

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



In the Matter of)

Impax Laboratories, Inc.,)
a corporation,)

Respondent.)
_____)

DOCKET NO. 9373

**ORDER ON RESPONDENT'S RENEWED MOTION
FOR *IN CAMERA* TREATMENT**

I.

By Order dated October 16, 2017, Respondent's Motion for *In Camera* Treatment was denied without prejudice because Respondent Impax Laboratories, Inc. ("Respondent" or "Impax") failed to seek appropriate time limits for *in camera* treatment for its documents. The October 16, 2017 Order set forth the legal standards governing motions for *in camera* treatment.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the October 16, 2017 Order, Respondent filed a renewed motion for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter ("Motion"). Federal Trade Commission ("FTC" or "Commission") Complaint Counsel does not oppose Respondent's Motion. Respondent's Motion is GRANTED, with modifications, as explained below.

II.

Respondent supported its Motion with the declaration of the Senior Director of Corporate Litigation of Impax Laboratories, Inc., Farschad Farzan, and attached the documents for which it seeks *in camera* treatment. With respect to those documents for which Respondent seeks only partial *in camera* treatment, Respondent appropriately marked its requests with narrowly selected portions.

The declaration describes in detail the confidential nature of the documents, the competitive harm that Respondent would suffer if these documents were made publicly available, and the measures that Respondent takes to ensure that they remain confidential. The declaration explains that the documents fall into five categories.

The first category of documents consists of documents that include financial and sales projections for future years and pipeline products. For these documents, Respondent requests *in camera* treatment “until the last date in each projection.” Respondent has demonstrated that these documents merit *in camera* protection. However, such a broadly worded expiration date is not administratively feasible. In order to make the expiration date of *in camera* treatment consistent across exhibits in this case, which establishes consistency and furthers administrative efficiency,¹ *in camera* treatment for a period of ten years, to expire on November 1, 2027, is GRANTED for the documents identified in this category.

The second category of documents consists of documents containing customer-specific pricing discussions. For these documents, Respondent requests *in camera* treatment for a period of five years. Respondent has demonstrated that these documents merit *in camera* protection. *In camera* treatment for a period of five years, to expire on November 1, 2022, is GRANTED for the documents identified in this category.

The third category of documents consists of documents containing information regarding potential mergers, acquisitions, and investments. For these documents, Respondent requests *in camera* treatment for a period of ten years. Respondent has demonstrated that these documents merit *in camera* protection. *In camera* treatment for a period of ten years, to expire on November 1, 2027, is GRANTED for the documents identified in this category.

The fourth category of documents consists of documents containing information regarding specific research and formulation efforts for products still in development. For these documents, Respondent requests *in camera* treatment for a period of ten years. Respondent has demonstrated that these documents merit *in camera* protection. *In camera* treatment for a period of ten years, to expire on November 1, 2027, is GRANTED for the documents identified in this category.

The fifth category of documents consists of third party data purchased from third party vendors that Impax states is subject to confidentiality obligations. Impax states that when purchasing information from third party vendors, Impax either directly or through its agents agreed to keep this data confidential, unless Impax is required by law to disclose it or receives written permission from the data vendor. Impax states that, due to these contractual restrictions, it seeks permanent *in camera* treatment. Impax’s non-disclosure agreements with third parties provide a reason for granting *in camera* treatment to the documents covered thereby. The non-disclosure agreements, by themselves, do not provide support for indefinite *in camera* treatment. Upon review of

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

the documents in this fifth category for which Impax seeks *in camera* treatment, it is clear that the documents are entitled to *in camera* treatment, but are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on November 1, 2027, is GRANTED for documents in this category.

III.

With the modifications detailed above, Respondent's Motion is GRANTED. Respondent is hereby instructed to prepare a proposed order listing the documents that have been granted *in camera* treatment by expiration date and exhibit number. Respondent shall submit the proposed order in Word format to the Office of Administrative Law Judges by October 30, 2017, and need not file it with the Office of the Secretary.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: October 23, 2017