

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



ORIGINAL

In the Matter of)
)
Benco Dental, Inc., et al)
)
Respondents)
_____)

PUBLIC

DOCKET NO. 9379

NON-PARTY THE DENALI GROUP’S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), non-party The Denali Group (“**Denali**”) respectfully moves this Court for *in camera* treatment of sensitive, confidential business documents (the “**Confidential Documents**”). Denali produced these documents, among others, in response to a third-party subpoena in this matter. The Federal Trade Commission (“FTC”) has now notified Denali that it intends to introduce ninety-one (91) pages of Denali’s documents, including the Confidential Documents, into evidence at the administrative trial in this matter. *See* Letter from the Federal Trade Commission dated September 17, 2018 (attached as Exhibit A). Benco Dental Supply Company (“**Benco**”), Henry Schein, Inc. (“**Schein**”), and Patterson Companies, Inc. (“**Patterson**”) have also advised Denali that they intend to use Denali’s documents. *See* Letter from Lauren Morgan Fincher dated September 17, 2018 (attached as Exhibit B).

The Confidential Documents warrant protection from public disclosure given the sensitive business information they contain. Thus, Denali submits this Motion requesting permanent *in camera* treatment of the Confidential Documents in their entirety.

All of the materials for which Denali is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, it would cause significant harm to Denali’s ability to compete in the dental practice consulting industry. For the

reasons discussed in this motion, Denali requests that this Court afford its confidential business documents *in camera* treatment indefinitely. In support of this motion, Denali relies on the Affidavit of Robert Lowther (“**Lowther Declaration**”), attached as Exhibit C, which provides additional details on the documents for which Denali is seeking *in camera* treatment.

I. The Documents for Which Protection is Sought

Denali seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibit D.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
CX4191 and RX 2040	Email from: Will Kralovec to Scott Graversen, Robert Lowther, Suzanne McNeely subject: RE:“Denali-Schein Relationship: First Assignment!”	10/31/2013	Denali 002912	Denali 002916
CX4193 and RX 2041	Email from: Robert Lowther to: englizu cc: Susan Tibbles and Richard Kearnl subject: “Desired Dental Equipment Proposals attachment(s): “Demewoz Benco quote.pdf; 20160229163258155-Dr. Demewoz-proposal.pdf; Dental Equipment List - Dr. Demewoz Project - 08.18.15.pdf; Dental Equipment Setup.pdf” (attachments included)	3/7/2016	Denali 004592	Denali 004600
CX4320	Email from: Robert Lowther to: Steve Aaron, Susan Tibbles, Richard Kearnl subject: “Demewoz New Start Dental Practice Equipment List, Lorton, VI”	3/14/2016	Denali 004625	Denali 004630
CX4321	Email from: Robert Lowther to: David Stose, William Kralovec, carmen.r@thedenaligroup.net et al subject: “Dr. Regenold Ultra Sonic”	5/21/2013	Denali 002807	Denali 002808
CX4322	Email from: William Kralovec to: David Bordewyk, Robert Lowther subject: “Dr. Sheila Merat”	8/6/2012	Denali 001054	Denali 001062
CX4323	Email from: Sheila Merat to: Michael towns, Robert Lowther, William Kralovec subject: “FW: Your Benco Dental Order # BC028468-3 (with attachment)”	1/3/2013	Denali 001329	Denali 001333
CX4324	Document: Benco Dental Supply Company Invoice	12/31/2012	Denali 001334	Denali 001344

CX4325	Email from: Sheila Merat to: Michael towns, Robert Lowther subject: "FW: Your Benco Dental invoice no. 3899 (with attachment)"	1/3/2013	Denali 001327	Denali 001327
CX4326	Document: Benco Dental Supply Company Invoice	12/31/2012	Denali 001328	Denali 001328
CX4331	Document: The Denali Group Confidentiality and Non-Disclosure Agreement	unknown	Denali 002962	Denali 002964
CX4332	Document: Project Bid Requirements	10/4/2013	Denali 002965	Denali 002969
CX4333	Document: Benco Dental Supply Company Equipment Quote	10/31/2013	Denali 002970	Denali 002970

II. Denali Documents are Secret and Material such that Disclosure Would Result in Serious Injury to Denali

In camera treatment of material is appropriate when its "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *5 (1999). In this context, courts generally attempt "to protect confidential business information from unnecessary airing." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

In considering both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977).

The Confidential Documents are both secret and material to Denali's business as discussed in detail in the Lowther Declaration. In sum, the materials at issue contain information of

competitive significance to Denali, such as customer names, addresses and emails as well as details of Denali's business plan and agreements with vendors. *See* Exhibit D. Denali has developed a business plan which differs from its competitors and the Confidential Documents will reveal Denali's internal processes. *Id.* Denali spent significant resources developing those processes, relationships with vendors and customers. Such information and processes are proprietary to Denali and not publicly known outside of Denali. *Id.* In addition to unfair exposure of Denali's business plan, agreements with vendors and customer lists, the Confidential Documents also contain sensitive information not publicly available regarding Denali's customers, such as their names, email addresses, business and home address. *Id.* Making this information public would put Denali's customers, who have entrusted Denali with this information, at risk of identity fraud and other harm from the public disclosure of their personal information. *Id.*

Further, disclosure of the Confidential Documents will result in the loss of a business advantage to Denali. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at *7 (Dec. 23, 1999) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury'"). Making the Confidential Documents public would result in a loss of business advantage that Denali has built as the result of its own substantial investments in the development of its business processes.

Finally, Denali's status as a third party is relevant to the treatment of its documents. The FTC has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *H.P. Hood & Sons*, 58 F.T.C. at 1186. This is especially so in the case of a third-party, which deserves "special solicitude" in its request for *in camera* treatment for its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984) (stating, "As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders

encourages cooperation with future adjudicative discovery requests”). Denali’s third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents. Denali’s clients, the dentists named in the Confidential Documents, have no counsel or other representation in this matter. Making their personal information public when they have no interest in this matter would be against public policy.

III. The Confidential Documents Contain Trade Secrets, which will Remain Sensitive Over Time and Thus, Permanent *In Camera* Treatment is Justified

Given the highly sensitive nature of the information contained in the Confidential Documents, Denali requests that they be given *in camera* treatment indefinitely.¹ The trade secret information contained in the Confidential Documents “is likely to remain sensitive or become more sensitive with the passage of time” such that the need for confidentiality is not likely to decrease over time. *In re Dura Lube Corp.*, 1999 FTC LEXIS at *7-8. “Trade secrets” are granted more protection than ordinary business documents. *Id.* at *5. Here, as described in the Lowther Declaration, the Confidential Documents contain business and trade secrets in the form of internal business processes. The competitive significance of the information contained in the Confidential Documents is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate.

¹ To the extent such permanent treatment is not given, Denali requests that the period of *in camera* treatment of the Confidential Documents be no fewer than 10 years.

IV. Conclusion

For the reasons set forth above and in the accompanying Lowther Declaration, Denali respectfully requests that this Court grant permanent *in camera* treatment for the Confidential Documents in their entirety.

Dated: September 26, 2018

Respectfully submitted,



Robert J. Bogdanowicz III
Texas Bar No. 24064916
rob@cbsattorneys.com

Mary Madden Melle
Texas Bar No. 24051789
mmelle@cbsattorneys.com

CALHOUN, BHELLA & SECHREST, LLP
325 N. Saint Paul St., Ste. 2300
Dallas, Texas 75201
(214) 981-9200 (t)
(214) 981-9203 (f)

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-party Denali Group (“Denali”) notified counsel for the parties via email on or about September 25, 2018 that it would be seeking *in camera* treatment of the Confidential Documents. Both counsel for the Federal Trade Commission and counsel for Respondents indicated that they would not object to Denali’s motion.

Dated: September 26, 2018



Robert J. Bogdanowicz III
Texas Bar No. 24064916
rob@cbsattorneys.com
Mary Madden Melle
Texas Bar No. 24051789
mmelle@cbsattorneys.com
CALHOUN, BHELLA & SECHREST, LLP
325 N. Saint Paul St., Ste. 2300
Dallas, Texas 75201
(214) 981-9200 (t)
(214) 981-9203 (f)

CERTIFICATE OF SERVICE

I, Mary M. Melle, declare under penalty of perjury under the laws of the State of Indiana that the following is true and correct. On September 26, 2018, I caused to be served the following documents on the parties listed below via electronic mail.

- NON-PARTY DENALI GROUP'S MOTION FOR IN CAMERA TREATMENT (PUBLIC VERSION AND NON-PUBLIC VERSION)
- NOTICE OF APPEARANCE
- [PROPOSED] ORDER

The Office of the Secretary (via overnight delivery)

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-172
Washington, D.C. 20580

Federal Trade Commission- Midwest Region, Chicago (via overnight delivery)

Todd Kossow, Director
Federal Trade Commission
230 S. Dearborn St., Suite 3030
Chicago, IL 60604

Howard Scher, Esq.
Kenneth L. Racowski, Esq.
Carrie Amezcua, Esq.
Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555
Howard.scher@bipc.com
kenneth.racowski@bipc.com
carrie.amezcua@bipc.com

Geoffrey D. Oliver, Esq.
Jones Day
51 Louisiana Avenue, N. W. Washington, D.C. 20001-2113
gdoliver@jonesday.com
Craig A. Waldman, Esq.
Benjamin M. Craven, Esq.
Ausra O. Deluard, Esq.
Jones Day
555 California Street
26th Floor
San Francisco, CA 94104
cwaldman@jonesday.com

bcraven@jonesday.com
adeluard@jonesday.com

Timothy J. Muris, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
tmuris@sidley.com

Colin Kass, Esq.
Adrian Fontecilla
Proskauer Rose LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, DC 20004-2533
ckass@proskauer.com
afontecilla@proskauer.com

Lauren Fincher, Esq.
Locke Lord LLP
600 Congress Ave.
Ste. 2200
Austin, TX 78701
lfincher@lockelord.com

John P. McDonald, Esq.
Locke Lord LLP
2200 Ross Avenue
Suite 2800
Dallas, TX 75201
jpmcdonald@lockelord.com

Joseph Ostoyich, Esq.
William Lavery, Esq.
Andrew George, Esq.
Jana Seidl, Esq.
Kristen Lloyd, Esq.
Baker Botts LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
joseph.ostoyich@bakerbotts.com
william.lavery@bakerbotts.com
andrew.george@bakerbotts.com
jana.seidl@bakerbotts.com
kristen.lloyd@bakerbotts.com

James J. Long, Esq.
Jay Schlosser, Esq.

Scott Flaherty, Esq.
Ruvn Jayasuriya, Esq.
William Fitzsimmons, Esq.
Briggs and Morgan
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
jlong@briggs.com
jschlosser@briggs.com
sflaherty@briggs.com
rjayasuriya@briggs.com
wfitzsimmons@briggs.com



Mary M. Melle

EXHIBIT A



Western Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

September 17, 2018

VIA EMAIL TRANSMISSION

Denali Group
c/o Mary Melle, Esq.
Calhoun, Bhella & Sechrest, LLP
325 N. Saint Paul Street, Suite 2300
Dallas, Texas 75201
mmelle@cbsattorneys.com

RE: *In the Matter of Benco Dental Inc., et al., Docket No. 9379*

Dear Ms. Melle:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on October 16, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* (i.e., non-public/confidential) status.

For documents that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015) and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the

document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Scheduling Order **the deadline for filing motions seeking *in camera* treatment is September 26, 2018**. A copy of the March 14, 2018 Scheduling Order can be found at <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

Additionally, in lieu of a deposition on the admissibility of the documents listed in Attachment A, we ask that you sign and return the attached declaration regarding the admissibility of these documents. Please return the signed declaration to my attention by September 28, 2018.

If you have any questions, please feel free to contact me at 415-848-5190.

Sincerely,

A handwritten signature in blue ink that reads "Erika Wodinsky". The signature is written in a cursive style.

Erika Wodinsky
Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
CX4190	Email from: Jasmine Rosner to Robert Lowther subject: ["FTC Litigation"]	5/18/2018	Denali 002520	Denali 002522
CX4191	Email from: Will Kralovec to Scott Graversen, Robert Lowther, Suzanne McNeely subject: ["Denali-Schein Relationship: First Assignment!"]	10/31/2013	Denali 002912	Denali 002916
CX4192	Email from: Will Kralovec to Jarret Patrick, Robert Lowther, Suzanne McNeely subject: ["Equipment quote - Greenville, SC Project"]	11/1/2013	Denali 002946	Denali 002948
CX4193	Email from: Robert Lowther to: englizu cc: Susan Tibbles and Richard Kearl subject: ["Desired Dental Equipment Proposals attachment(s): ["Demewoz Benco quote.pdf; 20160229163258155-Dr. Demewoz-proposal.pdf; Dental Equipment List - Dr. Demewoz Project - 08.18.15.pdf; Dental Equipment Setup.pdf"] (attachments included)	3/7/2016	Denali 004592	Denali 004600
CX4194	Email from: Robert Lowther to: Steve Aaron and Matt Zolfo cc: Susan Tibbles and Richard Kearl subject: "RE: Kresevic Proposal"	3/17/2016	Denali 004764	Denali 004765
CX4196	Email from: Robert Lowther to Steve Aaron, Susan Tibbles subject: ["Denali Group NDA (with attachments)"]	8/8/2016	Denali 006169	Denali 006184
CX4319	Email from: Robert Lowther to: Steve Aaron, Susan Tibbles, subject: ["Charlotte, NC GP New Star"]	6/15/2016	Denali 005873	Denali 005878
CX4320	Email from: Robert Lowther to: Steve Aaron, Susan Tibbles, Richard Kearl subject: ["Demewoz New Start Dental Practice Equipment List, Lorton, VI"]	3/14/2016	Denali 004625	Denali 004630
CX4321	Email from: Robert Lowther to: David Stose, William Kralovec, carmen.r@thedenaligroup.net et al subject: ["Dr. Regenold Ultra Sonic"]	5/21/2013	Denali 002807	Denali 002808
CX4322	Email from: William Kralovec to: David Bordewyk, Robert Lowther subject: ["Dr. Sheila Merat"]	8/6/2012	Denali 001054	Denali 001062
CX4323	Email from: Sheila Merat to: Michael towns, Robert Lowther, William Kralovec subject: ["FW: Your Benco Dental Order # BC028468-3 (with attachment)"]	1/3/2013	Denali 001329	Denali 001333
CX4324	Document: Benco Dental Supply Company Invoice	12/31/2012	Denali 001334	Denali 001344
CX4325	Email from: Sheila Merat to: Michael towns, Robert Lowther subject: ["FW: Your Benco Dental invoice no. 3899 (with attachment)"]	1/3/2013	Denali 001327	Denali 001327
CX4326	Document: Benco Dental Supply Company Invoice	12/31/2012	Denali 001328	Denali 001328

Exhibit No.	Full Name	Date	BegBates	EndBates
CX4330	Email from: William Kralovec to: Jarret Patrick, Robert Lowther, Suzanne McNeely subject: ["Equipment Quote - Greenville, SC Project"	11/7/2013	Denali 002960	Denali 002961
CX4331	Document: The Denali Group Confidentiality and Non-Disclosure Agreement	TBD	Denali 002962	Denali 002964
CX4332	Document: Project Bid Requirements	10/4/2013	Denali 002965	Denali 002969
CX4333	Document: Benco Dental Supply Company Equipment Quote	10/31/2013	Denali 002970	Denali 002970

EXHIBIT B



600 Congress, Suite 2200
Austin, TX 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Lauren M. Fincher
Direct: 512-305-4843
lfincher@lockelord.com

September 17, 2018

VIA E-MAIL & FED-EX

The Denali Group
c/o Robert J. Bogdanowicz III
Calhoun, Bhella & Sechrest, LLP
325 N. Saint Paul Street, Suite 2300
Dallas, Texas 75201

Re: *In the Matter of Benco Dental Supply Co, Henry Schein, Inc. and Patterson Companies, Inc.* (FTC Docket No. 9379)

Dear Mr. Bogdanowicz III,

By this letter, we are providing formal notice, pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Benco Dental Supply Company, Henry Schein, Inc., and Patterson Companies, Inc. intend to offer the documents and/or testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on October 16, 2018. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony which include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge. For your convenience, a copy of the documents and testimony will be provided to you via secure file share.

September 17, 2018

Page 2

Please be aware that under the current Scheduling Order of March 14, 2018, the deadline for filing motions seeking *in camera* status is September 26, 2018. A copy of the Scheduling Order can be found at <https://www.ftc.gov/system/files/documents/cases/d09379order590015.pdf>.

If you have any questions, please feel free to contact me at (512) 305-4843.

Sincerely,

LOCKE LORD LLP

/s/ Lauren Morgan Fincher

Lauren Morgan Fincher

**Denali Group
Attachment A**

RX Number	Description	Date	Beg Bates	End Bates
RX2040	Email from Will Kravolec to Scott Graversen, Robert Lowther and Suzanne McNeely RE: Denali-Schein Relationship First Assignment	10/31/2013	Denali 002912	Denali 002916
RX2041	Email from Robert Lowther to Englizu, Susan Tibbles and Richard Kearn Re: Desired Dental Equipment Proposals with attachments	3/7/2016	Denali 004592	Denali 004600
RX2961	Rob Lowther Deposition Transcript	8/22/2018	NA	NA

EXHIBIT C

4. The FTC has informed Denali that it intends to use ninety-one (91) of the documents that Denali produced in response to a subpoena in this matter. Benco Dental Supply Company (“**Benco**”), Henry Schein, Inc. (“**Schein**”), and Patterson Companies, Inc. (“**Patterson**”) have also advised Denali that they intend to offer three (3) documents that Denali produced in response to a subpoena in this matter.
5. As described in the Motion, Denali seeks permanent in camera treatment of the following documents:

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
CX4191 and RX 2040	Email from: Will Kralovec to Scott Graversen, Robert Lowther, Suzanne McNeely subject: RE:“Denali-Schein Relationship: First Assignment!”	10/31/2013	Denali 002912	Denali 002916
CX4193 and RX 2041	Email from: Robert Lowther to: englizu cc: Susan Tibbles and Richard Kearn subject: “Desired Dental Equipment Proposals attachment(s): “Demewoz Benco quote.pdf; 20160229163258155-Dr. Demewoz-proposal.pdf; Dental Equipment List - Dr. Demewoz Project - 08.18.15.pdf; Dental Equipment Setup.pdf” (attachments included)	3/7/2016	Denali 004592	Denali 004600
CX4320	Email from: Robert Lowther to: Steve Aaron, Susan Tibbles, Richard Kearn subject: “Demewoz New Start Dental Practice Equipment List, Lorton, VI”	3/14/2016	Denali 004625	Denali 004630
CX4321	Email from: Robert Lowther to: David Stose, William Kralovec, carmen.r@thedenaligroup.net et al subject: “Dr. Regenold Ultra Sonic”	5/21/2013	Denali 002807	Denali 002808
CX4322	Email from: William Kralovec to: David Bordewyk, Robert Lowther subject: “Dr. Sheila Merat”	8/6/2012	Denali 001054	Denali 001062
CX4323	Email from: Sheila Merat to: Michael towns, Robert Lowther, William Kralovec subject: “FW: Your Benco Dental Order # BC028468-3 (with attachment)”	1/3/2013	Denali 001329	Denali 001333
CX4324	Document: Benco Dental Supply Company Invoice	12/31/2012	Denali 001334	Denali 001344

CX4325	Email from: Sheila Merat to: Michael towns, Robert Lowther subject: "FW: Your Benco Dental invoice no. 3899 (with attachment)"	1/3/2013	Denali 001327	Denali 001327
CX4326	Document: Benco Dental Supply Company Invoice	12/31/2012	Denali 001328	Denali 001328
CX4331	Document: The Denali Group Confidentiality and Non-Disclosure Agreement	unknown	Denali 002962	Denali 002964
CX4332	Document: Project Bid Requirements	10/4/2013	Denali 002965	Denali 002969
CX4333	Document: Benco Dental Supply Company Equipment Quote	10/31/2013	Denali 002970	Denali 002970

6. CX4191/RX 2040 is email correspondence between the former president of Denali, Will Kralovec, and a Schein representative. The multi-page email from Kralovec essentially walks through Denali's business model and how exactly it operates. This is not information that would be shared with competitors as Denali's business model is unique in the industry. Denali employees, including myself, worked hard to come up with standard business practices and these practices, outlined in the email, are protected by Denali. It would be harmful to Denali if Denali's competitors were able to copy Denali's standard business practices.
7. CX4193/RX 2041 is email correspondence from me to my client, Dr. Demewoz. Denali's customer list is secret. I do not discuss who my clients are with anyone outside of Denali and my clients expect privacy regarding their identity. In addition to their identity, this document shows exactly how I conduct business with my clients. If this were made public, it would give my competitors a template for my proposals, equipment list and Denali's design/layout for offices. Denali's proposals, equipment lists and designs/layouts are not discussed with anyone outside of Denali, our vendors and our clients. If competitors had access to these, it would damage Denali's business.

8. CX4320 again is with regard to Dr. Demewoz. The identity of Denali's customers is Denali's secret. I do not discuss who my clients are with anyone outside of Denali and my clients expect privacy regarding their identity.
9. CX4321 is a document again referencing Denali's customer, this time Dr. Regenold. Dr. Regenold's email address is included in the correspondence. If this document were made public, Denali's competitors could reach out to Dr. Regenold and try to outbid Denali on Dr. Regenold's next project. Moreover, it makes Dr. Regenold's email address public information, putting him at risk for phishing scams and increasing the risk that his account could be hacked.
10. CX4322 is email correspondence regarding Denali's customer Dr. Sheila Merat. Again, the names of Denali's customers are not shared outside of Denali and the vendors it uses. Also in this exhibit are special discounted prices Denali has worked very hard to negotiate with its vendors; if Denali's competitors are aware of these prices and demand the same ones, it would hurt Denali's business.
11. CX4323 is email correspondence which contains not only Dr. Sheila Merat's name but also her email address and her home and business addresses. If this information were made public, it would allow both Denali's competition to have Dr. Merat's personal information and also put her at higher risk for identity theft because her personal information would be public.
12. CX4324 again contains Dr. Sheila Merat's name, home address and business address, personal information Denali would never make public in the regular course of its business. Moreover, this exhibit contains special discounted pricing that Denali gets for its customers from Benco. Making these prices available to Denali's competitors would allow them to

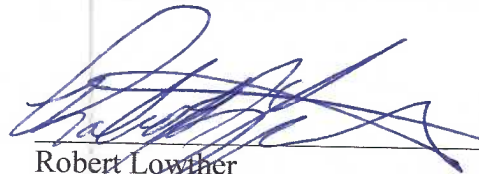
demand the same discounts and compete in a way they cannot currently compete with Denali.

13. CX4325 is email correspondence that again includes Denali's customer, Dr. Sheila Merat's name, email address and home and business address. Denali does not make public this information, which could violate Dr. Merat's privacy as well as put her at risk for identity theft; making this information public would also allow Denali's competitors Denali's customer information, which would allow competitors to contact her and try to obtain her business. This would clearly harm Denali.
14. CX4326 again contains Dr. Sheila Merat's name, home address and business address, personal information Denali would never make public in the regular course of its business. Moreover, this exhibit contains special discounted pricing that Denali gets for its customers from Benco. Making these prices available to Denali's competitors would allow them to demand the same discounts and better compete with Denali.
15. CX4331 is Denali's Confidentiality and Non-Disclosure Agreement, which Denali worked to customize to its industry and paid attorneys to create specifically for Denali. It is marked "Confidential" and Denali would not make this document available to the public. It is intended to be between Denali and "Service Providers" who will be furnished with customer names, addresses, email addresses, and other personal information which should remain private if customers are to trust Denali with that information in the future.
16. CX4332 is Denali's standard Project Bid Requirements form which is used to obtain bids from bidding firms and was specifically drafted by Denali's attorneys for only Denali's use. It is not shared outside of Denali and the bidding firms. It would be unfair to Denali to have this document be available to its competitors. The Denali Equipment Proposal

attached to the Project Bid Requirements form is also something Denali has developed for use in its business.

17. CX4333 is Benco's Equipment Quote for Denali which contains special discounted pricing that Denali gets for its customers from Benco. Making these prices available to Denali's competitors would allow them to demand the same discounts and better compete with Denali.

I declare under the penalty of perjury, that the foregoing is true and correct. Executed the 26th day of September, 2018.



Robert Lowther
President and CEO of The Denali Group

EXHIBIT D

**REDACTED IN ITS
ENTIRETY**

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

In the Matter of)	
)	PUBLIC
Benco Dental, Inc., et al)	
Respondents)	DOCKET NO. 9379

[PROPOSED] ORDER

Upon consideration of Non-Party Denali Group’s (Denali) Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order in their entirety.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
CX4191 and RX 2040	Email from: Will Kralovec to Scott Graversen, Robert Lowther, Suzanne McNeely subject: RE:“Denali-Schein Relationship: First Assignment!”	10/31/2013	Denali 002912	Denali 002916
CX4193 and RX 2041	Email from: Robert Lowther to: englizu cc: Susan Tibbles and Richard Kearn subject: “Desired Dental Equipment Proposals attachment(s): “Demewoz Benco quote.pdf; 20160229163258155-Dr. Demewoz-proposal.pdf; Dental Equipment List - Dr. Demewoz Project - 08.18.15.pdf; Dental Equipment Setup.pdf” (attachments included)	3/7/2016	Denali 004592	Denali 004600
CX4320	Email from: Robert Lowther to: Steve Aaron, Susan Tibbles, Richard Kearn subject: “Demewoz New Start Dental Practice Equipment List, Lorton, VI”	3/14/2016	Denali 004625	Denali 004630
CX4321	Email from: Robert Lowther to: David Stose, William Kralovec, carmen.r@thedenaligroup.net et al subject: “Dr. Regenold Ultra Sonic”	5/21/2013	Denali 002807	Denali 002808

CX4322	Email from: William Kralovec to: David Bordewyk, Robert Lowther subject: "Dr. Sheila Merat"	8/6/2012	Denali 001054	Denali 001062
CX4323	Email from: Sheila Merat to: Michael towns, Robert Lowther, William Kralovec subject: "FW: Your Benco Dental Order # BC028468-3 (with attachment)"	1/3/2013	Denali 001329	Denali 001333
CX4324	Document: Benco Dental Supply Company Invoice	12/31/2012	Denali 001334	Denali 001344
CX4325	Email from: Sheila Merat to: Michael towns, Robert Lowther subject: "FW: Your Benco Dental invoice no. 3899 (with attachment)"	1/3/2013	Denali 001327	Denali 001327
CX4326	Document: Benco Dental Supply Company Invoice	12/31/2012	Denali 001328	Denali 001328
CX4331	Document: The Denali Group Confidentiality and Non-Disclosure Agreement	unknown	Denali 002962	Denali 002964
CX4332	Document: Project Bid Requirements	10/4/2013	Denali 002965	Denali 002969
CX4333	Document: Benco Dental Supply Company Equipment Quote	10/31/2013	Denali 002970	Denali 002970

ORDERED:

Hon. Brian Lowe
Administrative Law Judge

Date: September ____, 2018

Notice of Electronic Service

I hereby certify that on October 02, 2018, I filed an electronic copy of the foregoing Denali's In Camera Motion and Proposed Order (Public), with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on October 02, 2018, I served via E-Service an electronic copy of the foregoing Denali's In Camera Motion and Proposed Order (Public), upon:

Lin Kahn
Attorney
Federal Trade Commission
lkahn@ftc.gov
Complaint

Ronnie Solomon
Attorney
Federal Trade Commission
rsolomon@ftc.gov
Complaint

Matthew D. Gold
Attorney
Federal Trade Commission
mgold@ftc.gov
Complaint

John Wiegand
Attorney
Federal Trade Commission
jwiegand@ftc.gov
Complaint

Erika Wodinsky
Attorney
Federal Trade Commission
Complaint

Boris Yankilovich
Attorney
Federal Trade Commission
byankilovich@ftc.gov
Complaint

Jeanine K. Balbach
Attorney
Federal Trade Commission
jbalbach@ftc.gov
Complaint

Thomas H. Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

Jasmine Rosner
Attorney
Federal Trade Commission
jrosner@ftc.gov
Complaint

Howard Scher
Attorney
Buchanan Ingersoll & Rooney PC
howard.scher@bipc.com
Respondent

Kenneth Racowski
Attorney
Buchanan Ingersoll & Rooney PC
kenneth.racowski@bipc.com
Respondent

Carrie Amezcua
Attorney
Buchanan Ingersoll & Rooney PC
carrie.amezcua@bipc.com
Respondent

John McDonald
Locke Lord LLP
jpmcdonald@lockelord.com
Respondent

Lauren Fincher
Locke Lord LLP
lfincher@lockelord.com
Respondent

Colin Kass
Proskauer Rose LLP
ckass@proskauer.com
Respondent

Adrian Fontecilla
Associate
Proskauer Rose LLP
afontecilla@proskauer.com
Respondent

Timothy Muris
Sidley Austin LLP
tmuris@sidley.com
Respondent

Geoffrey D. Oliver
Jones Day

gdoliver@jonesday.com
Respondent

Craig A. Waldman
Partner
Jones Day
cwaldman@jonesday.com
Respondent

Benjamin M. Craven
Jones Day
bcraven@jonesday.com
Respondent

Ausra O. Deluard
Jones Day
adeluard@jonesday.com
Respondent

Joseph Ostoyich
Partner
Baker Botts L.L.P.
joseph.ostoyich@bakerbotts.com
Respondent

William Lavery
Senior Associate
Baker Botts L.L.P.
william.lavery@bakerbotts.com
Respondent

Andrew George
Baker Botts L.L.P.
andrew.george@bakerbotts.com
Respondent

Jana Seidl
Baker Botts L.L.P.
jana.seidl@bakerbotts.com
Respondent

Kristen Lloyd
Associate
Baker Botts L.L.P.
Kristen.Lloyd@bakerbotts.com
Respondent

James Long
Attorney
Briggs and Morgan, P.A.
jlong@briggs.com
Respondent

Jay Schlosser
Attorney
Briggs and Morgan, P.A.
jschlosser@briggs.com
Respondent

Scott Flaherty
Attorney
Briggs and Morgan, P.A.
sflaherty@briggs.com
Respondent

Ruvin Jayasuriya
Attorney
Briggs and Morgan, P.A.
rjayasuriya@briggs.com
Respondent

William Fitzsimmons
Attorney
Briggs and Morgan, P.A.
wfitzsimmons@briggs.com
Respondent

Hyun Yoon
Buchanan Ingersoll & Rooney PC
eric.yoon@bipc.com
Respondent

David Owyang
Attorney
Federal Trade Commission
dowyang@ftc.gov
Complaint

Karen Goff
Attorney
Federal Trade Commission
kgoff@ftc.gov
Complaint

Emily Burton
Attorney
Federal Trade Commission
eburton@ftc.gov
Complaint

Jessica Drake
Attorney
Federal Trade Commission
jdrake@ftc.gov
Complaint

Ashley Masters
Attorney
Federal Trade Commission
amasters@ftc.gov
Complaint

Terry Thomas
Attorney
Federal Trade Commission
tthomas1@ftc.gov
Complaint

Danica Nobel
Attorney
Federal Trade Commission
dnoble@ftc.gov
Complaint

Mary Casale
Attorney
Federal Trade Commission
mcasale@ftc.gov
Complaint

Thomas Manning
Buchanan Ingersoll & Rooney PC
Thomas.Manning@bipc.com
Respondent

Sarah Lancaster
Locke Lord LLP
slancaster@lockelord.com
Respondent

Owen Masters
Associate
Proskauer Rose LLP
omasters@proskauer.com
Respondent

Stephen Chuk
Proskauer Rose LLP
schuk@proskauer.com
Respondent

Rucha Desai
Associate
Proskauer Rose LLP
rdesai@proskauer.com
Respondent

Jessica Moy
Federal Trade Commission
jmoy@ftc.gov
Complaint

Thomas Dilickrath
Federal Trade Commission
tdilickrath@ftc.gov
Complaint

Caroline L. Jones
Associate
Baker Botts L.L.P.
caroline.jones@bakerbotts.com
Respondent

David Munkittrick
Proskauer Rose LLP
dmunkittrick@proskauer.com
Respondent

David Heck
Proskauer Rose LLP
dheck@proskauer.com
Respondent

Thomas Dillickrath
Deputy Chief Trial Counsel
Federal Trade Commission
tdillickrath@ftc.gov
Complaint

Josh Goodman
Attorney
Federal Trade Commission
jgoodman@ftc.gov
Complaint

Nair Diana Chang
Federal Trade Commission
nchang@ftc.gov
Complaint

Mary M Melle
Attorney