

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



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In the Matter of )  
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Otto Bock HealthCare North America, Inc., )  
a corporation, )  
 )

Respondent. )  
\_\_\_\_\_ )

Docket No. 9378

**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 Respondent Otto Bock HealthCare North America, Inc. ("Respondent") have listed on their exhibit lists as materials that might be introduced at trial. Neither Complaint Counsel nor Respondent has filed an opposition 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. The specific motions of each of the non-parties are analyzed using the standards set forth above.

#### **Ability Prosthetics and Orthotics, Inc. ("Ability")**

Non-party Ability seeks indefinite *in camera* treatment for one document and for portions of the transcript of the April 4, 2018 deposition of Ability's Chief Executive Officer. Ability supports its motion with a declaration from its Chief Executive Officer. The declaration describes in detail the confidential nature of the information contained in the document and discussed in the deposition, the competitive harm that Ability would suffer if this information were made publicly available, and the measures that Ability takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains competitively sensitive information regarding costs of goods, including any negotiated discounts, the allowable claim, the cost to Ability of various MPKs, and Ability's gross margin on each patient.

Ability has met its burden of demonstrating that this document and the selected portions of the deposition transcript are entitled to *in camera* treatment. However, the information contained in PX3282 and PX5149 consist of ordinary business records, not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for PX03282 and for the following excerpts of PX05149: 16:18, 20-22; 30:12; 47:12-13, 17; 59:19-20; 60:10-11; 61:13, 23-25; 62:1-3; 68:3, 7; 69:3-7, 23-25; 70:1-3, 12; 71:7; 74:12-17; 93:25; 94:2, 20-21; 95:23-24; 96:4, 23-25; 97:1-25; 98:1-3; 100:1-7; 102:1-8, 19, 22, 25; 103:4, 10-15; 109:2, 7-24; 110:22-25; 111:1-5, 12-15, 20-25; 112:1-6, 11-25; 113:1-2; 114:2-3; 115:14-25; 116:1-25; 117:1-17, 22-25; 118:3-10, 18-25; 119:1-25; 120:1-20; 156:8-10, 24-25; 158:6-16, 159:1, 4-7; 161:19-25; 162:1-13, 22-24; 163:20; 164:18-24; 168:19-23; 169:1-9; 170:5-7; 182:22-23; 189:14-17; 192:1-7; 201:9-10, 21; 202:1; 205:13, 25; 207:10, 25; 208:2, 10, 18; 211:16, 21; 212:6; 230:13, 17; 233:6-8; 247:11-14, 16; 248:5, 17, 25; 249:3, 9, 16; 250:9, 15, 20; 251:4; 252:19; 253:17-18, 21; 254:5, 21; 255:7; 256:4-5; 258:22-23; 264:11, 17, 22-23; 265:1-11, 15, 18, 20, 23; 266:7-8, 11-12; 267:1-3, 5, 7, 15-17 and 269:15, 18.

#### **Blatchford, Inc. t/a Endolite North America ("Endolite")**

Non-party Endolite seeks *in camera* treatment for varying lengths of time for 21 documents and for certain portions of deposition testimony. Endolite supports its motion

with a declaration from its Executive Chairman and President. The declaration describes in detail the confidential nature of the information contained in the documents and discussed in the deposition, the competitive harm that Endolite would suffer if this information were made publicly available, and the measures that Endolite takes to ensure that the information contained therein remains confidential. The declaration explains that the documents fall into four categories, addressed sequentially below.

The first category contains Endolite's sales and financial data, which reveals product-level sales, monthly sales reports by product line and distribution channel, sales targets, margins, distributor contracts and pricing information. Endolite 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 July 1, 2023, is GRANTED for: PX3174/RX0671/RX0876; RX0812; RX0813; RX0763; RX0016; RX0752; RX0329; RX0795; RX0791 and PX4001/RX0723.

The second category contains one document, Endolite's research and development plan, which contains specific, detailed descriptions of Endolite's products. Endolite has met its burden of demonstrating that this document is entitled to *in camera* treatment for a period of ten years. *In camera* treatment for a period of ten years, to expire on July 1, 2028, is GRANTED for: RX0716.

The third category contains Endolite's confidential sales support and training materials, which include confidential patient feedback, internal studies on competing products, and Endolite's evaluation of its strategic market positioning. Endolite 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 July 1, 2023, is GRANTED for: PX3177; PX3178/RX0288; and RX0395.

The fourth category contains Endolite's strategic plans, marketing insights, and competitive analyses, which reveal Endolite's internal analysis of its sales performance by product, self-evaluation of recent issues and customer complaints, and action plans. Endolite 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 July 1, 2023, is GRANTED for: RX0761; RX0607; RX0572; RX0754; RX0440; RX0717 and RX0842.

In addition, Endolite seeks *in camera* treatment for portions of a deposition transcript relating to the above information. Endolite has met its burden of demonstrating that the following portions of PX5144 are entitled to *in camera* treatment for a period of five years, to expire on July 1, 2023: 15:3-6; 15:8-11; 16:4-10; 16:18-17:1; 34:8; 35:1-36:4; 37:20-39:3; 40:12-41:19; 42:8-21; 43:8; 47:22-48:12; 61:2-5; 62:1-5; 63:17-19; 68:17-69:12; 69:15-21; 70:10-18; 72:14-73:9; 86:8; 86:22; 87:4; 87:10-12; 88:10-21; 89:5-10; 90:5-91:17; 91:20-92:2; 92:10-16; 95:6-11; 95:14-17; 100:9-101:13; 106:1-2; 106:22-107:3; 108:1-20; 109:16-110:2; 114:1-115:3; 115:5-14; 116:19-117:5; 117:20-118:22; 119:5-14; 119:17-123:8; 123:11-124:14; 125:18-20; 128:11-15; 128:18-129:5;

129:18-131:22; 142:22-143:1; 143:3-12; 146:6-8; 148:21-22; 149:7-150:4; 155:13-156:20; 157:2; 157:8-9; 157:13-158:1; 158:19-160:16; 161:14; 163:7; 163:14-165:9; 181:12-16; 181:21-182:1; 182:19-183:11; 186:16-187:12; 187:16-188:8; 188:11-190:4; 190:21-191:5; 193:3-7; 193:11-194:2; 195:17-196:14; 197:2-16; 197:19-198:14; 202:11-12; 202:17-205:13; 206:17-207:7; 210:16-211:1; 211:15-213:6; 213:17-214:12; 215:8-22; 216:7-11; 218:3-219:5; 223:10-17; 224:12-19; 225:1-3; 225:6-18; 226:12; 226:16-17; 226:20-229:13; 229:18-231:4; 231:14-232:9; 236:12-237:18; 238:11-14; 239:4-8; 239:12-240:20; 242:2-3; 242:7-17; 242:21-243:8; 243:13-22; 244:9-12; 244:20-21; 245:3-9; 245:19-246:7; 246:15-247:5; 248:1-10; 248:15-249:6; 252:15-253:17; 253:20-254:14; 254:17-255:1; 255:6-18; 256:6-257:2; 263:17-264:1; 266:22-267:13; 267:16-17; 275:3-12; 275:16-18; 275:21-276:2; 276:5-20; 277:1-280:5; 280:8-15 and 280:19-287:12. Endolite has also met its burden of demonstrating that the following portions of PX5144, relating to research and development plans, are entitled to *in camera* treatment for a period of ten years, to expire on July 1, 2028: 75:19-77:1; 78:4-79:16; 79:19-80:3; 80:6-15; 80:19-82:3; 82:10-84:11; 233:4-235:7; 235:12-19 and 236:1-8.

### **Cascade Orthopedic Supply, Inc. (“Cascade”)**

Non-party Cascade seeks *in camera* treatment for seven documents and for portions of a deposition transcript.<sup>1</sup> Cascade supports its motion with a declaration from its President. The declaration describes in detail the confidential nature of the information contained in the documents and discussed in the deposition, the competitive harm that Cascade would suffer if this information were made publicly available, and the measures that Cascade takes to ensure that the information contained therein remains confidential. The declaration explains that the documents and deposition testimony contain competitively sensitive information regarding prices, costs, numbers of specific units sold, profit margins, percentages, inventory ranks, and detailed sales information.

Cascade has met its burden of demonstrating that the documents and the selected portions of the deposition transcript are entitled to *in camera* treatment. In order to make the expiration date of *in camera* treatment consistent across exhibits provided by non-parties, which establishes consistency and furthers administrative efficiency,<sup>2</sup> *in camera* treatment for a period of five years, to expire July 1, 2023, is GRANTED for RX0736, and the requested portions of RX0601, RX0612/PX3074, RX0799 (exclusive of the cover email), RX0901, PX3075, PX0077, and to the following portions of RX0999/PX5120: 29:10-13, 17, 24; 31:10, 14-15; 32:4-5, 14-23; 34:9-10; 36:25; 37:1-10; 37:25; 42:22-25; 43:1-4; 45:5-6, 10, 13-14; 46:5-8, 12-13, 22-24; 47:4, 7-9, 14, 16; 56:22-25; 57:1-2; 63:11, 13-14; 64:18, 25; 65:11-12, 24; 66:7; 70:6, 11-13, 15, 18-20, 22, 24; 71:1, 7-25; 72:1-18; 77:1-16, 20; 79:23-25; 80:1-4; 80:5-20; 82:22, 24-25; 83:13, 17, 22, 25; 84:7-9; 97:21; 100:2-14, 18-25; 101:1-5, 21-22; 102:6-7, 19-25; 103:1-25, 104:5, 8, 10-12, 16;

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<sup>1</sup> On June 12, 2018, Cascade filed a motion for extension of time in which to file its motion for *in camera* treatment. That motion is GRANTED.

<sup>2</sup> See *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, at \*20 n.1.

107:7-22; 108:2-4, 8-13, 15-25; 109:1-2; 115:23; 116:1, 4, 7; 117:4, 7-8, 21-22; 122:4-15; 131:14-25; 132:1-4; 140:4-5, 8 and 149:10.

In addition, Cascade has shown that pages 083-088 and 109-144 of PX3075 contain sensitive personal information, relating to personal financial information and employment arrangements. This sensitive personal information shall be accorded permanent *in camera* treatment.

### **College Park Industries (“CPI”)**

Non-party CPI seeks *in camera* treatment for portions of a deposition transcript and documents produced in discovery. CPI supports its motion with a declaration from its President and Chief Operating Officer. CPI asserts that the information contained in the documents and discussed in the deposition address CPI’s development process and strategy, CPI’s competitive market and technology process and strategy, CPI’s product costs and pricing, and CPI’s intellectual property and technology. CPI explains that disclosure of these documents would cause CPI competitive harm and describes the measures that CPI takes to ensure that the information contained therein remains confidential.

CPI has met its burden of demonstrating that documents and the selected portions of the deposition transcript are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire July 1, 2023, is GRANTED for the documents and selected portions of the deposition transcript identified in CPI’s motion.

CPI did not identify the documents for which it seeks *in camera* treatment by a PX or RX number. The parties shall prepare a proposed order indicating that, by this Order, the CPI documents that have been granted *in camera* treatment, the length of time *in camera* treatment has been extended, and identifying each document by its PX or RX number.

### **Daw Industries, Inc. (“Daw”)**

Non-party Daw seeks indefinite *in camera* treatment for eight exhibits and two deposition transcripts. Daw supports its motion with a declaration from its President. The declaration describes in detail the confidential nature of the information contained in the documents and discussed in the deposition, the competitive harm that Daw would suffer if this information were made publicly available, and the measures that Daw takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain competitively sensitive information regarding pricing information, cost data, marketing practices, pricing decisions, contracts with distributors, and profit/gross margins.

Daw has met its burden of demonstrating that the documents are entitled to *in camera* treatment. However, the information for which Daw seeks *in camera* treatment consists of ordinary business records, and not trade secrets, and is not entitled to

indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for RX0734/PX4002, PX3158, PX3160, PX3161/RX0856, PX3162/RX0859, RX0091, PX3165/RX0781, and PX3167.

Daw's motion is DENIED WITHOUT PREJUDICE for the deposition transcripts, RX1017/PX5146 and RX1018/PX5147, because Daw did not narrow its request to only the portions of testimony containing confidential information. Daw is hereby instructed to review the deposition testimony and may, by July 13, 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.

**Michael Fillauer and Fillauer Companies, Inc. ("Fillauer")**

Non-party Fillauer seeks indefinite *in camera* treatment for PX3018 and for certain portions of Mr. Fillauer's deposition transcript relating to PX3018. Fillauer seeks *in camera* treatment for a period of three to five years for other portions of Mr. Fillauer's deposition. Fillauer supports its motion with a declaration from its Chief Executive Officer.

The declaration describes in detail the confidential nature of the information contained in the document and discussed in the deposition, the competitive harm that Fillauer would suffer if this information were made publicly available, and the measures that Fillauer takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains competitively sensitive information regarding the Fillauer's cost and labor analysis and that portions of the deposition reveal information contained therein. The declaration also explains that other portions of the deposition reveal Fillauer's revenue in 2017, specific current sales information and customer and distribution information, and analysis of competitors and current market conditions.

Fillauer has met its burden of demonstrating that PX3018 and the selected portions of the deposition transcript are entitled to *in camera* treatment. However, the information for which Fillauer seeks *in camera* treatment consists of ordinary business records, and not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for PX3018 and the following excerpts of PX5105: 25:14-27:10; 28:21-31:11; 31:12-34:3; 35:21-45:2; 50:24-51:18; 53:7-56:13; 69:3-18; 75:14-24; 79:4-17; 85:3-10; and 91:25-93:12.

**Fourroux Prosthetics, Inc. ("Fourroux")**

Non-party Fourroux seeks permanent *in camera* treatment for two documents and certain portions of one deposition transcript. Fourroux supports its motion with a declaration from its President. The declaration describes in detail the confidential nature of the documents and testimony and the competitive harm that Fourroux would suffer if these documents and testimony were made publicly available and the measures that



Fourroux takes to ensure that they remain confidential. The declaration explains that the documents and testimony contain competitively sensitive information revealing the amounts Fourroux pays for and is reimbursed for prosthetic knees, from which profit margins can be derived.

Fourroux has met its burden of demonstrating that these documents and deposition testimony are entitled to *in camera* treatment. However, the documents for which Fourroux seeks *in camera* treatment are 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 July 1, 2023, is GRANTED for RX0900 and RX0624 and for the following excerpts of the deposition transcript identified as PX5166/RX1034: 30:5-8, 22-25;42:23-43:14; 48:11-22; 60:25-61:23; 62:19-63:10; 69:22-70:3; 76:13-77:18; 113:15-114:9; 116:1-117:2, 122:13-123:9; 136:9-24 and 173:18-174:15.

### **Hanger, Inc. (“Hanger”)**

Non-party Hanger seeks *in camera* treatment for 28 documents and certain portions of deposition transcripts indefinitely or, alternatively, for a period of ten years. Hanger supports its motion with a declaration from its Senior Vice President, General Counsel, and Secretary. The declaration describes in detail the confidential nature of the documents and the competitive harm that Hanger would suffer if these documents and the deposition testimony thereon were made publicly available and the measures that Hanger takes to ensure that the information contained therein remains confidential. The declaration explains that the documents consist of five categories: internal business presentations, internal business communications, third-party payor and supplier contracts, internal program information and data analysis, and testimony from its president and chief executive. For many of its documents and deposition transcripts, Hanger has identified only selected portions that merit *in camera* treatment.

Hanger has met its burden of demonstrating that these documents and deposition testimony are entitled to *in camera* treatment. However, the documents for which Hanger seeks *in camera* treatment are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or for *in camera* treatment for an extended duration. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for the documents, or portions thereof, identified in Hanger’s motion.

### **Health Evolution Partners (“HEP”)**

Non-party HEP seeks *in camera* treatment for portions of 20 business documents for a period of five years. HEP supports its motion with a declaration from a Partner. The declaration describes in detail the confidential nature of the documents, the competitive harm that HEP would suffer if these documents were made publicly available, and the measures that HEP takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain sensitive and confidential business information regarding HEP’s portfolio companies

other than Freedom Innovations that are not relevant to this proceeding. HEP has prepared redacted versions of these documents that can be included on the public record.

HEP has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for the documents identified in HEP's motion. Counsel are instructed, to the extent possible, to use the redacted version of these documents at trial.

### **Jonesboro P&O Labs ("JPO")**

Non-party JPO seeks indefinite *in camera* treatment for two documents and portions of two deposition transcripts. JPO 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 deposition testimony, the competitive harm that JPO would suffer if these documents were made publicly available, and the measures that JPO takes to ensure that the information contained therein remains confidential. The declaration explains that the documents consist of a fee schedule between JPO and Arkansas BlueCross BlueShield and another fee schedule that contains the reimbursement amount that different payers have agreed to pay JPO for various prosthetic components.

JPO has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the information for which JPO seeks *in camera* treatment reflects ordinary business records, and not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for RX0905, PX3036 and for the following portions of RX0995/PX5108 (dep 3/8): 17:8-18:9; 20:5-20:19; 23:11-24:17; 28:5-30:2; 36:3-37:24; 51:3-52:6; 55:6-55:10; 56:10-57:16; 57:18-64:1; 68:13-72:13; 73:14-74:7; 75:24-77:17; 91:5-91:12; 91:16-91:24; 92:10-96:4; 98:21-99:1; 99:23-103:3; 111:16-117:10; 118:14-121:19; 132:2-132:20; 134:22-137:7; 140:2-141:6; 144:23-145:14; 159:1-160:8; 171:9-172:15; 173:1-173:21; 197:25-204:4; 205:16-209:3; 214:25-221:20; and 229:2-230:1 and for the following portions of PX5003 (IHT 11/29): 17:12-17:18; 18:21-19:18; 29:8-33:1; 50:11-53:18; 56:19-58:20; 60:24-67:24; 68:12-69:16; and 74:8-75:24.

### **Madison Capital Funding LLC ("Madison Capital")**

Non-party Madison Capital seeks indefinite *in camera* for three documents. Madison Capital supports its motion with a declaration from its Assistant Vice President. The declaration describes in detail the confidential nature of the documents, the competitive harm that Madison Capital would suffer if these documents were made publicly available, and the measures that Madison Capital takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain sensitive and confidential business information about proprietary models, analyses, and processes developed by Madison Capital to evaluate and manage credit risk. The declaration also explains that the competitive significance of the

proprietary analysis, models, and confidential criteria used in these documents is unlikely to decrease over time and thus, extended protection from public disclosure is appropriate.

Madison Capital has met its burden of demonstrating that its documents are entitled to *in camera* treatment. The information for which Madison Capital seeks *in camera* treatment does not reflect trade secrets, but does have competitive significance that is entitled to *in camera* treatment for an extended duration. *In camera* treatment for a period of ten years, to expire on July 1, 2028 is GRANTED for: PX3008, PX3009, and PX3010.

### **Mayo Clinic (“Mayo”)**

Non-party Mayo seeks *in camera* treatment for one exhibit, PX3129/RX0623, for a period of two years. Mayo supports its motion with a declaration from its Musculoskeletal Research Professor, Professor of Biomedical Engineering, and Director of the Motion Analysis Laboratory.

The declaration explains that this document is a draft research study manual and that Mayo has contractual obligations to maintain its confidentiality. The declaration further explains that Mayo anticipates the review process for this document will be completed and the manuscript published within the next two years.

Mayo has met its burden of demonstrating that this document is entitled to *in camera* treatment for the requested length of time. *In camera* treatment for a period of two years, to expire on July 1, 2020, is GRANTED for PX3129/RX0623.

### **Moelis & Company (“Moelis”)**

Non-party Moelis seeks indefinite *in camera* treatment for six documents. Moelis supports its motion with a declaration from its Managing Director. The declaration describes in detail the confidential nature of the documents, the competitive harm that Moelis would suffer if these documents were made publicly available, and the measures that Moelis takes to ensure that the information contained therein remains confidential. The declaration explains that the documents reveal its confidential fee structure and contact logs revealing confidential communications with persons from Moelis’ network of proprietary contacts.

Moelis has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the information for which Moelis seeks *in camera* treatment consists of ordinary business records, and not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for PX3048/RX0427, PX3057/RX0478, PX3135, PX3136, PX3264/RX0663, and PX3286.

### **Nabtesco Corporation (“Nabtesco”)**

Non-party Nabtesco seeks indefinite *in camera* treatment for one exhibit, PX3004. Nabtesco supports its motion with a declaration from its General Manager of the Assistive Products Department, Accessibility Innovations Company. The declaration describes in detail the confidential nature of the document and the competitive harm that Nabtesco would suffer if this document was made publicly available and the measures that Nabtesco takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains confidential sales, pricing, purchasing volumes and margin information.

Nabtesco has met its burden of demonstrating that this document is entitled to *in camera* treatment. However, the information for which Nabtesco seeks *in camera* treatment consists of ordinary business records, and not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for PX3004.

### **The Ohio Willow Wood Company (“WillowWood”)**

Non-party WillowWood seeks full *in camera* treatment for 30 documents and partial *in camera* treatment for 8 documents, including portions of deposition transcripts, for varying lengths of time. WillowWood supports its motion with a declaration from its President and Chief Executive Officer (“Abrogast declaration”). The declaration describes in detail the confidential nature of the documents, the competitive harm that WillowWood would suffer if these documents were made publicly available, and the measures that WillowWood takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contains information relating to high-level strategic plans, new product development efforts, detailed company financial information, customer bids and pricing, and potential acquisitions.

WillowWood has met its burden of demonstrating that its documents are entitled to *in camera* treatment. WillowWood sought indefinite *in camera* treatment for nine of its documents (listed in paragraph 11 of the Abrogast declaration). Of these documents, WillowWood has demonstrated that six of these documents reveal future research and development and new product development plans and thus has met its burden of showing that the competitive significance of these documents is unlikely to decrease over time. Thus, indefinite *in camera* treatment is GRANTED for PX3021/RX0978/RX0838, RX0445, RX0463, RX0535, RX0542, and RX0982. *In camera* treatment for a period of ten years, to expire on July 1, 2028, is GRANTED for: PX3022/RX0979, RX0983, RX1042, RX1043, RX0494, RX0498, RX0749, and the designated portions of the following deposition transcripts: PX5106, PX5152, PX5156, and PX5159. In addition, WillowWood has shown that PX0535 and RX1043 contain sensitive personal information. Therefore, permanent *in camera* treatment is GRANTED for PX0535 and RX1043.

The remainder of the documents for which *in camera* protection was sought consist of ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or to an extended period of ten years. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for the remainder of the documents for which WillowWood sought *in camera* treatment. By July 13, 2018, WillowWood shall prepare a proposed order that lists all WillowWood documents for which *in camera* treatment has been granted, including the portions therein of the transcripts, the corresponding PX or RX numbers, and each document's *in camera* treatment expiration date.

#### **Orthotic & Prosthetic Centers, Inc. (“O&P”)**

Non-party O&P seeks *in camera* treatment for seven documents and one deposition transcript. O&P supports its motion with a declaration from its President. The declaration describes the confidential nature of the documents and the competitive harm that O&P would suffer if these documents were made publicly available and the measures that O&P takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain fee schedules, revenue streams, costs charged by suppliers and the resultant gross margins received by O&P.

O&P has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for RX0011, RX0120, RX0121, RX0484, RX0641, RX0743, and RX0888.

O&P's motion is DENIED WITHOUT PREJUDICE for the deposition transcript identified as RX1011 because O&P did not narrow its request to only the portions of testimony containing confidential information. O&P is hereby instructed to review the deposition testimony and may, by July 13, 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.

#### **Össur Americas, Inc. (“Össur”)**

Non-party Össur seeks *in camera* treatment for various lengths of time for 24 exhibits and certain deposition excerpts. Össur supports its motion with a declaration from its Executive Vice President of Research and Development. The declaration describes in detail the confidential nature of the documents, the competitive harm that Össur would suffer if these documents were made publicly available, and the measures that Össur takes to ensure that the information contained in these documents remains confidential.

The declaration explains that the documents fall into four categories. The first category consists of documents detailing Össur's merger and acquisition efforts and strategies, which contain information regarding a highly-sensitive, abandoned transaction containing specific details of financial and strategic analyses, including revenue outlooks

and competitive intelligence on potential bidders, and regarding planned product capabilities and sales and revenue information. Ossur seeks indefinite *in camera* treatment for these documents. These documents are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment or for *in camera* treatment for an extended period. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for RX0878, PX3012, RX0472, RX0517, RX0526, RX0531, RX0475/PX3102, and RX0532.<sup>3</sup>

The second category contains documents describing Ossur's research and development efforts. These documents reveal Ossur's product design and development and include design specifications and drawings. Ossur seeks indefinite *in camera* treatment for these documents. Ossur has met its burden of demonstrating that documents in this category are entitled to indefinite *in camera* treatment. Indefinite *in camera* treatment is GRANTED for RX0880, RX0082/PX3245, RX0486/PX3246, RX0292, RX0881, RX0192, RX0088, RX0849, and RX0853.

The third category contains documents providing Ossur's pricing, sales, strategy, and positioning against competitors. Ossur 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 July 1, 2023, is GRANTED for PX3106, RX0883, PX3247, PX3248, RX0344, and RX0343/PX3098.

The fourth category consists of two deposition transcripts. Ossur seeks *in camera* treatment for selected portions of the deposition testimony relating to competitively sensitive information. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for the following excerpts of RX1002: 19:3-7; 20:5-6, 9-10, 13-14; 47:19-22; 48:1-5; 48:22-25; 59:7-10; 61:22-25; 62:2-3 and 71:6; and the following excerpts of RX0985: 16:12-13, 17-23; 17:1; 19:22-24; 21:2-3; 24:4-7; 47:17-21; 53:17-21; 109:21-23; 111:13-24; 112:1-3; 115:7; 147:3; 161:13-14; 208:19; 216:13; 217:3-4, 10; 225:18 and 236:13-14.

### **Parker-Hannifin Corporation (“Parker”)**

Non-party Parker seeks *in camera* treatment for nine documents and certain deposition excerpts for a period of five years. Parker supports its motion with a declaration from its Vice President and Head of Human Motion and Control business unit. The declaration describes in detail the confidential nature of the documents and deposition testimony, the competitive harm that Parker would suffer if these documents were made publicly available, and the measures that Parker takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain confidential information including financial analysis and planning, product development and release schedules, and business plans and strategies.

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<sup>3</sup> Ossur's request that these last three documents be redacted is denied. The documents are adequately protected by *in camera* treatment.

Parker has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for RX0375, PX3080/RX0406, PX3084/RX0401, PX3085/RX0373, PX3087/RX0483, PX3088/RX0465, PX3092/RX0301, PX3093/RX0410, PX3096/RX0302, PX5125/RX0990 and for the following excerpts of PX5125/RX0990: 20:16-26:15; 27:12-28:3; 29:8-14; 30:1-22; 35:6-46:12; 47:11-51:22; 54:1-59:6; 63:24-64:13; 66:6-69:7; 69:23-70:15; 79:21-82:21; 83:25-85:2; 86:5-93:15; 95:11-99:24; 100:14-101:23; 103:4-108:4; 109:7-115:9; 116:4-118:2; 118:20-119:2; 119:24-124:15; 125:12-125:22; 126:4-129:15; 130:3-132:12; 133:4-137:5; 137:21-139:13; 140:11-141:17; 142:9-156:17; 158:11-159:15; 160:5-24; 161:7-163:14; 163:20-172:14; 173:3-181:17; 182:24-183:20; 184:21-185:19; 187:14-23 and 188:14-189:3.

**Proteor, Inc. (“Proteor”)**

Non-party Proteor seeks *in camera* treatment for four documents and for one deposition transcript for a period of five years. Proteor supports its motion with a declaration from its Commercial Director and Vice President of Operations. The declaration describes in detail the confidential nature of the documents, the competitive harm that Proteor would suffer if these documents were made publicly available, and the measures that Proteor takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain confidential, commercially sensitive information detailing Proteor’s future strategic business plans in the United States, pricing information related to sales of Proteor products to customers, and past, current, and anticipated profits.

Proteor has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for RX0533, RX0678, and RX1029. Proteor’s motion is DENIED WITHOUT PREJUDICE with respect to the deposition transcript identified as PX5161/RX1029 because Proteor did not narrow its request to only the portions of testimony containing confidential information. Proteor is hereby instructed to review the deposition testimony and may, by July 13, 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.

**Scheck & Siress Prosthetics, Inc. (“Scheck”)**

Non-party Scheck seeks indefinite *in camera* treatment for certain excerpts from deposition testimony. Scheck supports its motion with a declaration from its President and Chief Executive Officer. The declaration describes the confidential nature of the information disclosed in the deposition, the competitive harm that Scheck would suffer if this information were made publicly available, and the measures that Scheck takes to ensure that this information remains confidential. The declaration explains that the deposition testimony reveals specific reimbursement rates and procurement costs.

Scheck has met its burden of demonstrating that this information is entitled to *in camera* treatment, but has not met its burden of demonstrating that it is entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for the following excerpts of RX1007: 109:17-110:6; 110:24-25; 111:11-25; 141:11-25; 158:5-15; 183:16-22; 187:24-188:5 and 232:5-11.

**United HealthCare Services, Inc. (“United”)**

Non-party United seeks indefinite *in camera* treatment for one document and selected portions of the transcript of one deposition. United supports its motion with a declaration from its Senior Clinical Program Consultant. The declaration describes in detail the confidential nature of the document and the deposition testimony, the competitive harm that United would suffer if this information was made publicly available, and the measures that United takes to ensure that the information contained therein remains confidential. The declaration explains that the document and testimony contain confidential, commercially sensitive reimbursement data and United’s internal methods and practices for setting reimbursement rates, assessing claims, and contracting with clinics and working with vendors. The declaration further explains that, although prices may change over time, the competitive significance of its methods and practices do not.

United has met its burden of demonstrating that this information is entitled to *in camera* treatment for a period of ten years. *In camera* treatment for a period of ten years, to expire on July 1, 2028, is GRANTED for PX3154/RX0890 and for the following excerpts of PX5165/RX1033: 31:16-32:20; 47:1-7, 11-13, 19-25; 48:1-8; 49:23-53:17; 54:1-58:9; 59:6-60:10; 60:23-62:16; 64:24-65:11; 71:24-72:1; 72:7-18; 72:21-73:4; 80:2-81:6; 82:6-12, 17; 82:22-83:16; 83:21-84:3; 84:9-15, 17-19, 22-24; 85:1-86:3, 7-15; 90:19-91:18; 92:19-93:15; 93:23-94:20; 95:1-3; 98:14-24; 99:19-24; 104:19-105:1, 12-14; 106:13-25; 107:2-7, 16-24; 108:8-112:5; 115:11-18; 116:2-118:21; 121:1-15 and 133:19-134:3.

**Wright & Filippis, Inc. (“W&F”)**

Non-party W&F seeks *in camera* treatment for one document and for specified pages of the transcript of one deposition. W&F supports its motion with a declaration from its President and Chief Executive Officer. The declaration describes in detail the confidential nature of the document, the competitive harm that W&F would suffer if this document were made publicly available, and the measures that W&F takes to ensure that the information contained therein remains confidential. The declaration explains that the document and testimony contain confidential, commercially sensitive information relating to pricing, cost, sales, volume, suppliers, and other proprietary information.

W&F has met its burden of demonstrating that the information is entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on July 1, 2023, is GRANTED for RX0089 for the following excerpts of PX5167/RX1035: 37:4-16; 39:17-40:8; 55:5-56:1; 57:8-58:2; 59:1-20; 60:16-61:10; 62:8-25; 64:2-12; 65:1-



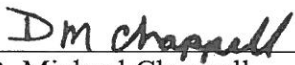
69:25; 70:3-25; 71:1-15; 73:1-23; 75:5-76:2; 89:13-16; 109:6-110:25; 113:7-114:3; 117:9-118:3; 119:9-10; 121:16-122:4 and 123:15-19.

#### 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>4</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 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 may 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:

  
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D. Michael Chappell  
Chief Administrative Law Judge

Date: July 6, 2018

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<sup>4</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.