

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



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In the Matter of )  
 )  
Benco Dental Supply Co., )  
a corporation, )  
 )  
Henry Schein, Inc., )  
a corporation, and )  
 )  
Patterson Companies, Inc., )  
a corporation. )  
 )  
Respondents. )  
\_\_\_\_\_)

Docket No. 9379

**ORDER ON NON-PARTIES' MOTIONS  
FOR *IN CAMERA* TREATMENT**

**I.**

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the Scheduling Order entered in this matter, certain non-parties, identified below, filed motions for *in camera* treatment for designated materials that Federal Trade Commission ("FTC") Complaint Counsel and/or Respondents Benco Dental Supply Co., Henry Schein, Inc. and Patterson Companies, Inc. ("Respondents") have listed on their exhibit lists as materials that might be introduced at trial. Neither Complaint Counsel nor Respondents have filed oppositions to any of these motions.

**II.**

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

## A. Clearly defined, serious injury

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

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

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

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only “in unusual circumstances,” including circumstances in which “the need for confidentiality of the material . . . is not likely to decrease over time. . . .” 16 C.F.R.

§ 3.45(b)(3). “Applicants seeking indefinite *in camera* treatment must further demonstrate ‘at the outset that the need for confidentiality of the material is not likely to decrease over time’ 54 Fed. Reg. 49,279 (1989) . . . [and] that the circumstances which presently give rise to this injury are likely to be forever present so as to warrant the issuance of an indefinite *in camera* order rather than one of more limited duration.” *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at \*2-3 (April 25, 1990). In *DuPont*, the Commission rejected the respondent’s request for indefinite *in camera* treatment. However, based on “the highly unusual level of detailed cost data contained in these specific trial exhibit pages, the existence of extrapolation techniques of known precision in an environment of relative economic stability, and the limited amount of technological innovation occurring in the . . . industry,” the Commission extended the duration of the *in camera* treatment for a period of ten years. *Id.* at \*5-6.

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

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

## **B. Sensitive personal information**

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

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

### III.

The non-parties listed below filed separate motions for *in camera* treatment. Each motion included the documents for which *in camera* treatment is sought and was properly supported by a declaration of an individual within the company who had reviewed the documents at issue. These declarations supported the applicants’ claims that the documents are sufficiently secret and sufficiently material to their businesses that disclosure would result in serious competitive injury. That showing was then balanced against the importance of the information in explaining the rationale of FTC decisions. In evaluating the specific motions of each of the non-parties under the standards set forth above, requests for *in camera* treatment by non-parties warrant “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967); *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, \*4 (May 25, 2011).

#### **The Atlanta Dental Supply Company (“ADS”)**

Non-party ADS seeks permanent *in camera* treatment for two exhibits. ADS supports its motion with a declaration from its president. The declaration describes in detail the confidential nature of the documents and the competitive harm that ADS would suffer if these documents were made publicly available and the measures that ADS takes to ensure that they remain confidential. The declaration explains that the documents contain competitively sensitive, confidential business documents and sales data relating to dental supplies, products and dental equipment.

ADS has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the documents for which ADS seeks *in camera* treatment consist of ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified as CX4129 and CX4442.

#### **Brasseler USA (“Brasseler”)**

Non-party Brasseler seeks *in camera* treatment for 36 documents, including one deposition transcript, for varying lengths of time. Brasseler supports its motion with declarations from its Senior Director, Business Operations and from its President, Strategic Business Units and Asia Pacific Dental, for Schein. The declarations describe in detail the confidential nature of the documents, the competitive harm that Brasseler would suffer if these documents were made publicly available, and the measures that Brasseler takes to ensure that the information contained in these documents remains confidential.

The declarations explain that the documents fall into four categories. The first category consists of current contracts, including purchasing agreements with many of Brasseler's current or prospective customers, which include pricing and other competitively sensitive terms that are specific to individual agreements and heavily negotiated. Brasseler has met its burden of demonstrating that documents in this category are entitled to *in camera* treatment, but not for an extended period of ten years. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for CX4146, CX4147, CX4149, CX4181, RX2020, RX2022, RX2023 and RX2032.

The second category contains documents relating to Brasseler's non-public pricing information including proprietary price lists, discount schedules, and rebates offered to specific customers and buying groups. Brasseler has met its burden of demonstrating that documents in this category are entitled to *in camera* treatment, but not for an extended period of ten years. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for CX4148, CX4156, CX4161, CX4163, CX4174, CX4180, RX2021, RX2029 and RX2031.

The third category contains documents concerning Brasseler's sales, costs, margins, financial performance, and customers. Brasseler has met its burden of demonstrating that documents in this category are entitled to *in camera* treatment for a period of five years. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for CX4160, CX4163, CX4165, CX4177 and CX4188.

The fourth category consists of private information related to mergers and acquisition activity, and other forward-looking strategic documents produced by Brasseler. Brasseler has met its burden of demonstrating that documents in this category are entitled to *in camera* treatment, but not for an extended period of ten years. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for CX4150, CX4151, CX4154, CX4162, CX4164, CX4182, CX4183, CX4187, CX4334, RX2025, RX2026, RX2027, RX2028 and RX2030.

In addition, some of the documents in the fourth category contain sensitive personal information such as personal addresses and personal financial information. Indefinite *in camera* treatment is GRANTED for CX4150, CX4151, CX4182, CX4187, RX2025, RX2026, RX2027, and RX2028<sup>1</sup>.

Brasseler's motion is DENIED WITHOUT PREJUDICE for the deposition transcript identified as RX2955 because Brasseler did not narrow its request to only the portions of testimony containing confidential information. Brasseler may, by October 19, 2018, file a renewed motion seeking *in camera* treatment for only those pages and line numbers that contain information that meets the standard for *in camera* treatment.

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<sup>1</sup> Although the sensitive personal information can be redacted and should not be a basis for withholding the documents from the public record, because these documents are covered by the *in camera* treatment ruling for documents in Brasseler's fourth category, documents are being withheld from the public record and the sensitive personal information contained therein merely extends the time for which the documents are withheld.

### **Burkhart Dental (“Burkhart”)**

Non-party Burkhart seeks permanent *in camera* treatment of 32 documents and excerpts from 4 deposition transcripts. Burkhart supports its motion with a declaration from its officer. The declaration describes in detail the confidential nature of the documents and the competitive harm that Burkhart would suffer if these documents were made publicly available and the measures that Burkhart takes to ensure that the information contained in these documents remains confidential. The declaration explains that the documents contain information of competitive significance to Burkhart, including: raw sales data; agreements and other documents containing the terms and structure of Burkhart’s relationship with group purchasing organizations (“GPOs”); other generally sensitive and confidential commercial information, including pricing, sales strategies and internal guidelines; training and compensation information; and information regarding legal matters.

Burkhart has met its burden of demonstrating that these documents are entitled to *in camera* treatment. These documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified as CX0219, CX0220, CX1032/RX1051, CX4103/CX4240, CX4114, CX4117, CX4119/RX1012, CX4120, CX4124, CX4126, CX4130, CX4218, CX4219, CX4222, CX4223, CX4224, CX4227, CX4228, CX4229, CX4239, CX4241, CX4242, CX4243/CX4451, CX4245, CX4248, CX4268, CX4288, CX4443 and for the following excerpts of CX0319/RX2986: 18:25-21:13; 21:14-26:24; 29:7-31:25; 34:2-36:8; 37:25-45:15; 49:5-66:2; 73:19-76:3; 78:23-80:15; 81:3-93:14; 96:2-103:24; 104:23-106:7; 118:5-123:20; 125:16-137:19; 138:1-139:21; 141:18-146:10; CX8021/RX3036: 19:5-19:17; 23:6-24:5; 28:15-31:3; 31:4-41:20; 45:6-46:15; 46:16-55:3; 57:19-58:7; 68:6-70:17; 82:20-83:7; 88:13-97:25; 122:10-123:24; 126:22-127:14; RX1135: 24:1-29:16; 33:3-36:4 and RX1136: 29:23-46:15; 47:12-60:23; 63:8-76:21; 82:19-83:8; 95:19-98:12; 99:5-108:17; 111:8-130:16; 138:24-225:7; 231:14-234:23; 242:2-257:7; 262:19-263:20.

### **Darby Dental Supply Company, LLC (“Darby”)**

Non-party Darby seeks permanent *in camera* treatment for 17<sup>2</sup> documents. Darby supports its motion with a declaration from its president and chief executive officer. The declaration describes in detail the confidential nature of the documents and the competitive harm that Darby would suffer if these documents were made publicly available and the measures that Darby takes to ensure that they remain confidential. The declaration explains that the documents contain servicing/purchasing agreements with strategic partners/servicing organizations and group purchasing organizations, including sales and pricing history.

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<sup>2</sup> Darby filed two motions. The first sought *in camera* treatment for nine documents; the second motion sought *in camera* treatment for eight additional documents. Both motions are addressed as one filing.

Darby has met its burden of demonstrating that these documents are entitled to *in camera* treatment. These documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified as CX4127, CX4444, CX4452, CX4453, CX4454, CX4455, CX4456, CX4457, CX4458, RX3078, RX3079, RX3080, RX3081, RX3082, RX3083, RX3084, and RX3085.

### **The Denali Group (“Denali”)**

Non-party Denali seeks permanent *in camera* treatment for 14 documents. Denali supports its motion with a declaration from its president and chief executive officer. The declaration describes in detail the confidential nature of the documents and the competitive harm that Denali would suffer if these documents were made publicly available and the measures that Denali takes to ensure that they remain confidential. The declaration explains that the documents contain confidential sensitive business information detailing Denali’s business model and operations, personal customer information, and pricing information.

Denali has met its burden of demonstrating that these documents are entitled to *in camera* treatment. These documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified as CX4191/RX2040, CX4193/RX2041, CX4320, CX4321, CX4322, CX4323, CX4324, CX4325, CX4326, CX4331, CX4332, and CX4333.

### **Georgia Dental Association, Inc. (“GDA”)**

Non-party GDA seeks permanent *in camera* treatment for ten documents and for certain portions of two deposition transcripts. GDA supports its motion with a declaration from its general counsel and corporate secretary. The declaration describes in detail the confidential nature of the documents and the competitive harm that GDA would suffer if these documents were made publicly available and the measures that GDA takes to ensure that they remain confidential. The declaration explains that the documents and deposition transcripts contain competitively sensitive information regarding contractual agreements, strategic business plans, sales data, and confidential customer feedback.

GDA has met its burden of demonstrating that these documents are entitled to *in camera* treatment. These documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified as CX0300, CX4078, CX4295,

CX4296, CX4297, CX4298, CX4299, CX4449/RX0736 and for the following portions of CX8011/RX3026: 14:15-25; 15:2; 15:13-18; 23:11-14; 31:23-25; 32:2-16; 43:23-5 and 44:2-10; and for the following portions of CX0320/RX2987: 36:16-17, 23; 37:3-6, 41:22-25; 42:1; 44:24-25; 45:1-22; 47:1-9; 57:14-24; 62:3-24; 63:2-25; 64:1-23; 65:18-25; 66:1-3; 100:3-13; 100:24-25; 101:1-10; 105:12-20; 106:1-16; 106:24-25; 107:1-3; 107:7-14; 113:1-25; 114:1-11; 115:19-25; 116:1-24; 117:4-14; 117:22-25; 118:1-13; 120:4-20 and 125:12-16.

### **Klear Impakt, LLC (“Klear Impakt”)**

Non-party Klear Impakt seeks permanent *in camera* treatment for four documents. Klear Impakt supports its motion with a declaration from its vice president of finance. The declaration describes in detail the confidential nature of the documents and the competitive harm that Klear Impakt would suffer if these documents were made publicly available and the measures that Klear Impakt takes to ensure that they remain confidential. The declaration explains that the documents contain highly sensitive details relating to vendor agreements and financial terms.

Klear Impakt has met its burden of demonstrating that these documents are entitled to *in camera* treatment. These documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified as CX4107, RX2057, RX2058 and RX2059.

### **Michigan Dental Association (“MDA”)**

Non-party MDA seeks permanent *in camera* treatment for excerpts of a deposition transcript, along with corresponding exhibits. MDA supports its motion with a declaration from its president. The declaration describes in detail the confidential nature of the information contained in the deposition and documents, the competitive harm that MDA would suffer if this information was made publicly available, and the measures that MDA takes to ensure that it remains confidential. The declaration explains that the excerpts from the deposition and its corresponding exhibits contain sensitive and confidential proprietary business information relating to endorsement relationships and contracts, pricing and marketing strategies, sales and profit plans, and future sales outlook.

MDA has met its burden of demonstrating that the selected portions of the deposition transcript and its corresponding exhibits are entitled to *in camera* treatment. The information and the documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1,



2023, is GRANTED for the deposition page/line numbers and deposition exhibits identified below:

Deposition Page/Line Numbers	FTC Exhibit Pages	Deposition Exhibit	FTC Exhibit Pages
103:20 - 110:1	CX9069-027 - CX9069-029	Exhibit 952	CX9069-101
149:14 - 154:22	CX 9069-038 - CX9069-040	Exhibit 957	CX9069-110 - CX9069-114
161:19 - 167:11	CX 9069-041 - CX9069-043	Exhibit 960	CX9069-118 - CX9069-126
		Exhibit 961	CX9069-127
177:1 - 184:21	CX 9069-045 - CX9069-047	Exhibit 963	CX9069-129 - CX9069-193

#### **Mid-Atlantic Dental Partners (“Mid-Atlantic”)**

Non-party Mid-Atlantic seeks permanent *in camera* treatment for nine documents and for a deposition transcript. Mid-Atlantic supports its motion with a declaration from its chief executive officer. The declaration describes in detail the confidential nature of the documents and the competitive harm that Mid-Atlantic would suffer if these documents were made publicly available and the measures that Mid-Atlantic takes to ensure that they remain confidential. The declaration explains that the documents contain sensitive and confidential business information about its corporate structure, business operations, and business relationships/affiliations.

Mid-Atlantic has met its burden of demonstrating that these documents are entitled to *in camera* treatment. These documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified as CX4131, CX4132, CX4135, CX4136, CX4138, CX4140/RX2769, CX4141, CX4142, and CX4143.

Mid-Atlantic’s motion is DENIED WITHOUT PREJUDICE for the deposition transcript because Mid-Atlantic did not narrow its request to only the portions of testimony containing confidential information. Mid-Atlantic may, by October 19, 2018, file a renewed motion seeking *in camera* treatment for only those pages and line numbers that contain information that meets the standard for *in camera* treatment.

### **Pearson Dental Supplies (“Pearson”)**

Non-party Pearson seeks permanent *in camera* treatment for one document. Pearson supports its motion with a declaration from its president. The declaration describes in detail the confidential nature of the document and the competitive harm that Pearson would suffer if this document were made publicly available and the measures that Pearson takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains confidential business data, retrieved from its database, that includes highly sensitive financial information on its sales and customers. The declaration also states its sales and customer database is used to develop pricing decisions and marketing strategies and that Pearson is a privately held company and does not make any public filings.

Pearson has met its burden of demonstrating that this document is entitled to *in camera* treatment. This document is an ordinary business record, and not a trade secret, and is not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the document identified as CX4441.

### **Smile Source, LP (“Smile Source”)**

Non-party Smile Source seeks *in camera* treatment, for varying lengths of time, for 32 documents and portions of deposition transcripts containing three categories of information: (1) sales, pricing, rebates/discounts, and member feedback; (2) vendor bidding processes, negotiations, and terms; and (3) strategic business plans. Smile Source supports its motion with a declaration from its in-house counsel. The declaration describes in detail the confidential nature of the documents and the competitive harm that Smile Source would suffer if these documents were made publicly available and the measures that Smile Source takes to ensure that they remain confidential.

Smile Source has met its burden of demonstrating that these documents are entitled to *in camera* treatment. These documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified as CX0294/CX4128, CX4099, CX4098, CX4203/CX4206/RX2087, CX4205, CX4125, CX4207, CX4209, CX4450, CX0295, CX4097, CX4100, CX4101, RX2084, CX0296, CX4204, RX2085, RX2086, RX2088, CX0291, CX4208, RX2082, CX4200, CX4202, RX2083 RX2090, RX2091, and RX2092.

With respect to the deposition transcripts, Smile Source has narrowed its request to only the portions of testimony containing confidential information by providing redacted versions of the transcripts. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the redacted portions of CX8019/RX3034, RX2952, CX0322/RX2989 and CX8039/RX3051. Complaint Counsel is hereby

ORDERED to provide, by October 19, 2018, a proposed order that indicates pages and line numbers of the Smile Source depositions that have been granted *in camera* treatment by this Order.

### **Strategic Data Marketing, LLC (“SDM”)**

Non-party SDM seeks permanent *in camera* treatment for a number of competitively sensitive business documents. SDM supports its motion with a declaration from its managing director. The declaration describes in detail the confidential nature of the documents and the competitive harm that SDM would suffer if these documents were made publicly available and the measures that SDM takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain confidential business data relating to financial sales, sales performance and marketing strategies collected on various companies. The declaration also states that SDM entered data collection agreements with various manufacturers and distributors and that SDM agreed to keep the information confidential.

SDM has met its burden of demonstrating that the documents are entitled to *in camera* treatment. The documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on October 1, 2023, is GRANTED for the documents identified in SDM’s motion. Complaint Counsel is hereby ORDERED to provide, by October 19, 2018, a proposed order that indicates the exhibit number(s) of the SDM documents that have been granted *in camera* treatment by this Order.

#### **IV.**

Several of the non-parties requested that disclosure of their *in camera* documents be limited to only those persons enumerated in Paragraph 7 of the Protective Order issued in this case. That request is granted. All of the documents for which *in camera* treatment has been granted shall also be treated as confidential under the Protective Order and may only be disclosed to those entities covered by the Protective Order.<sup>3</sup> In addition, pursuant to Rule 3.45(a), “material made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted. Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative

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<sup>3</sup> Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question. Protective Order ¶ 7.

Law Judge, the Commission and reviewing courts may disclose such *in camera* material to the extent necessary for the proper disposition of the proceeding.” 16 C.F.R. §3.45(a).

Each non-party whose documents or information has been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been provided for the material described in this Order. The parties are permitted to elicit testimony that includes references to, or general statements derived from, the content of information that has been granted *in camera* treatment. 16 C.F.R. § 3.45. However, any testimony revealing the confidential information from documents that have been granted *in camera* treatment shall be provided in an *in camera* session. Counsel shall segregate their questions of witnesses in such a manner that all questions on *in camera* materials will, to the extent practicable, be grouped together and elicited in an *in camera* session.

ORDERED:

*Dm Chappell*

\_\_\_\_\_  
D. Michael Chappell

Chief Administrative Law Judge

Date: October 11, 2018

Notice of Electronic Service

**I hereby certify that on October 11, 2018, I filed an electronic copy of the foregoing Order on Non-Parties Motions 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 October 11, 2018, I served via E-Service an electronic copy of the foregoing Order on Non-Parties Motions for In Camera Treatment , upon:**

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

Ronnie Solomon  
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Jeanine K. Balbach  
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