail from Victor Pais to Ruffner Page re: Response to your offer	1/6/2008		Tr. 429:5-7 JX 0002-A		Tr. 428:10,15; 429:3-7; 2056:10
CX 2040	E-mail from Ruffner Page to Victor Pais re: No worries	7/1/2008		Tr. 3475:4-10		
CX 2041	E-mail from Victor Pais to Ruffner Page and James M. Proctor re: Format for Financial data re: P2-BFA-Format-101008.xls	10/10/2008		Tr. 3475:4-10		
CX 2042	E-mail from James M. Proctor to Walter Florence, Ruffner Page and Victor Pais re: Meeting	11/11/2008		Tr. 3475:4-10		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2043	E-mail from Ruffner Page to Victor Pais re: Meeting in Chicago 12/22/08..	12/14/2008		Tr. 3475:4-10		
CX 2044	E-mail from Victor Pais to Ruffner Page re: a Outline for our meeting 10/22 to discuss P2 plan w/Attach: P2-Proposal Outline-122208.ppt	12/20/2008		Tr. 3475:4-10		
CX 2045	E-mail from Craig Schapiro to Mitchell Rona re: See sheet 2 on the excel sheet... w/Attach: domestic_Mult.xls	12/21/2009		Tr. 1596:11-13		Tr. 1596:8,11,12,15; 1599:24
CX 2046	Intentionally Not Used			N/A		
CX 2047	E-mail from Michelle McNamee to Ruffner Page re: Slides from April 29th GM Review w/Attach: TylerUnion Rick Tatman.ppt, South Plant Kent Brown.ppt, Union Tim Douty.ppt, AB&I Kurt Winter.ppt, Tyler Pipe Tony Orłowski.ppt	5/1/2008		JX 0002-A		Tr. 4686:14; 4687:10,17,19; 4689:5,10,24; 4695:2,13; 4696:1; 4698:22; 4699:2
CX 2048	E-mail from Victor Pais to Ruffner Page re: our mtg this wk	5/5/2008		JX 0002-A		
CX 2049	E-mail from Mike Keel to Ruffner Page re: victor	6/4/2008		JX 0002-A		
CX 2050	E-mail from Victor Pais to Ruffner Page re: our mtgs	6/9/2008		JX 0002-A		
CX 2051	E-mail from Ruffner Page to Siddharth Bhattacharji re: my daughter's contact	6/12/2008		JX 0002-A		
CX 2052	E-mail from Daniel Pryor to Ruffner Page re: [no subject]	6/21/2008		JX 0002-A		
CX 2053	E-mail from Victor Pais to Ruffner Page re: Response to your interest in ISO Fittings and Summary of Global opportunities...	7/7/2008		JX 0002-A		
CX 2054	Intentionally Not Used			N/A		
CX 2055	E-mail from Victor Pais to Ruffner Page re: A prelude to our meeting...	8/12/2008		JX 0002-A		
CX 2056	E-mail from Ruffner Page to Leon McCullough re: Contribution to MHP Hospice Serenity House Capital Campaign	12/24/2008		JX 0002-A		
CX 2057	Letter from Ruffner Page to McWane employees and friends	1/4/2012		JX 0002-A		
CX 2058	E-mail from Victor Pais to Ruffner Page re: a few thoughts to follow up your 'P2' Response...	1/26/2009		JX 0002-A		
CX 2059	E-mail from Victor Pais to Ruffner Page re: Your lead of the article on Stimulus in India	3/14/2009		JX 0002-A		
CX 2060	E-mail from Victor Pais to Ruffner Page re: NYC meeting...	3/15/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2061	E-mail from Victor Pais to Ruffner Page re: lunch tomorrow	3/16/2009		JX 0002-A		
CX 2062	E-mail from Victor Pais to Ruffner Page re: Follow up of our discussions...a Strategic Global Investment (SGI) Plan	3/24/2009		JX 0002-A		
CX 2063	E-mail from Ruffner Page to Charlie Nowlin re: India JV	5/30/2009		JX 0002-A		
CX 2064	E-mail from Victor Pais to Ruffner Page re: Hope you are doing well...when can we talk?	9/30/2009		JX 0002-A		
CX 2065	E-mail from Mike Keel to Ruffner Page re: A few personal thoughts ahead of our meeting tomorrow...	8/24/2009		JX 0002-A		
CX 2066	E-mail from Ginger Canterbury to Ruffner Page re: [no subject]	6/12/2008		JX 0002-A		
CX 2067	E-mail from Leon McCullough to Ruffner Page re: Sigma PO received for Disa items w/Attach: Copy of Tyler purchase - Sigma Quote.xls	6/18/2008		JX 0002-A		
CX 2068	E-mail from Ruffner Page to Leon McCullough re: Initial DIFRA Output reports	6/18/2008		JX 0002-A		Tr. 946:13; 949:16
CX 2069	E-mail from Ruffner Page to Victor Pais re: your plans to meet Frontenac in Chicago	6/18/2008		JX 0002-A		
CX 2070	E-mail from Ruffner Page to Tom Leonard re: BCH patterns & tooling	7/4/2008		JX 0002-A		
CX 2071	E-mail from Victor Pais to Ruffner Page re: call Tuesday mrg	7/7/2008		JX 0002-A		
CX 2072	E-mail from Mike Keel to Ruffner Page re: Abu Dhabi	7/14/2008		JX 0002-A		
CX 2073	E-mail from Victor Pais to Ruffner Page re: Wall Street Journal today pages A2	7/29/2008		JX 0002-A		
CX 2074	Intentionally Not Used			N/A		
CX 2075	E-mail from Victor Pais to Ruffner Page re: Request for a meeting...	8/5/2008		JX 0002-A		
CX 2076	E-mail from Victor Pais to Ruffner Page re: our meetingsnext week...	8/6/2008		JX 0002-A		
CX 2077	E-mail from Mike Keel to Ruffner Page re: july 08 mgt report	8/12/2008		JX 0002-A		
CX 2078	E-mail from Victor Pais to Ruffner Page re: our schedule for meetings next week...	8/12/2008		JX 0002-A		
CX 2079	E-mail from Victor Pais to Ruffner Page re: I will call U @ 2pm CDT	8/22/2008		JX 0002-A		
CX 2080	E-mail from Michael Berry to Todd Karren re: Weekly Activity Report week ending 8/6/2010	8/10/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2081	E-mail from Victor Pais to Ruffner Page, Walter Florence, Siddharth Bhattacharji et al. re: Conference Call Friday 8/29/08	8/28/2008		JX 0002-A		
CX 2082	E-mail from Leon McCullough to Ruffner Page re: End of the month Special Sigma Ltr 8-28-08 w/Attach: Sigma Ltr 8-28-08.pdf	8/29/2008		JX 0002-A		
CX 2083	E-mail from Victor Pais to Ruffner Page re: CA draft...	9/9/2008		JX 0002-A		
CX 2084	E-mail from Ruffner Page to Michelle McNamee re: Victor	9/29/2008		JX 0002-A		
CX 2085	Intentionally Not Used			N/A		
CX 2086	E-mail Victor Pais to Ruffner Page re: meeting	10/15/2008		JX 0002-A		
CX 2087	E-mail from Allan Boscacci to Ruffner Page re: direction for 2009 PLBG Group w/Attach: Plbg group Direction 2009.doc	12/10/2008		JX 0002-A		
CX 2088	E-mail from Victor Pais to Ruffner Page re: Thanks -- I will call you @ 1:15 PM CDT Keep lunch short!	1/12/2009		JX 0002-A		
CX 2089	E-mail from Ruffner Page to Phillip McWane re: December DIFRA Report w/Attach: DIFRA_2008_12.xls	1/23/2009		JX 0002-A		
CX 2090	E-mail from Leon McCullough to Ruffner Page re: From ScanFront220	1/30/2009		JX 0002-A		
CX 2091	E-mail from Ruffner Page to Leon McCullough re: Sigma	3/17/2009		JX 0002-A		
CX 2092	E-mail from Victor Pais to Ruffner Page re: Please mark me down for the Thursday (4/2) 3 PM -- thanks!	3/27/2009		JX 0002-A		
CX 2093	E-mail from Victor Pais to Ruffner Page re: mtg today...	4/2/2009		JX 0002-A		
CX 2094	E-mail from Victor Pais to Ruffner Page re: Wld like to talk to you later this aftn...What's a good time?	4/6/2009		JX 0002-A		
CX 2095	E-mail from Ruffner Page to Victor Pais re: Can I call you @ 11 am CDT?	6/10/2009		JX 0002-A		
CX 2096	E-mail from Michelle McNamee to Ruffner Page re: Tank [sic] you -- I will see you Friday morning @ 9 am	6/29/2009		JX 0002-A		
CX 2097	E-mail from Ruffner Page to Leon McCullough re: surestop	6/30/2009		JX 0002-A		
CX 2098	E-mail from Ruffner Page to Dennis Charko re: surestop	5/2/2009		JX 0002-A		
CX 2099	E-mail from Victor Pais to Ruffner Page re: our meeting -- Wednesday/Thursday	5/19/2009		JX 0002-A		
CX 2100	E-mail from Victor Pais to Ruffner Page re: on my way - running a bit late	5/21/2009		JX 0002-A		
CX 2101	E-mail from Ruffner Page to Leon McCullough re: ACIPCo/TylerUnion	5/21/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2102	E-mail from Victor Pais to Ruffner Page re: Ur Vms	5/29/2009		JX 0002-A		
CX 2103	E-mail from Ruffner Page to Rick Tatman re: BCH ownership - patterns	5/30/2009		JX 0002-A		
CX 2104	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Leon McCullough to Ruffner Page re: Ferguson Fittings	6/15/2009	RX-172	JX 0002-A		
CX 2105	E-mail from Leon McCullough to Ruffner Page re: ACIPCo/Sigma	6/22/2009		JX 0002-A		
CX 2106	E-mail from Ruffner Page to Thomas Walton and Rick Tatman re: Ferguson service levels	5/15/2009		JX 0002-A		
CX 2107	E-mail from Ruffner Page to Leon McCullough re: another wish/thought	7/9/2009		JX 0002-A		
CX 2108	E-mail from Victor Pais to Ruffner Page re: request for a meeting...	8/5/2009		JX 0002-A		
CX 2109	E-mail from Leon McCullough to Ruffner Page re: June, 2009 vs. July, 2009 w/Attach: Review Report1.xls, June vs July 09 Variance Analysis.xls	8/7/2009		JX 0002-A		
CX 2110	E-mail from Victor Pais to Ruffner Page re: Meeting this week...	8/23/2009		JX 0002-A		
CX 2111	E-mail from Leon McCullough to Ruffner Page re: Victor	8/25/2009		JX 0002-A		
CX 2112	E-mail from Ruffner Page to Leon McCullough re: Sigma	9/15/2009		JX 0002-A		
CX 2113	E-mail from Ruffner Page to Kurt Winter re: GM meeting in Tyler	10/21/2009		JX 0002-A		
CX 2114	E-mail from Ruffner Page to Allan Boscacci re: [no subject]	3/8/2010		JX 0002-A		
CX 2115	E-mail from Ruffner Page to Leon McCullough re: Trust Letter to Pipe group	6/22/2011		JX 0002-A		
CX 2116	Letter from Victor Pais to Alex and PJ Gopi re: A Strategic Master Plan	8/4/2008		Tr. 3475:4-10		
CX 2117	Letter from Victor Pais to Walter Florence re: Check List for Discussion	6/23/2008		Tr. 3475:4-10		
CX 2118	E-mail from Victor Pais to Yin Baohai & Yin Zhenhao re: An update about the corporate changes at McWane...	10/22/2007		Tr. 1882:19-21		Tr. 1881:11; 1882:16,19,20
CX 2119	E-mail from Victor Pais to Larry Rybacki & Siddharth Bhattacharji re: Ruffner's resp for my Request for a meeting...	12/13/2007		Tr. 1894:5-7		Tr. 1893:15,17; 1894:2,5,6; 2041:16

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2120	E-mail from Victor Pais to Siddharth Bhattacharji re: URG...PI review the attached draft for McW... w/Attach: McWane Meeting-121407.doc	12/14/2007		Tr. 1889:25-1890:2		Tr. 1888:18,21; 1889:13,25; 1890:1; 2039:16
CX 2121	Tyler/Union 2009 Budget Waterworks Division	00/00/2009		JX 0002-A		
CX 2122	Intentionally Not Used			N/A		
CX 2123	E-mail from John Springer to Thomas Walton, Tatmanand Leon McCullough re: 2008 vs. 2007 w/Attach: Tyler Union Var analysis.xls, Variance Analysis.doc	9/8/2008		JX 0002-A		
CX 2124	E-mail from John Springer to Thomas Walton, Rick Tatman, Leon McCullough et al. re: 2008 vs. 2007 - Waterworks w/Attach: Tyler Union Var analysis.xls, Variance Analysis.doc	10/7/2008		JX 0002-A		
CX 2125	E-mail from John Springer to Kent Brown, Rick Tatman, Thomas Walton et al. re: 2008 vs. 2007 - Waterworks Division w/Attach: Tyler Union Var analysis.xls, Variance Analysis.doc	12/8/2008		JX 0002-A		
CX 2126	E-mail from John Springer to Rick Tatman, Thomas Walton and Leon McCullough re: 2008 vs. 2007 - Waterworks Division w/Attach: Tyler Union Var analysis.xls, Variance Analysis.doc	1/14/2009		JX 0002-A		Tr. 834:13
CX 2127	E-mail from John Springer to Rick Tatman, Thomas Walton and Leon McCullough re: 2009 vs. 2008 - Waterworks Division w/Attach: Variance Analysis.xls, Variance Analysis.doc	2/10/2008		JX 0002-A		
CX 2128	E-mail from Rick Tatman to Charlie Nowlin re: Performa Sigma Offer July 2009.xls w/Attach: Peforma Sigma Offer July 2009.xls	7/22/2008		JX 0002-A		
CX 2129	E-mail from John Springer to Leon McCullough, Thomas Walton, Rick Tatman et al. re: 2009 vs. 2008 - Waterworks Division w/Attach: Variance Analysis.doc, Variance Analysis.xls	8/10/2009		JX 0002-A		
CX 2130	E-mail from John Springer to Leon McCullough, Thomas Walton, Rick Tatman et al. re: Waterworks Division 2009 vs. 2008 w/Attach: Variance Analysis.doc, Variance Analysis.xls	9/10/2009		JX 0002-A		
CX 2131	E-mail from John Springer to Kurt Winter and Greg Simmons re: 2009 vs. 2008 w/Attach: Variance Analysis.doc, Variance Analysis.xls	12/7/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2132	E-mail from John Springer to Leon McCullough, Thomas Walton, Rick Tatman et al. re: 2009 vs. 2008 - Waterworks Division w/Attach: Variance Analysis.doc, Variance Analysis.xls	1/14/2010		JX 0002-A		
CX 2133	Intentionally Not Used			N/A		
CX 2134	E-mail from John Springer to Leon McCullough, Rick Tatman and Kent Brown re: 2011 v 2010 - Waterworks Division w/Attach: Variance Analysis Discussion.doc, Variance Analysis.xls	3/4/2011		JX 0002-A		
CX 2135	E-mail from Brant Locklier to Rick Tatman, Barry Patterson, Leon McCullough et al. re: Month end for Tyler Union w/Attach: 1ConsollncState1211.xlsm, 2SGP1211.xls, 3WWFin State1211.xls	1/10/2012		JX 0002-A	Ordered 8/17/2012	
CX 2136	E-mail from Tom Leonard to Ruffner Page, Boscaccian and Leon McCullough re: Corporate Rebate	2/6/2008		JX 0002-A		
CX 2137	Intentionally Not Used			N/A		
CX 2138	E-mail Brant Locklier to Rick Tatman, Leon McCullough, Kent Brown et al. re: More monthly reports from Union w/Attach: 2SGP0511.XLS	6/5/2011		JX 0002-A	Ordered 8/17/2012	
CX 2139	E-mail from John Springer to Bob Sheehan, Tom Leonard, Rick Tatman et al. re: 2006 vs. 2005 w/Attach: TP Variance Analysis 0612.xls, TP Variance Analysis 0612.doc	1/12/2007		JX 0002-A		
CX 2140	E-mail from Jerry Soules to Charlie Nowlin and John Springer re: GFD vs Impact Analysis w/Attach: All Options at 2007 Price & 2007 - fixed vs. variable.xls	10/18/2007		JX 0002-A		
CX 2141 - CX 2142	Intentionally Not Used			N/A		
CX 2143	E-mail from Charlie Nowlin to Thomas Walton re: Sensitivity Analysis.xls w/Attach: Sensitivity Analysis.xls	11/29/2007		JX 0002-A		
CX 2144	Intentionally Not Used			N/A		
CX 2145	E-mail from Charlie Nowlin to Jody Hall re: 2008 vs. 2007 - Tyler/Union Combined w/Attach: Tyler Union Var Analysis.xls, Variance Analysis.doc	7/11/2008		JX 0002-A		Tr. 4092:8,14; 4095:23; 4110:9; 4123:3; 4664:17,23; 4665:10,22
CX 2146	Intentionally Not Used			N/A		
CX 2147	E-mail from Yuxiao to Andy Payant, Charlie Nowlin, Leon McCullough et al. re: Txx_blue book_Dec08: w/Attach: Txx_BlueBook_Dec08.xls	1/8/2009		JX 0002-A		
CX 2148	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2149	E-mail from John Springer to Kurt Winter, Tony Orlowski and Tom Leonard 2009 vs. 2008 - Plumbing Division w/Attach: Variance Analysis.xls, Variance Analysis.doc	2/10/2009		JX 0002-A		
CX 2150	E-mail from John Springer to Leon McCullough, Thomas Walton and Rick Tatman re: Waterworks Division 2009 vs. 2008 w/Attach: Variance Analysis.doc, Variance Analysis.xls	3/11/2009		JX 0002-A		
CX 2151	E-mail from John Springer to Leon McCullough, Thomas Walton, Rick Tatman et al. re: 2009 vs. 2008 - Waterworks Division w/Attach: Variance Analysis.doc, Variance Analysis.xls	6/5/2009		JX 0002-A		
CX 2152	E-mail from Thomas Walton to Charlie Nowlin re: June, 2009 vs. July, 2009 w/Attach: Review Report1.xls, June vs. July 09 Variance Analysis.xls	8/6/2009		JX 0002-A		
CX 2153	E-mail from John Springer to Leon McCullough, Thomas Walton, Rick Tatman et al. re: 2009 vs 2008 - Waterworks Division w/Attach: Variance Analysis.doc, Variance Analysis.xls	11/6/2009		JX 0002-A		
CX 2154	E-mail from John Springer to Leon McCullough, Rick Tatman and Kent Brown re: 2010 vs. 2009 w/Attach Variance Analysis Discussion.doc, Variance Analysis.xls	1/13/2011		JX 0002-A		
CX 2155	E-mail from Charlie Nowlin to Thomas Walton re: [no subject]	8/4/2009		JX 0002-A		
CX 2156	E-mail from Yuxiao to Andy Payant, Barry Patterson and Rick Tatman re: blue book Nov09 Txx w/Attach: Txx Blue Book Nov09.xls	12/6/2009		JX 0002-A		
CX 2157	E-mail from John Springer to Leon McCullough, Thomas Walton, Rick Tatman et al. re: 2009 vs. 2008 - Waterworks Division w/Attach: Variance Analysis.doc, Variance Analysis.xls	4/7/2009		JX 0002-A		
CX 2158	E-mail from John Springer to Leon McCullough, Thomas Walton and Rick Tatman re: 2009 vs. 2008 - Waterworks Division re: Variance Analysis.doc, Variance Analysis.xls	5/8/2009		JX 0002-A		
CX 2159	E-mail from John Springer to Leon McCullough, Thomas Walton and Rick Tatman et al. re: 2009 vs. 2008 - Waterworks Division w/Attach: Variance Analysis.doc, Variance Analysis.xls	7/9/2009		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2160	Intentionally Not Used			N/A		
CX 2161	Letter from Jerry Jansen to Eddie Gibbs re: Program Offering for 2011	2/7/2011		JX 0002-A		
CX 2162	List of WinWater Works Companies	5/22/2012		JX 0002-A		
CX 2163	List of Purchases from 2007 to 2011	00/00/2011		JX 0002-A		
CX 2164	E-mail from Jerry Jansen to Eddie Gibbs re: New List Pricing - Tyler Union w/Attach: Tyler Union Price Announcement 2 15 2011.docx; UT Tyler Union Price Announcement 2 15 2011.docx; PA Tyler Union Price Announcement 2 15 2011.docx	2/16/2011		JX 0002-A		
CX 2165	Letter from Rick Tatman to Eddie Gibbs re: Thank you for your support	5/17/2010		JX 0002-A		
CX 2166	E-mail from Eddie Gibbs to Local Cos - WinWater re: Domestic Ductile Fittings w/Attach: McWane Announcement Sept 22nd 2009.pdf; SIGMA-BA-MDA-Customer Letter-092209.pdf	4/14/2010		JX 0002-A		
CX 2167	E-mail from Eddie Gibbs to Rick Tatman re: Tyler Union Announcement w/Attach: McWaneAnnouncement Sept 22nd 2009.pdf	11/2/2009		JX 0002-A		
CX 2168	E-mail from Eddie Gibbs to M.L. Salsman, Ronald Bohannon, Stephen Coen et al. re: Tyler Union Questions follow-up	9/23/2009		JX 0002-A		
CX 2169	E-mail from Eddie Gibbs to Local Cos - Winwater re: Star Pipe "American Made" Announcement	6/18/2009		JX 0002-A		
CX 2170	E-mail from Rick Tatman to Rick Tatman re: Tyler/Union Announcement Regarding pending price action on Fittings and Accessories w/Attach: TylerUnion Announcement May 7 2008.pdf	5/8/2008		JX 0002-A		Tr. 499:13;
CX 2171	Intentionally Not Used			N/A		
CX 2172	E-mail from Glenn Fielding to Linda Mills and Brian Parker re: Tyler/Union Price Increase Announcement w/Attach: TylerUnion Price Increase Letter 01 11 08.pdf	1/11/2008		JX 0002-A		Tr. 381:11,13; 382:1; 400:17,21; 2774:22; 2783:8
CX 2173	E-mail from Glenn Fielding to Jerry Webb and Darrin Anderson re: Tyler Union Announcement -- here is the meat of text	9/22/2009		JX 0002-A		Tr. 2750:12,14; 2760:17; 2761:19; 2768:19,21
CX 2174	Intentionally Not Used			N/A		
CX 2175	E-mail from Leon McCullough to Allan Boscacci, Michael Lowe, Kip Wixson et al. re: 2009 Sales \$ for Rebates.xls w/Attach: 2009 Sales \$ for Rebates.xls	11/30/2009		JX 0002-A		
CX 2176	Handwritten notes prepared for 3/9/10 meeting	3/9/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2177	E-mail from Rick Tatman to Thomas Walton and Kent Brown re: DIWF Dom vs. Blend Mix July w/Attach: DIWF Dom vs Blend Mix July.xls	8/18/2009		JX 0002-A		
CX 2178	E-mail from Rick Tatman to Thomas Walton re: Tyler/Union New List Price & Multipliers w/Attach: Multiplier Change Analysis.xlsm	4/12/2009		JX 0002-A		
CX 2179	Presentation: Star Pipe Products: Made in the USA	6/29/2009		JX 0002-A		
CX 2180	E-mail from Thomas Walton to Leon McCullough w/Attach: Prices Reduction and Rebate Analysis 081409.xls	8/14/2009		JX 0002-A		
CX 2181	Intentionally Not Used			N/A		
CX 2182	E-mail from Rick Tatman to Thomas Walton re: HDS & FEI Programs w/Attach: Amended TylerUnion DIWF Program March 19th.doc; 2009 TylerUnion DIWF Program March 11th.doc	8/19/2009		JX 0002-A		
CX 2183	Handwritten Notes prepared for 10/2/10 meeting	10/2/2010		JX 0002-A		
CX 2184	Intentionally Not Used			N/A		
CX 2185	E-mail from Leon McCullough to Thomas Walton and Rick Tatman re: We now have domestic stock Fittings and JR 7/24	7/24/2009		JX 0002-A		
CX 2186	E-mail from Thomas Walton to Leon McCullough re: Sigma ULFM	11/18/2009		JX 0002-A		
CX 2187	E-mail from Ruffner Page to Mike Keel, Leon McCullough and Thomas Walton re: USP	3/25/2009		JX 0002-A		
CX 2188	TylerUnion Job Pricing Request for R&B Supply	1/15/2011		JX 0002-A		
CX 2189	E-mail from Jerry Jansen to Rick Tatman and Vince Napoli re: FEI MD VA Program Credit	5/13/2011		JX 0002-A		
CX 2190	E-mail from Jerry Jansen to Roger Wells & Mike Snyder re: Acc Ut	5/21/2011		JX 0002-A		
CX 2191	E-mail from Jerry Jansen to Vince Napoli, Scott Harms and Buck Christian re: Coleman Enterprises	1/6/2012		JX 0002-A		
CX 2192	E-mail from Vince Napoli to Rick Tatman re: Dom pricing and Star	8/2/2010		JX 0002-A		
CX 2193	E-mail from Jerry Jansen to Vince Napoli, Nikki Dolick and Scott Harms re: Huntsville Utilities	7/12/2010		JX 0002-A		
CX 2194	Intentionally Not Used			N/A		
CX 2195	E-mail from Nikki Dolick to Vince Napoli re: Atlanta Annual Bid	7/12/2010		JX 0002-A		
CX 2196	E-mail from Scott Harms to Jerry Jansen, Vince Napoli and Nikki Dolick re: Atlanta Annual Bid	7/12/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2197	E-mail from Jerry Jansen to Vince Napoli, Scott Harms and Nikki Dolick re: Huntsville Utilities	7/13/2010		JX 0002-A		
CX 2198	E-mail from Scott Harms to Jerry Jansen, Vince Napoli and Nikki Dolick re: Cobb Co	9/3/2010		JX 0002-A		
CX 2199	E-mail from Vince Napoli to Sheila Sullivan re: Wilson Mills Roger Johnson County	8/16/2010		JX 0002-A		
CX 2200 - CX 2202	Intentionally Not Used			N/A		
CX 2203	Meeting notes from Rick Tatman	10/13/2009		JX 0002-A		Tr. 2844:11; 2849:3; 2850:13; 2901:20
CX 2204	Intentionally Not Used			N/A		
CX 2205	E-mail from Stephen Gables to Ray Torok, Tom Morton and Gary Crawford re: FW: Tyler Union & Sigma Letters	9/22/2009		JX 0002-A		Tr. 2849:5,10; 2895:6
CX 2206 - CX 2208	Intentionally Not Used			N/A		
CX 2209	E-mail from Tom Morton to Stephen Gables re: 4541 Ballenger - Mckinney (4"-24" Domestic Fittings)	2/25/2010		JX 0002-A		
CX 2210	E-mail from Tom Morton to Paul Ciolino RE: Excess MJ Field Lok gland inventory	9/7/2010		JX 0002-A		
CX 2211 - CX 2213	Intentionally Not Used			N/A		
CX 2214	E-mail from Stephen Gables to Tom Morton re: US Pipe charts	9/9/2010		JX 0002-A		
CX 2215	E-mail from Susan Schepps to Tom Morton re: Star - American Made Development Plan rev. 9/03	9/15/2009		JX 0002-A		Tr. 2834:13
CX 2216	Intentionally Not Used			N/A		
CX 2217	E-mail from Tom Morton to Ray Torok, Gary Crawford, & Phil Goodwin re: Star Pipe trip report - November 12, 2009 w/Attach: Star Pipe trip report - November 12, 2009.doc	11/12/2009		JX 0002-A		Tr. 2853:3; 2902:17
CX 2218 - CX 2221	Intentionally Not Used			N/A		
CX 2222	E-mail from Tom Morton to Jordan Dorfman and Philip Metzger re: EPA	6/3/2009		JX 0002-A		
CX 2223	E-mail from Tom Morton to Ray Torok, Gary Crawford, Kent Brown et al. re: Fittings Information w/Attach: Fittings Market - April 15, 2009.doc, Fittings market Data - April 15 2009.xls	4/15/2009		JX 0002-A		Tr. 2821:3,10

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2224 - CX 2230	Intentionally Not Used			N/A		
CX 2231	E-mail from Courtney Davis to Margaret Powell re: DIFRA - U.S. Pipe w/Attach: DIFRA Input Output Format Rev 2 xls (3).xls	6/5/2008		JX 0002-A		
CX 2232	E-mail from Jane Flanary to Gary Crawford re: DIFRA updated for Feb sales w/Attach: DIFRA Input Output USPIPE Feb10.xls	3/4/2010		JX 0002-A		
CX 2233 - CX 2251	Intentionally Not Used			N/A		
CX 2252	E-mail from Craig Schapiro to M20 re: New Multipliers - Star Pipe Products	6/27/2008		Tr. 3475:4-10		Tr. 3573:8
CX 2253	E-mail from Greg Fox to Russell Axon, Gloria Lamborne, Scott Marlow et al. re: Fitting/Accessory Price Increase Confirmation Letters w/Attach: Price Increase Southeast - July 14 2008.pdf; Price Increase Mississippi - July 14 2008.pdf	7/7/2008		Tr. 3475:4-10		Tr. 3575:7
CX 2254	E-mail from Matt Minamyler to Matt Minamyler, Bud Leider, Michael Berry et al. re: Mult Change plan for your review	6/19/2008		JX 0002-A		Tr. 3216:8,11
CX 2255	E-mail from Star Pipe Products to Outside Sales re: New Multipliers - Star Pipe Products	6/27/2008		JX 0002-A		
CX 2256	<b>REMOVED -- DUPLICATE EXHIBIT</b> Federal Register/Vol. 74, No. 104: EPA Notice of Nationwide Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) for de minimis Incidental Components of Projects Financed Through the Clean or Drinking Water State Revolving Funds Using Assistance Provided Under ARRA	6/2/2009	RX-155	JX 0002-A		
CX 2257	Intentionally Not Used			N/A		
CX 2258	Spreadsheet: Griffin Pipe Fitting Purchases 1/1/2003 to 4/23/2012	4/23/2012		JX 0002-A	Ordered 8/17/2012	
CX 2259	Spreadsheet: Griffin Pipe Products Fitting Sales January 2003 to December 2011	12/00/2011		JX 0002-A	Ordered 8/17/2012	

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2260	Expert Report of Laurence Schumann, PH.D. (In Camera Version)	6/15/2012		JX 0002-A	Ordered 10/26/2012	Tr. 3754:7,8,13; 3762:13; 3763:12; 3764:9; 3795:20; 3840:20; 4059:9; 4060:16,19,20; 4141:7; 4166:7,12; 4176:24; 4190:5; 4253:3; 4307:23; 4326:5; 4364:19; 4374:11; 4469:25; 4473:9; 4535:13; 4636:7; 4646:24; 4647:10; 4696:21
CX 2260-A	Expert Report of Laurence Schumann, PH.D. (Public Version)	6/15/2012		Tr. 6041:17-18		Tr. 6041:10
CX 2261	E-mail from Jerry Jansen to Justin Connor re: Middleton CT Annual renewal	9/3/2010		JX 0002-A		
CX 2262	E-mail from Vince Napoli to Jerry Jansen re: City of Lakeland Annual bids 9-8-10 w/Attach: Tyler Union.xlsx, tyler union2.xls, Tyler Union3.xls, tyler union4.xls, tyler union5.xls, Tyler union CIVD.xlsx, tyler union CIVB risers.xlsx	9/1/2010		JX 0002-A		
CX 2263	E-mail from Larry Ruffin to Vince Napoli re: Florida Pricing	8/23/2010		JX 0002-A		
CX 2264	E-mail from Marla Drake to Vince Napoli re: Indian Springs WTP Feguson w/Attach: Indian Creek File Quotes.pdf	7/22/2010		JX 0002-A		
CX 2265	Rebuttal Expert Report of Laurence Schumann, Ph.D. (In Camera Version)	7/12/2012		JX 0002-A	Ordered 10/26/2012	Tr. 5228:21, 23; 5810:1,4; 5931:14; 5952:22; 5982:24; 5989:7; 6026:19
CX 2265-A	Rebuttal Expert Report of Laurence Schumann, Ph.D. (Public Version)	7/12/2012		Tr. 6041:19-20		Tr. 6041:10
CX 2266	E-mail from Thad G. Long to Tom Brakefield re: DIFRA Input Output Format (3).xls	4/8/2008		JX 0002-A		
CX 2267	E-mail from Dan McCutcheon to Rick Tatman, Thad G. Long, Tom Brakefield et al. re: DIFRA Input Output Format (3).xls	4/9/2008		JX 0002-A		Tr. 482:10; 483:7-11;
CX 2268	E-mail from Wood Herren to Rick Tatman re: DIFRA reporting	5/28/2008		JX 0002-A		
CX 2269	E-mail from Rick Tatman to Wood Herren re: April DIFRA report	6/11/2008		JX 0002-A		Tr. 530:5,7
CX 2270	E-mail from Wood Herren to Tom Brakefield, Rick Tatman, Gary Crawford et al. Ductile Iron Fittings Research Association - Reporting of Fittings Sales	6/12/2008		JX 0002-A		

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2271	Intentionally Not Used			N/A		
CX 2272	E-mail from Thad G. Long to Tom Brakefield re: DIFRA Meeting	3/18/2008		Tr. 1285:18-20		Tr. 1283:6; 1284:23; 1285:15,18,19
CX 2273 - CX 2275	Intentionally Not Used			N/A		
CX 2276	E-mail from Andrea Gayle to Mike Vore re: 2012 Wolseley North America Corporate Sourcing Agreement(s) - McWane, Inc. w/Attach: 2012 McWane, Inc. - Admin. Agreement.pdf, 2012 McWane, Inc. - Rebate Agreement.pdf	5/8/2012		JX 0002-A	Ordered 8/17/2012	
CX 2277	E-mail from Andrea Gayle to Rick Tatman re: 2012 Wolseley North America Corporate Sourcing Agreement(s) - Tyler Union w/Attach: 2012 Tyler Union - Admin. Agreement.pdf, 2012 Tyler Union - Rebate Agreement.pdf	2/13/2012		JX 0002-A	Ordered 8/17/2012	
CX 2278 - CX 2286	Intentionally Not Used			N/A		
CX 2287	E-mail from Michael Berry to Bud Leider and Matt Minamyre re: AZ, CA, HI	4/23/2009		JX 0002-A		
CX 2288	E-mail from Dan McCutcheon to Ramesh Bhutada and Kirthi Jain re: Extract from "Weekly report from Sales"	4/23/2009		JX 0002-A		
CX 2289 - CX 2290	Intentionally Not Used			N/A		
CX 2291	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Victor Pais to Leon McCullough re: Victor to Leon: Thank you ... see you Tuesday ... Have a great weekend!	4/24/2009	CX 0728	Tr. 3475:4-10		
CX 2292	Intentionally Not Used			N/A		
CX 2293	E-mail from Michael Berry to Shaun Smith, Todd Karren, Kris Kadai, John Ristine, Blake Wegener, Tomas Carlin, Pam Garey, John Lemoine re: Domestic Updates	12/21/2009		JX 0002-A		
CX 2294	E-mail from Pam Garey to Dan McCutcheon re: Do you have copies of tile domestic quote log?	7/16/2011		JX 0002-A		Tr. 2598:3,22; 2629:6; 4377:10; 4379:15; 4457:15; 4615:13,17,18; 4617:3
CX 2295	ADIP Fittings Sales 2003 - 2012	00/00/2003		JX 0002-A	Ordered 8/17/2012	
CX 2296	AFC Fittings Sales 2003 - 2012	00/00/2003		JX 0002-A	Ordered 8/17/2012	

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2297	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Pricing Strategy Changes	11/25/2008	CX 0831	JX 0002-A		
CX 2298 - CX 2299	Intentionally Not Used			N/A		
CX 2300	E-mail from Matt Minamyer to Bud Leider, Michael Berry, Neil McGillivray et al. re: Multiplier Increase	2/2/2008	CX 0043 (MESP0009348); CX 1354 (SPP009413)	JX 0002-A		Tr. 2400:1; 3188:5; 3248:20; 4226:2
CX 2301 - CX 2303	Intentionally Not Used			N/A		
CX 2304	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Bud Leider to Matt Minamyer re: Sigma aggressive	11/4/2008	RX-110	JX 0002-A		
CX 2305	E-mail from Bud Leider to Matt Minamyer re: 30" and up fittings	11/4/2008		JX 0002-A		
CX 2306	Intentionally Not Used			N/A		
CX 2307	E-mail from Bud Leider to Matt Minamyer re: Budget 2009 w/Attach: Cental - Budget 2009.xls	12/2/2008		JX 0002-A	Ordered 8/31/2012	
CX 2308	E-mail from Bud Leider to Matt Minamyer re: Sigma Denver	12/15/2008		JX 0002-A		
CX 2309	E-mail from John Fiorillo to Dan McCutcheon re: Activity Report that I mentioned HD not being able to buy from us w/Attach: Weekly Activity Report 1 22 2010.doc, Weekly Activity Report 10 16 2009.doc, Weekly Activity Report 10-2 2009.doc	3/12/2010		JX 0002-A		
CX 2310 - CX 2311	Intentionally Not Used			N/A		
CX 2312	E-mail from Bud Leider to Dan McCutcheon re: Sept 22nd Announcement Q&A.pdf	9/22/2009		JX 0002-A		
CX 2313 - CX 2315	Intentionally Not Used			N/A		
CX 2316	E-mail from Pete Lisowski to Bud Leider and Dan McCutcheon re: Week Ending 2-27-10	2/28/2010		JX 0002-A		
CX 2317	Intentionally Not Used			N/A		
CX 2318	E-mail from Dan McCutcheon to John Fiorillo re: Activity reports that I mentioned HD not being able to buy from us	3/10/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2319	E-mail from Michael Berry to Bud Leider re: Please send me a copy of your mbos w/Attach: 2010 Game Plan & MBO's - Ryan Michael Berry.doc	3/29/2010		JX 0002-A		
CX 2320 - CX 2322	Intentionally Not Used			N/A		
CX 2323 - CX 2324	Intentionally Not Used			N/A		
CX 2325	Star Domestic Roger Wells territory 60	7/3/2010		JX 0002-A		
CX 2326	Intentionally Not Used			N/A		
CX 2327	E-mail from Thomas Walton to Rick Tatman re: Draft Presentation for 1Q 2008 DIWF LP Review.ppt	12/31/2007		JX 0002-A		Tr. 340:22;
CX 2328	E-mail from Dan McCutcheon to Kristin Reid re: Groeniger - WaltonRd Domestic and Import - REV 2.1.10	2/1/2010		JX 0002-A		
CX 2329	E-mail from Victor Pais to Tom Brakefield, Larry Rybacki, & Siddharth Bhattacharji re: DIFRA meeting	5/14/2009		JX 0002-A		
CX 2330	E-mail from Star Pipe Products to Outside Sales re: Star - New Multipliers	6/25/2009		JX 0002-A		
CX 2331	E-mail from Star Pipe Products to Outside Sales re: Star - New Multipliers	6/25/2009		JX 0002-A		
CX 2332	E-mail from Star Pipe Products to Outside Sales re: Star - New Multipliers	6/25/2009		JX 0002-A		
CX 2333	E-mail from Star Pipe Products to Sales Management re: Star - New Multipliers	6/26/2009		JX 0002-A		
CX 2334	E-mail from Ramesh Bhutada to Pawan Sharda et al FW: DIFRA September 2008	10/17/2008		JX 0002-A	Ordered 8/31/2012	
CX 2335	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Dan McCutcheon to Pawan Sharda RE: Star Pipe Market Share % Analysis thru Apr 08	7/8/2008	CX 1708	JX 0002-A		
CX 2336	E-mail from Star Pipe Products to Outside Sales re: New Multipliers - Star Pipe Products	2/6/2008		JX 0002-A		Tr. 3193:24
CX 2337	<b>REMOVED -- DUPLICATE EXHIBIT</b> E-mail from Pawan Sharda to Ramesh Bhutada RE: Housing Data Summary thru Mar 08	4/23/2009	RX-143	JX 0002-A	Ordered 8/31/2012	
CX 2338 - CX 2342	Intentionally Not Used			N/A		
CX 2343	Region 20 Weekly Highlights: December 2008 through March 2010	3/13/2010		JX 0002-A		
CX 2344	Weekly Highlights: October through March	3/7/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.

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Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2345 - CX 2348	Intentionally Not Used			N/A		
CX 2349	E-mail from Rick Tatman to Thomas Walton re: Star New Utility Pice List	4/23/2009		JX 0002-A		
CX 2350 - CX 2351	Intentionally Not Used			N/A		
CX 2352	E-mail from Greg Adams to Jerry Jansen and Douglas Allen re: Star w/Attach: _AVGcert.txt	5/1/2009		JX 0002-A		
CX 2353	Handwritten Notes: WWF Meeting	8/20/2009		JX 0002-A		
CX 2354	E-mail from Rick Tatman to Leon McCullough and Thomas Walton re: Summary Notes from Sigma LOI discussion with Mitchell Rona 6pm Monday	8/24/2009		JX 0002-A		
CX 2355 - CX 2357	Intentionally Not Used			N/A		
CX 2358	TylerUnion List Prices Effective May 1, 2009	5/1/2009		JX 0002-A		
CX 2359	Star Pipe Products Domestic Utility Fittings & Accessories Price List	5/12/2009		JX 0002-A		
CX 2360	E-mail from Manoj Rathi to Navin Bhargava re: DIFRA Reports w/Attach: DIFF Star share_r.xls	6/17/2008		JX 0002-A		
CX 2361	Intentionally Not Used			N/A		
CX 2362	E-mail from Manoj Rathi to Navin Bhargava re: Fittings Sales .. (Regular Ton Base) w/Attach: DIFRA Input Output Format Rev 2 xls (3) (3).xls	5/20/2008		JX 0002-A		
CX 2363	E-mail from Manoj Rathi to Vinod Mantri and Kirthi Jain re: DIFRA data with May number w/Attach: DIFF_06short_0708short_lg_lcan (2).xls	6/27/2008		JX 0002-A		
CX 2364	Intentionally Not Used			N/A		
CX 2365	E-mail from Vinod Mantri to Dan McCutcheon and Navin Bhargava re: DIFRA Report - Dec 08 w/Attach: DIFRA Report.xls	1/12/2009		JX 0002-A		
CX 2366	E-mail from Ramesh Bhutada to Dan McCutcheon re: Market share calculation w/Attach: Market share projections (1).xls	5/20/2009		JX 0002-A	Ordered 8/31/2012	
CX 2367	Intentionally Not Used			N/A		
CX 2368	E-mail from Narendra Zamwar to Dan McCutcheon re: Domestic Development Plan w/Attach: ARRA - Development Plan - Commitement to Sales.xls	8/25/2009		JX 0002-A	Ordered 8/31/2012	
CX 2369 - CX 2374	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2375	E-mail from Narendra Zamwar to Navin Bhargava re: Domestic Cost Increase Summary	3/3/2011		JX 0002-A	Ordered 8/31/2012	Tr. 2942:23; 2943:1,4; 2992:18; 2993:22; 3022:13
CX 2376 - CX 2380	Intentionally Not Used			N/A		
CX 2381	E-mail from Narendra Zamwar to Dan McCutcheon re: CAW	3/22/2010		JX 0002-A	Ordered 8/31/2012	
CX 2382	Intentionally Not Used			N/A		
CX 2383	E-mail from Kirthi Jain to Dan McCutcheon re: DIFRA December 2007 & 2008 Reports w/Attach: DIFRA Fittings Report Dec 2008.pdf, image001.gif	2/1/2010		JX 0002-A		
CX 2384	E-mail from Manoj Rathi to Sachin Jakhotia and Navin Bhargava re: Foote - This week's Production Schedule w/Attach: foote.xls	12/17/2009		JX 0002-A		
CX 2385	E-mail from Kirthi Jain to Ravi Pallod and Navin Bhargava re: Weekly Multiplier Trend Report - 07-26-10 w/Attach: GP Margin & Multi. Rpt (Excl Canada) - 07-26-2010.xlsx	7/27/2010		JX 0002-A	Ordered 8/31/2012	
CX 2386	E-mail from Manoj Rathi to Navin Bhargava re: Domestic Fittings Pattern Count	10/11/2010		JX 0002-A		
CX 2387	E-mail from Manoj Rathi to Navin Bhargava re: Domestic Fittings Pattern Count w/Attach: Tyler Master List.xls	10/11/2010		JX 0002-A		
CX 2388	Intentionally Not Used			N/A		
CX 2389	E-mail from Navin Bhargava to Narendra Zamwar re: Frazier & Frazier Financial Information w/Attach: Star pipe information.xls	11/17/2009		JX 0002-A	Ordered 8/31/2012	
CX 2390	E-mail from Balaji Vemula to Dan McCutcheon, Mark Bowsher, Narendra Zamwar et al. re: RMA Status - December 09 w/Attach: Pending for Failure Analysis - December 09.xls, RMA Open for Sales Response - December 09.xls, Closed RMA - December 09.xls	1/5/2010		JX 0002-A		
CX 2391	E-mail from Sachin Jakhotia to Navin Bhargava, Ravi Pallod, Basu et al. re: Project X2009 - Update as of Jun 3rd w/Attach: Quote Summary.xls, Matching cost.xls, Project X2009, Status and Action Plan.xls	6/3/2009		JX 0002-A	Ordered 8/31/2012	
CX 2392	E-mail from Ramesh Bhutada to Navin Bhargava, Narendra Zamwar, & Vishal Chandak re: 30" to 48" Fittings Sourcing/manufacturing Plan	8/19/2011		JX 0002-A	Ordered 8/31/2012	

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2393	E-mail from Manohar Venuturupalli to Sachin Jakhota, Narendra Zamwar and Navin Bhargava re: Foote Foundry CMTR's	12/3/2009		JX 0002-A	Ordered 8/31/2012	
CX 2394	Union Foundry Financial Statements December 2006 Rick Tatman	12/00/2006		JX 0002-A	Ordered 8/17/2012	
CX 2395	Tyler Pipe Financial Statements December 2006 Rick Tatman	12/00/2006		JX 0002-A	Ordered 8/17/2012	
CX 2396	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler Union Waterworks Fittings Financial Statements December 2009 Rick Tatman	12/00/2009	RX-721	JX 0002-A	Ordered 8/17/2012	
CX 2397	Tyler Pipe Waterworks Fittings Financial Statements December 2007 Rick Tatman	12/00/2007		JX 0002-A	Ordered 8/17/2012	
CX 2398	Union Foundry Financial Statements December 2007 Rick Tatman	12/00/2007		JX 0002-A	Ordered 8/17/2012	
CX 2399	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler Union Waterworks Fittings Financial Statements July 2010 Rick Tatman	07/00/2010	RX-713	JX 0002-A	Ordered 8/17/2012	
CX 2400	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler Union Waterworks Fittings Financial Statements August 2010 Rick Tatman	08/00/2010	RX-714	JX 0002-A	Ordered 8/17/2012	
CX 2401	<b>REMOVED -- DUPLICATE EXHIBIT</b> Waterworks Fittings Financial Statements September 2010 Rick Tatman	09/00/2010	RX-715	JX 0002-A	Ordered 8/17/2012	
CX 2402	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler Union Waterworks Fittings Financial Statements October 2010 Rick Tatman	10/00/2010	RX-716	JX 0002-A	Ordered 8/17/2012	
CX 2403	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler Union Waterworks Fittings Financial Statements November 2010 Rick Tatman	11/00/2010	RX-717	JX 0002-A	Ordered 8/17/2012	
CX 2404	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler Union Waterworks Fittings Financial Statements January 2011 Rick Tatman	01/00/2011	RX-718	JX 0002-A	Ordered 8/17/2012	
CX 2405	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler Union Waterworks Fittings Financial Statements February 2011 Rick Tatman	02/00/2011	RX-719	JX 0002-A	Ordered 8/17/2012	
CX 2406	<b>REMOVED -- DUPLICATE EXHIBIT</b> Tyler Union Waterworks Fittings Financial Statements March 2011 Rick Tatman	03/00/2011	RX-720	JX 0002-A	Ordered 8/17/2012	
CX 2407	Spreadsheet: Sigma International Group Financial Records January 31, 2008	1/31/2008		Tr. 3475:4-10	Ordered 8/17/2012	

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2408	Spreadsheet: Sigma International Group Financial Records February 29, 2008	2/29/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2409	Spreadsheet: Sigma International Group Financial Records March 31, 2008	3/31/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2410	Spreadsheet: Sigma International Group Financial Records April 30, 2008	4/30/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2411	Spreadsheet: Sigma International Group Financial Records May 31, 2008	5/31/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2412	Spreadsheet: Sigma International Group Financial Records June 30, 2008	6/30/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2413	Spreadsheet: Sigma International Group Financial Records July 31, 2008	7/31/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2414	Spreadsheet: Sigma International Group Financial Records August 31, 2008	8/31/2008		Tr. 3475:4-10	Ordered 8/17/2012	
	<b>REMOVED -- DUPLICATE EXHIBIT</b>					
CX 2415	Tyler Union Waterworks Fittings Financial Statements December 2009 Leon McCullough	12/00/2009	RX-631	JX 0002-A	Ordered 8/17/2012	Tr. 5674:5,6; 5677:2,6; 5680:14,21
CX 2416	Tyler Union Waterworks Fittings Financial Statements December 2008 Leon McCullough	12/00/2008		JX 0002-A	Ordered 8/17/2012	Tr. 842:22; 856:9,10; 991:10
CX 2417	Tyler Union Waterworks Fittings Financial Statements March 2010 Leon McCullough	03/00/2010		JX 0002-A	Ordered 8/17/2012	
CX 2418	Tyler Union Waterworks Fittings Financial Statements January 2010 Leon McCullough	01/00/2010		JX 0002-A	Ordered 8/17/2012	
CX 2419	Tyler Union Waterworks Fittings Financial Statements February 2010 Leon McCullough	02/00/2010		JX 0002-A	Ordered 8/17/2012	
CX 2420	Spreadsheet: Sigma International Group Financial Records September 30, 2008	9/30/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2421	Spreadsheet: Sigma International Group Financial Records October 31, 2008	10/31/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2422	Spreadsheet: Sigma International Group Financial Records November 30, 2008	11/30/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2423	Spreadsheet: Sigma International Group Financial Records December 31, 2008	12/31/2008		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2424	Spreadsheet: Sigma International Group Financial Records January 31, 2009	1/31/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2425	Spreadsheet: Sigma International Group Financial Records February 28, 2009	2/28/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2426	Spreadsheet: Sigma International Group Financial Records March 31, 2009	3/31/2009		Tr. 3475:4-10	Ordered 8/17/2012	

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2427	Spreadsheet: Sigma International Group Financial Records April 30, 2009	4/30/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2428	E-mail from Matt Minamyer to Ramon Prado re: McDade-FL Issue	11/29/2007		JX 0002-A		
CX 2429	E-mail from Dan McCutcheon to Jason O'Nan & Vishal Chandak re: CISPI file - domestic only quote 3.28.08	3/28/2008		JX 0002-A		
CX 2430	E-mail from Star Pipe Products to Outside Sales re: New Multipliers - Star Pipe Products	6/27/2008		JX 0002-A		Tr. 2448:8; 3217:10
CX 2431	E-mail from Star Pipe Products to Outside Sales re: New Multipliers - Star Pipe Products	6/27/2008		JX 0002-A		
CX 2432	E-mail from Star Pipe Products to Outside Sales re: New Multipliers - Star Pipe Products	6/27/2008		JX 0002-A		
CX 2433	E-mail from Star Pipe Products to Outside Sales re: New Multipliers - Star Pipe Products	6/27/2008		JX 0002-A		
CX 2434	E-mail from Vinod Mantri to Dan McCutcheon re: DIFRA Report - Sept 08 w/Attach: DIFRA Report.xls	10/13/2008		JX 0002-A		
CX 2435	E-mail from Vinod Mantri to Dan McCutcheon and Navin Bhargava re: DIFRA Report - Oct 2008 w/Attach: DIFRA Report.xls	11/11/2008		JX 0002-A		
CX 2436	E-mail from Rick Tatman to Leon McCullough re: Star news June 2010	6/8/2010		JX 0002-A		
CX 2437	E-mail from Rick Tatman to Leon McCullough re: New Multiplier Maps	6/17/2010		JX 0002-A		
CX 2438	E-mail from Rick Tatman to Leon McCullough re: Sigma Price Increase Letter	6/11/2010		JX 0002-A		Tr. 313:4,5,10
CX 2439	E-mail from Rick Tatman to Jerry Jansen re: Price increase letter	6/16/2010		JX 0002-A		Tr. 597:15-17; 598:7
CX 2440	E-mail from Rick Tatman to Butch J. Doane re: Tyler Union price increase	6/17/2010		JX 0002-A		Tr. 320:20,22; 977:17
CX 2441	E-mail from Rick Tatman to Jerry Jansen re: Star - New Fitting Multipliers	6/19/2010		JX 0002-A		
CX 2442	E-mail from Rick Tatman to Leon McCullough and Jerry Jansen re: Price Announcement	6/16/2010		JX 0002-A		Tr. 307:20;
CX 2442-A	E-mail from Rick Tatman to Leon McCullough and Jerry Jansen re: Price Announcement w/attach: Non-Domestic Draft B.docx; Non-Domestic Draft A.doc	6/16/2010		JX 0002-A		Tr. 310:13; 320:24;
CX 2443	E-mail from Laura Laura Alvey to Dan Todd; Greg Adams; et al re: Multiplier Change Announcement Non Domestic	6/17/2010		JX 0002-A		

\* Connotes an objection on hearsay grounds.



Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2444	E-mail from Rick Tatman to Vince Napoli, Debbie Vinson and Susan Welch re: FVV: Clarification on Sigma to Tyler/Union pricing	5/15/2008		JX 0002-A		
CX 2445	E-mail from Dave Pietryga to M20 re: FW: Tyler Import Price Increase	12/22/2009		Tr. 3475:4-10		
CX 2446	E-mail from Greg Fox to Russell Axon et al re: Sigma Fitting & Accessory Price Increase Announcement	12/31/2009		Tr. 3475:4-10		
CX 2447	E-mail from Rick Tatman to Tom Brakefield re: DIFRA	8/18/2008		Tr. 554:2-4 JX 0002-A		Tr. 551:12; 552:18; 553:23; 554:02-04; 1315:18,22,23
CX 2448	E-mail from Tom Brakefield to Rick Tatman re: DIFRA	9/23/2008		Tr. 556:17-19 JX 0002-A		Tr. 555:04; 556:13-19; 1317:11
CX 2449	Intentionally Not Used			N/A		
CX 2450	E-mail from Dave Pietryga to Brian Brian Ast et al re: FW: Tyler Price Increase	6/18/2010		Tr. 3475:4-10		Tr. 3499:5
CX 2451	E-mail from Greg Fox to Russell Axon et al re: Southeast Sales Team: F&A Price Increase	1/16/2009		Tr. 3475:4-10		
CX 2452	E-mail from Greg Fox to Russell Axon et al re: FW: New Multiplier - Star Pipe Products	1/26/2009		Tr. 3475:4-10		
CX 2453	E-mail from Michael Walsh to Harry Bair et al re: Price Increase Letter from Larry ..	6/10/2010		Tr. 3475:4-10		Tr. 3494:16; 3720:7
CX 2454	E-mail from Victor Pais to M20 re: VP to M20 : Tyler update	10/17/2008		Tr. 3475:4-10		
CX 2455	Letter from Larry Rybacki to Sigma's Valued Customers re: January 2, 2008 Price Increase	12/20/2007		JX 0002-A		Tr. 351:7; 1114:13; 3513:21; 3623:16
CX 2456	E-mail from Star Pipe Marketing Dept. to Tony Lesmeister re: New Multipliers - Star Pipe Products	6/27/2008		JX 0002-A		
CX 2457	Letter from Larry Rybacki to Sigma's Valued Customers re: List Price Increase January 2, 2008 / Multiplier Increase November 5 2007	10/19/2007		JX 0002-A		Tr. 1109:21; 3683:15
CX 2458	E-mail from Rick Tatman to Leon McCullough, Thomas Walton and Jerry Jansen re: Fitting Market - price	1/21/2009		JX 0002-A		
CX 2459	E-mail from Jerry Jansen to Vince Napoli and Mike Snyder re: FW: Star - New Multipliers	12/30/2009		JX 0002-A		
CX 2460	Spreadsheet: Sigma International Group Financial Records May 31, 2009	5/31/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2461	Spreadsheet: Sigma International Group Financial Records June 30, 2009	6/30/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2462	Spreadsheet: Sigma International Group Financial Records July 31, 2009	7/31/2009		Tr. 3475:4-10	Ordered 8/17/2012	

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2463	Spreadsheet: Sigma International Group Financial Records August 31, 2009	8/31/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2464	Spreadsheet: Sigma International Group Financial Records September 30, 2009	9/30/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2465	Spreadsheet: Sigma International Group Financial Records October 31, 2009	10/31/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2466	Spreadsheet: Sigma International Group Financial Records November 30, 2009	11/30/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2467	Spreadsheet: Sigma International Group Financial Records December 31, 2009	12/31/2009		Tr. 3475:4-10	Ordered 8/17/2012	
CX 2468	McWane, Inc's Responses and Objections to Complain Counsel's First Set of Interrogatories	3/22/2012		JX 0002-A		
CX 2469	Respondent McWane, Inc.'s Objections and Responses to Complaint Counsel's Request for Admissions	6/8/2012		JX 0002-A		
CX 2470	Spreadsheet: Star Financial Records 2008	00/00/0000		Tr. 2574:8-10	Ordered 8/31/2012	Tr. 2572:4; 2574:5,8,9; 2640:5; 2653:9; 5775:6,9,12,17,22,24;
CX 2471	E-mail from Pawan Sharda to Kirthi Jain re: 36 Months Gross Profit Trend.xlsx w/Attach: 36 Months Gross Profit Trend.xlsx	7/20/2011		JX 0002-A	Ordered 8/31/2012	
CX 2472	Intentionally Not Used			N/A		
CX 2473	E-mail from Charlie Nowlin to Jody Hall re: Tyler Union Variance analysis	7/11/2008		JX 0002-A		
CX 2474 - CX 2475	Intentionally Not Used			N/A		
CX 2476	Designated Deposition Transcript of Laura Alvey	5/31/2012		JX 0002-A		
CX 2477	Designated Deposition Transcript of Jerry Jansen	5/9/2012		JX 0002-A		
CX 2478	Designated Investigational Hearing Transcript of Leon McCullough	8/12/2010		JX 0002-A		
CX 2479	Designated Deposition Transcript of Leon McCullough	5/22/2012		JX 0002-A		
CX 2480	Designated Deposition Transcript of Vince Napoli	5/30/2012		JX 0002-A		
CX 2481	Designated Deposition Transcript of Charlie Nowlin	5/29/2012		JX 0002-A		
CX 2482	Designated Deposition Transcript of Ruffner Page	5/24/2012		JX 0002-A		
CX 2483	Designated Investigational Hearing Transcript of Rick Tatman	7/21/2010		JX 0002-A		
CX 2484	Designated Deposition Transcript of Rick Tatman	5/10/2012		JX 0002-A		
CX 2485	Designated Deposition Transcript of Thomas Walton	5/31/2012		JX 0002-A		
CX 2486	Designated Deposition Transcript of Jerry Burns	5/17/2012		JX 0002-A		
CX 2487	Designated Deposition Transcript of Mike Hays	5/17/2012		JX 0002-A		
CX 2488	Designated Deposition Transcript of Alan Backman	5/22/2012		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2489	Designated Investigational Hearing Transcript of Ed Morrison	2/4/2011		JX 0002-A		
CX 2490	Designated Deposition Transcript of Ed Morrison	4/30/2012		JX 0002-A		
CX 2491	Designated Investigational Hearing Transcript of Wayne Johnson	1/26/2011		JX 0002-A		
CX 2492	Designated Deposition Transcript of Wayne Johnson	5/14/2012		JX 0002-A		
CX 2493	Designated Deposition Transcript of Karen Fairbanks	4/17/2012		JX 0002-A	Ordered 8/17/2012	
CX 2494	Designated Deposition Transcript of Rick Fairbanks	4/17/2012		JX 0002-A	Ordered 8/17/2012	
CX 2495	Designated Deposition Transcript of Tom Brakefield - Volume 1	5/4/2012		JX 0002-A		
CX 2496	Designated Deposition Transcript of Tom Brakefield - Volume 2	5/4/2012		JX 0002-A		
CX 2497	Designated Deposition Transcript of Thad G. Long	5/31/2012		JX 0002-A		
CX 2498	Designated Deposition Transcript of Thomas Teske	5/17/2012		JX 0002-A		
CX 2499	Designated Deposition Transcript of Jim Keffer	5/15/2012		JX 0002-A		
CX 2500	Designated Deposition Transcript of Danny Swalley	5/2/2012		JX 0002-A	Ordered 8/17/2012	
CX 2501	Designated Investigational Hearing Transcript of Peter Prescott	1/4/2011		JX 0002-A		
CX 2502	Designated Deposition Transcript of Peter Prescott	5/8/2012		JX 0002-A		
CX 2503	Designated Investigational Hearing Transcript of Bill Thees	11/16/2010		JX 0002-A		
CX 2504	Designated Deposition Transcript of Bill Thees	6/1/2012		JX 0002-A		
CX 2505	Designated Deposition Transcript of Charles Frazier	4/24/2012		JX 0002-A		
CX 2506	Designated Deposition Transcript of VJ Gupta	4/24/2012		JX 0002-A		
CX 2507	Designated Deposition Transcript of David Glidewell	4/26/2012		JX 0002-A		
CX 2508	Designated Deposition Transcript of Doug Kuhrts	5/24/2012		JX 0002-A	Ordered 8/17/2012	
CX 2509	Designated Investigational Hearing Transcript of Michael Groeniger	12/14/2010		JX 0002-A		
CX 2510	Designated Deposition Transcript of Michael Groeniger	5/11/2012		JX 0002-A		
CX 2511	Designated Investigational Hearing Transcript of Roy Pitts	10/29/2010		JX 0002-A		
CX 2512	Designated Deposition Transcript of Roy Pitts	4/11/2012		JX 0002-A		
CX 2513	Designated Investigational Hearing Transcript of Jerry Webb	11/9/2010		JX 0002-A		
CX 2514	Designated Deposition Transcript of Jerry Webb	5/30/2012		JX 0002-A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2515	Designated Investigational Hearing Transcript of Dennis Sheley	1/11/2010		JX 0002-A	Ordered 8/17/2012	
CX 2516	Designated Deposition Transcript of Dennis Sheley	4/24/2012		JX 0002-A	Ordered 8/17/2012	
CX 2517	Designated Deposition Transcript of Eddie Hall	5/8/2012		JX 0002-A		
CX 2518	Designated Deposition Transcript of Mark Meyer	5/14/2012		JX 0002-A		
CX 2519	Designated Deposition Transcript of Suvabrata Saha	5/11/2012		JX 0002-A		
CX 2520	Designated Deposition Transcript of Rick Haley	3/16/2012		JX 0002-A		
CX 2521	Designated Investigational Hearing Transcript of Bharat Agarwal	6/4/2010		JX 0002-A	Ordered 8/17/2012	
CX 2522	Designated Deposition Transcript of Bharat Agarwal	5/25/2012		JX 0002-A	Ordered 8/17/2012	
CX 2523	Designated Deposition Transcript of Siddharth Bhattacharji	5/29/2012		JX 0002-A		
CX 2524	Designated Deposition Transcript of Stuart Box	5/2/2012		JX 0002-A		
CX 2525	Designated Investigational Hearing Transcript of Matt Minamyer	11/10/2011		JX 0002-A		
CX 2526	Designated Deposition Transcript of Matt Minamyer	5/9/2012		JX 0002-A	Ordered 8/31/2012	
CX 2527	Designated Investigational Hearing Transcript of Victor Pais	7/23/2010		JX 0002-A		
CX 2528	Designated Deposition Transcript of Victor Pais	5/31/2012		JX 0002-A		
CX 2529	Designated Investigational Hearing Transcript of Mitchell Rona	8/6/2010		JX 0002-A		
CX 2530	Designated Deposition Transcript of Mitchell Rona	5/18/2012		JX 0002-A		
CX 2531	Designated Deposition Transcript of Larry Rybacki	5/14/2012		JX 0002-A		
CX 2532	Designated Deposition Transcript of Michael Berry	6/1/2012		JX 0002-A		
CX 2533	Designated Deposition Transcript of Navin Bhargava	6/5/2012		JX 0002-A	Ordered 8/31/2012	
CX 2534	Designated Investigational Hearing Transcript of Ramesh Bhutada	10/12/2010		JX 0002-A	Ordered 8/31/2012	
CX 2535	Designated Deposition Transcript of Ramesh Bhutada	5/14/2012		JX 0002-A	Ordered 8/31/2012	
CX 2536	Designated Deposition Transcript of Leroy (Bud) Leider	5/31/2012		JX 0002-A	Ordered 8/31/2012	
CX 2537	Designated Investigational Hearing Transcript of Dan McCutcheon - Vol. 1	10/12/2010		JX 0002-A	Ordered 8/31/2012	
CX 2538	Designated Investigational Hearing Transcript of Dan McCutcheon - Vol. 2	5/4/2011		JX 0002-A	Ordered 8/31/2012	

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2539	Designated Deposition Transcript of Dan McCutcheon	5/16/2012		JX 0002-A	Ordered 8/31/2012	
CX 2540	Designated Deposition Transcript of Pawan Sharda	5/15/2012		JX 0002-A	Ordered 8/31/2012	
CX 2541	Designated Deposition Transcript of Gary Crawford	5/31/2012		JX 0002-A		
CX 2542	Designated Deposition Transcript of Tom Morton	5/30/2012		JX 0002-A		
CX 2543	Designated Investigational Hearing Transcript of Mike Coryn	1/13/2011		JX 0002-A		
CX 2544	Designated Deposition Transcript of Mike Coryn	5/16/2012		JX 0002-A		
CX 2545	Designated Investigational Hearing Transcript of Edward Gibbs	1/28/2011		JX 0002-A		
CX 2546	Designated Deposition Transcript of Edward Gibbs	5/29/2012		JX 0002-A		
CX 2547	Designated Deposition Transcript of Lee Ann Ewing	4/24/2012		JX 0002-A		
CX 2548 - CX 2551	Intentionally Not Used			N/A		
CX 2552	Email from Lavery to Bloom, Balbach and Holleran re: RE: Questions re McWane Spreadsheet w/ attachment Line 125255 of McWane 007681.xlsx	6/5/2012		Tr. 6038:11-13		Tr. 5643:21; 5821:9; 6036:11; 6038:10
CX 2553 - CX 2555	Intentionally Not Used			N/A		
CX 2556	Tyler Pipe/Union Foundry Utilities Domestic Multiplier Map	2/27/2006		JX 0002-A		
CX 2557	Tyler Pipe/Union Foundry Utilities Blended Fittings Multiplier Map	12/18/2006		JX 0002-A		
CX 2558	Domestic Fittings (3" - 12") Multiplier Map LP-5091	5/1/2009		JX 0002-A		
CX 2559	Domestic Fittings (3" - 12") Multiplier Map LP-5091	1/22/2010		JX 0002-A		
CX 2560	Domestic Fittings Multiplier Map LP20116	3/14/2011		JX 0002-A		
CX 2561	Domestic Fittings Multiplier Map LP20116	2/10/2012		JX 0002-A		
CX 2562	Tyler Pipe/Union Foundry Form LP-5072 List Prices	7/2/2007		JX 0002-A		
CX 2563	Tyler Union Form LP-5091 List Prices	5/1/2009		JX 0002-A		
CX 2564	Native Excel Spreadsheets			JX 0002-A		
CX 2565	E-mail from W. Lavery to M. Bloom re: D.C. Multipliers	5/14/2012		JX 0002-A		
CX 2566	E-mail from W. Lavery to L. Holleran, M. Bloom re: Column heading descriptions	5/3/2012		JX 0002-A		
CX 2567	Spreadsheet: Top 46 Star Domestic Products Edited for Input			JX 0002-A		
CX 2568	Spreadsheet: McWane and Star Price by Ton by size - Fixed Basket			JX 0002-A		
CX 2569	Intentionally Not Used			N/A		

\* Connotes an objection on hearsay grounds.

Exhibit No.	Description	Date	Also Referenced As	Admissibility	In Camera	Trial Transcript Citation
CX 2570	Star Special Pricing Requests Chart			Tr. 2687:9-11		Tr. 2684:13; 2686:24; 2687:8,9,10; 2688:4
CX 2571 - CX 3026	Intentionally Not Used			N/A		
CX 3027	E-mail from Rick Tatman to Jerry Jansen re: Fowler/Sigma	4/30/2009		Tr. 815:11-13		Tr. 815:8,11,13; 816:3
CX 3028 - CX 3032	Intentionally Not Used			N/A		
CX 3033	Star Form S-6 HD Supply #124	2/27/2008		Tr. 2675:11-13		Tr. 2674:18; 2675:2,11,12,16,22
CX 3034 - CX 3040	Intentionally Not Used			N/A		
CX 3041	Star Form S-6 First Supply	6/26/2008		Tr. 2677:12-14		Tr. 2676:25; 2677:4,9,12,13,19
CX 3042	Star Form S-6 HD Supply #520	7/1/2008		Tr. 2687:21-23		Tr. 2679:10,13; 2680; 2687:15,21,22; 2691:7
CX 3043 - CX 3059	Intentionally Not Used			N/A		
CX 3060	Screenshot from McWane Website <www.mcwanebuyamerican.com/why-buy-american>	N/A		Tr. 5651:16-18		Tr. 5647:25; 5648:3,16; 5651:15
CX 3061	Report linked to from McWane Website: Alliance for American Manufacturing, "Buy American Works: Longstanding United States Policy Enhances the Job Creating Effect of Government Spending." February 2010.	N/A		Conditionally Admitted Tr. 5652:2-3		Tr. 5648:1,19; 5651:20,21
	<b>Demonstrative Exhibits:</b>					
CXD 3085-A	Dr. Schumann's Demonstrative Exhibit discussing Expert Rebuttal Report (public)	00/00/0000		Tr. 6041:21-22		Tr. 5795:23; 5796:13; 5802:11; 5952:13; 6041:11

COMPLAINT COUNSEL'S WITNESS INDEX

**IN THE MATTER OF MCWANE, INC.  
DOCKET NO. 9351**

**COMPLAINT COUNSEL'S WITNESS INDEX**

<b>NAME</b>	<b>TITLE</b>	<b>COMPANY</b>	<b>TRANSCRIPT CITE ** TOTAL **</b>	<b>TRANSCRIPT CITE **IN CAMERA**</b>	<b>DATE</b>
Complaint Counsel's Opening Statements	N/A	N/A	Tr. 11:23 - 108:02	N/A	9/4/2012
Richard Tatman	Vice President & General Manager	McWane / TylerUnion	Tr. 206:22 - 1080:24	Tr. 844:01 - 862:20 Tr. 991:04 - 1032:25 Tr. 1036:04 - 1044:09	9/4/2012 - 9/7/2012
Lawrence Rybacki	President	Sigma Corporation	Tr. 1082:01 - 1142:11 Tr. 3482 - 3745	Tr. 3598:23 - 3676:14 Tr. 3732:13 - 3744:3	9/7/2012 & 10/9/2012
Suvorata "Steve" Saha	President	NACIP, Inc.	Tr. 1151:15 - 1211:7	N/A	9/11/2012
Tommy Brakefield	Consultant	Self-Employed	Tr. 1212:11 - 1430:7	N/A	9/11/2012
Mitchell Rona	Vice President of Operations	Sigma Corporation	Tr. 1437:10 - 1720:12	N/A	9/12/2012 - 9/13/2012
Victor Pais	Former President & CEO	Sigma Corporation	Tr. 1721:1 - 2232:8	Tr. 2189:4 - 2227:9	9/13/2012 - 9/14/2012
Dan McCutcheon	President	Star Pipe Products	Tr. 2246:14 - 2693:6	Tr. 2437:4 - 2451:23; 2467:4 - 2483:15; 2491:4 - 2504:14; 2640:3 - 2659:16	9/18/2012 - 9/19/2012
Jerry Webb	CEO of Waterworks Division	HD Supply	Tr. 2694:5 - 2805:21	N/A	9/19/2012 - 9/20/2012
Thomas Morton	Former Vice President of Purchasing	US Pipe & Foundry	Tr. 2806:7 - 2916:16	N/A	9/20/2012
Navin Bhargava	Executive Vice President	Star Pipe Products	Tr. 2917:1 - 3031:22	Tr. 2930:1 - 2980:16; 2989:4 - 3032:5	9/20/2012 - 9/21/2012
William (Bill) Thees	Vice President of Waterworks	Ferguson Enterprises	Tr. 3032:15 - 3120:18	N/A	9/21/2012
Matthew Minamyer	National Sales Manager of the Piping Products Division	Sigma Corporation	Tr. 3127:10 - 3290:11	N/A	9/25/2012
Roy Pitts	Director of Vendor Relations	Hajoca Corporation	Tr. 3290:19 - 3367:5	N/A	9/25/2012
Dennis Sheley	President & Owner	Illinois Meter/IMCO Utility Supply	Tr. 3375:13 - 3464:23	Tr. 3427:4 - 3435:13	9/26/2012





**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

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

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

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

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*Counsel for Respondent McWane, Inc.*

**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.

December 19, 2012

By: s/ Thomas H. Brock  
Attorney