

Dated: April 7, 2017

Respectfully submitted,



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camera treatment to only the most severely sensitive and potentially harmful portions of RX 1228, CX0439, and CX1343 (together, the “Highly Sensitive Portions”) that directly affect a possible post-2022 exit of the 1-800 Contacts investment. The public release of the Highly Sensitive Portions in five years, if before AEA exits its investment, would cause AEA significant competitive and economic harm to the most significant aspect of its business. AEA has limited the Highly Sensitive Portions to only those details that AEA foresees as competitively sensitive beyond the Order’s five-year *in camera* protections and for an indeterminate period as required by Rule 3.45(b)(3). None of the Highly Sensitive Portions, to AEA’s knowledge, contain any value for the public’s understanding of the Court’s adjudicative process in the above-captioned litigation.

For the reasons discussed in this Motion and the attached Second Declaration of Barbara Burns (“Second Burns Declaration” and Exhibit B), AEA respectfully requests this Court provide the Highly Sensitive Portions with indefinite *in camera* treatment.

In the alternative, Non-Party AEA Investors LP respectfully moves this Court for an order certifying its April 4, 2017 Order for interlocutory appeal to the Commission, pursuant to Rule 3.23(b), as relates to its determination that Non-Party AEA Investors LP has not met its burden of demonstrating that exhibits numbered RX1228, CX0439, and CX1343 were entitled to indefinite *in camera* treatment pursuant to Rule 3.45(b).

Counsel for 1-800 Contacts confirmed that they do not oppose this Motion for *in camera* treatment, and counsel for the FTC takes no position on the Motion.

I. Description of the Highly Sensitive Portions

AEA seeks indefinite *in camera* treatment for the Highly Sensitive Portions identified in the attached Exhibit C with red boxes designating the Highly Sensitive Portions. AEA also

attaches Exhibit D (Ex. No. RX1228 with redactions), Exhibit E (Ex. No. CX0439 with redactions), and Exhibit F (Ex. No. CX1343) for use after April 1, 2022. The Highly Sensitive Portions are identical in all aspects except for the pre-existing redactions in Exhibit F (Ex. No. CX1343).¹ As described in AEA’s March 24, 2017 Motion for *In Camera* Treatment, the Confidential Documents were each a different version of the same AEA presentation that had been submitted to the FTC as part of AEA Investors Fund V LP’s Hart-Scott-Rodino filings related to the acquisition of 1-800 Contacts, dated December 28, 2015, and the proposed acquisition of Vision Direct, Inc., dated March 7, 2016. The following section includes a table, which describes the material designated as Highly Sensitive Portions.

II. The Highly Sensitive Portions Include AEA’s Trade Secrets – Purchase Price Valuations, Business Projections, Target Acquisitions and Valuations, and Investment Exit Scenarios – For Which Indefinite *In Camera* Treatment is Appropriate

Under Rule 3.45(b), an Administrative Law Judge “shall order” that material offered into evidence “be placed in camera only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting in camera treatment . . .” 16 C.F.R. § 3.45(b). The Court’s April 4, 2017 Order agreed with AEA that its Confidential Documents required *in camera* treatment under Rule 3.45(b). AEA now renews its request that the Court provide indefinite *in camera* treatment to the Highly Sensitive Portions of its Confidential Documents under Rule 3.45(b)(3).

Under FTC Rule 3.45(b)(3), the movant must specify why the need for confidentiality is not likely to decrease over time or “any other reasons why such material is entitled to *in camera* treatment for an indeterminate period.” 16 C.F.R. § 3.45(b)(3). Courts have recognized that the

¹ As noted in AEA’s March 24, 2017 filing, CX1343 was previously redacted for sharing with AEA’s portfolio company, 1-800 Contacts.

“competitive sensitivity or proprietary value of the information . . . will not necessarily diminish, and may actually increase, with the passage of time.” *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at *7 (Oct. 17, 1990). Trade secrets, such as secret formulas, processes, and technical information have historically received more protection than ordinary business records, such as customer lists, prices to customers, and costs of doing business and profits. *In re Jerk, LLC*, 2015 FTC LEXIS at *2; *In re Dura Lube*, 1999 FTC LEXIS at *5. This Court has previously extended indefinite or long-term *in camera* treatment to similar materials that included secret formulas, secret processes, or other secret technical information. *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1189 (Mar. 14, 1961); *In re General Foods Corp.*, 95 F.T.C. 352 (Mar. 10, 1980); *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at *2-3 (Apr. 25, 1990) (providing *in camera* protection for ten years); *In re Textron*, 1991 FTC LEXIS 135, at *1 (Apr. 26, 1991).

Regarding the Highly Sensitive Portions, the appropriate length of time for *in camera* treatment is currently indeterminate and depends on when AEA exits its investment, which could extend beyond April 1, 2022. Second Burns Declaration, at ¶ 3. For this reason, the Highly Sensitive Portions meet the standard of *In re Coca-Cola*, which anticipated those forms of information that may actually increase in proprietary value over the course of time. If and when AEA begins the process of selling 1-800 Contacts, the internal projections, valuations, and anticipated exit multiples included in the Highly Sensitive Portions will increase in competitive sensitivity. Second Burns Declaration, at ¶ 3.

The Highly Sensitive Portions contain the type of sensitive details that investment firms use to identify, buy, and sell businesses. AEA currently owns 1-800 Contacts, but like most investment firms, its business depends on its exit strategy. Second Burns Declaration, at ¶ 4.

This exit strategy is based on AEA's internal business projections for 1-800 Contacts and its valuation analysis of what an appropriate exit of the investment will look like. Second Burns Declaration, at ¶ 4. If AEA's proprietary purchase-build-and-sale analysis is publicly disclosed, AEA expects to lose significant value when potential bidders are effectively handed its playbook. Second Burns Declaration, at ¶ 4.

If publicly disclosed, potential bidders will take advantage of AEA's internal projections, valuations, and anticipated exit multiples to undercut AEA's asking price and EBITDA multiples, or to find faults in 1-800 Contacts' ability to meet its business plans. Second Burns Declaration, at ¶ 5. For example, details such as the amount of equity that AEA has in 1-800 Contacts can and will influence the amount offered by bidders for 1-800 Contacts. Second Burns Declaration, at ¶ 5. In addition, both 1-800 Contacts and AEA will be exposed to criticism or a weaker market if it misses AEA's internal and confidential business projections. Second Burns Declaration, at ¶ 5. Potential buyers will know whether AEA is selling 1-800 Contacts as it planned to, at a low point, or at a high point – knowledge of which would expose AEA to severe economic harm. Second Burns Declaration, at ¶ 5.

As the table below shows, each proposed redaction identified with a red box on Exhibit B (submitted *in camera* only) pertains to material that foreseeably affects post-2022 business activity. Second Burns Declaration, at ¶ 6. The information described below if known to a future bidder for 1-800 Contacts after 2022 would affect the bidder's bid negotiations; calculation of a purchase price; or AEA's potential returns on the investment. Second Burns Declaration, at ¶ 6. In addition, bidders could use the pre- and post-2022 business projections, growth strategies, against AEA to scrutinize whether 1-800 Contacts achieved its stated

expectations and assumptions used when AEA calculated its investment exit valuation and ultimate asking price for 1-800 Contacts. Second Burns Declaration, at ¶ 6.

Bates No. from Ex. No. RX 1228 (Bates-Numbered FTC-00000816-909)	Description of Redacted Information
FTC-00000819	Valuation figures, including purchase price calculations, EBITDA multiples, bidding data, and debt and equity figures for AEA's interest in 1-800 Contacts.
FTC-00000820	Discussion of investment exit possibilities, expected valuation at the time of exit, and measurable variables related to maintaining the anticipated valuation at the time of exit.
FTC-00000823	Discussion and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and runway projections through 2025. Discussion of investment exit possibilities, expected valuation at the time of exit, and measurable variables related to maintaining the anticipated valuation at the time of exit.
FTC-00000827	Discussion of and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020.
FTC-00000830	Discussion of investment exit possibilities, expected valuation at the time of exit, measurable variables related to maintaining the anticipated valuation at the time of exit, and a comparison of valuation tiers based on measurable figures and business development plans.
FTC-00000841	Discussion of business opportunities, goals, and future growth, including with projected revenue growth through 2025 and those projections stated assumptions.
FTC-00000867	AEA's projections beyond 2020 and through 2025 for customer growth, business upside, and measurable customer additions.
FTC-00000881	Discussion and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020 or 2025.
FTC-00000882	Specific AEA projections for measureable growth into 2020 for 1-800 Contacts related to specific business opportunities and market projections.
FTC-00000883 FTC-00000884 FTC-00000885 FTC-00000886	Projected figures related to business opportunities, goals, and future growth, including with projected revenue targets for 2025.

Bates No. from Ex. No. RX 1228 (Bates-Numbered FTC-00000816- 909)	Description of Redacted Information
FTC-00000890	Discussion of and specific projections for growth of the 1-800 Contacts business related to its core suppliers and the effect on its EBITDA, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2019.
FTC-00000892	Projections for expansion of 1-800 Contacts into a new business sector, which is materially significant to resale valuation.
FTC-00000895	Valuation figures, including purchase price calculations, EBITDA multiples, bidding data, debt and equity figures for AEA's interest in 1-800 Contacts and its potential returns on the investment.
FTC-00000896	Broken down into tiers based on success, discussion of and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020.
FTC-00000897 FTC-00000898	Regarding specific success levels, discussion of and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020.
FTC-00000899 FTC-00000900	Regarding specific success levels, discussion of and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020, as well as calculations of returns on investment based on meeting multiple, separately forecasted results.
FTC-00000901	Specific financial projections and calculations of return sensitivities based on several unique business variables and growth-affecting factors.
FTC-00000902	Discussion and specific terms of 1-800 Contacts negotiated option package and its connection to achieving financial projections.
FTC-00000903	Specific figures related to cash flow, which will directly affect purchase price if and when AEA exits its investment in 1-800 Contacts.
FTC-00000904	Discussion of investment exit possibilities, expected valuation at the time of exit, and measureable variables related to maintaining the anticipated valuation at the time of exit.
FTC-00000905	Discussion of investment exit possibilities, expected valuation at the time of exit, measureable variables related to maintaining the anticipated valuation at the time of exit, specific timing of a possible exit, and the formula for calculating the valuation.
FTC-00000909	Discussion of debt refinancing opportunities related to valuation figures, including purchase price calculations, debt leverage figures, and equity values for AEA's interest in 1-800 Contacts projected through 2020.

The need to keep the Highly Sensitive Portions from public disclosure will not decrease in competitive sensitivity until AEA exits its 1-800 Contacts' investment, which is why AEA requests that the Court extend its five-year protection to indefinite *in camera* treatment as to these Highly Sensitive Portions of the Confidential Documents. Second Burns Declaration, at ¶ 7.

III. Alternatively, AEA Requests That the Court Certify its April 4, 2017 Order for Interlocutory Appeal to the Commission

In the alternative, AEA respectfully requests this Court certify its April 4, 2017 Order (attached as Exhibit A) for interlocutory appeal to the Commission because, on the issue of what qualifies as “material entitled to *in camera* treatment for an indeterminate period” under Rule 3.45(b)(3), a difference of opinion exists where subsequent review is not available to AEA as a non-party. This appeal notably does not intrude on the Court’s adjudicative process or delay the present litigation. Instead, it seeks to clarify an important standard applicable to many movants whose confidential business secrets and processes are classified as “ordinary business records,” which receive less protective treatment under precedent, when Rule 3.45(b)(3) requires no such classification. The Commission’s guidance is therefore important to clarify how Rule 3.45(b)(3) should be applied to those business documents that exceed the definition of ordinary course business records but are not classified as trade secrets by precedent.

Rule 3.23(b) provides the standard for a movant’s request for interlocutory appeal:

A party may request the Administrative Law Judge to determine that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy.

16 C.F.R. § 3.23(b). This Court has previously granted a request for an interlocutory appeal in the *in camera* motion context “to clarify the standards as to when *in Camera* treatment is

warranted.” *In the Matter of Bristol-Myers Co.*, 1977 FTC LEXIS 25, 90 F.T.C. 455, at *1 (1977). In *Bristol-Myers*, the Commission sought to provide guidance as to what constituted “good cause.” *Id.* The Commission’s review resulted in the development of six informative factors for determining “good cause,” which continue to provide necessary guidance to movants and this Court.

Prompted by the instant matter, the Commission can provide guidance on the second part of the Rule 3.45 analysis: the “reasons why the need for confidentiality of the material, or portion thereof at issue is not likely to decrease over time, and any other reasons why such material is entitled to *in camera* treatment for an indeterminate period.” 16 C.F.R. 3.45(b)(3). AEA’s business valuations, projections, and exit strategies constitute “material entitled to *in camera* treatment for an indeterminate period” under Rule 3.45(b)(3). AEA’s exit strategy for its investment in 1-800 Contacts is highly and competitively sensitive both in the present and for the foreseeable future. When exactly AEA plans to exit its investment is currently indeterminate. When combining this Court’s finding in its April 4, 2017 Order that AEA met its burden to receive *in camera* treatment and Rule 3.45(b)(3)’s extension of *in camera* treatment to those materials providing reasons for indeterminate periods, Rule 3.45 should allow for indefinite *in camera* treatment for such information regardless of whether the material contains a trade secret. The common distinction between an ordinary business record and a trade secret is a creation of precedent that unfairly narrows Rule 3.45, which the Commission should clarify.

In the Court’s April 4, 2017 Order, the distinction between ordinary business records and trade secrets appeared to control its analysis. April 4, 2017 Order at *2-3. Specifically, when reviewing Microsoft’s documents, the Court provided that “Microsoft has not demonstrated that these documents reveal proprietary formulas or algorithms, or other information sufficiently

secret and material to merit indefinite *in camera* treatment.” April 4, 2017 Order at *10. The Court also provided indefinite *in camera* treatment to four Google documents, which based on the publicly available descriptions, pertained to Google’s proprietary algorithms. April 4, 2017 Order at *6. However, documents containing sensitive business data and processes, such as internal forward-looking projections, investment strategies, pricing data, pricing methods, and financial analyses were denied indefinite *in camera* treatment.

Therein lies the difference in opinion on what qualifies as “material entitled to *in camera* treatment for an indeterminate period.” The Court’s April 4, 2017 Order and its precedent appear to frequently rely on a distinction based on intellectual property that focuses on trade secrets instead of the period for which the *in camera* protection is needed. The common distinction between an ordinary business record and a trade secret is a creation of precedent that unfairly narrows Rule 3.45, which the Commission should clarify. Rule 3.45(b)(3) contemplates only the sensitive materials relation to time, which should incorporate the unique and indeterminate business valuation and exit strategy analyses of a private investment firm. Without the benefit of keeping this highly sensitive information confidential, the investment firm would lose substantial value and distinction in the marketplace.

Review of this issue would also provide the Commission with a significant opportunity to protect non-parties from unnecessary harm caused by participating in FTC proceedings. Protection of non-parties’ confidential materials in antitrust disputes is an issue of growing importance. Clarity on the disclosure of non-party confidential materials can only benefit this Court and the parties before it.

Given the substantial ground for differences of opinion on the interpretation of Rule 3.45(b)(3) and the importance of that interpretation on the many future *in camera* motions, interlocutory appeal of the April 4, 2017 Order is warranted.

IV. Conclusion

For the reasons set forth above and in the accompanying Second Burns Declaration, AEA respectfully requests that this Court grant indefinite *in camera* treatment for the Highly Sensitive Portions. In the alternative, AEA respectfully request that the Court certify its April 4, 2017 Order to interlocutory appeal to the Commission pursuant to Rule 3.23.

Dated: April 7, 2017

Respectfully submitted,



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STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-Party AEA Investors LP (“AEA”) notified counsel for the parties in the above-captioned matter via email on or about April 7, 2017 that it would be seeking indefinite *in camera* treatment for the Highly Sensitive Portions, or, in the alternative, an interlocutory appeal of the Court’s April 4, 2017 Order. Counsel for 1-800 Contacts, Inc. indicated that they do not object to AEA’s motion and the Federal Trade Commission takes no position on AEA’s motion.

Dated: April 7, 2017



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EXHIBIT A

April 4, 2017 Order

(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.

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.

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, but noting “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 (June 26, 1996). Where *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 (September 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 where 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.

As set forth below, each of the non-parties listed herein filed separate motions for *in camera* treatment. With two exceptions, each motion was supported by an affidavit or declaration of an individual within the company who had reviewed the documents at issue. These affidavits and 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. With one exception, the motions included the documents or deposition testimony for which *in camera* treatment was sought. Where *in camera* treatment for deposition testimony was sought, the non-parties narrowed their requests to specific page and line numbers. The specific motions of each of the non-parties are analyzed using the standards set forth above and are addressed below in alphabetical order.

AEA Investors LP (“AEA”):

Non-party AEA seeks *in camera* treatment for three documents that Complaint Counsel and Respondent intend to introduce into evidence. AEA states that these three documents are three different versions of a presentation AEA made related to a proposed acquisition. These documents are: RX1228, CX0439, and CX1343. AEA states that CX1343 is a version of the presentation that had been redacted for sharing with AEA’s portfolio company, 1-800 Contacts. AEA seeks permanent *in camera* treatment for all three documents. In addition, with respect to RX1228 and CX0439, AEA requests that the court limit distribution to outside counsel only.

AEA supports its motion with a declaration from its General Counsel and Chief Compliance Officer. The declaration describes in detail the confidential nature of the documents, which contain evaluations of market factors, market risks, company advantages, company disadvantages, and company risks, and which also review future strategic plans, including financial metrics, customer and supplier data, and market growth indicators. The declaration also describes in detail the measures that AEA has taken to protect the confidentiality of the documents for which AEA seeks *in camera* treatment and explains the competitive harm AEA would suffer if these documents were made publicly available. Accordingly, AEA has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection. However, AEA has not met its burden of demonstrating that RX1228, CX0439, and CX1343, which consist of ordinary business records, are entitled to indefinite *in camera* treatment.

In camera treatment, for a period of five years, to expire on April 1, 2022, is GRANTED for the documents identified as: RX1228, CX0439, and CX1343.

With respect to AEA’s request that distribution of RX1228 and CX0439 be limited to outside counsel only, disclosure of RX1228 and CX0439 may be made only as permitted under the Protective Order entered in this case.¹

Coastal Contact, Inc. (“Coastal”)

Non-party Coastal seeks *in camera* treatment for documents and witness testimony that Complaint Counsel and Respondent intend to introduce into evidence. Coastal seeks *in camera* treatment for a period of three years.

¹ 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.

Coastal supports its motion with a declaration from its Chief Financial Officer. The declaration describes in detail the confidential nature of the documents, which contain information on Coastal's pricing, competitive positioning, marketing and bidding strategies, and internal analyses of customer demographics and buying patterns. The declaration also describes in detail the measures that Coastal has taken to protect the confidentiality of the documents for which Coastal seeks *in camera* treatment and explains the competitive harm Coastal would suffer if these documents were made publicly available. Accordingly, with the exception of RX1222, Coastal has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection. RX1222 is a 2012 Powerpoint presentation and Coastal has not demonstrated that this document meets the Commission's strict standards.

Coastal states it is seeking *in camera* treatment for 50 documents. A review of the documents shows that many of the documents are duplicates of each other, such that there are only 19 unique documents at issue.² Furthermore, although Coastal seeks *in camera* treatment for a period of three years, 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,³ *in camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for the 18 documents identified as: CX1465, CX1471, CX1686, CX1695, CX1698, CX1699, CX1700, CX1701, CX1702, CX1710/RX1209, CX1711, CX1714, CX1792, CX1793, RX1208, RX1210, RX1220, and "nonparty submission 00010405"⁴.

In camera treatment is DENIED WITHOUT PREJUDICE for the document identified as RX1222. If Coastal wishes to file a renewed motion demonstrating that RX1222 meets the Commission's strict standards, Coastal shall have until April 10, 2017 to file a renewed motion for *in camera* treatment in accordance with this order.

Contact Lens King, Inc. ("CLK")

Non-party CLK seeks *in camera* treatment for four documents that Complaint Counsel intends to introduce into evidence. CLK seeks *in camera* treatment for a period of two to five years for CX1473 and CX1474, and indefinite *in camera* treatment for CX1476 and CX1794.

CLK supports its motion with an affidavit from its President. The affidavit explains that CX1473 and CX1474 contain sales and pricing data and that CX1476 and CX1794 contain "negative keyword" reports and information relative to bidding on competitors' keywords. The

² With one exception, the duplicates that Coastal lists are documents which do bear a CX or RX number that are duplicative of documents which do not bear a CX or RX number. The one exception is CX1710 and RX1209, which are duplicates of each other and which both bear a CX or RX number.

³ See *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, *20 n.1 (May 25, 2011).

⁴ It is unclear whether nonparty submission 00010405 has been assigned a CX or RX number. If either party seeks to introduce nonparty submission 00010405 as an exhibit, counsel shall prepare a proposed order indicating that nonparty submission 00010405 has been granted *in camera* treatment by this Order and identifying it by its CX or RX number.

affidavit describes in detail the confidential nature of the documents. The affidavit also describes in detail the measures that CLK has taken to protect the confidentiality of the documents for which CLK seeks *in camera* treatment and explains the competitive harm CLK would suffer if these documents were made publicly available. Accordingly, CLK has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection. However, CLK has not met its burden of demonstrating that CX1476 and CX1794, which consist of ordinary business records, are entitled to indefinite *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, *in camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for the documents identified as: CX1473, CX1474, CX1476 and CX1794.

Google, Inc. (“Google”)

Non-party Google seeks *in camera* treatment for 242 documents and deposition testimony that Complaint Counsel and Respondent intend to introduce into evidence. Google seeks indefinite *in camera* treatment.

Google supports its motion with a declaration from its Director of Product Management and from its Senior Competition Counsel. The declarations explain that there are seven categories of documents for which Google seeks *in camera* treatment. These groups are: (1) datasets that contain customer data and Google search query data, including keywords that customers bid on, costs-per-click bid by customer, and click-through rates; (2) internal documents related to studies Google conducted to optimize formatting search engine results pages; (3) internal documents related to design and results of experiments conducted by Google, including systems used to implement policies reflecting Google’s proprietary algorithms; (4) two documents which Google describes in the *in camera* version of its motion and declaration; (5) transcripts of depositions of Google employees in this matter, portions of which and the exhibits thereto included confidential and competitively sensitive information; (6) internal communications related to Google’s responses to questions about AdWords raised by 1-800 Contacts, which reveal analysis and confidential data about bids and bidding strategies; and (7) a single internal document discussing quality score on AdWords. The declarations describe in detail the confidential nature of the documents. The declarations also describe in detail the measures that Google has taken to protect the confidentiality of the documents for which Google seeks *in camera* treatment and explains the competitive harm Google would suffer if these documents were made publicly available. Accordingly, Google has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

With respect to documents in groups 1, 6, and 7, Google has not met its burden of demonstrating that these documents are entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for the documents identified as in groups 1, 6, and 7.

With respect to documents in groups 2, 3, 4, and 5, Google has met its burden of demonstrating that these documents are entitled to indefinite *in camera* treatment. Indefinite *in camera* treatment is GRANTED for the documents identified as in groups 2, 3, 4, and 5.

Google has not identified the documents for which it seeks *in camera* treatment by CX or RX number. If either party seeks to introduce these documents as exhibits, counsel shall prepare a proposed order indicating that, by this Order, the document has been granted *in camera* treatment, the length of time *in camera* treatment has been extended, and identifying each document by its CX or RX number.

Lens.com, Inc. (“Lens.com”)

Non-party Lens.com seeks *in camera* treatment for one document that Complaint Counsel intends to introduce into evidence: CX1464. Lens.com seeks *in camera* treatment for a period of five years.

Lens.com supports its motion with a declaration from its Chief Executive Officer. The declaration explains that CX1464 details highly sensitive information regarding Lens.com’s prices, sales, and financial performance. The declaration also describes in detail the measures that Lens.com has taken to protect the confidentiality of the document for which Lens.com seeks *in camera* treatment and explains the competitive harm Lens.com would suffer if the document were to be made publicly available. Accordingly, Lens.com has met its burden of demonstrating that the material for which it seeks *in camera* treatment should be given such protection.

In camera treatment, for a period of five years, to expire on April 1, 2022, is GRANTED for the document identified as CX1464.

LensDirect LLC (“LensDirect”)

Non-party LensDirect seeks *in camera* treatment for 26 documents and deposition testimony that Complaint Counsel intends to introduce into evidence. LensDirect does not indicate a specific time period for which it seeks *in camera* treatment.

In its motion and in its proposed order, LensDirect seeks *in camera* treatment for the following 26 documents: CX1639, CX1640, CX1641, CX1642, CX1643, CX1644, CX1645, CX1646, CX1647, CX1648, CX1649, CX1650, CX1651, CX1652, CX1653, CX1654, CX1655, CX1656, CX1657, CX1658, CX1659, CX1660, CX1661, CX1779, CX1780, CX1784, and for certain portions of the deposition of Ryan Aloviz.

In support of its motion, LensDirect provides a declaration from its Chief Executive Officer. The declaration does not provide the information necessary to support a finding that any of the 26 documents are sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury, and should therefore receive *in camera*

treatment.⁵ Further, “there is a presumption that *in camera* treatment will not be accorded to information that is more than three years old.” *In re Polypore Int’l, Inc.*, 2009 FTC LEXIS 100, *4 (May 6, 2009). With respect to the documents that are more than three years old and the portions of the testimony from the deposition of Ryan Alovic about those documents, LensDirect has not demonstrated that public disclosure is likely to cause serious competitive injury.

For these reasons, LensDirect’s motion is DENIED WITHOUT PREJUDICE. By April 10, 2017, LensDirect may file a renewed motion for *in camera* treatment which includes an affidavit or declaration from an individual within the company who has reviewed the documents demonstrating that the documents for which it seeks *in camera* treatment are sufficiently secret and material to the applicant’s business that disclosure would result in serious competitive injury.

LensDiscounters.com (“LD Vision”)

Non-party LD Vision seeks *in camera* treatment for four documents that Complaint Counsel intends to introduce into evidence. LD Vision seeks indefinite *in camera* treatment.

LD Vision supports its motion with a declaration from its Chief Operating Officer. The declaration explains that the documents include information related to LD Vision’s financial condition, pricing strategies, investment strategies, and techniques for marketing and advertising its products. A review of the documents shows that CX1479, CX1812, and CX1813 contain competitively sensitive information, the disclosure of which would cause competitive harm. Accordingly, LD Vision has met its burden of demonstrating that CX1479, CX1812, and CX1813 should be given *in camera* protection. However, LD Vision has not met its burden of demonstrating that CX1479, CX1812, and CX1813, which consist of ordinary business records, are entitled to indefinite *in camera* treatment.

In camera treatment, for a period of five years, to expire on April 1, 2022, is GRANTED for the documents identified as CX1479, CX1812, and CX1813.

CX8003 is a declaration prepared by an LD Vision employee and attached exhibits, many of which are dated 2005, and many of which appear to have been widely disseminated. A review of the declaration and the documents attached shows that CX8003 does not meet the Commission’s strict standards for *in camera* treatment.

In camera treatment is DENIED WITHOUT PREJUDICE for the document identified as CX8003. LD Vision shall have until April 10, 2017, to file a renewed motion for *in camera* treatment seeking *in camera* treatment only for those paragraphs of the declaration and those exhibits attached thereto that meet the Commission’s strict *in camera* standards.

⁵ The declaration provides information relative to whether certain documents (CX1242, CX1463, and CX1241) are business records. These exhibits are not listed in the motion as documents for which LensDirect is seeking *in camera* treatment.

Luxottica Retail North America, Inc. (“Luxottica”)

Non-party Luxottica seeks *in camera* treatment for one document that Complaint Counsel intends to introduce into evidence. Luxottica seeks indefinite *in camera* treatment, or in the alternative, for a period of five years.

Luxottica supports its motion with an affidavit from its Senior Director. The affidavit describes in detail the confidential nature of the document, which consists of a detailed monthly breakdown of Luxottica’s contact lens sales, separated by individual retail brands. The affidavit also describes in detail the measures that Luxottica has taken to protect the confidentiality of the document for which Luxottica seeks *in camera* treatment and explains the competitive harm Luxottica would suffer if this material were to be made publicly available. Accordingly, Luxottica has met its burden of demonstrating that the material for which it seeks *in camera* treatment should be given such protection. However, Luxottica has not met its burden of demonstrating that CX1817, which consists of an ordinary business record, is entitled to indefinite *in camera* treatment.

In camera treatment, for a period of five years, to expire on April 1, 2022, is GRANTED for the document identified as CX1817.

Memorial Eye, PA (“Memorial Eye”)

Non-party Memorial Eye seeks *in camera* treatment for documents Complaint Counsel and Respondent intend to introduce into evidence. Memorial Eye does not indicate a specific time period for which it seeks *in camera* treatment.

Memorial Eye supports its motion with a declaration from its General Manager. The declaration avers generally that the documents include financial statements that detail profit and loss, marketing reports, communications with customers and vendors, and documents related to previous litigation with 1-800 Contacts that contain confidential business information. However, the declaration does not explain specifically that each document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury. Furthermore, Memorial Eye did not provide a set of the exhibits for which it seeks *in camera* treatment and thus no determination can be made as to whether any of the documents meets the Commission’s strict standards. Therefore, Memorial Eye’s Motion is DENIED WITHOUT PREJUDICE.

Memorial Eye shall have until April 10, 2017, to file a renewed motion for *in camera* treatment seeking *in camera* treatment in accordance with this order.

Microsoft Corporation (“Microsoft”)

Non-party Microsoft seeks *in camera* treatment for 16 documents and 3 sets of data that Complaint Counsel and Respondent intend to introduce into evidence. Microsoft seeks indefinite *in camera* treatment.

Microsoft supports its motion with an affidavit from its Assistant General Counsel. The affidavit describes the documents, some of which contain sensitive legal and client information, including statistics of the pricing impact on brand discounts, brand clicks and investment rates. The affidavit further avers that studies made by Microsoft’s search engine Bing regarding brand term bidding for advertisements contain confidential information about how Microsoft’s users click and evaluate bids on brand terms. With respect to the three sets of data, the declaration avers that the sets contain data on customer bids, ad campaigns, user clicks, ad impressions, and page views. The declaration states that public disclosure of its documents would harm its ability to compete with other search advertising platforms.

With respect to MSFT-108-127 (2004 settlement agreement) and MSFT-129-132 (2009 advertising agreement), these documents are over three years old and Microsoft has not demonstrated that they remain competitively sensitive. In addition, because these two documents do not bear a CX or RX number, it is not clear whether either party intends to introduce these exhibits at trial. With respect to CX1454, a review of the document shows that it is a cover email and does not contain confidential information. Microsoft’s motion is DENIED WITHOUT PREJUDICE as to CX1454, MSFT-108-127, and MSFT-129-132. If Microsoft intends to renew its request for *in camera* treatment for these documents, Microsoft shall ascertain whether these documents are intended trial exhibits before filing such motion and such renewed motion shall be filed by April 10, 2017.

With respect to CX1662, CX1663, CX1664, CX1665, CX1666, CX1667, CX1668, CX1669, CX1670, RX0837, MSFT-001-19 (2015 litigation documents), and the 3 data sets identified as MSFT-FTC0001-FTC3057; FTC-MSOFT-0001-FTC0006; MSFT-FTC0001-FTC1879, a review of the declaration and the documents indicates that the documents contain confidential information, the disclosure of which would cause harm to Microsoft. However, Microsoft has not demonstrated that these documents reveal proprietary formulas or algorithms, or other information sufficiently secret and material to merit indefinite *in camera* treatment. Accordingly, *in camera* treatment, for a period of five years, to expire on April 1, 2022, is GRANTED for these documents. With respect to MSFT-001-19 and the 3 data sets identified as MSFT-FTC0001-FTC3057, FTC-MSOFT-0001-FTC0006, and MSFT-FTC0001-FTC1879, if a party seeks to introduce these documents as exhibits, counsel shall prepare a proposed order indicating that the document has been granted *in camera* treatment by this Order and identifying it by its CX or RX number.

With respect to CX8005 (a January 2017 declaration of Rukmini Iyer, Scientist Manager at Microsoft) and to a February 2017 declaration of Rukmini Iyer, Scientist Manager at Microsoft that does not bear a CX or RX number, Microsoft has demonstrated that these declarations contain highly sensitive commercial information, including information pertaining to proprietary formulas or algorithms. Accordingly, with respect to these documents,

Microsoft's motion is GRANTED and indefinite *in camera* treatment is GRANTED for the documents identified as: CX8005 and the February 2017 declaration of Rukmini Iyer. If a party seeks to introduce the February 2017 declaration as an exhibit, counsel shall prepare a proposed order indicating that the document has been granted *in camera* treatment by this Order and identifying it by its CX or RX number.

Visionworks of America, Inc. ("Visionworks")

Non-party Visionworks seeks *in camera* treatment for eight documents that Complaint Counsel and Respondent intend to introduce into evidence. Visionworks seeks *in camera* treatment for varying time periods, discussed below.

Visionworks supports its motion with a declaration from its Director of Marketing. The declaration describes in detail the confidential nature of the documents, which contain pricing strategies and data, sales data, revenues, documents concerning marketing strategies and budgets, and information on incentives, discounts, and rebates. The declaration also describes in detail the measures that Visionworks has taken to protect the confidentiality of the material for which Visionworks seeks *in camera* treatment and explains the competitive harm Visionworks would suffer if this information were to be made publicly available. Accordingly, Visionworks has met its burden of demonstrating that the material for which it seeks *in camera* treatment should be given such protection.

Of the eight exhibits, Visionworks seeks indefinite *in camera* treatment for one – CX1477. Visionworks has not met its burden of demonstrating that CX1477, which consists of an ordinary business record relating to its pricing strategy, margins, discounts, and sales, is entitled to indefinite *in camera* treatment. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for the document identified as: CX1477.

Of the remaining exhibits, Visionworks seeks *in camera* treatment for either three or five years. 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, *in camera* treatment for a period of five years is granted as described below.

With respect to CX1796, RX245, and RX246, which reveals the keywords Visionware bids on in Google Adwords, Visionworks has narrowly tailored its request to only the information set forth in column D of these documents. *In camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for column D of CX1796, RX245, and RX246.

With respect to CX943, CX1778, and RX241, which constitute or include the June 3, 2016 declaration of Jared Duley, Visionworks has narrowly tailored its request to only paragraph 16 of the Duley declaration. *In camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for paragraph 16 in CX943, CX1778, and RX241.

With respect to CX9036, the deposition of Jared Duley, Visionworks has narrowly tailored its request to only certain portions. *In camera* treatment for a period of five years, to

expire on April 1, 2022, is GRANTED for the following portions of CX9036: 22:22-23:23; 52:2-54:1; 54:2-56:5; 60:5-82:17; 101:10-14; 119:9-20; 120:21-132:15, 136:17-137:5, 149:9-155:13; 164:12-165:18; 167:3-12; 168:5-25; and 175:10-176:24.

Walgreens, Inc. (“Walgreens”)

Non-party Walgreens seeks *in camera* treatment for 41 documents Complaint Counsel and Respondent intend to introduce into evidence, including portions of investigational hearing transcripts (“IHTs”) and deposition transcripts. Walgreens seeks indefinite *in camera* treatment, or, in the alternative, with respect to one category of documents, ten years, and, with respect to another category, three years.

Walgreens supports its motions with a declaration from the Manager of Digital Marketing for Vision Direct, a subsidiary of Walgreens. The declaration describes in detail the confidential nature of the documents, which fall into two categories: (1) keyword lists, which the declaration states represent the business judgment of a team of digital marketing experts, and (2) strategic analysis of advertising and pricing strategy, including performance, pricing, margins, and costs. The declaration also describes in detail the measures that Walgreens has taken to protect the confidentiality of the documents for which Walgreens seeks *in camera* treatment and explains the competitive harm Walgreens would suffer if these materials were made publicly available. Except as noted below, Walgreens has met its burden of demonstrating that many of its documents should be given *in camera* protection. Walgreens has not, however, met its burden of demonstrating that any of its documents, which consist of ordinary business records, are entitled to indefinite *in camera* treatment.

A number of documents for which Walgreens seeks *in camera* treatment are over three years old and Walgreens has not demonstrated that these documents remain competitively sensitive. Therefore, Walgreen’s motion is DENIED WITHOUT PREJUDICE as to the following documents: CX1206 (WAG-031), CX1207 (WAG-032), CX1210 (WAG-037), CX1211 (WAG-038), CX1213 (WAG-046), CX1805, and RX0149 (WAG-047). If Walgreens wishes to file a renewed motion demonstrating that these documents meet the Commission’s strict standards, Walgreens shall do so no later than April 10, 2017.

In camera treatment, for a period of five years, to expire on April 1, 2022, is GRANTED for the documents identified as: CX1214 (WAG-051), CX1215 (WAG-053), CX1216 (WAG-054), CX1222 (WAG-003), CX1489⁶ (WAG-074), CX 1490 (WAG-075), CX1510 (WAG-076), CX1797 (WAG-008), CX1798 (WAG-009), CX1799 (WAG-223), CX1814 (WAG-073), CX1815 (WAG-077), RX0151(WAG-215), RX0152(WAG-232), and RX0148 (WAG-251).

There are a number of documents for which Walgreens seeks *in camera* treatment that do not bear CX or RX numbers. From the list of potential trial exhibits identified by Complaint Counsel, these are: WAG-062, WAG-080, WAG-084, WAG-085, WAG-086, and WAG-087.

⁶ It appears that the documents identified as CX1489 (WAG-074), CX1490 (WAG-075), and CX1510 (WAG-076) were also listed as documents that Respondent intends to introduce at trial, but Walgreens did not identify the documents by their corresponding RX numbers.

From the list of potential trial exhibits identified by Respondent, these are: WAG-016, WAG-017, WAG-018, WAG-019, WAG-020, WAG-028, WAG-202, and WAG-214. *In camera* treatment, for a period of five years, will be given to these documents if they are offered into evidence by either party. If a party seeks to introduce any of these documents as exhibits, counsel shall prepare a proposed order indicating that the document has been granted *in camera* treatment by this Order and identifying the document by its CX or RX number.

With respect to CX8001 and CX8002, declarations provided by Glen Hamilton, Walgreens has narrowly limited its request to only specific paragraphs discussing confidential material. *In camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for paragraphs 6, 20 and 21 of CX8001 and paragraphs 6, 19 and 20 of CX8002.

With respect to CX9007, CX9008 and CX9038, the IHTs and deposition transcripts of Stephen Fedele and Glen Hamilton, Walgreens has limited its request to only specific page and line numbers discussing confidential material. *In camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for the following portions of CX9007: 21:19-22; 22:12-13; 23:1; 41:8; 53:3, 9; CX9008: 9:12-13; 12:18-25; 13:1, 6-8; 35:2-10, 15-16; 36:1-2, 19-21; 44:5-9; 51:11-14; and CX9038: 27:24-25; 28:1, 32:13-20; 34:5, 10, 14, 18; 37:9-10, 20, 22; 39:8-10, 12, 17; 41:25; 42:3, 22, 25; 43:17; 44:12-14, 19-20, 25; 45:25; 45:1-7; 53:22-25; 54-55; 56:1-19; 60:21-25; 61:1, 22-24; 65:13-25; 66:1-23; 67:12-25; 68-69; 75:24-25; 76-77; 78:1-9; 79:25; 80:1, 13, 16, 22, 23; 90:18-23; 92:17-18, 21-24; 93:5, 19, 22; 94:1-16; 97:20-21; 98:5; 101:22; 102:5-10; 103:21-23; 113:17-22; 114:7-9; 116:3-25; 117:1, 9-22; 118:14-17; 119:9-10; 120:7-8; 121:6-25 and 122:1-3.

WebEyeCare, Inc. (“WEC”)

Non-party WEC seeks *in camera* treatment for three documents and for portions of an IHT and a deposition transcript that Complaint Counsel and Respondent intend to introduce into evidence. WEC seeks indefinite *in camera* treatment, or in the alternative, for a period of five years.

WEC supports its motion with a declaration from its co-owner. The declaration describes in detail the confidential nature of the documents, which contain information about WEC’s product sales and revenue, as well as its marketing and advertising practices, including statistics pertaining to its online search advertising efforts through keywords and search terms. The declaration further states that the IHT and deposition contain information related to WEC’s marketing and advertising practices, customer acquisition methods and strategies, and WEC’s internal views and analysis. The declaration also describes in detail the measures that WEC has taken to protect the confidentiality of the documents for which WEC seeks *in camera* treatment and explains the competitive harm WEC would suffer if these materials were made publicly available. With respect to the IHT and deposition of Peter Batushansky, WEC has limited its request to only specific page and line numbers discussing confidential material. Accordingly, WEC has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection. However, WEC has not met its burden of

demonstrating that the materials, which consist of ordinary business records, are entitled to indefinite *in camera* treatment.

In camera treatment, for a period of five years, to expire on April 1, 2022, is GRANTED for the documents identified as: CX1467, CX1819, and CX1820/RX1849.

With respect to CX9000 and CX9014, the IHT and deposition transcript of Peter Batushansky, WEC has limited its request to only specific page and line numbers discussing confidential material. *In camera* treatment for a period of five years, to expire on April 1, 2022, is GRANTED for the following portions of CX9000: 6:18-21; 8:23-25; 9:1-4, 13-25; 10:1-8, 24-25; 11:1-15; 14:4-25; 15-69; 70:1-22; 73:13-25; 74:1-25; 75-91; 92:1-19; 93-102; 103:25; 104-122; 123:18-25; 124-126; 128:15-25; 129-132:1-12, and for the following portions of CX9014: 14:3-25; 15-19; 20:1-4; 21:1-24; 23:9-25; 24; 25:1-4; 26:22-25; 27-32; 33:1-2, 12-25; 34-39; 40:1-3; 41:5-25; 42-46; 47:1-3; 48-52; 53:1-8, 14-25; 54-64; 65:1-17; 67:18-25; 68-85; 86:1-2, 13-25; 87; 88:1-19; 89-100; 101:1-10; 102:16-25; 103-194; 195:1-12; 197:11-25; 198:1-16; 201:20-25; 202-208 and 209:1-11.

IV.

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. At the time that any documents that have been granted *in camera* treatment are offered into evidence, or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session. Any testimony regarding documents that have been granted *in camera* treatment may be provided in an *in camera* session.

It is apparent from the non-parties' motions that Complaint Counsel and Respondent seek to introduce duplicative copies of the same underlying document. For example, according to AEA, CX0439 and RX1228 are duplicates of the same document; according to WEC, CX1820 and RX1849 are duplicates of the same document. The parties are reminded of their obligation, pursuant to the Scheduling Order, to confer and eliminate duplicative exhibits in advance of the final prehearing conference.

ORDERED:



 D. Michael Chappell
 Chief Administrative Law Judge

Date: April 4, 2017

EXHIBIT B

Second Barbara Burns Declaration

the public and AEA's competitors before the time if and when AEA exits its investment in 1-800 Contacts would cause serious competitive injury to AEA.

3. For the Highly Sensitive Portions, the appropriate length of time for *in camera* treatment is currently indeterminate and depends on when AEA exits its investment in 1-800 Contacts, which could extend beyond April 1, 2022. If and when AEA begins the process of selling 1-800 Contacts, the internal projections, valuations, and anticipated exit multiples included in the Highly Sensitive Portions will increase in competitive sensitivity.

4. AEA currently owns 1-800 Contacts, but like most investment firms, our business depends on an exit strategy. This exit strategy is based on AEA's internal business projections for 1-800 Contacts and our internal valuation analysis of what an appropriate exit of the investment will look like. If AEA's proprietary purchase-build-and-sale analysis is publicly disclosed, AEA would expect to lose significant value when potential bidders are effectively handed our playbook.

5. If publicly disclosed, potential bidders will take advantage of AEA's internal projections, valuations, and anticipated exit multiples to undercut our asking price and EBITDA multiples, or to find faults in 1-800 Contacts' ability to meet its business plans. For example, details such as the amount of equity that AEA has in 1-800 Contacts can and will influence the amount offered by bidders for 1-800 Contacts. In addition, both 1-800 Contacts and AEA will be exposed to criticism or a weaker market if it misses AEA's internal and confidential business projections. Potential buyers will know whether AEA is selling 1-800 Contacts as it planned to, at a low point, or at a high point – knowledge of which would expose AEA to severe economic harm.

6. As the table below shows, the Highly Sensitive Portions pertain to material that foreseeably affects post-2022 business activity. The information described below if known to a future bidder for 1-800 Contacts after 2022 would affect the bidder's bid negotiations; calculation of a purchase price; or AEA's potential returns on the investment. In addition, bidders could use the pre- and post-2022 business projections, growth strategies, and success variables against AEA to scrutinize whether 1-800 Contacts achieved its stated expectations and assumptions used when AEA calculated our investment exit valuation and ultimate asking price for 1-800 Contacts.

Bates No. from Ex. No. RX 1228 (Bates-Numbered FTC-00000816-909)	Description of Redacted Information
FTC-00000819	Valuation figures, including purchase price calculations, EBITDA multiples, bidding data, and debt and equity figures for AEA's interest in 1-800 Contacts.
FTC-00000820	Discussion of investment exit possibilities, expected valuation at the time of exit, and measurable variables related to maintaining the anticipated valuation at the time of exit.
FTC-00000823	Discussion and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and runway projections through 2025. Discussion of investment exit possibilities, expected valuation at the time of exit, and measurable variables related to maintaining the anticipated valuation at the time of exit.
FTC-00000827	Discussion of and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020.
FTC-00000830	Discussion of investment exit possibilities, expected valuation at the time of exit, measurable variables related to maintaining the anticipated valuation at the time of exit, and a comparison of valuation tiers based on measurable figures and business development plans.
FTC-00000841	Discussion of business opportunities, goals, and future growth, including with projected revenue growth through 2025 and those projections stated assumptions.
FTC-00000867	AEA's projections beyond 2020 and through 2025 for customer growth, business upside, and measurable customer additions.

Bates No. from Ex. No. RX 1228 (Bates-Numbered FTC-00000816- 909)	Description of Redacted Information
FTC-00000881	Discussion and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020 or 2025.
FTC-00000882	Specific AEA projections for measureable growth into 2020 for 1-800 Contacts related to specific business opportunities and market projections.
FTC-00000883 FTC-00000884 FTC-00000885 FTC-00000886	Projected figures related to business opportunities, goals, and future growth, including with projected revenue targets for 2025.
FTC-00000890	Discussion of and specific projections for growth of the 1-800 Contacts business related to its core suppliers and the effect on its EBITDA, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2019.
FTC-00000892	Projections for expansion of 1-800 Contacts into a new business sector, which is materially significant to resale valuation.
FTC-00000895	Valuation figures, including purchase price calculations, EBITDA multiples, bidding data, debt and equity figures for AEA's interest in 1-800 Contacts and its potential returns on the investment.
FTC-00000896	Broken down into tiers based on success, discussion of and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020.
FTC-00000897 FTC-00000898	Regarding specific success levels, discussion of and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020.
FTC-00000899 FTC-00000900	Regarding specific success levels, discussion of and specific projections for growth of the 1-800 Contacts business, stated assumptions and expectations for achieving this growth, future business plans for achieving growth, and financial projections through 2020, as well as calculations of returns on investment based on meeting multiple, separately forecasted results.
FTC-00000901	Specific financial projections and calculations of return sensitivities based on several unique business variables and growth-affecting factors.
FTC-00000902	Discussion and specific terms of 1-800 Contacts negotiated option package and its connection to achieving financial projections.
FTC-00000903	Specific figures related to cash flow, which will directly affect purchase price if and when AEA exits its investment in 1-800 Contacts.
FTC-00000904	Discussion of investment exit possibilities, expected valuation at the time of exit, and measureable variables related to maintaining the anticipated

Bates No. from Ex. No. RX 1228 (Bates-Numbered FTC-00000816- 909)	Description of Redacted Information
	valuation at the time of exit.
FTC-00000905	Discussion of investment exit possibilities, expected valuation at the time of exit, measureable variables related to maintaining the anticipated valuation at the time of exit, specific timing of a possible exit, and the formula for calculating the valuation.
FTC-00000909	Discussion of debt refinancing opportunities related to valuation figures, including purchase price calculations, debt leverage figures, and equity values for AEA's interest in 1-800 Contacts projected through 2020.

7. The need to keep the Highly Sensitive Portions from public disclosure will not decrease in competitive sensitivity until AEA exits its 1-800 Contacts' investment, which is why these Highly Sensitive Portions of the Confidential Documents require indefinite *in camera* treatment.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

April 7, 2017 at New York, New York.



Barbara Burns

EXHIBIT C

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

CONFIDENTIAL

IN CAMERA TREATMENT REQUESTED

HIGHLY SENSITIVE PORTIONS

REDACTED IN ENTIRETY

EXHIBIT D

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

CONFIDENTIAL

IN CAMERA TREATMENT REQUESTED

REDACTED IN ENTIRETY

EXHIBIT E

Exhibit No. CX0439 (Bates-Numbered 1800F 00091505)

CONFIDENTIAL

IN CAMERA TREATMENT REQUESTED

REDACTED IN ENTIRETY

EXHIBIT F

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

CONFIDENTIAL

IN CAMERA TREATMENT REQUESTED

REDACTED IN ENTIRETY

CERTIFICATE OF SERVICE

I, Bernard A. Nigro Jr., declare under penalty of perjury that the following is true and correct. On April 7, 2017, I caused to be served the following documents on the parties listed below by the manner indicated.

- **NON-PARTY AEA INVESTORS LP's RENEWED MOTION FOR *IN CAMERA* TREATMENT, OR, IN THE ALTERNATIVE, MOTION FOR INTERLOCUTORY APPEAL OF THE COURT'S APRIL 4, 2017 ORDER (PUBLIC VERSION AND NON-PUBLIC VERSION)**
- **PROPOSED ORDERS**

The Office of the Secretary (via overnight delivery and the FTC's E-Filing System):

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

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

D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
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Washington, D.C. 20580

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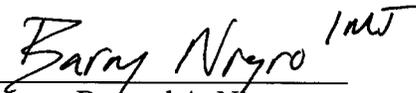


Bernard A. Nigro Jr.

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

April 7, 2017

By: 
Bernard A. Nigro