

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



**ORIGINAL**

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In the Matter of )

1-800 Contacts, Inc., )  
a corporation )

) PUBLIC

) Docket No. 9372  
)  
)  
)

**NON-PARTY AEA INVESTORS LP'S MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45 of the Federal Trade Commission's ("FTC") Rules of Practice, 16 C.F.R. § 3.45, non-party AEA Investors LP ("AEA") respectfully moves this Court for *in camera* treatment of its competitively sensitive, confidential business documents (the "Confidential Documents"). AEA produced the Confidential Documents as part of its Hart-Scott-Rodino Improvements Act ("HSR") filings, dated December 28, 2015 and March 7, 2016, related to the proposed acquisitions of 1-800 Contacts, Inc. and Vision Direct, Inc., respectively.<sup>1</sup> 1-800 Contacts notified AEA's counsel on March 15, 2017 of its intention to use one of the Confidential Documents as evidence in the upcoming trial in the above-captioned matter. *See* Letter from 1-800 Contacts' counsel, Munger, Tolles & Olson LLP, dated March 15, 2017 (Exhibit A). The FTC's counsel did the same on March 21, 2017 and March 23, 2017. *See* e-mails from FTC counsel, Daniel Matheson (dmatheson@ftc.gov), dated March 21, 2017 and March 23, 2017 (Exhibit B).

The Confidential Documents are confidential business documents that, if publicly released, would cause AEA significant competitive harm. For the reasons discussed in this

<sup>1</sup> One of AEA's investment funds, AEA Investors Fund V LP, made the Hart-Scott-Rodino filings.

Motion and the attached Declaration of Barbara Burns (“Burns Declaration” and Exhibit C), AEA requests this Court provide the Confidential Documents with permanent *in camera* treatment in their entirety.

Counsel for both the FTC and 1-800 Contacts confirmed that they do not oppose this Motion for *in camera* treatment.

**I. Description of the Confidential Documents**

AEA seeks *in camera* treatment for the following Confidential Documents, attached as Exhibit D, Exhibit E, and Exhibit F. The Confidential Documents are identical in all aspects except for the HSR filing in which they were produced, which is stamp-noted on the Confidential Documents’ first page, and the redactions in bates-numbered document 1800F\_00091505 (Exhibit No. CX1343). Each Confidential Document is a different version of the same AEA presentation. Exhibit D (bates-numbered FTC-00000816-909) is the document 1-800 Contacts intends to use as Exhibit No. RX1228. AEA Investors Fund V LP submitted this document as part of its HSR filing related to the acquisition of 1-800 Contacts, dated December 28, 2015. Exhibit E (bates-numbered FTC-1800VD-20161492) is a document the FTC intends to use as Exhibit No. CX0439. AEA Investors Fund V LP submitted this document as part of its HSR filing related to the proposed acquisition of Vision Direct, Inc., dated March 7, 2016. Exhibit F (bates-numbered document 1800F\_00091505) is a document the FTC intends to use as Exhibit No. CX1343, which was previously redacted for sharing with AEA’s portfolio company, 1-800 Contacts.

AEA has not shared either RX1228 or CX0439 with 1-800 Contacts because these documents include AEA’s valuation and financial analysis of 1-800 Contacts that it did not want shared with its portfolio investment. This is indicative of AEA’s continuing efforts to keep the

sensitive information contained in the Confidential Documents confidential. Because the above-captioned matter does not have a protective order in place, AEA requests that the court limit distribution of Exhibits RX1228 and CX0439 to an outside counsel only basis. Exhibit No. CX1343 has been shared with 1-800 Contacts and does not require that additional protection.

Exhibit No.	Bates No.	Document Title	Author	Pages	Date
RX1228	FTC-00000816-909	1-800 Contacts: Staff Final Update	AEA Investors Fund V LP	94	December 2015
CX0439	FTC-1800VD-20161492	1-800 Contacts: Staff Final Update	AEA Investors Fund V LP	94	December 2015
CX1343	1800F_00091505	1-800 Contacts: Staff Final Update (redacted)	AEA Investors Fund V LP	66	December 2015

**II. The Confidential Documents are AEA’s Core Business Material that Reveal Internal Processes, Business Valuation, Present and Future Business Plans, Market Analysis and Risks, Bidding Details, Investment Rationales, and Diligence Findings.**

Under Rule 3.45(b), an Administrative Law Judge “shall order” that material offered into evidence “be placed *in camera* only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment . . .” 16 C.F.R. § 3.45(b). The movant must show the Confidential Documents are “sufficiently secret and sufficiently material to [its] business that disclosure would result in serious competitive injury.” *In re Jerk, LLC*, 2015 FTC LEXIS, at \*2 (Feb. 25, 2015) (quoting *In re General Foods Corp.*, 95 F.T.C. 352, at \*10 (Mar. 10, 1980) (quotations omitted)). For example, “The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *In re Dura Lube Corp.*, 1999 F.T.C. 255, at \*7 (Dec. 23, 1999) (quoting *General Foods*, 95 F.T.C. at 355)). If shown, courts will order “to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

In evaluating secrecy and materiality, courts have weighed six factors: (1) the extent to which the information is known outside of the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, at 456-57 (1977).

AEA is a leading global private investment firm with approximately \$10 billion in assets under management. Burns Declaration ¶ 4. AEA focuses on private equity and debt investments in the middle market (often within niche and complex sectors), leveraging its internal network of relationships, and industry experience and expertise to identify and evaluate investment opportunities. Burns Declaration ¶ 4. AEA then works with its portfolio investments to improve the business and achieve returns on the investment. Burns Declaration ¶ 4.

As detailed in the Burns Declaration, for every potential investment, AEA performs detailed due diligence, market research, economic and financial analyses, and retains the advice of commercial, financial, legal, and business external advisors. Burns Declaration ¶¶ 5-9. This work often spans many months or longer. Before making any investment, the findings of this process are encapsulated in materials such as the Confidential Documents, which are then presented to AEA's decision makers for final analysis and approval. Burns Declaration ¶ 5. On the basis of the type of analysis contained in the Confidential Documents and its diligence findings, AEA commits tens or hundreds of millions of dollars from private funds it sponsors to

these investments, often having to decide whether to maintain or increase its bidding price over its competition. Burns Declaration ¶ 5.

The Confidential Documents are secret and highly confidential. Burns Declaration ¶ 4. AEA does not share these documents with its external advisors or anyone outside of the AEA structure other than any equity co-investors.<sup>2</sup> Burns Declaration ¶ 6. The Confidential Documents include AEA's own summary and analysis of its target, 1-800 Contacts. Burns Declaration ¶ 6. The text reveals the deal team's impressions, the factors considered, and the investment thesis underlying AEA's interest in the transaction. Burns Declaration ¶ 6. In addition, the documents describe competitively significant information such as AEA's bidding strategy and history, its ongoing valuation analysis, its internal forecasts for 1-800 Contacts, and a discussion of potential investment exit plans. Burns Declaration ¶ 6.

AEA also performed its own market research, speaking with dozens of industry experts in third-party interviews. Burns Declaration ¶ 7. In addition, the Confidential Documents report and analyze the due diligence work performed by AEA's retained external advisors. Burns Declaration ¶ 7. In total, the information in the Confidential Documents cost AEA at least \$1 million to develop. Burns Declaration ¶ 7.

The Confidential Documents digest the diligence work and identify the most important market factors, market risks, company advantages, company disadvantages, and company risks. Burns Declaration ¶ 8. A closer look at the pages of the Confidential Documents reveals what financial metrics, customer and supplier data, and growth indicators that AEA analyzed and emphasized during this process. Burns Declaration ¶ 8. In addition, the Confidential Documents

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<sup>2</sup> The Confidential Documents were shared with counsel in connection with the required HSR filings.

include future strategic and highly sensitive plans for 1-800 Contacts, including business plans, add-on acquisitions, synergies, savings plans, and innovations. Burns Declaration ¶ 8.

The Confidential Documents are also unique to AEA. Burns Declaration ¶ 9. They contain AEA's proprietary analyses and expertise, as well as the expertise of its retained external advisors that it directed and managed during this project. Burns Declaration ¶ 9. This information is highly valuable for AEA – preventing present and future access to the Confidential Documents is critical to AEA's success. Burns Declaration ¶ 9. Making the Confidential Documents public would compromise the business advantage that AEA has internally developed and in which it has invested. Burns Declaration ¶ 9. In contrast, the interest in public disclosure for these specific documents is not significant.

Moreover, as a non-party, AEA's request "deserve[s] special solicitude." *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, at \*2 (1984). Prior rulings have concluded 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. AEA's non-party status weighs in favor of granting *in camera* status to the Confidential Documents.

### **III. Permanent *In Camera* Treatment Is Appropriate Because the Confidential Documents Contain AEA's Trade Secrets and Details That Will Remain Sensitive or Become More Sensitive With Time.**

Under FTC Rule 3.45(b)(3), the movant must specify why the need for confidentiality is not likely to decrease over time. 16 C.F.R. § 3.45(b)(3). Courts have recognized that the "competitive sensitivity or proprietary value of the information . . . will not necessarily diminish, and may actually increase, with the passage of time." *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at \*7 (Oct. 17, 1990). Trade secrets, such as secret formulas, processes, and technical

information have historically received more protection than ordinary business records, such as customer lists, prices to customers, and costs of doing business and profits. *In re Jerk, LLC*, 2015 FTC LEXIS at \*2; *In re Dura Lube*, 1999 FTC LEXIS at \*5.

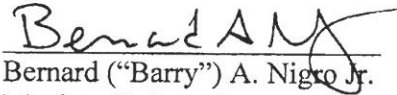
As described in the Burns Declaration, the Confidential Documents contain the internal processes and data analyses that form the basis for AEA's investments. Burns Declaration ¶¶ 9-10. AEA's internal process for evaluating and developing an investment asset is critical to its ability to compete with other private investment firms, for its portfolio companies to maintain their competition in the marketplace, and for AEA to profitably exit the investment at the appropriate time. Burns Declaration ¶ 10. Moreover, the Confidential Documents include confidential business plans and analyses of 1-800 Contacts that competitors could use to 1-800 Contacts' disadvantage. Burns Declaration ¶¶ 8-10. Because the Confidential Documents reveal valuable, secret, and distinguishable internal processes and future business plans for AEA, the competitive significance of the documents is unlikely to decrease over time and thus permanent protection is warranted. Burns Declaration ¶ 10.

#### **IV. Conclusion**

For the reasons set forth above and in the accompanying Burns Declaration, AEA respectfully requests that this Court grant permanent *in camera* treatment for the Confidential Documents in their entirety and limit distribution of RX1228 and CX0439 to an outside counsel only basis.

Dated: March 24, 2017

Respectfully submitted,



Bernard ("Barry") A. Nigro Jr.

Matthew E. Joseph

Fried, Frank, Harris, Shriver & Jacobson  
LLP

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matthew.joseph@friedfrank.com

Counsel for Non-Party, AEA Investors LP



**STATEMENT REGARDING MEET AND CONFER**

The undersigned certified that counsel for non-party AEA Investors LP (“AEA”) notified counsel for the parties in the above-captioned matter via email on or about March 17, 2017, March 20, 201, and March 23-24, 2017 that it would be seeking *in camera* treatment of the Confidential Documents. Both counsel for the 1-800 Contacts, Inc. and the Federal Trade Commission indicated that they do not object to AEA’s motion.

Dated: March 24, 2017



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Counsel for Non-Party, AEA Investors LP

**EXHIBIT A**

## MUNGER, TOLLES &amp; OLSON LLP

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March 15, 2017

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 CARY B. LERMAN  
 GREGORY P. STONE  
 BRAD D. BRIAN  
 BRADLEY S. PHILLIPS  
 GEORGE M. GARVEY  
 WILLIAM D. TEMKO  
 STEPHEN M. KRISTOVICH  
 JOHN W. SPIEGEL  
 DONALD B. VERRILLI, JR.  
 TERRY E. SANCHEZ  
 STEVEN M. PERRY  
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 THOMAS B. WALKER  
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 GARTH T. VINCENT  
 TED DANE  
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 MARTIN D. BERN  
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 ROBERT L. DELL ANGELO  
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 KELLY M. KLAUS  
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 RANDALL O. SOMMER  
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 TODD J. ROSEN  
 MELINDA CADES LAMONIE  
 BETH GOLDMAN  
 GRANT A. DAVIS-DENNY  
 JONATHAN H. BLAVIN  
 DANIEL B. LEVIN  
 MIRIAM KIM  
 MISTY M. SANFORD  
 HAILYN J. CHEN  
 BETHANY W. KR. STOVICH  
 JACOB S. KRELIKAMP  
 JEFFREY Y. WU  
 LAURA D. SMOLOWE  
 ANJAN CHOUDHURY  
 RYLE W. WACH  
 HEATHER E. TAKAHASHI  
 ERIN J. COX  
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 THOMAS P. CLANDY  
 JOSHUA PATASHNIK  
 JOSHUA S. MELTZER  
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 JOHN L. SCHWAB  
 SARAH N. TAYLOR  
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 MAXIMILIAN L. FELDMAN  
 SAMUEL T. BOYD  
 PETER E. BOOS  
 SETH J. FORTIN  
 ANKUR MANDHANIA  
 J'KE K. FORREST  
 ASHLEY D. KAPLAN  
 JESSICA REICH BARRIL  
 JEREMY K. BEECHER  
 MATTHEW K. DONOHUE  
 ALLYSON R. BENNETT  
 ELIZABETH A. LAUGHTON  
 EMILY CURRAN-HUBERTY

TIMOTHY J. HOON  
 JORDAN K. NAVARETTE  
 JOHN B. MAJOR  
 BRYAN A. WILLIAMS  
 DAVID J. FEDER  
 LAUREN C. BARNETT  
 NICHOLAS R. SINDY  
 C. HUNTER HAYES  
 KIMBERLY D. OMENS  
 USHA C. VANCE  
 AARON D. PENNEKAMP  
 TREVOR N. TEMPLETON  
 STEPHEN T. MAYER  
 ELIZABETH R. AYRAL  
 SARAH S. LEE  
 JULIAN BEACH  
 ELIZABETH A. KIM  
 SUSAN S. HAR  
 THOMAS RUBINSKY  
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 LAURA M. LOPEZ  
 MICHAEL C. BAKER  
 SARAH G. BOYCE\*\*  
 MOLLY K. PRIEDEMAN  
 BENJAMIN WOODSIDE SCHRIER

OF COUNSEL  
 ROBERT K. JOHNSON  
 ALAN V. FRIEDMAN  
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 ALLISON B. STEIN  
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 ERIC P. TUTTLE  
 PETER E. GRATZINGER  
 MARK R. YOKHNER  
 CHAD GOLDBER

E. LEROY TOLLES  
 (1922-2008)

\*A PROFESSIONAL CORPORATION

\*\*ADMITTED IN DC AND NY ONLY  
 \*ADMITTED IN DC AND MD ONLY

Via E-MAIL AND U.S. MAIL

Barry Nigro, Esq.  
 Fried, Frank, Harris, Shriver & Jacobson LLP  
 801 17th Street, NW  
 Washington, DC 20006

Re: In the Matter of 1-800 Contacts, Inc., FTC Docket No. 9372

Dear Mr. Nigro:

I am writing to provide formal notice to AEA, as required by 16 C.F.R. § 3.45 and paragraph 7 of the Scheduling Order in this matter, that 1-800 Contacts, Inc. intends to use certain documents produced by AEA as evidence at the upcoming trial in this matter. The documents bear the following control numbers:

FTC-1800VD-20162097-115

FTC-00000816-909.

Any motion seeking *in camera* treatment for any of those materials must be filed on or before March 27, 2017. See Scheduling Order, p. 3. I have enclosed a copy of the Scheduling Order, which requires us to tell you about the “strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 105); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Dura*

Writer's Direct Contact  
 (213) 683-9133  
 steven.perry@mto.com

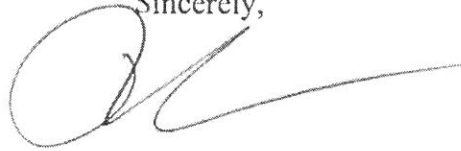
MUNGER, TOLLES & OLSON LLP

Barry Nigro, Esq.  
March 15, 2017  
Page 2

*Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999).” Motions seeking *in camera* treatment “also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents.” *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Scheduling Order, paragraph 7.

Please contact me or Greg Sergi if you have any questions regarding the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Perry', with a long horizontal flourish extending to the right.

Steven M. Perry

SMP:ei

Enclosure

cc: Greg Sergi

**EXHIBIT B**

**From:** Matheson, Daniel <dmatheson@ftc.gov>  
**Sent:** Thursday, March 23, 2017 11:46 PM  
**To:** Joseph, Matthew; Ross, Aaron  
**Cc:** Nigro, Barry; Clair, Kathleen  
**Subject:** RE: FTC Docket No. 9372 1-800 Contacts - in camera motion

Matt,

Happy to discuss anything below if desired.

1. Our position is that you should ask for in camera treatment for both CX1343 and CX0439. We do not oppose your effort to seek in camera treatment for either document.
2. The basic reason for the appearance of nearly duplicate documents (CX1343 and CX0439) is that we have an upcoming meet and confer with Respondent regarding exhibits. As you note, the only apparent difference between these documents relates to redactions, thus it is entirely possible that we will agree during the meet and confer on which version should go on a joint exhibit list. But, as we haven't yet completed those discussions, we cannot at this time predict which version will be used at trial (or cited in the post-trial findings of fact).
3. This is the only document that we have added to our exhibit list, as far as we are aware, that is an AEA document. I have confirmed that it is the only document with an FTC-1800VD Bates prefix, and we are not aware of any other Bates prefix that would be relevant.

Please let us know if it would be helpful to discuss.

Best regards,

Dan

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**From:** Joseph, Matthew [mailto:Matthew.Joseph@friedfrank.com]  
**Sent:** Thursday, March 23, 2017 10:23 PM  
**To:** Ross, Aaron; Matheson, Daniel  
**Cc:** Nigro, Barry; Clair, Kathleen  
**Subject:** RE: FTC Docket No. 9372 1-800 Contacts - in camera motion

Dan and Aaron,

The attached (CX1343) was sent to us by 1-800 Contacts and appears to be the same AEA document as Exhibit List No. CX0439 (Bates No. FTC-1800VD-20161492), but in redacted form. Are you planning to use both the attached and Ex. No. CX0439 as exhibits? Since the documents are the same, we wanted to check. We will want to make sure this document also receives in camera treatment if you plan to do so.

Could you also please notify us of any additional AEA documents on your exhibit list?

Thanks,  
Matt

Matthew Joseph  
Associate  
[matthew.joseph@friedfrank.com](mailto:matthew.joseph@friedfrank.com) | Tel: +1 202 639 7152

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801 17th Street, NW Washington, DC 20006  
[friedfrank.com](http://friedfrank.com)

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**From:** Ross, Aaron [<mailto:aross@ftc.gov>]  
**Sent:** Tuesday, March 21, 2017 1:25 PM  
**To:** Matheson, Daniel <[dmatheson@ftc.gov](mailto:dmatheson@ftc.gov)>; Joseph, Matthew <[Matthew.Joseph@friedfrank.com](mailto:Matthew.Joseph@friedfrank.com)>  
**Cc:** Nigro, Barry <[Barry.Nigro@friedfrank.com](mailto:Barry.Nigro@friedfrank.com)>; Clair, Kathleen <[kclair@ftc.gov](mailto:kclair@ftc.gov)>  
**Subject:** RE: FTC Docket No. 9372 1-800 Contacts - in camera motion

Matt,

Attached is a draft declaration. The document is too large to send via email, but our paralegals will send you a download link. Please let us know if you have questions.

Best regards,  
Aaron

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**Aaron Ross**  
Federal Trade Commission | Anticompetitive Practices  
t: +1 202 326 3696 | m: +1 202 460 6406 | [aross@ftc.gov](mailto:aross@ftc.gov)

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**From:** Matheson, Daniel  
**Sent:** Tuesday, March 21, 2017 10:37 AM  
**To:** 'Joseph, Matthew'  
**Cc:** Nigro, Barry; Ross, Aaron; Clair, Kathleen  
**Subject:** RE: FTC Docket No. 9372 1-800 Contacts - in camera motion

Will do. Thanks.

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**From:** Joseph, Matthew [<mailto:Matthew.Joseph@friedfrank.com>]  
**Sent:** Tuesday, March 21, 2017 10:37 AM  
**To:** Matheson, Daniel  
**Cc:** Nigro, Barry; Ross, Aaron; Clair, Kathleen  
**Subject:** RE: FTC Docket No. 9372 1-800 Contacts - in camera motion

Thanks, Dan – We will be sure to refer to your exhibit in our filing.

Regarding declarations of authenticity, 1-800 Contacts' counsel provided us with a template for a declaration of authenticity. We haven't provided it to them yet, but plan to. We are happy to provide you with a declaration as well – could you please send us a draft? Also, would you mind sending us document CX0439, Bates No. FTC-1800VD-20161492? We will want to review it and attach it to our filing.

Thanks,  
Matt

**Matthew Joseph**  
Associate  
[matthew.joseph@friedfrank.com](mailto:matthew.joseph@friedfrank.com) | Tel: +1 202 639 7152

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**From:** Matheson, Daniel [<mailto:dmatheson@ftc.gov>]  
**Sent:** Tuesday, March 21, 2017 10:09 AM  
**To:** Joseph, Matthew <[Matthew.Joseph@friedfrank.com](mailto:Matthew.Joseph@friedfrank.com)>  
**Cc:** Nigro, Barry <[Barry.Nigro@friedfrank.com](mailto:Barry.Nigro@friedfrank.com)>; Ross, Aaron <[aross@ftc.gov](mailto:aross@ftc.gov)>; Clair, Kathleen <[kclair@ftc.gov](mailto:kclair@ftc.gov)>  
**Subject:** RE: FTC Docket No. 9372 1-800 Contacts - in camera motion

Matt,

You have our permission to state that Complaint Counsel does not oppose your motion for in camera treatment regarding FTC-00000816. You should also state in your motion that Complaint Counsel intends to include this document on its Exhibit List as CX0439, Bates No. FTC-1800VD-20161492.

Have you provided 1-800 Contacts' counsel with a declaration regarding FTC-00000816? If you have not provided 1-800 Contacts' counsel with such a declaration, we would ask that you agree to provide us a declaration regarding the authenticity and circumstances of creation of CX0439, Bates No. FTC-1800VD-20161492 – we would be happy to send a draft.

Happy to discuss if this is unclear. I am away from my desk today but could call at your convenience if desired.

Best regards,

Dan

---

**From:** Joseph, Matthew [<mailto:Matthew.Joseph@friedfrank.com>]  
**Sent:** Monday, March 20, 2017 4:25 PM  
**To:** Matheson, Daniel  
**Cc:** Nigro, Barry  
**Subject:** FTC Docket No. 9372 1-800 Contacts - in camera motion

Dear Mr. Matheson,

On March 15, 2017, 1-800 Contacts' counsel informed us of its intention to use bates-numbered document FTC-00000816 (attached) as evidence in the 1-800 Contacts matter (FTC Docket No. 9372). AEA Investors authored this document and produced it to the Commission on December 28, 2015 as part of its HSR filing for the acquisition of 1-800 Contacts. AEA views this document as highly sensitive, confidential business information that, if disclosed, could cause the business serious injury. AEA therefore intends to file a motion for *in camera* treatment regarding this document. Please let us know whether we can claim you do not oppose AEA's motion for *in camera* treatment regarding this document.

Please let Barry Nigro or me know if you would like to discuss.

Thanks,  
Matt

Matthew Joseph  
Associate  
[matthew.joseph@friedfrank.com](mailto:matthew.joseph@friedfrank.com) | Tel: +1 202 639 7152

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## PUBLIC-REDACTED

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**EXHIBIT C**

**Barbara Burns Declaration**

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

In the Matter of	)	
	)	
1-800 Contacts, Inc.,	)	PUBLIC
a corporation	)	Docket No. 9372
	)	
	)	

**DECLARATION OF BARBARA BURNS IN SUPPORT OF NON-PARTY AEA INVESTORS LP'S MOTION FOR *IN CAMERA* TREATMENT**

I, Barbara Burns, hereby declare as follows:

1. I am General Counsel and Chief Compliance Officer for AEA Investors LP ("AEA"). I make this declaration in support of Non-Party AEA's Motion for *In Camera* Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the AEA documents that both parties seek to use in the above-captioned matter ("Confidential Documents"). I have provided certifications of authenticity as to the Confidential Documents to both parties. Given my position at AEA, I am familiar with the type of information contained in the Confidential Documents and their competitive significance to AEA. Based on my review of the Confidential Documents, my knowledge of AEA's business and internal processes, and the confidential treatment AEA provides this type of information, I submit that the disclosure of the Confidential Documents to the public and AEA's competitors would cause serious competitive injury to AEA.

3. 1-800 Contacts, Inc. and the Federal Trade Commission ("FTC") have informed AEA of their intention to use AEA documents in the above-captioned matter. These documents

were produced as part of Hart-Scott-Rodino Improvements Act (“HSR”) filings, dated December 28, 2015 and March 7, 2016, related to the proposed acquisitions of 1-800 Contacts, Inc. and Vision Direct, Inc., respectively. One of AEA’s investment funds, AEA Investors Fund V LP, made the HSR filings. The Confidential Documents are identical in all aspects except for the HSR filing in which they were produced, which is stamp-noted on the Confidential Documents’ first page, and the redactions in bates-numbered document 1800F\_00091505 (Exhibit No. CX1343). In sum, each Confidential Document is a different version of the same original AEA presentation. Bates-numbered document FTC-00000816-909 is the document 1-800 Contacts intends to use as Exhibit No. RX1228. AEA Investors Fund V LP submitted this document as part of its HSR filing related to the acquisition of 1-800 Contacts, dated December 28, 2015. Bates-numbered document FTC-1800VD-20161492 is a document the FTC intends to use as Exhibit No. CX0439 and which AEA Investors Fund V LP submitted as part of its HSR filing related to the proposed acquisition of Vision Direct, Inc., dated March 7, 2016. Bates-numbered document 1800F\_00091505 is the document the FTC intends to use as Exhibit No. CX1343, which was previously redacted for sharing with AEA’s portfolio company, 1-800 Contacts. These documents are highly sensitive and contain AEA’s confidential business information and trade secrets. As described in the Motion, AEA seeks permanent *in camera* treatment for the following documents:

<b>Exhibit No.</b>	<b>Bates No.</b>	<b>Document Title</b>	<b>Author</b>	<b>Pages</b>	<b>Date</b>
RX1228	FTC-00000816-909	1-800 Contacts: Staff Final Update	AEA Investors Fund V LP	94	December 2015
CX0439	FTC-1800VD-20161492	1-800 Contacts: Staff Final Update	AEA Investors Fund V LP	94	December 2015
CX1343	1800F_00091505	1-800 Contacts: Staff Final Update (redacted)	AEA Investors Fund V LP	66	December 2015

4. AEA is a leading global private investment firm with approximately \$10 billion in assets under management. AEA focuses on private equity and debt investments in the middle market (often within niche and complex sectors), leveraging its internal network of relationships, and industry experience and expertise to identify and evaluate investment opportunities. AEA then works with its portfolio investments to improve the business and achieve returns on the investment. AEA, at all times, keeps secret and confidential the fact of a potential investment in a certain company or asset, as well as its internal process for reviewing, deliberating, evaluating, and deciding to pursue a given investment.

5. For every potential investment, over the course of many months or longer, AEA performs detailed due diligence, market research, economic and financial analyses, and retains the advice of commercial, financial, legal, and business external advisors. Before making any investment, AEA combines the findings of this process into materials such as the Confidential Documents, which are then presented to AEA's decision makers for final analysis and approval. On the basis of the type of analysis contained in the Confidential Documents and its diligence findings, AEA commits tens or hundreds of millions of dollars from private funds it sponsors to these investments, often having to decide whether to maintain or increase its bidding price over its competition.

6. AEA does not share these types of internal documents with its external advisors or anyone outside of the AEA structure other than any equity co-investors (or as required by law). The Confidential Documents include AEA's own summary and analysis of 1-800 Contacts as a potential acquisition target. The text reveals the deal team's impressions, the factors considered, and the investment thesis underlying AEA's interest in the transaction. In addition, the documents describe competitively significant information such as AEA's bidding strategy

and history, its ongoing valuation analysis, its internal forecasts for 1-800 Contacts, and a discussion of potential investment exit plans.

7. For each of its investments, AEA performs its own independent due diligence. This often includes interviewing industry experts and leveraging our network to understand the potential investment market, competition, and risk. The Confidential Documents summarize the findings from that research and diligence effort. In addition, the Confidential Documents report and analyze the due diligence work performed by AEA's retained external advisors. In the end, the information reflected in the Confidential Documents will cost AEA at least \$1 million to develop.

8. The Confidential Documents also identify the most important market factors, market risks, company advantages, company disadvantages, and company risks. The Confidential Documents analyze AEA's preferred indicators of investment success – financial metrics, customer and supplier data, and market growth indicators. In addition, the Confidential Documents review future strategic and highly sensitive plans for 1-800 Contacts, including business plans, add-on acquisitions, synergies, savings plans, and innovations.

9. I believe this work product is unique to AEA. The Confidential Documents reflect our proprietary analyses and expertise, as well as the expertise of our retained external advisors that we oversee and direct during this project. This information is therefore highly valuable for AEA. Publishing the Confidential Documents to the public would compromise the business advantage that we have invested in and internally developed.

10. AEA's internal process for evaluating and developing an investment asset is critical to our ability to compete with other private investment firms, for our portfolio companies to maintain their competition in the marketplace, and for us to profitably exit the investment at

the appropriate time. Competitors could use the confidential business plans and analyses of 1-800 Contacts included in the Confidential Documents to 1-800 Contacts' disadvantage. Because the Confidential Documents reveal valuable, secret, and distinguishable internal processes and future business plans for AEA, the competitive significance of the documents is unlikely to decrease over time and thus permanent protection is warranted.

I declare under penalty of perjury that the foregoing is true and correct. Executed March  
24, 2017 at New York, New York.

  
\_\_\_\_\_  
Barbara Burns



**EXHIBIT D**

**Exhibit No. RX1228 (Bates-Numbered FTC-00000816-909)**

**CONFIDENTIAL**

**IN CAMERA TREATMENT REQUESTED**

**REDACTED IN ENTIRETY**

**EXHIBIT E**

**Exhibit No. CX0439 (Bates-Numbered FTC-1800VD-20161492)**

**CONFIDENTIAL**

**IN CAMERA TREATMENT REQUESTED**

**REDACTED IN ENTIRETY**

**EXHIBIT F**

**Exhibit No. CX1343 (Bates-Numbered 1800F 00091505)**

**CONFIDENTIAL**

**IN CAMERA TREATMENT REQUESTED**

**REDACTED IN ENTIRETY**



## CERTIFICATE OF SERVICE

I, Bernard A. Nigro Jr., declare under penalty of perjury that the following is true and correct. On March 24, 2017, I caused to be served the following documents on the parties listed below by the manner indicated.

- **NON-PARTY AEA INVESTORS LP'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 and the FTC's E-Filing System):**

Donald S. Clark  
Secretary  
Federal Trade Commission  
400 – 7<sup>th</sup> Street, S.W., 5<sup>th</sup> Floor  
Washington, D.C. 20024

**The Office of the Administrative Law Judge (via overnight delivery, electronic mail, and the FTC's E-Filing System):**

D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room H-110  
Washington, D.C. 20580

**Counsel for Federal Trade Commission (via overnight delivery and electronic mail (public version only)):**

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Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
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**Counsel for 1-800-Contacts, Inc. (via overnight delivery and electronic mail (public version only)):**

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**And via electronic mail a copy upon the following:**

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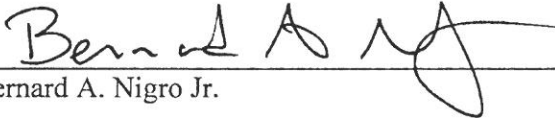
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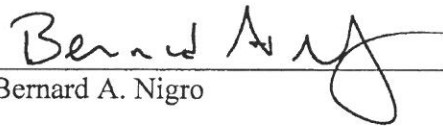
  
Bernard A. Nigro Jr.



**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.

March 24, 2017

By:   
Bernard A. Nigro

Notice of Electronic Service

**I hereby certify that on March 24, 2017, I filed an electronic copy of the foregoing Non-Party AEA Investors LP's Motion for In Camera Treatment, 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 March 24, 2017, I served via E-Service an electronic copy of the foregoing Non-Party AEA Investors LP's Motion for In Camera Treatment, upon:**

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TBrock@ftc.gov  
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