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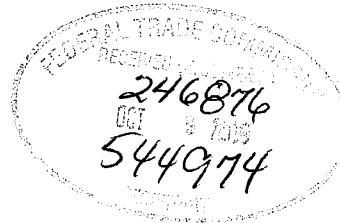
**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of )  
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**Polypore International, Inc.  
a corporation**

Docket No. 9327

PUBLIC



FEDERAL TRADE COMMISSION  
2009 OCT -9 PM 12:05  
DOCUMENT PROCESSING

**EXIDE TECHNOLOGIES’ (I) MOTION FOR *IN CAMERA* TREATMENT  
OF THE GILLESPIE DECLARATION, AND (II) OPPOSITION TO  
RESPONDENT’S MOTION FOR A COURT ORDER ALLOWING  
RESPONDENT TO REVIEW THE DECLARATION OF DOUGLAS  
GILLESPIE**

Non-party Exide Technologies (“Exide”) moves, pursuant to Federal Trade Commission (“FTC”) Rule of Practice 3.45(b), 16 C.F.R. § 3.45(b), for an order directing *in camera* treatment of the September 30, 2009 Declaration of Douglas Gillespie (“Gillespie Declaration”) that was submitted with Complaint Counsel’s Response To Respondent’s Second Motion To Reopen The Hearing Record.

In addition, Exide submits this opposition to Respondent’s Motion For A Court Order Allowing Respondent To Review The Declaration Of Douglas Gillespie.

**I. THE GILLESPIE DECLARATION SHOULD BE GIVEN *IN CAMERA* TREATMENT**

In the Declaration Of Douglas Gillespie In Support Of *In Camera* Treatment that is attached to this pleading, Mr. Gillespie explains why the Gillespie Declaration (*i.e.*, his prior declaration on September 30, 2009) should receive *in camera* treatment. As he explains, the Gillespie Declaration principally discusses Exide’s ongoing negotiations

with Daramic for the supply of separators. It also discloses highly confidential information concerning Exide's plans and expectations concerning potential contractual arrangements with Daramic and others after the expiration of Exide's current contract with Daramic at the end of 2009. Disclosure of this information would cause serious harm to Exide's ability to negotiate new supply arrangements and place Exide at a significant negotiating disadvantage. For that reason, Exide treats such information as highly confidential.

Similar Exide documents have previously been given *in camera* treatment for these reasons. See Order On Non-Party Exide's Supplemental Motion For *In Camera* Treatment at 2 (May 18, 2009) (granting *in camera* treatment for documents relating to Daramic contract proposal, including "minutes and notes reflecting Exide's internal analysis of Daramic's proposal"); Order On Non-Parties' Motions For *In Camera* Treatment at 4-5 (May 6, 2009) (granting *in camera* treatment for documents relating to ongoing contract negotiations with potential suppliers). The Gillespie Declaration merits the same *in camera* treatment.

## **II. RESPONDENT'S COUNSEL SHOULD NOT BE PERMITTED TO DISCLOSE THE GILLESPIE DECLARATION TO DARAMIC'S EXECUTIVES**

Polypore has requested an order that would permit disclosure of the Gillespie Declaration to "Respondent" – which presumably includes, but certainly is not limited to, the Daramic executives who are directly involved in ongoing contract negotiations with Exide. That motion should be denied.

Respondent's arguments in support of this motion are frivolous, at best. The claim that it is "impossible" to comply with the October 2, 2009 Order Requiring Reply

Brief (“Order”) without disclosing the Gillespie Declaration is refuted by the clear terms of the Order itself, which requires Respondent to address “[w]hether Respondent possesses evidence . . .” Order ¶ 2. Compliance with the Order does not require disclosure of information *to* Respondent; it requires disclosure of information *by* Respondent. Respondent surely knows what evidence it does or does not possess. And if Respondent possesses relevant evidence, any competent counsel should be able to elicit it without disclosing the Gillespie Declaration or its contents.

Respondent’s counsel surely understands this. The Protective Order that has governed the treatment of confidential discovery information throughout this proceeding has forbidden the disclosure of confidential information to Respondent. Respondent’s counsel has vigorously defended the litigation, without once (to Exide’s knowledge) claiming that there was any need to disclose protected confidential discovery information in order to respond to such confidential information. Similarly, Respondent’s counsel was barred from disclosing Mr. Gillespie’s *in camera* testimony to Respondent, but nonetheless mounted a vigorous defense with no claim that there was any need to waive the *in camera* rules for the benefit of Daramic’s executives. Indeed, if there were any merit to Respondent’s argument – that confidential information from third parties must be disclosed to the Respondent, in order to elicit evidence that Respondent already possesses – protective orders and *in camera* rules would be set aside routinely, not only in this case but in *every* case.

There is no reason to inflict harm on Exide, a non-party, or to confer a commercial advantage on Daramic, by permitting the disclosure of Exide’s confidential

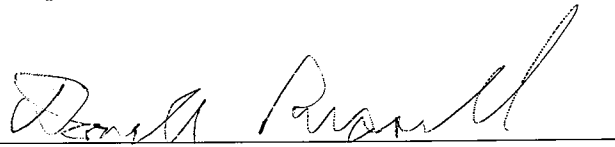
information – especially when such disclosure is entirely unsupported by any legitimate need.

### CONCLUSION

The Gillespie Declaration should be given *in camera* treatment. Respondent's motion should be denied.

Dated: October 9, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald J. Russell", written over a horizontal line.

Donald J. Russell

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Counsel for Exide Technologies

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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**In the Matter of**

Docket No. 9327

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**Polypore International, Inc.**  
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**PROPOSED ORDER**

Upon the motion of non-party Exide Technologies, and for good cause shown, it is hereby ORDERED:

The September 30, 2009 Declaration Of Douglas Gillespie, submitted with Complaint Counsel's Response To Respondent's Second Motion To Reopen The Hearing Record, shall be placed *in camera* for a period of three years; AND

Respondent's Motion For A Court Order Allowing Respondent To Review The Declaration Of Douglas Gillespie is denied.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date:

## CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing Exide Technologies' (I) Motion For *In Camera* Treatment Of The Gillespie Declaration, And (II) Opposition To Respondent's Motion For A Court Order Allowing Respondent To Review The Declaration Of Douglas Gillespie, and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

Donald S. Clark, Secretary  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Rm H-135  
Washington, D.C. 20580  
[secretary@ftc.gov](mailto:secretary@ftc.gov)

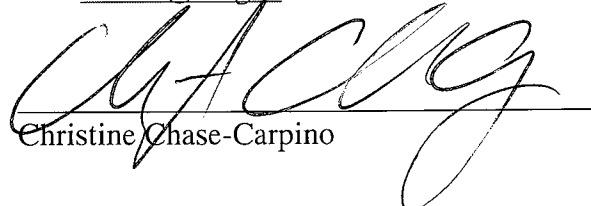
I hereby certify that on October 9, 2009, I caused to be served one copy via electronic mail delivery and two copies via hand delivery of the foregoing Exide Technologies' (I) Motion For *In Camera* Treatment Of The Gillespie Declaration, And (II) Opposition To Respondent's Motion For A Court Order Allowing Respondent To Review The Declaration Of Douglas Gillespie upon:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
[oyalj@ftc.gov](mailto:oyalj@ftc.gov)

I hereby certify that on October 9, 2009, I caused to be served by first class mail delivery and electronic mail delivery a copy of the foregoing Exide Technologies' (I) Motion For *In Camera* Treatment Of The Gillespie Declaration, And (II) Opposition To Respondent's Motion For A Court Order Allowing Respondent To Review The Declaration Of Douglas Gillespie upon:

William L. Rikard, Jr.  
Eric D. Welsh  
Three Wachovia Center  
401 South Tryon Street, Suite 3000  
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[williamrikard@parkerpoe.com](mailto:williamrikard@parkerpoe.com)  
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[sdahm@ftc.gov](mailto:sdahm@ftc.gov)

  
Christine Chase-Carpino

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

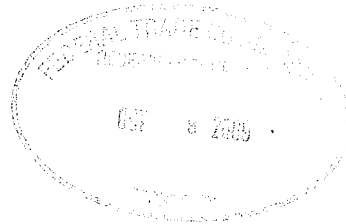
**In the Matter of**

**Docket No. 9237**

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**Polypore International, Inc.  
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**DECLARATION OF DOUGLAS GILLESPIE  
IN SUPPORT OF *IN CAMERA* TREATMENT**

Pursuant to 28 U.S.C. § 1746, I hereby make the following statement:

1. My name is Douglas Gillespie. I am the Vice President for Global Procurement for Exide Technologies. On September 30, 2009, I signed the "Declaration Of Douglas Gillespie" ("Gillespie Declaration") which Complaint Counsel submitted with its Response To Respondent's Second Motion To Reopen The Hearing Record. I submit this declaration in support of Exide Technologies' (I) Motion For *In Camera* Treatment Of The Gillespie Declaration, and (II) Opposition To Respondent's Motion For A Court Order Allowing Respondent To Review The Declaration Of Douglas Gillespie.

2. The Gillespie Declaration contained information that is highly confidential. Public disclosure of that material would seriously harm Exide's commercial and competitive interests. For that reason, Exide requests that the Gillespie Declaration be given *in camera* treatment until such time as disclosure will not cause this harm.

3. The Gillespie Declaration principally discusses Exide's ongoing negotiations with Daramic for the supply of separators. The declaration discloses, among other things, Exide's analysis of the available sources of supply for separators used to produce flooded

automotive (SLI) batteries in North America and separators used to produce flooded motive, deep cycle, and UPS batteries manufactured in North America. It also discloses highly confidential information concerning Exide's plans and expectations concerning potential contractual arrangements with Daramic and others after the expiration of Exide's current contract with Daramic at the end of 2009. Disclosure of this information would cause serious harm to Exide's ability to negotiate new supply arrangements.

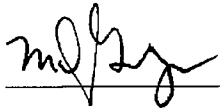
4. Disclosure of the Gillespie Declaration to Daramic business executives, in particular, would harm Exide's position in the ongoing negotiations. In my experience as the executive in charge of negotiating Exide's procurement contracts, disclosure of information of this type may lead to a significant negotiating disadvantage.

5. This information about Exide's negotiating plans and options is treated by the company as highly confidential. The information is distributed within the company only to those who have a specific need for it. These individuals are typically bound by confidentiality obligations that would prohibit them from disclosing the information if they left the company. This information is not disclosed to others outside of the company and, in particular, is not disclosed to Exide's competitors or suppliers.

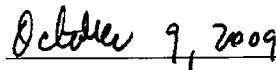
6. Whatever the result of current negotiations, Exide may find itself negotiating with Daramic for a new agreement at any time in the foreseeable future. Disclosure of the Gillespie Declaration would prejudice Exide's negotiating position in such negotiations. For this reason, I believe that the information in the Gillespie Declaration should receive *in camera* treatment for a period of at least three years, and that any shorter period would risk substantial competitive and commercial harm to Exide.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Douglas Gillespie



Date