

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



ORIGINAL

DOCKET NO. 9377

In the Matter of)
)
Tronox Limited,)
a corporation,)
)
National Industrialization Company)
(TASNEE),)
a corporation,)
)
National Titanium Dioxide Company)
Limited (Cristal),)
a corporation, and)
)
Cristal USA Inc.,)
a corporation,)
)
Respondents.)
)
_____)

NON-PARTY TRUE VALUE COMPANY'S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party True Value Company ("True Value") respectfully moves this Court for *in camera* treatment of three documents ("Confidential Documents") and select portions of the deposition transcript of John Vanderpool (and accompanying exhibits) ("Confidential Testimony"), as each of these materials contains competitively-sensitive, confidential business information (collectively, the "Confidential Materials"). True Value produced these documents, among others, in response to third-party subpoenas and a civil investigative demand in this matter. The Federal Trade Commission ("FTC") and Respondents in the above-captioned matter have now notified True Value that they intend to introduce the Confidential Materials into evidence at the

administrative trial in this matter. *See* Letters from the Federal Trade Commission and Respondents dated April 19, 2018, attached hereto as Exhibits A-B, respectively.

All of the materials for which True Value is seeking *in camera* treatment contain confidential business information, such that if they were to become part of the public record, True Value would be significantly (and financially) harmed in its ability to compete in the retail paint industry. For the reasons discussed in this motion, True Value requests that this Court afford its Confidential Materials limited *in camera* treatment, for a period of at least five years. In support of this motion, True Value relies on the Declaration of John Vanderpool (“Vanderpool Declaration”), attached hereto as Exhibit C, which provides additional details on the materials for which True Value is seeking *in camera* treatment. Counsel for both the FTC and Respondents confirmed that they do not oppose this Motion.

I. The Documents for Which Protection Is Sought.

True Value seeks *in camera* treatment for the following Confidential Materials, copies of which are attached as Exhibit D-G, respectively.

<u>Exhibit No.</u>	<u>Description</u>	<u>Date</u>	<u>BegBates</u>	<u>EndBates</u>
PX4197	True Value Response to Civil Investigative Demand FTC File No. 171-0085	TBD	TRUE-VALUE-000004	TRUE-VALUE-000014
PX4198	True Value Document: Ti02 Distribution Pounds – Spend - 2017	TBD	TRUE-VALUE-000065	TRUE-VALUE-000066
PX4205	True Value Manufacturing Co., Raw Material – Where Used	2/15/08	TRUE-VALUE-000070	TRUE-VALUE-000095
PX7044	Deposition Transcript: John Vanderpool (and accompanying exhibits)	3/27/18	PX7044-001	PX7044-055

II. True Value's Documents Are Sufficiently Secret and Material such that Disclosure Would Result in Serious Injury to True Value.

A party or third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence only by a motion to the Administrative Law Judge. 16 C.F.R. § 3.45(b). *In camera* treatment is appropriate when its “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are “sufficiently secret and sufficiently material to [its] business that disclosure would result in serious competitive injury.” *In re Jerk, LLC*, 2015 F.T.C. LEXIS, at *2 (Feb. 25, 2015) (quoting *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980)); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, at *5 (1999). In this context, courts generally attempt “to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

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

In light of the FTC's recognition that “[t]he likely loss of business advantages is a good example of a clearly defined, serious injury,” courts generally attempt “to protect confidential business information from unnecessary airing.” See *In re Hoechst Marion Roussel, Inc.*, 2000 F.T.C. LEXIS 138, at *6 (Sept. 19, 2000) (internal quotations and citation omitted); *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1186-88. Indeed, the FTC found *in camera* treatment of business records

to be appropriate on a number of occasions. *See In re Jerk, LLC*, 2015 F.T.C. LEXIS, at *2 (collecting sources).

Here, the Confidential Documents are all secret and material to True Value's business as discussed in detail in the Vanderpool Declaration. In sum, the documents at issue contain information of competitive significance to True Value, such as a detailed monthly and yearly breakdown of True Value's TiO₂ volume levels from each supplier and net spend on TiO₂ from 2014-2017, from which one could potentially extrapolate profit margins. (Vanderpool Declaration at ¶¶ 5-6.) Most of this information is less than three years old, *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (2000), or remains competitively sensitive, *In re Jerk, LLC*, 2015 F.T.C. LEXIS, at *2.

With respect to the Confidential Testimony, it also contains information that is sufficiently secret and material to True Value – specifically, testimony related to the Confidential Documents, supplier contracts, TiO₂ pricing and customer identities [24:10-23, 32:9-17, 34:4-50:22, 54:16-21, 56:23-57:5, 71:9-23, 75:8-11, 81:10-84:9, 88:3-22, 92:7-97:6, 99:22-104:1, 104:18-107:19, 108:18-119:15, 121:7-20, 122:6-126:22, 130:8-136:5, 137:6-11, and 138:8-141:20]. (Vanderpool Declaration at ¶ 10.) The cited pages and line numbers reflect that Mr. Vanderpool discusses at length private True Value data and metrics, including some of the same data reflected in the Confidential Documents, as well as what certain data means when viewed in context. In addition, Mr. Vanderpool provided significant insight into True Value's customers, business practices, and more highly sensitive business information. (*Id.* at ¶11.) Further, Mr. Vanderpool discussed True Value's business structure and its internal views on the paint industry. (*Id.*) In sum, Mr. Vanderpool's Confidential Testimony provides an extensive look at True Value's internal know-how, business practices, strategy, customers, net spend, volume levels and data in general, all of

which True Value has spent a great deal of time and resources developing and protecting since its inception.

As a manufacturer of paint for sale in retail hardware stores, True Value depends on its ability to provide quality paint at a reasonable price, and thus requires confidentiality of its net spend and volume levels so as to not disclose profit margins and damage its standing in the vendor community and with retailers and other end users. (Vanderpool Declaration at ¶ 3.) The information contained in the Confidential Documents is not shared with anyone outside of the company. (*Id.* at ¶ 5.) This same level of confidentiality applies internally at True Value, where only a limited number of employees have access to the TiO₂ data, and the rest are provided access, if at all, on a “need to know” basis. (*Id.*) For example, only members of the Procurement, Finance, Production and Lab teams have access to this data, all of which need to have access to the data in the ordinary course of their respective duties. (*Id.*) Otherwise, the TiO₂ data is not divulged outside of this core group and it is the standard practice of True Value to internally wall off other employees in order to maintain the TiO₂ data in strict confidentiality. (*Id.*) In addition, when True Value produced the documents, it did so with the understanding that they were to be maintained as confidential pursuant to the Protective Order in this case. (*Id.* at ¶ 9.) Because of the highly confidential and proprietary nature of the information and its materiality to True Value’s business, *in camera* treatment is appropriate.

Moreover, unlike cases where the movant’s request for *in camera* treatment covers massive amounts of large documents, without discriminating between the confidential and non-confidential information contained therein, *see, e.g., In re Basic Research*, No. 9318, 2006 WL 271520, at *2 (F.T.C. Jan. 25, 2006), the Confidential Materials for which True Value seeks *in camera* treat are limited in page number and scope, with only specifically tailored portions of Mr. Vanderpool’s

Confidential Testimony selected, and consist solely of confidential business information that, if disclosed, would cause True Value to suffer a serious competitive injury. *See In re Union Co. of Calif.*, 2005 F.T.C. LEXIS 9, at *1 (Jan. 19, 2005).

Further, disclosure of the Confidential Materials will result in the loss of a business advantage to True Value. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255, at *7 (“The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’”). The Ti02 data, along with identification of customers and other confidential testimonial materials, represents proprietary information that, if it were disclosed publicly, would create a significant competitive advantage to True Value’s competitors and suppliers who would not otherwise have access to this data. For instance, the Ti02 data could be used by: (i) competitors to steal business or diminish True Value’s market share and (ii) by suppliers to raise prices or increase leverage in contract negotiations – all of which amount to a competitive disadvantage to True Value. (Vanderpool Declaration at ¶¶ 6-7.) True Value spends a significant amount of time and internal resources on compiling and tracking the Ti02 data, such that it would be highly prejudicial to allow third parties to gain from these efforts and essentially use the data to True Value’s detriment. (*Id.* at ¶ 8.)

III. Public Disclosure of the Confidential Materials Would Result in Serious Competitive Injury to True Value.

The Ti02 data in its present form, could be extrapolated by competitors, manufacturers, vendors and suppliers to achieve a competitive advantage over True Value. (Vanderpool Declaration at ¶ 6.) Specifically, competitors could use this Ti02 and customer data to determine True Value’s market share and, therefore, would be in a significantly stronger position to compete with True Value for advantageous manufacturing and provider agreements. (*Id.*) Additionally, because the monthly and yearly Ti02 pounds and spend data is further broken down by True Value’s suppliers, other suppliers can determine how much True Value is paying, and this could

potentially put the suppliers in a stronger bargaining position and give them more leverage to negotiate more favorable contract and pricing terms. (*Id.* at ¶ 7.) The FTC has previously recognized that this kind of information warrants *in camera* treatment because of the unearned advantages its disclosure would confer to others. See *In re McWane, Inc.*, No. 9351, 2012 WL 3862131, at *2 (F.T.C. Aug. 17, 2012) (finding that customer data, pricing and cost information was appropriate for *in camera* treatment); *In re General Foods Corp.*, 96 F.T.C. at 169 n.4 (affirming that profit data generally is both secret and material to the producing party).

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

IV. *In Camera* Treatment of the Confidential Documents Will Not Impede Public Understanding of the FTC's Decision in this Matter.

True Value recognizes that 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. at 458. However, the information contained within the Confidential Materials is in no way central to the FTC's claims against Respondents. Adjudication of these claims will not hinge upon True Value's customer base and TiO₂ volume levels and net spend from 2014-2017 or otherwise be vital to either the FTC's case-in-chief or Respondents' defense. Therefore, *in camera* treatment

of the Confidential Materials will not harm the public interest or detract from the public understanding of the FTC's decision in this matter. In other words, as the FTC aptly stated in *Kaiser Aluminum & Chemical Corp.*, "[a] public understanding of this proceeding does not depend on access to these data submitted by these third party firms." 103 F.T.C. at 500.

V. The Confidential Materials Contain Business Records for which Limited *In Camera* Treatment is Justified.

The FTC has recognized the propriety of granting *in camera* treatment to business records. *See, e.g., In re Champion Spark Plug Co.*, 1982 F.T.C. LEXIS 85, at *2 (Apr. 5, 1982); *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188-89; *In re Kaiser Aluminum*, 103 F.T.C. at 500. While trade secrets have historically received more protection than business records, and can be given *in camera* treatment indefinitely, where *in camera* treatment is granted for business records, it is typically provided for two to five years. *See, e.g., In re Union Oil Co. of Cal.*, 2004 F.T.C. LEXIS 223, at *2 (Nov. 22, 2004); *Conference Interpreters*, 1996 F.T.C. LEXIS 298, at *13-14 (June 26, 1996). Here, True Value is not seeking the heightened protection of permanent *in camera* treatment, it is seeking durations for *in camera* treatment that only cover a period in which the information remains commercially sensitive for True Value. (Vanderpool Declaration at ¶ 12.) For all the Confidential Materials, True Value believes a limited *in camera* treatment for a period of at least five years is warranted.

VI. Conclusion

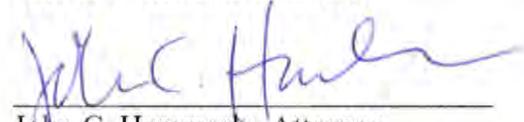
For the reasons set forth above and in the accompanying Vanderpool Declaration, True Value respectfully requests that this Court grant limited *in camera* treatment of the Confidential Documents in their entirety for a period of at least five years.

Date: April 30, 2018

Respectfully submitted,

TRUE VALUE COMPANY

By:



John C. Hammerle, Attorney

True Value Company

8600 W. Bryn Mawr Ave.

Chicago, IL 60631

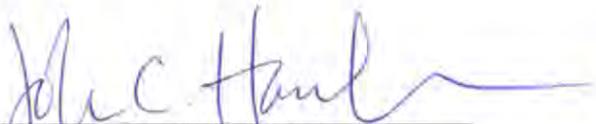
Ph. 773-695-5458 / Fax 773-695-5465

john.hammerle@truevalue.com

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for non-party True Value Company ("True Value") notified counsel for the parties via email on or about April 25, 2018 that it would be seeking *in camera* treatment of the Confidential Documents. Both counsel for the Federal Trade Commission and the Respondents indicated that they would not object to True Value's motion.

Date: April 30, 2018



John C. Hammerle, Attorney
True Value Company
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Chicago, IL 60631
Ph. 773-695-5458 / Fax 773-695-5465
john.hammerle@truevalue.com

EXHIBIT A



Bureau of Competition
Mergers II Division

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

April 19, 2018

VIA EMAIL TRANSMISSION

True Value Company
c/o John C. Hammerle
Retail Support Center
8600 W. Bryn Mawr Ave.
Chicago, IL 60631
John.Hammerle@truevalue.com

RE: *In the Matter of Tronox Limited et al.*, Docket No. 9377

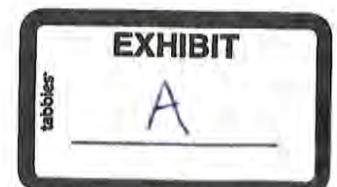
Dear John:

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

The administrative trial is scheduled to begin on May 18, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

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

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



affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Second Revised Scheduling Order (revised on February 23, 2018), **the deadline for filing motions seeking *in camera* treatment is May 1, 2018**. A copy of the February 23, 2018 Second Revised Scheduling Order and the December 20, 2017 original Scheduling Order, which contains Additional Provisions, can be found at <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>.

If you have any questions, please feel free to contact me at (202) 326-2199.

Sincerely,

/s/ Sean Hughto

Sean Hughto

Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
PX4197	True Value Response to Civil Investigative Demand FTC File No. 171-0085	TBD	TRUE-VALUE-000004	TRUE-VALUE-000014
PX4198	True Value Document: TiO2 Distribution Pounds - Spend - 2017	TBD	TRUE-VALUE-000065	TRUE-VALUE-000066
PX4205	True Value Manufacturing Co., Raw Material - Where Used	2/15/2018	TRUE-VALUE-000070	TRUE-VALUE-000095
PX7044	Deposition Transcript: James Vanderpool	3/27/2018	PX7044-001	PX7044-055

EXHIBIT B

Arnold & Porter

Seth Wiener
 +1 202.942.5691 Direct
 Seth.Wiener@arnoldporter.com

April 19, 2018

VIA EMAIL AND UPS

John C. Hammerle
 True Value
 8600 West Bryn Mawr Avenue
 Chicago, Illinois 60631-3505"

Re: In re Tronox Limited (FTC Docket No. 9377)

Dear Mr. Hammerle:

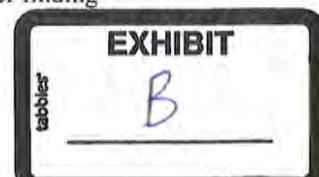
This letter services as notice, per footnote one of the Second Revised Scheduling Order, entered February 23, 2018, and paragraph ten of the Protective Order Governing Confidential Material, entered December 7, 2017 in the above-captioned matter before the United States Federal Trade Commission, that Tronox Limited, National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively "Respondents") plan to introduce the following documents or transcripts containing confidential material produced by True Value at the hearing before Judge Chappell:

Bates Begin	Bates End
TRUE-VALUE-000004	TRUE-VALUE-000014
TRUE-VALUE-000065	TRUE-VALUE-000066
TRUE-VALUE-000070	TRUE-VALUE-000095

- Deposition Transcript of John Vanderpool (and accompanying exhibits)

Per paragraph seven of the Scheduling Order, entered December 20, 2017, I inform you "of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).¹ Motions also must be

¹ "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

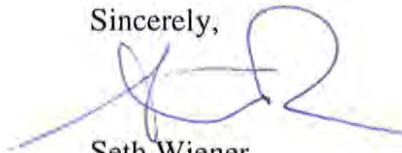


The logo for Arnold & Porter, featuring the company name in a serif font with a stylized graphic element above it.

John C. Hammerle
April 19, 2018
Page 2

supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge.”

Sincerely,

A handwritten signature in blue ink, appearing to read 'Seth Wiener', with a large, stylized flourish at the end.

Seth Wiener

that the material constitutes sensitive personal information.” *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *see also In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015).

EXHIBIT C

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

_____))
 In the Matter of))
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 Tronox Limited,))
 a corporation,))
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 National Industrialization Company))
 (TASNEE),))
 a corporation,))
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 National Titanium Dioxide Company))
 Limited (Cristal),))
 a corporation, and))
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 Cristal USA Inc.,))
 a corporation,))
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 Respondents.))
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 _____)

DOCKET NO. 9377

**DECLARATION OF JOHN VANDERPOOL IN SUPPORT OF NON-PARTY
TRUE VALUE COMPANY'S MOTION FOR *IN CAMERA* TREATMENT**

1. John Vanderpool, hereby declare as follows:

1. I am the Divisional Vice President for Paint at True Value Company ("True Value"). I make this declaration in support of Non-Party True Value Company's Motion for In Camera Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the documents True Value produced in the above-captioned matter in response to subpoenas and civil investigative demands from the Federal Trade Commission and Respondents. Given my position at True Value, I am familiar with the type of information contained in the documents and its competitive significance to True Value. Based



on my review of the documents, my knowledge of True Value's business, and my familiarity with the confidentiality protection afforded this type of information by True Value. I submit that the disclosure of these documents to the public, suppliers, customers and competitors of True Value would cause serious competitive injury to True Value.

3. True Value is, and has been for over 50 years, the wholesaler for True Value® stores ("Members"). Through its General Paint Manufacturing division, True Value manufactures various paint products, including aerosol sprays, latex primers and finish, top coats, and cleaning products, most of which utilize titanium dioxide or TiO₂, for sale to these True Value® member stores and for private label resale by other retailers. True Value purchases TiO₂ from various suppliers for use in its paint products, and applies proprietary methods and formulas to create the paint for its customers. Such methods distinguish True Value's business model from its competitors and are critical to its business development and competition strategies. True Value depends on its ability to provide quality paint at a reasonable price, and thus requires confidentiality of its net spend and volume levels so as to not disclose profit margins and damage its standing in the vendor community and with retailers and other end users.

4. The FTC and Respondents have informed True Value that they intend to use three of the documents that True Value produced in response to subpoenas at the administrative hearing in this matter, as well as the deposition transcript (and accompanying exhibits) of John Vanderpool, as a representative of True Value and in my personal capacity, which also was taken in connection with a subpoena issued in this matter. Of these documents, Exhibits PX4197, PX4198, PX4205, and certain portions of my deposition transcript are particularly sensitive and contain confidential business information. As described in the Motion, True Value seeks in camera protection of the following documents and testimonial materials:

<u>Exhibit No.</u>	<u>Description</u>	<u>Date</u>	<u>BegBates</u>	<u>EndBates</u>
PX4197	True Value Response to Civil Investigative Demand FTC File No. 171-0085	TBD	TRUE-VALUE-000004	TRUE-VALUE-000014
PX4198	True Value Document: Ti02 Distribution Pounds – Spend - 2017	TBD	TRUE-VALUE-000065	TRUE-VALUE-000066
PX4205	True Value Manufacturing Co., Raw Material – Where Used	2/15/08	TRUE-VALUE-000070	TRUE-VALUE-000095
PX7044	Deposition Transcript: John Vanderpool (and accompanying exhibits)	3/27/18	PX7044-001	PX7044-055

5. Exhibits PX4197, PX4198 and PX4205 all contain highly sensitive and confidential Ti02 data consisting of pounds used in paint formulas, net spend, and/or volume levels from 2014-2017, separated by individual suppliers. This Ti02 data is not publicly reported and would be extremely difficult, if not impossible, for True Value's competitors or other third parties to access or duplicate. True Value keeps this information in strict confidence and does not share the information contained in these documents with anyone outside of the company. Within True Value, Ti02 data is only accessible by a limited number of employees who need access to the data in the ordinary course of their duties. These employees work on the Procurement, Finance, Production and Lab teams. All other employees at True Value are not privy to this data and are strictly on a "need to know" basis. Other than what is referenced herein, the Ti02 data is not disclosed outside of this core group and it is the standard practice of True Value to internally wall off other employees in order to maintain the Ti02 data in strict confidentiality.

6. The Ti02 data is significantly valuable not only to True Value, but also to its competitors and suppliers. Disclosure of the information within these three exhibits would be highly detrimental to True Value, as doing so would provide competitors and suppliers with

competitively significant information, causing serious and irreparable harm to True Value, which would, as a result, lose a business advantage that it has fairly created for itself in the marketplace. The data in its current form can be extrapolated into other data, which could be very damaging to True Value's paint business. For instance, competitors could use the monthly and yearly breakdown of True Value's net spend to determine profit margins, steal business and diminish True Value's share of the paint market in the United States. This would allow competitors to better compete with True Value for advantageous manufacturing and provider agreements.

7. Likewise, suppliers could also benefit from True Value's TiO₂ data being made public. True Value has agreements with various TiO₂ suppliers, all of which are confidential. However, if suppliers are made aware of how much True Value spends on TiO₂ per pounds used, separated by individual supplier, they can extrapolate that data to increase prices and put themselves in a stronger bargaining position as well as give themselves more leverage to negotiate more favorable contract and pricing terms. Thus, it would not only harm True Value's ability to negotiate with and obtain fair pricing from its suppliers, which in turn would hurt customers, but it would also harm True Value's ability to compete with other paint manufacturers.

8. True Value spends a significant amount of time and resources on compiling and tracking the TiO₂ data contained in these three exhibits and would be highly prejudiced if it were to be disclosed publicly. Both competitors and suppliers would gain an unnecessary and damaging competitive advantage over True Value. If they have this information, they will be able to use informed approximations to better compete against and/or negotiate with True Value. Additionally, customers and end users/retailers with this information could unfairly use it to True Value's detriment.

9. True Value produced the information contained with Exhibits PX4197, PX4198 and PX4205 with the understanding that it would be treated as confidential pursuant to protective order in the above-captioned matter.

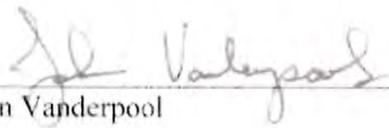
10. In addition, Exhibit PX7044 is the transcript of the Deposition of John Vanderpool in this action, along with any accompanying exhibits. At the time my deposition was taken, the entire transcript was designated Confidential pursuant to the Protective Order. The transcript contains highly sensitive information and analysis about Exhibits PX4197, PX4198 and PX4205, as well as terms of supplier contracts, Ti02 pricing, volume levels and net spend, and customer identities. *See* PX7044 at 24:10-23, 32:9-17, 34:4-50:22, 54:16-21, 56:23-57:5, 71:9-23, 75:8-11, 81:10-84:9, 88:3-22, 92:7-97:6, 99:22-104:1, 104:18-107:19, 108:18-119:15, 121:7-20, 122:6-126:22, 130:8-136:5, 137:6-11, and 138:8-141:20. The selected portions of the transcript cited herein also contain information related to True Value's internal views, thoughts, and analysis that drives the actions True Value takes (and doesn't take) to grow its business. These testimonial materials therefore go beyond the raw numbers to True Value's know-how, strategy and procedures.

11. If the contents of these testimonial materials and the accompanying exhibits were made public, it would injure True Value because their disclosure would provide significant insight to True Value's competitors and suppliers of its profit margins, views of the industry, and share of the marketplace, as well as important financial information and what aspects of True Value's business are most vulnerable to outside forces. All such information is hidden – and heavily protected – from the public, and is therefore highly confidential and sensitive to True Value.

12. Accordingly, True Value believes that *in camera* status for Exhibits PX4197, PX4198 and PX4205, and those relevant portions of Exhibit PX7044 (and accompanying exhibits)

cited in Paragraph 10, is necessary for a duration of at least five years to cover the period in which this information remains commercially sensitive for True Value.

I declare under penalty of perjury that the foregoing is true and correct. Executed April 30, 2018 at Chicago, Illinois.



John Vanderpool

EXHIBITS D-G

**Hearing Exhibits PX4197, PX4198,
PX4205, and PX7044**

**MARKED CONFIDENTIAL
REDACTION IN THEIR
ENTIRETY REQUESTED**

Notice of Electronic Service

I hereby certify that on May 3, 2018, I filed an electronic copy of the foregoing Non-Party True Value Company's Motion for *In Camera* Treatment (Public Version), with:

D. Michael Chappell
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600 Pennsylvania Ave. W
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Donald Clark
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I hereby certify that on May 3, 2018, I served via E-Service an electronic copy of the foregoing Non-Party True Value Company's Motion for *In Camera* Treatment (Public Version), upon:

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