

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

In the Matter of)	
)	PUBLIC
Otto Bock HealthCare North America, Inc.,)	
)	DOCKET NO. 9378
Respondents)	
)	

**NON-PARTY HEALTH EVOLUTION PARTNERS'
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), counsel for non-party Health Evolution Partners ("HEP") submits this Memorandum of Law in support of HEP's motion, filed this date, for *in camera* treatment for five years of competitively-sensitive, confidential portions of 20 exhibits (the "Confidential Documents").

Counsel for The Federal Trade Commission ("FTC") and counsel for Respondent Otto Bock HealthCare North America, Inc. ("Otto Bock") have stated that they do not intend to oppose HEP's Motion. A corresponding Statement Regarding Meet and Confer is appended to this Memorandum.

HEP produced the Confidential Documents, along with many others, in response to a third-party subpoena in this matter (attached as Exhibit A). The FTC has now notified HEP that it intends to introduce 126 of HEP's documents into evidence at the administrative trial in this matter, and Respondent Otto Bock has notified HEP that it intends to introduce 83 of HEP's documents into evidence at the administrative trial in this matter, including the Confidential Documents. *See* Letter from the FTC dated May 25, 2018 (attached as Exhibit B); letter from Otto Bock dated May 29, 2018 (attached as Exhibit C).

The exhibits for which HEP is seeking *in camera* treatment are confidential business documents that contain information regarding HEP's other portfolio companies that are not relevant to this proceeding. If certain portions of these documents were to become part of the public record, HEP and certain of its portfolio companies would be significantly harmed. For the reasons discussed in this motion, HEP respectfully requests that the Commission afford the Confidential Documents *in camera* treatment with regards to the information in the documents that relate to its portfolio companies other than Freedom Innovations Holdings, LLC and its subsidiaries ("Freedom Innovations"). In support of the motion, HEP relies on the Affidavit of Kay Yun, Partner at HEP ("Yun Declaration"), attached as Exhibit D, which provides additional details regarding the Confidential Documents.

HEP has prepared redacted versions of the documents that can be included on the public record. Redacted versions of the documents, which can be included on the public record, are attached as Exhibit E. For ease of review, highlighted versions of the documents showing the proposed redactions that should be given *in camera* treatment in their entirety have been created and are attached hereto as Exhibit F.

I. The Documents for Which Protection is Sought

HEP seeks *in camera* treatment for the following Confidential Documents.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
PX02020	Health Evolution Partners Report: Financial Statements	12/31/2016	HEP004294	HEP004310
PX02022	Health Evolution Partners Report: Quarterly Report	09/30/2017	HEP004311	HEP004326
PX02067	Email from Thomas Chung to David Brailer, Braden Kelly, et al. re: Preliminary Freedom Returns and YTD Portco Financials	10/21/2016	HEP002148	HEP002164
PX02076	Email from Thomas Chung to David Brailer re: Draft Q3 Valuations	09/23/2016	HEP012464	HEP012509

PUBLIC

PX02078	Email from Thomas Chung to David Brailer, Braden Kelly, et al. re: Preliminary Freedom Returns and YTD Portco Financials	10/21/2016	HEP013162	HEP013178
PX02083	Email from Thomas Chung to xixi.zhao@pwc.com and Kay Yun re: Latest Investment Committee Meeting Notes	02/17/2017	HEP014925	HEP014927
PX02085	Email from Thomas Chung to David Brailer and Kay Yun re: 2017-03-13 IC Meeting Discussion Materials	03/10/2017	HEP016706	HEP016742
PX02086; PX03267	Email from Kay Yun to Raquel Gonzalez re: Fund I Q1 Report	03/29/2017	HEP017988	HEP018031
PX02092; PX03269	Email from Kay Yun to Raquel Gonzalez re: Q2 2017 Financials	06/28/2017	HEP022052	HEP022098
PX02094	Email from Thomas Chung to Kay Yun re: 2017-09-18	09/17/2017	HEP022667	HEP022693
PX02095	Email from Thomas Chung to David Brailer and bk@bradenkelly.com re: 2017-02-13 IC Meeting Discussion Materials	02/13/2017	HEP014795	HEP014797
PX02096	Email from Thomas Chung to David Brailer, Kay Yun, et al. re: 2017-04-03	04/03/2017	HEP018460	HEP018462
PX02097; PX03268	Email from Thomas Chung to Kay Yun, Braden Kelly, et al. re: 2017-06-02 IC Meeting Discussion Materials	06/02/2017	HEP021442	HEP021470
PX02099	Email from Thomas Chung to Kay Yun, Braden Kelly, et al. re: 2017-08-07 IC Meeting Discussion Materials	08/07/2017	HEP022408	HEP022410
PX02100	Email from Thomas Chung to Kay Yun, Braden Kelly, et al. re: 2017-08-28 IC Meeting Discussion Materials	08/28/2017	HEP022606	HEP022608
RX-0290	Email from Thomas Chung to Matthew Stariha re: Valuation Back-Up, w/attachments Freedom Valuation Report_16 09 30_v7.xlsx; Freedom Valuation Report_16 09 30_v6.pdf; Kisimul Valuation Excel Backup_2016 09 30_v1.xlsx; Kisimul Valuation Report_2016 09 30_v1.pdf; LLC Agreement - FIH Group Holdings, LLC.pdf; FIH Group Holdings, LLC - Amendment No. 1 to A&R LLC Agreement.docx; Freedom - FIH Group Holdings, LLC - Amendment No. 2 to A&R LLC Agreement....docx	09/28/2016	HEP012587	HEP12698
RX-0311	Email from Thomas Chung to David Brailer, et al., bcc: Braden Kelly, re: Preliminary Freedom Returns and YTD Portco Financials, w/attachments Monitors_Q3 HV Update.pdf; Preliminary Freedom Returns Summary_2016 10 20.pdf	10/21/2016	HEP013179	HEP013195
RX-0312	Email from Kay Yun to Thomas Chung, et al., bcc: Braden Kelly re: Preliminary Freedom Returns and YTD Portco Financials	10/21/2016	HEP013196	HEP013197
RX-0313	Email from Kay Yun to Thomas Chung, et al., bcc: Braden Kelly re: Preliminary Freedom Returns and YTD Portco Financials	10/21/2016	HEP013198	HEP013199

RX-0358	Email from Thomas Chung to David Brailer, et al., re: 2017-01-17 IC Meeting Discussion Materials, w/attachment Portco Activity Tracker 2017 01 17.pdf	01/17/2017	HEP014599	HEP014601
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II. HEP's Documents are Secret and Material to HEP's Business

In camera treatment of material 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 secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Labe 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 Court 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). As discussed in the Yun Declaration, the Confidential Documents relate to HEP's portfolio businesses that are not the subject of this proceeding. Such information is both secret and material to HEP's business and, as set forth below, satisfies the standard for *in camera* treatment.

The Commission has recognized the propriety of granting *in camera* treatment to business records. *See, e.g., In re McWane, Inc.*, No. 9351, 2012 WL 3862131, at *2 (F.T.C. Aug. 17, 2012); *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; *Kaiser Aluminum*, 103 F.T.C. at 500. Thus, the information for which HEP seeks *in camera* treatment is eligible to receive it.

HEP has taken significant steps to protect the confidential information contained in the Confidential Documents, which was produced pursuant to compulsory processes and under the terms of the December 28, 2017, Protective Order Governing Confidential Material in this matter (the “Protective Order”) which was issued to protect the information contained in the Confidential Documents at question here. Pursuant to the Protective Order, HEP’s counsel stamped the documents as “Confidential” to avoid any public disclosure. Furthermore, HEP takes substantial measures to guard the secrecy of the information contained in the Confidential Documents by limiting the dissemination of that information and taking every reasonable step to protect its confidentiality. The information contained in the Confidential Documents is only disclosed to senior HEP management and selected portfolio company employees with reason to have access to the information or outside of HEP to the extent necessary to facilitate key transactions. Because HEP is a private equity firm with no public shareholders, the information contained in the Confidential Documents is not and would not otherwise become publicly available.

As described in more detail in the Yun Declaration, the Confidential Documents contain confidential information regarding the financial performance of HEP and its portfolio companies. The Confidential Documents also contain competitively-sensitive information regarding HEP’s portfolio companies, including costs, profit margins, strategic plans, confidential valuations and plans regarding future Research and Development.

While Freedom Innovations is obviously the focus of this proceeding and it is our understanding that HEP’s financial situation may be relevant to this proceeding, it is our understanding that HEP’s other portfolio companies are not relevant to this proceeding in any way.

There is no reason that the confidential information of HEP's other portfolio companies should be publicly disclosed.

Finally, HEP'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*, 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 FTC 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.). HEP's third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

III. IN CAMERA PROTECTION SHOULD EXTEND FOR FIVE YEARS

Because of the highly confidential and proprietary nature of the information contained in the Confidential Documents, lasting protection is appropriate in order to ensure avoidance of the competitive injuries to HEP's business outlined above. The Confidential Information, once disclosed, will remove advantages HEP currently enjoys due to its efforts to maintain the confidentiality of the information contained in the Confidential Documents. Accordingly, HEP respectfully requests that the information contained in the Confidential Documents be afforded *in camera* protection for a period of five years.

IV. Conclusion

For the reasons set forth above and in the accompanying Yun Declaration, HEP respectfully requests that this Court grant *in camera* treatment for five years for the information

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for non-party Health Evolution Partners (“HEP”) notified counsel for the parties via telephone on or about June 7 and 8, 2018 that it would be seeking *in camera* treatment of the Confidential Documents. Both counsel for the Federal Trade Commission and counsel for Otto Bock HealthCare North America, Inc. indicated that they did not intend to oppose HEP’s motion.

Respectfully submitted,

/s Matthew D. Kent

Matthew D Kent
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Atlanta, GA 30309
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*Counsel for Non-Party
Health Evolution Partners*

DATED: June 11, 2018

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

In the Matter of)	
)	PUBLIC
Otto Bock HealthCare North America, Inc.,)	
Respondents)	DOCKET NO. 9378
)	

[PROPOSED] ORDER

Upon consideration of non-party Health Evolution Partners' ("HEP's") Motion for *In Camera* Treatment, IT IS HEREBY ORDERED that the information contained in the following documents related to the companies, other than Freedom Innovations Holdings, LLC and its subsidiaries, in which HEP has an ownership interest are to be provided *in camera* treatment under 16 C.F.R. § 3.45 for five years from the date of this order.

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PX02020	Health Evolution Partners Report: Financial Statements	12/31/2016	HEP004294	HEP004310
PX02022	Health Evolution Partners Report: Quarterly Report	09/30/2017	HEP004311	HEP004326
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PX02076	Email from Thomas Chung to David Brailer re: Draft Q3 Valuations	09/23/2016	HEP012464	HEP012509
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PX02085	Email from Thomas Chung to David Brailer and Kay Yun re: 2017-03-13 IC Meeting Discussion Materials	03/10/2017	HEP016706	HEP016742
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PX02092; PX03269	Email from Kay Yun to Raquel Gonzalez re: Q2 2017 Financials	06/28/2017	HEP022052	HEP022098
PX02094	Email from Thomas Chung to Kay Yun re: 2017-09-18	09/17/2017	HEP022667	HEP022693
PX02095	Email from Thomas Chung to David Brailer and bk@bradenkelly.com re: 2017-02-13 IC Meeting Discussion Materials	02/13/2017	HEP014795	HEP014797
PX02096	Email from Thomas Chung to David Brailer, Kay Yun, et al. re: 2017-04-03	04/03/2017	HEP018460	HEP018462
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PX02100	Email from Thomas Chung to Kay Yun, Braden Kelly, et al. re: 2017-08-28 IC Meeting Discussion Materials	08/28/2017	HEP022606	HEP022608
RX-0290	Email from Thomas Chung to Matthew Stariha re: Valuation Back-Up, w/attachments Freedom Valuation Report_16 09 30_v7.xlsx; Freedom Valuation Report_16 09 30_v6.pdf; Kisimul Valuation Excel Backup_2016 09 30_v1.xlsx; Kisimul Valuation Report_2016 09 30_v1.pdf; LLC Agreement - FIH Group Holdings, LLC.pdf; FIH Group Holdings, LLC - Amendment No. 1 to A&R LLC Agreement.docx; Freedom - FIH Group Holdings, LLC - Amendment No. 2 to A&R LLC Agreement....docx	09/28/2016	HEP012587	HEP12698
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RX-0358	Email from Thomas Chung to David Brailer, et al., re: 2017-01-17 IC Meeting Discussion Materials, w/attachment Portco Activity Tracker_2017 01 17.pdf	01/17/2017	HEP014599	HEP014601

Redacted versions of these documents may be filed on the public record.

ORDERED:

The Honorable D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I, Austin A.B. Ownbey, declare under penalty of perjury that the following is true and correct. On June 11, 2018, I caused to be served the following documents on the parties listed below by the manner indicated:

- Non-Party Health Evolution Partners' Motion for *In Camera* Treatment, with accompanying Memorandum of Law and all Exhibits, and Statement Regarding Meet and Confer
- [Proposed] Order Granting *In Camera* Treatment

The Office of the Secretary (via FTC E-Filing System and Hand Delivery)

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-172
Washington, DC 20580

The Office of the Administrative Law Judge (via FTC E-Filing System and Hand Delivery)

The Honorable D, Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-106
Washington, DC 20580

Complaint Counsel for Federal Trade Commission (via FTC E-Filing System and Hand Delivery)

Catherine M. Sanchez, Esq.
Stephen Mohr, Esq.
Federal Trade Commission
400 7th Street, SW
Washington, DC 20024

Counsel for Otto Bock (via FTC E-Filing System and Email)

Sean Zabaneh
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196

/s Austin A.B Ownbey

EXHIBIT A



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Health Evolution Partners c/o Matthew D. Kent, Alston & Bird LLP One Atlantic Center 1201 West Peachtree Street, Suite 4900 Atlanta, GA 30309-3424	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Federal Trade Commission 400 7th St. SW Washington, DC 20024	4. MATERIAL WILL BE PRODUCED TO Steven Lavender 5. DATE AND TIME OF PRODUCTION February 23, 2018 at 9:00 AM
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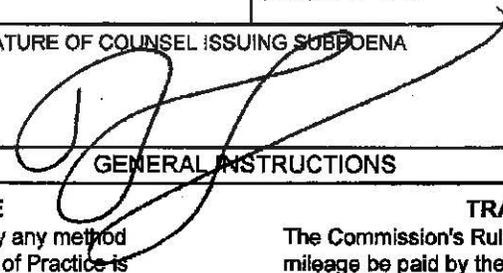
6. SUBJECT OF PROCEEDING

In the Matter of Otto Bock Healthcare North America, Inc., Docket No. 9378

7. MATERIAL TO BE PRODUCED

Documents & materials responsive to the attached Subpoena Duces Tecum Requests for Production

8. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Daniel Zach, or designee Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2118
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DATE SIGNED Feb 2, 2018	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
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GENERAL INSTRUCTIONS

<p>APPEARANCE</p> <p>The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.</p>	<p>TRAVEL EXPENSES</p> <p>The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.</p>
<p>MOTION TO LIMIT OR QUASH</p> <p>The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.</p>	<p>A copy of the Commission's Rules of Practice is available online at http://bit.ly/FTCRulesofPractice. Paper copies are available upon request.</p> <p>This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.</p>

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

via Fed Ex

on the person named herein on:

February 2, 2018

(Month, day, and year)

Steven Lavender

(Name of person making service)

Attorney

(Official title)

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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

Docket No. 9378

Respondent.

**COMPLAINT COUNSEL'S SUBPOENA *DUCES TECUM* ATTACHMENT TO
HEALTH EVOLUTION PARTNERS**

Pursuant to the Federal Trade Commission's Rule of Practice, 16 C.F.R. § 3.34, and the Definitions and Instructions set forth below, Complaint Counsel hereby requests that the Company produce all documents, electronically stored information, and other things in its possession, custody, or control responsive to the following requests:

SPECIFICATIONS

1. Submit all documents relating to Plans of the Company, Freedom, or any other Person, relating to microprocessor prosthetic knees, non-microprocessor prosthetic knees, microprocessor prosthetic feet, or non-microprocessor prosthetic feet (including, but not limited to, Plié, Quattro, and Kinnex) in the United States and each U.S. State, District, or Territory, including, but not limited to, business plans; short-term and long-range strategies and objectives; expansion or retrenchment plans; research and development efforts; presentations to management committees, executive committees, and boards of directors; budgets and financial projections; communications with potential customers; patient testing; and the Freedom Innovations Business Leadership Council.
2. Submit all documents relating to competition in the manufacture or sale of microprocessor prosthetic knees, non-microprocessor prosthetic knees, microprocessor prosthetic feet, or non-microprocessor prosthetic feet in the United States and each U.S. State, District, or Territory, including, but not limited to, market studies, forecasts and surveys, and all other documents relating to: (a) the Sales, market share, or competitive position of the Company or any of its competitors; (b) the relative strength or weakness of Persons producing or selling microprocessor prosthetic knees, non-microprocessor prosthetic knees, microprocessor prosthetic feet, or non-microprocessor prosthetic feet; (c) supply and demand conditions; (d) attempts to win customers from other Persons and losses of customers to other Persons, including, but not limited to, all sales personnel call reports and win/loss reports; (e) allegations by any Person that any Person that manufactures or sells microprocessor prosthetic knees, non-microprocessor prosthetic

knees, microprocessor prosthetic feet, or non-microprocessor prosthetic feet is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints; threatened, pending, or completed lawsuits; and federal and state investigations; and (f) any actual or potential effect on the supply, demand, cost, or price of microprocessor prosthetic knees, non-microprocessor prosthetic knees, microprocessor prosthetic feet, or non-microprocessor prosthetic feet as a result of competition from any other possible substitute product.

3. Submit:

- (a) all documents relating to the Company's, Freedom's, or any other Person's price lists, pricing Plans, pricing policies, pricing forecasts, pricing strategies, price structures, pricing analyses, price zones, pricing decisions, and third-party insurance reimbursement rates relating to microprocessor prosthetic knees, non-microprocessor prosthetic knees, microprocessor prosthetic feet, or non-microprocessor prosthetic feet in the United States and each U.S. State, District, or Territory; and
- (b) all studies, analyses, or assessments of the pricing or profitability of microprocessor prosthetic knees, non-microprocessor prosthetic knees, microprocessor prosthetic feet, or non-microprocessor prosthetic feet sold or provided by the Company, Freedom, or any other person in the United States and each U.S. State, District, or Territory.

4. For the Company and Freedom, submit three years of audited financial statements (including income statements and balance sheets), and year-to-date information for the current year.

5. Submit all documents relating to the Merger, including but not limited to:

- (a) correspondence with any other person, including, but not limited to, Otto Bock, Freedom, Moelis & Company, Madison Capital Funding LLC, Össur Americas, Inc., BMO Harris Bank, N.A., or any potential buyer of assets from Freedom;
- (b) offers and other communications of interest in a potential acquisition of Freedom made by any person (including, but not limited to, Otto Bock, Össur Americas, Inc., CRG L.P., ABS Capital Partners, Inc., and OrbiMed Advisors, LLC);
- (c) any evaluation of the acquisition of Freedom by Otto Bock;
- (d) Freedom's and/or the Company's decision to proceed with the Merger and not proceed with negotiations with any other person (including, but not limited to, Össur Americas, Inc., CRG L.P., ABS Capital Partners, Inc., and OrbiMed Advisors, LLC);
- (e) the search for a purchaser other than Otto Bock for Freedom;

- (f) the evaluation of a potential acquisition of Freedom by any person other than Otto Bock, including, but not limited to, Össur Americas, Inc., CRG L.P., ABS Capital Partners, Inc., and OrbiMed Advisors, LLC; and
 - (g) any concern that Freedom would be liquidated but for the Merger.
6. Submit all documents relating to the terms, conditions, or extent of any financing (actual, considered, or solicited) made available to Freedom, including, but not limited to:
- (a) any review, evaluation, or analysis of any financing (actual, considered, or solicited) to be made available;
 - (b) Freedom's February 16, 2012 Credit Agreement with Madison Capital Funding LLC ("Credit Agreement") and any amendments to the Credit Agreement;
 - (c) any correspondence and materials provided to Madison Capital Funding LLC or Health Evolution Partners related to any financing (actual, considered, or solicited) made available to Freedom; and
 - (d) any correspondence and materials provided to BMO Harris Bank, N.A. or Health Evolution Partners related to any financing (actual, considered, or solicited) made available to Freedom.
7. Submit all documents created prior to the Merger relating to the actual or projected financial condition or competitive viability of Freedom, including, but not limited to, information regarding:
- (a) the profitability of Freedom or of any of Freedom's businesses or business activities;
 - (b) any factors jeopardizing the viability of Freedom or of any of Freedom's businesses or business activities;
 - (c) the ability of Freedom to meet its financial obligations prior to the Merger;
 - (d) the ability of Freedom to successfully reorganize under Chapter 11 of the Bankruptcy Act absent the Merger;
 - (e) the valuation of Freedom; and
 - (f) whether, absent the Merger, the Freedom assets would have exited the sale and manufacture of microprocessor prosthetic knees, non-microprocessor prosthetic knees, microprocessor prosthetic feet, or non-microprocessor prosthetic feet.
8. Submit the video "vinettes" [*sic*] and wrap up comments video of the Quattro alpha 3

fittings that were loaded into the data room in August, 2017, as referenced in David Smith's August 24, 2017 email, which was produced by Health Evolution Partners and is bates labeled HEP022600.

DEFINITIONS

1. The term "Company" means Health Evolution Partners, its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.
2. The term "Otto Bock" means Otto Bock HealthCare North America, Inc., its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between Otto Bock and any other person.
3. The term "Freedom" means FIH Group Holdings, LLC, also known as Freedom Innovations, its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between Freedom Innovations and any other person.
4. The term the "Merger" means the Agreement and Plan of Merger, dated September 22, 2017, by and among Otto Bock HealthCare North America, Inc., OB Roosevelt Acquisition, LLC, FIH Group Holdings, LLC and Health Evolution Partners Fund I (AIV I), LP.
5. The terms "and" and "or" have both conjunctive and disjunctive meanings.
6. The term "Computer Files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce Documents that exist in machine-readable form, including Documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers,

backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with Complaint Counsel's need for Documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel identified on the last page of this request. Complaint Counsel will consider modifying this Definition to:

- a. exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
 - b. limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Complaint Counsel; or
 - c. include other proposals consistent with Commission policy and the facts of the case.
7. The term "Containing" means containing, describing, or interpreting in whole or in part.
 8. The terms "Discuss" or "Discussing" mean in whole or in part constituting, Containing, describing, analyzing, explaining, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. A document that "Discusses" another document includes the other document itself.
 9. The term "Documents" means all Computer Files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term "Documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of Documents; metadata and other bibliographic or historical data describing or Relating to Documents created, revised, or distributed on computer systems; copies of Documents that are not identical duplicates of the originals in that Person's files; and copies of Documents the originals of which are not in the possession, custody, or control of the Company.

Unless otherwise specified, the term "Documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar Documents of a purely transactional nature; (b) architectural Plans and engineering blueprints; and (c) Documents solely Relating to environmental, tax, human resources, OSHA, or ERISA issues.

10. The terms "each," "any," and "all" mean "each and every."
11. The term "entity" means any natural person, corporation, company, partnership, joint

venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.

12. The term “person” includes Health Evolution Partners, Otto Bock, and Freedom and means any natural person, corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity engaged in commerce.
13. The terms “Plan” or “Plans” mean proposals, strategies, recommendations, analyses, reports, or considerations, whether or not tentative, preliminary, precisely formulated, finalized, authorized, or adopted.
14. The terms “Relate” or “Relating to” mean in whole or in part Discussing, constituting, commenting, Containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.
15. The term “Sales” means net sales (i.e., total sales after deducting discounts, returns, allowances and excise taxes). “Sales” includes Sales of microprocessor prosthetic knees, non-microprocessor prosthetic knees, microprocessor prosthetic feet, and non-microprocessor prosthetic feet whether manufactured or provided by the Company itself or purchased from sources outside the Company and resold by the Company in the same manufactured form as purchased.

INSTRUCTIONS

1. Unless otherwise indicated, each request covers documents and information dated, generated, received, or in effect from January 1, 2016, to the present.
2. The Company need not produce responsive documents that the Company has previously produced to the Commission in relation to the prior investigation, FTC No. 171-0231. **The Company must produce all other responsive documents, including any otherwise responsive documents that may have been produced by the Company to the Commission in relation to any other investigation conducted by the Commission.**
3. This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by the Company up to fifteen (15) calendar days prior to the date of the Company's full compliance with this request.
4. Except for privileged material, the Company will produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. The Company should submit any appendix, table, or other attachment by either attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, the Company will not redact, mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.
5. Unless modified by agreement with Complaint Counsel, this subpoena requires a search of all documents in the possession, custody, or control of the Company including, without limitation, those documents held by any of the Company's officers, directors, employees, agents, representatives, or legal counsel, whether or not such documents are on the premises of the Company. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive documents, the Company must provide the Complaint Counsel with the following information as to each such person: his or her name, address, telephone number, and relationship to the Company. In addition to hard copy documents, the search must include all of the Company's Electronically Stored Information.
6. Form of Production. The Company shall submit all documents as instructed below absent written consent signed by Complaint Counsel.
 - a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:
 - i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and applicable metadata and information as described in subparts (a)(iii) and (a)(iv).
 - ii. Submit emails in image format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
To	Recipient(s) of the email.
From	The person who authored the email.
CC	Person(s) copied on the email.
BCC	Person(s) blind copied on the email.
Subject	Subject line of the email.
Date Sent	Date the email was sent.
Time Sent	Time the email was sent.
Date Received	Date the email was received.
Time Received	Time the email was received.
Attachments	The Document ID of attachment(s).
Mail Folder Path	Location of email in personal folders, subfolders, deleted items or sent items.
Message ID	Microsoft Outlook Message ID or similar value in other message systems.

- iii. Submit email attachments in image format, or native format if the file is one of the types identified in subpart (a)(i), with extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Parent Email	The Document ID of the parent email.

Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

- iv. Submit all other electronic documents in image format, or native format if the file is one of the types identified in subpart (a)(i), accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

- v. Submit documents stored in hard copy in image format accompanied by OCR with the following information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.

- vi. Submit redacted documents in PDF format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 8.
- b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats such as CSV files, with all underlying data un-redacted and all underlying formulas and algorithms intact.
 - c. If the Company intends to utilize any electronic search terms, de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact Complaint Counsel to determine, with the assistance of the appropriate Complaint Counsel representative, whether and in what manner the Company may use such software or services when producing materials in response to this Subpoena.
 - d. Produce electronic file and image submissions as follows:
 - i. For productions over 4 gigabytes, use IDE, EIDE, SATA, or solid-state hard disk drives with uncompressed data in a USB 2.0 (or newer) external enclosure formatted in a Microsoft Windows-compatible format. Use of USB 2.0 (or newer) Flash Drives is also permitted. You may also use Accellion Secure File Transfer for productions of this size. Please contact the FTC for assistance if you would like to transfer files in this manner;
 - ii. For productions under 4 gigabytes, CD-R CD-ROM optical disks formatted to ISO 9660 specifications, DVD-ROM optical disks for Windows-compatible personal computers; and

- iii. All Documents produced in electronic format shall be scanned for and free of viruses prior to submission. Complaint Counsel will return any infected media for replacement, which may affect the timing of the Company's compliance with this Subpoena.
 - iv. Encryption of productions using NIST FIPS-compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.¹
 - e. Each production shall be submitted with a transmittal letter that includes the Docket Number (No. 9378); production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.
7. All documents responsive to these requests:
- a. Shall be produced in complete form, unredacted unless privileged, and in the order in which they appear in the Company's files;
 - b. Shall be marked on each page with corporate identification and consecutive document control numbers when produced in image format;
 - c. Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black and white photocopying or conversion to TIFF format of any document (e.g., a chart or graph) makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-color photocopy, or a JPEG format image);
 - d. Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and
 - e. Shall be accompanied by an index that identifies (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents. The Complaint Counsel representative will provide a sample index upon request.

¹ The National Institute of Standards and Technology (NIST) issued Federal Information Processing Standard (FIPS) Publications 140-1 and 140-2, which detail certified cryptographic modules for use by the U.S. Federal government and other regulated industries that collect, store, transfer, share, and disseminate sensitive but unclassified information. More information about FIPS 140-1 and 140-2 can be found at <http://csrc.nist.gov/publications/PubsFIPS.html>.

8. If any documents are withheld from production based on a claim of privilege, the Company shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.
9. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but the Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
10. The Company must provide Complaint Counsel with a statement identifying the procedures used to collect and search for electronically stored documents and documents stored in paper format. The Company must also provide a statement identifying any electronic production tools or software packages utilized by the Company in responding to this subpoena for: keyword searching, Technology Assisted Review, email threading, de-duplication, global de-duplication or near-de-duplication, and
 - a. if the Company utilized keyword search terms to identify documents and information responsive to this subpoena, provide a list of the search terms used for each custodian;
 - b. if the Company utilized Technology Assisted Review software;
 - i. describe the collection methodology, including: how the software was utilized to identify responsive documents; the process the Company utilized to identify and validate the seed set documents subject to manual review; the total number of documents reviewed manually; the total number of documents determined nonresponsive without manual review; the process the Company used to determine and validate the accuracy of the automatic determinations of responsiveness and nonresponsiveness; how the Company handled exceptions ("uncategorized documents"); and if the Company's documents include foreign language documents, whether reviewed manually or by some technology-assisted method; and
 - ii. provide all statistical analyses utilized or generated by the Company or its agents related to the precision, recall, accuracy, validation, or quality of its document production in response to this subpoena; and identify the person(s) able to testify on behalf of the Company about information known or reasonably available to the organization, relating to its response to this specification.

- c. if the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this subpoena, or if the Company computer systems contain or utilize such software, the Company must contact a Complaint Counsel representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena

Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Steven Lavender at (202) 326-3563. The response to the request shall be addressed to the attention of Steven Lavender, Federal Trade Commission, 400 7th Street SW, Washington, D.C. 20024, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* is complete and correct to the best of my knowledge and belief.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

CERTIFICATE OF SERVICE

I hereby certify that I delivered via FedEx and electronic mail a copy of the foregoing document to:

Matthew D. Kent, Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street, Suite 4900
Atlanta, GA 30309-3424

Counsel for Health Evolution Partners

I hereby certify that I delivered via electronic mail a copy of the foregoing document to:

Edward G. Biester III
Sean P. McConnell
Wayne A. Mack
Erica Fruiterman
Sarah Kulik
William Shotzbarger
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103
egbiester@duanemorris.com
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WAMack@duanemorris.com
efruiterman@duanemorris.com
skulik@duanemorris.com
wshotzbarger@duanemorris.com

*Counsel for Respondent Otto Bock HealthCare North
America, Inc.*

February 2, 2018

By: /s/ Steven Lavender
Steven Lavender
Federal Trade Commission
Bureau of Competition
400 7th Street SW
Washington, DC 20024
slavender@ftc.gov
Telephone: (202) 326-3563

Counsel Supporting the Complaint

PUBLIC

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

In the Matter of

Otto Bock HealthCare North America, Inc.,
a corporation,

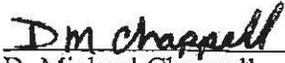
Respondent.

DOCKET NO. 9378

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: December 20, 2017

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be 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. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9378" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9378" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. 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.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

EXHIBIT B



Bureau of Competition
Mergers I Division

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

May 25, 2018

VIA EMAIL

Health Evolution Partners
c/o Matthew D. Kent
Alston & Bird LLP
One Atlantic Center, 1201 West Peachtree Street, Suite 4900
Atlanta, GA 30309-3424
Matthew.Kent@alston.com

RE: *In the Matter of Otto Bock HealthCare North America, Inc.*, Federal Trade
Commission Dkt. No. 9378

Dear Matthew,

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 intend to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on July 10, 2018. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony which 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, 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); and *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 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). You must also provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

Please be aware that under the current Scheduling Order dated April 26, 2018, the deadline for filing motions seeking *in camera* status is June 11, 2018.

If you have any questions, please feel free to contact me at (202) 326-2850.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen Mohr".

Stephen Mohr
Counsel Supporting the Complaint

Attachment A

Exhibit No.	Description	Date	BegBates	EndBates
PX02001	Freedom Innovations Presentation: Freedom Innovations, LLC (June 2017)	06/00/2017	HEP000043	HEP000101
PX02003	Freedom Innovations Presentation: Freedom Innovations, LLC (August 2017)	08/00/2017	HEP000102	HEP000154
PX02004	Freedom Innovations Presentation: Board of Directors Teleconference (April 6, 2017)	4/6/2017	HEP000032	HEP000042
PX02005	Email from Jon Hammack to David Smith, Paul Vallone et al. re: [EXT] Freedom deck and worksheet w/Attach: Freedom Innovations - CIP_v2017.03.29.pdf; FI - Historicals and Projections (2017.03.22) Gross Margin.xlsx; Key Forecast Assumptions...	00/00/0000	HEP000440	HEP000513
PX02006	Email from Jon Hammack to David Smith, Braden Kelly, et al. re: [EXT] FIH Questions	7/15/2017	HEP000597	HEP000601
PX02007	Email from Braden Kelly to David Brailer, Kay Yun, et al. re: EQT	8/28/2017	HEP000720	HEP000720
PX02008	Email from Lee Kim to David Smith, Maynard Carkhuff, et al. re: Freedom Innovations - August 2017 Flash Report	9/7/2017	HEP003414	HEP003416
PX02009	Email from Jon Hammack to David Smith, Braden Kelly, et al. re: Non-binding offer	7/26/2017	HEP000618	HEP000624
PX02010	Email from David Smith to Jon Hammack and Braden Kelly re: [EXT] FIH Questions	7/15/2017	HEP000602	HEP000606
PX02011	Email from Jon Hammack to Rolf Classon, David Smith, et al. re: Script	7/17/2017	HEP000607	HEP000608
PX02012	Letter from Moelis & Company to Final Bidders re: Submission of Final Offers	8/1/2017	HEP000625	HEP000628
PX02013	Email from David Smith to Braden Kelly re: OB	8/8/2017	HEP000632	HEP000632
PX02014	Email from Braden Kelly to Thomas Chung, Kay Yun, et al. re: Roosevelt: Final Bid Letter and Merger Agreement Mark-up	8/31/2017	HEP000734	HEP000932
PX02016	Email from Lee Kim to Joseph McDermott, Adam Willis, et al. re: Freedom Innovations, Compliance Package, July 2015	8/30/2015	HEP004081	HEP004093
PX02017	Email from Lee Kim to Joseph McDermott, Adam Willis, et al. re: Freedom Innovations, Compliance Package, October 2015	11/25/2015	HEP004152	HEP004164
PX02018	Email from Lee Kim to Joseph McDermott, Adam Willis, et al. re: Freedom Innovations, Compliance Package, November 2015	12/21/2015	HEP004165	HEP004177
PX02019	Letter from Jon Sigurdsson to Jon Hammack and Mark Webber re: Project Roosevelt - Ossur Proposal	8/31/2017	HEP004200	HEP004202
PX02020	Health Evolution Partners Report: Financial Statements	12/31/2016	HEP004294	HEP004310
PX02021	Freedom Innovations Report: Consolidated Financial Statements	12/31/2016	HEP004231	HEP004256
PX02022	Health Evolution Partners Report: Quarterly Report	9/30/2017	HEP004311	HEP004326
PX02023	Email from Lee Kim to Joseph McDermott, David Smith, et al. re: Freedom Innovations, Annual Compliance Documents, 2016	4/20/2017	HEP003802	HEP003843
PX02023R	[redacted] Email from Lee Kim to Joseph McDermott, David Smith, et al. re: Freedom Innovations, Annual Compliance Documents, 2016	4/20/2017	HEP003802	HEP003843
PX02024	Email from David Smith to Jon Hammack and Braden Kelly re: AW: [EXT] Financial workbook	3/24/2017	HEP002889	HEP002896
PX02025	Email from adorotheou@parker.com to Ned Brown and Thomas Chung re: Diagnostics	3/31/2016	HEP001268	HEP001271
PX02025R	[redacted] Email from adorotheou@parker.com to Ned Brown, Thomas Chung re: Diagnostics	3/31/2016	HEP001268	HEP001271

Attachment A

Exhibit No.	Description	Date	BegBates	EndBates
PX02026	Email from Lee Kim to Joseph McDermott, Adam Willis, et al. re: Freedom Innovations Compliance Package, December 2016	1/30/2017	HEP002464	HEP002480
PX02027	Email from Lee Kim to David Smith, Braden Kelly, et al. re: board call monday	2/3/2017	HEP002484	HEP002490
PX02028	Email from Lee Kim to David Smith, Maynard Carkhuff, et al. re: Freedom Innovations, August 2017 Financial Statements	9/12/2017	HEP003418	HEP003432
PX02029	Email from Lee Kim to David Smith, Maynard Carkhuff, et al. re: Freedom Innovations, January 2017 Financial Statements	2/14/2017	HEP002505	HEP002513
PX02030	Email from Thomas Chun to David Brailer re: Freedom Draft IC Presentation	2/16/2017	HEP002523	HEP002535
PX02031	Email from David Smith to Braden Kelly and Thomas Chung re: [EXT] Re: Slides - Email 3 of 3	3/12/2017	HEP002771	HEP002798
PX02032	Email from Lee Kim to David Smith et al. re: Prep Materials for Freedom Innovations Board Meeting, 4/9/2017	4/18/2017	HEP003218	HEP003299
PX02033	Email from David Smith to Paul Vallone, Braden Kelly, et al. re: Parker slides	8/1/2017	HEP003345	HEP003365
PX02034	Email from David Smith to Rolf Classon, Maynard Carkhuff, et al. re: [EXT] Slides - Email 3 of 3	3/27/2017	HEP002905	HEP002953
PX02034R	[redacted] Email from David Smith to Rolf Classon, Maynard Carkhuff, et al. re: [EXT] Re: Slides - Email 3 of 3	3/27/2017	HEP002905	HEP002953
PX02035	Email from Lee Kim to David Smith, Maynard Carkhuff, et al. re: Prep Materials for Freedom Board Meeting/Teleconference, July 20, 2016	7/19/2016	HEP001343	HEP001385
PX02036	Email from Lee Kim to David Smith, Maynard Carkhuff, et al. re: Freedom Innovations - June 2017 Flash Report	7/7/2017	HEP003342	HEP003344
PX02037	Email from Lee Kim to David Smith, Maynard Carkhuff, et al. re: Freedom Innovations - July 2017 Flash Report	8/4/2017	HEP003366	HEP003367
PX02038	Email from Joe Martin to David Smith, Rolf Classon, et al. re: CONFIDENTIAL	4/5/2016	HEP008239	HEP008241
PX02039	Email from David Smith to Jon Hammack, Braden Kelly, et al. re: Non-binding offer	7/27/2017	HEP022254	HEP022255
PX02040	Email from Braden Kelly to David Smith, Lee Kim, et al. re: Irvine and Gunnison Leases	8/6/2017	HEP022399	HEP022399
PX02041	Email from Braden Kelly to David Smith re: Complete Documents for QNX ALpha III testing	8/17/2017	HEP022579	HEP022583
PX02042	Email from David Smith to Braden Kelly re: Banks	8/22/2017	HEP022592	HEP022592
PX02044	Email from Braden Kelly to Ned Brown, David Smith, Rolf Classon, re: [no subject]	9/23/2017	HEP022754	HEP022754
PX02045	Email from Thomas Chung to David Smith and Ned Brown re: Plie Revenue vs Product Launch	4/8/2016	HEP008620	HEP008620
PX02046	Email from David Smith to Thomas Chung and Ned Brown re: Plie Revenue vs Product Launch	4/9/2016	HEP008622	HEP008623
PX02047	Email from David Smith to Thomas Chung, Ned Brown, et al. re: Incremental Plie 3 Price Reduction to Hanger Clinics	5/10/2016	HEP009486	HEP009487
PX02048	Email from Thomas Chung to David Smith re: Cash Forecast Slides for BOD Meeting	5/26/2016	HEP010269	HEP010441
PX02049	Email from Rolf Classon to David Smith re: Question	3/1/2016	HEP006511	HEP006512
PX02049R	[redacted] Email from Rolf Classon to David Smith re: Question	3/1/2016	HEP006511	HEP006512
PX02050	Email from Maynard Carkhuff to Joe Martin, Rob Cripe, et al. re: Plie 3-Hangar	3/16/2016	HEP007506	HEP007506
PX02052	Freedom Innovations Memo: Compliance Certificate	8/28/2017	HEP000721	HEP000733

Attachment A

Exhibit No.	Description	Date	BegBates	EndBates
PX02053	Letter from Otto Bock to Jon Hammack and Mark Weber re: Freedom Innovations - Indicative Offer	7/26/2017	HEP004178	HEP004184
PX02054	Letter from FIH Group Holdings to Jon Hammack and Mark Weber re: Freedom Innovations - Amendment to Final Bid Materials	9/5/2017	HEP004191	HEP004195
PX02055	Letter from Moelis & Company to Jon Hammack and Mark Weber re: Project Roosevelt - Non-Binding Proposal	7/25/2017	HEP004196	HEP004199
PX02056	Email from Mark Webber to Thomas Chung re: NWC	9/22/2017	HEP022746	HEP022748
PX02057	HEP Report: Freedom Innovations Consolidated Financial Statements	4/6/2017	HEP000396	HEP000437
PX02058	Otto Bock/Freedom Innovations Agreement and Plan of Merger	9/22/2017	HEP000155	HEP000294
PX02059	Email from David Smith to Braden Kelly re: Parker	11/28/2016	HEP013519	HEP013521
PX02060	Email from David Smith to Maynard Carkhuff, Jon Hammack, et al. re: HGN	7/2/2017	HEP022099	HEP022099
PX02061	Email from Braden Kelly to David Brailer, Kay Yun, et al. re: Freedom	7/12/2017	HEP022129	HEP022129
PX02062	Email from Braden Kelly to Rolf Classon and David Smith re: VB: Freedom: Final Round	8/4/2017	HEP022284	HEP022285
PX02063	Email from Braden Kelly to David Brailer re: [EXT] VB: SweetSpot	8/22/2017	HEP022590	HEP022591
PX02064	Email from Thomas Chung to David Brailer, Kay Yun, et al. re: Freedom Board Meeting Summary - 4/6/2017	4/6/2017	HEP000392	HEP000393
PX02065	Email from Thomas Chung to David Brailer, Kay Yun, et al. re: Freedom Board Meeting Summary (4/19/17)	4/20/2017	HEP000438	HEP000439
PX02066	Email from Thomas Chung to Braden Kelly re: Preliminary Freedom Returns	9/28/2016	HEP001867	HEP001873
PX02067	Email from Thomas Chung to David Brailer, Braden Kelly, et al. re: Preliminary Freedom Returns and YTD Portco Financials	10/21/2016	HEP002148	HEP002164
PX02068	Email from Thomas Chung to Braden Kelly and bk@bradenkelly.com re: Draft Freedom Term Sheet	12/16/2016	HEP002372	HEP002378
PX02069	Email from Thomas Chung to Braden Kelly re: Freedom YTD Performance	3/13/2017	HEP002825	HEP002826
PX02070	Email from Thomas Chung to David Smith and Ned Brown re: 2015 Freedom Revenue Summary	2/22/2016	HEP005823	HEP005826
PX02071	Email from Ned Brown to Thomas Chung, Partners, et al. re: Freedom HV Presentation and Freedom 3/16 Board Mtg Presentation	3/17/2016	HEP007693	HEP007694
PX02073	Email from Thomas Chung to Lee Kim re: PH Prep call w/Attach: Parker Update 2016 04 11.pdf	4/7/2016	HEP008598	HEP008605
PX02075	Email from Thomas Chung to David Brailer, Braden Kelly, et al. re: Prep Materials for Freedom Board Meeting/Teleconference, July 20, 2016	7/20/2016	HEP011848	HEP011850
PX02076	Email from Thomas Chung to David Brailer re: Draft Q3 Valuations	9/23/2016	HEP012464	HEP012509
PX02077	Email from Thomas Chung to Braden Kelly and bk@bradenkelly.com re: Preliminary Freedom Returns	9/28/2016	HEP012580	HEP012586
PX02078	Email from Thomas Chung to David Brailer, Braden Kelly, et al. re: Preliminary Freedom Returns and YTD Portco Financials	10/21/2016	HEP013162	HEP013178
PX02079	Email from Thomas Chung to Thomas Chung re: Freedom Board Meeting Summary	1/13/2017	HEP014570	HEP014570
PX02080	Email from Thomas Chung to David Brailer and Braden Kelly re: Freedom Board Meeting Highlights - 12.19.2016	12/19/2016	HEP002384	HEP002385
PX02081	Email from Thomas Chung to David Brailer and Braden Kelly re: Freedom Board Meeting Summary	1/13/2017	HEP002462	HEP002463

Attachment A

Exhibit No.	Description	Date	BegBates	EndBates
PX02082	Email from Thomas Chung to Rolf Classon, Ned Brown, et al. re: Freedom Board Working Session: To-Dos and Notes	3/3/2016	HEP006811	HEP006813
PX02083	Email from Thomas Chung to xixi.zhao@pwc.com and Kay Yun re: Latest Investment Committee Meeting Notes	2/17/2017	HEP01425	HEP01427
PX02085	Email from Thomas Chung to David Brailer and Kay Yun re: 2017-03-13 IC Meeting Discussion Materials	3/10/2017	HEP016706	HEP016742
PX02086	Email from Kay Yun to Raquel Gonzalez re: Fund I Q1 Report	3/29/2017	HEP017988	HEP018031
PX02087	Email from Thomas Chung to David Smith, Ned BrownGmail, et al. re: follow up	4/4/2017	HEP018517	HEP018520
PX02088	Email from Thomas Chung to David Brailer, Braden Kelly, et al. re: Freedom Board Meeting Summary - 4/6/2017	4/6/2017	HEP018960	HEP018961
PX02089	Email from Thomas Chung to David Brailer and Braden Kelly re: Freedom Board Meeting Summary (4/19/17)	4/20/2017	HEP019378	HEP019379
PX02090	Email from Thomas Chung to David Brailer, Braden Kelly, et al. re: Freedom Board Call (5/27): Sale/Refi Process Update	5/27/2017	HEP021416	HEP021416
PX02091	Email from Thomas Chung to David Brailer, Braden Kelly, et al. re: Freedom Board Meeting - 6/10/17	6/10/2017	HEP021570	HEP021570
PX02092	Email from Kay Yun to Raquel Gonzalez re: Q2 2017 Financials	6/2/2017	HEP022052	HEP022098
PX02093	Email from Thomas Chung to Kay Yun, Braden Kelly, et al. re: Freedom Board Meeting - July 7, 2017	7/7/2017	HEP022114	HEP022114
PX02094	Email from Thomas Chung to Kay Yun re: 2017-09-18	9/17/2017	HEP022667	HEP022693
PX02095	Email from Thomas Chung to David Brailer and bk@bradenkelly.com re: 2017-02-13 IC Meeting Discussion Materials	2/13/2017	HEP014795	HEP014797
PX02096	Email from Thomas Chung to David Brailer, Kay Yun, et al. re: 2017-04-03	4/3/2017	HEP018460	HEP018462
PX02097	Email from Thomas Chung to Kay Yun, Braden Kelly, et al. re: 2017-06-02 IC Meeting Discussion Materials	6/2/2017	HEP021442	HEP021470
PX02099	Email from Thomas Chung to Kay Yun, Braden Kelly, et al. re: 2017-08-07 IC Meeting Discussion Materials	8/7/2017	HEP022408	HEP022410
PX02100	Email from Thomas Chung to Kay Yun, Braden Kelly, et al. re: 2017-08-28 IC Meeting Discussion Materials	8/28/2017	HEP022606	HEP022608
PX02101	Email from David Smith to Ned Brown, Braden Kelly, et al. re: conversation	5/20/2016	HEP001283	HEP001284
PX02102	Email from David Smith to Braden Kelly re: Budget	12/7/2016	HEP002297	HEP002313
PX02103	Email from David Smith to Joseph McDermott, Adam Willis, et al. re: Proposed Revisions to the 7th Amendment Term Sheet	2/6/2017	HEP014753	HEP014755
PX02104	Email from David Smith to Rolf Classon, Christa Kruezburg, et al. re: OCM Slides - Draft	11/21/2016	HEP002240	HEP002277
PX02107	Email from Ned Brown to Braden Kelly, Thomas Chung, et al. re: 2015 Freedom Revenue Summary	2/23/2016	HEP005868	HEP005869
PX02108	Email from David Smith to Ned Brown and Rolf Classon re: Freedom Board Working Session: To-Dos and Notes	3/4/2016	HEP006829	HEP006830
PX02109	Health Evolution Partners Document: Seventh Amendment to Credit Agreement and Waiver	00/00/0000	HEP000308	HEP000320
PX02109R	[redacted] Health Evolution Partners Document: Seventh Amendment to Credit Agreement and Waiver	00/00/0000	HEP000308	HEP000320
PX02110	Health Evolution Partners Document: Freedom Innovations Holdings Financial Statements	00/00/2015 - 12/31/2016	HEP004203	HEP004230

Attachment A

Exhibit No	Description	Date	BegBates	EndBates
PX02111	Health Evolution Partners Document: Sixth Amendment to Credit Agreement and Waiver	00/00/0000	HEP000321	HEP000332
PX02112	Health Evolution Partners Document: FIH Group Holdings: Confidentiality Agreement	6/13/2017	HEP000295	HEP000300
PX02113	Health Evolution Partners Document: Attention: Hans Georg Nader: Confidentiality Agreement	10/17/2016	HEP000333	HEP000339
PX02114	Moelis and Company Presentation: Project Roosevelt: Discussion Materials	08/00/2017	HEP000711	HEP000714
PX02115	Letter from Sonke Rossing to Jon Hammack and Mark Webber re: Freedom Innovations - Final Bid	8/31/2017	HEP004185	HEP004190
PX02119	Email from Ned Brown to David Smith re: follow-up	4/4/2017	HEP018717	HEP018721
PX02120	Email from Braden Kelly to David Brailer re: Freedom Innovations Board Materials	5/27/2017	HEP021395	HEP021415
PX02121	Email from David Smith to Rolf Classon, Braden Kelly, et al. re: Activity tracking report board call w/Attach: Roosevelt - Contact Log (2017.07.06).pdf; ATT00001.txt	00/00/0000	HEP000580	HEP000583
PX02122	Health Evolution Partners Document: Amended and Restated Capital Contribution Agreement	00/00/0000	HEP001197	HEP001200
PX02123	Email from Lee Rimler to rclasson@optonline.net, adorotheou@parker.com, et al. re: Board Call	9/22/2017	HEP001203	HEP001207
PX02124	Email from Thomas Chung to Kay Yun re: Freedom HV Presentation	7/8/2016	HEP001322	HEP001332
PX02125	Email from Lee Kim to David Smith, Maynard Carkhuff, et al. re: Freedom Innovations - August 2017 Flash Report	9/7/2017	HEP003416	HEP003417
PX02126	Email from David Smith to Ketan Parikh, Jon Hammack, et al. re: [No Subject]	5/4/2017	HEP019480	HEP019480
PX03267	Email from Kay Yun to Raquel Gonzalez re: Fund I Q1 Report	3/29/2017	HEP017988	HEP018031
PX03268	Email from Thomas Chung to Kay Yun re: 2017-06-02 IC Meeting Discussion Materials	6/2/2017	HEP021442	HEP021470
PX03269	Email from Kay Yun to Raquel Gonzalez re: Q2 2017 Financials	6/28/2017	HEP022052	HEP022098
PX05113	Deposition Transcript of Thomas Chung (Health Evolution Partners)	3/16/2018	PX05113-001	PX05113-082
PX07001	Letter from Matthew Kent to Steven Lavender re: Subpoena Duces Tecum ("Subpoena") and Civil Investigative Demand ("CID") issued to Health Evolution Partners ("HEP") dated November 3, 2017, In re Acquisition of FIH Group Holdings, LLC by Otto Bock...	11/17/2017	PX07001-001	PX07001-005
PX07004	Letter from Matthew Kent to Steven Lavender re: Requested Information from Health Evolution Partners	10/26/2017	PX07004-001	PX07004-003
PX07028	Letter from Matthew D. Kent to Steve Lavender re: Subpoena Duces Tecum ("Subpoena") and Civil Investigative Demand ("CID") issued to Health Evolution Partners ("HEP") dated November 3, 2017, In re Acquisition of FIH Group Holdings, LLC by Otto Bock...	11/17/2017	PX07028-001	PX07028-005

EXHIBIT C

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May 29, 2018

VIA EMAIL AND FEDERAL EXPRESS

Health Evolution Partners
c/o Matthew Kent
Alston & Bird LLP
1201 W. Peachtree St.
Atlanta, GA 30309
matthew.kent@alston.com

Re: In the Matter of Otto Bock HealthCare North America, Inc., Federal Trade Commission Dkt. No. 9378

Dear Mr. Kent,

By this letter, we are providing formal notice, pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Respondent Counsel intend to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on July 10, 2018. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony which 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, 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); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a

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May 29, 2018

Page 2

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). You must also provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

Please be aware that under the current Scheduling Order dated April 26, 2018, the deadline for filing motions seeking *in camera* status is June 11, 2018.

If you have any questions, please feel free to contact me at 215-979-1149.

Very truly yours,

/s/ Sean S. Zabaneh

Sean S. Zabaneh

TAL

Enclosures

cc: Sean P. McConnell
Sarah O'Laughlin Kulik

Attachment A

Exhibit No.	Description	Date	BegBates	EndBates
RX-0989	Deposition Transcript of Thomas Chung (HEP)	3/16/2018	RX-0989-00001	RX-0989-00082
RX-0984	Investigational Hearing Transcript of David Smith (HEP)	12/1/2017	FTC-DVSH-000001	FTC-DVSH-000249
RX-1001	Deposition Transcript of David Smith (HEP)	3/22/2018	RX-1001-00001	RX-1001-00098
RX-0400	Freedom Innovations Board of Directors Teleconference Presentation	04/06/2017	HEP000032	HEP000042
RX-0435	Presentation: Freedom Innovations, LLC - Executive Summary, etc.	6/01/2017	HEP000043	HEP000101
RX-0481	Presentation - Freedom Innovations, LLC - Executive Summary, etc.	8/01/2017	HEP000102	HEP000154
RX-0398	Seventh Amendment to Credit Agreement and Waiver among Freedom Innovations, LLC, Freedom Innovations Holdings, LLC, and Madison Capital Funding, LLC	04/04/2017	HEP000308	HEP000320
RX-0460	Email chain from David Smith to Jon Hammack, cc: Braden Kelly re: FIH Questions	7/15/2017	HEP000602	HEP000606
RX-0164	Email from A. Dorotheou to Ned Brown, cc: Thomas Chung re: Fwd: Diagnostics,	3/23/2016	HEP001268	HEP001271
RX-0224	Email from David Smith to Ned Brown, et al., re: Fwd: Conversation	5/20/2016	HEP001283	HEP001284
RX-0242	Email from Thomas Chung to Lee Kim, cc: David Smith, re: Freedom HV Presentation Update, w/attachment Freedom Update_v15.pdf	7/8/2016	HEP001316	HEP001321
RX-0247	Email from Lee Kim to David Smith, et al., cc: Thomas Chung, et al., bcc: Braden Kelly, re: Prep Materials for Freedom Board Meeting/ Teleconference, July 20, 2016, w/attachment BOD presentation, 2016 07 20, master.pdf	7/19/2016	HEP001344	HEP001385
RX-0249	Email chain from Lee Kim to David Smith, et al., cc: Thomas Chung, et al., bcc: Braden Kelly re: Prep Materials for Freedom Board Meeting/ Teleconference, July 20, 2016, w/attachment BOD presentation, 2016 07 20, master, revised slide 37.pdf	7/20/2016	HEP001494	HEP001495
RX-0274	Email from Thomas Chung to Ned Brown re: Draft Freedom Equity Investor List w/attachment Potential Freedom Equity Investors_v1.pdf	9/13/2016	HEP001602	HEP001603
RX-0287	Email from David Brailer to Braden Kelly, Kay Yun, cc: Thomas Chung re: Prep Materials for Freedom Board Meeting, September 22, 2016	9/22/2016	HEP001755	HEP001756
RX-0308	Email from Braden Kelly to David Brailer and Kay Yun, cc: Thomas Chung, re: Fwd: Freedom - 20th Board Meeting - Materials, w/attachment Freedom Innovations - Discussion Materials (2016.10.19).pdf	10/19/2016	HEP002104	HEP002116

RX-0310	Email from Thomas Chung to David Smith, cc: Ned Brown, re: Freedom: Potential Equity/Deb Investor Summary w/attachment Potential Freedom Investors_v5.pdf	10/19/2016	HEP002144	HEP002145
RX-0336	Email from Thomas Chung to David Brailer, Kay Yun, cc: Braden Kelly, re: Freedom Board Meeting Highlights - 12.19.2016	12/19/2016	HEP002384	HEP002385
RX-0356	Email from Thomas Chung to David Brailer, Kay Yun, cc: Braden Kelly, re: Freedom Board Meeting Summary - 1.12.2017	1/13/2017	HEP002462	HEP002463
RX-0372	Email from Thomas Chung to David Brailer, Kay Yun, cc: Braden Kelly, re: FW: Freedom Draft IC Presentation, w/attachment Freedom IC Update_v3.pd	2/16/2017	HEP002523	HEP002535
RX-0378	Freedom Summary Performance - Freedom Monitor_2017 02.pdf	3/13/2017	HEP002826	HEP002826
RX-0386	Email from David Smith to Rolf Classon, et al., cc: Thomas Chung, et al., re: FW: [EXT] Slides – Email 3 of 3, w/attachments Freedom Innovations - Management Presentation (2017.03.13) FINAL.PDF; Project Roosevelt - Diligence Questions_2017.03.24.docx; FI - Historicals and Projections (2017.03.22).xlsx; Freedom Innovations - Follow-Up Materials (2017.03.22).pdf	3/27/2017	HEP002905	HEP002947
RX-0405	Email from Lee Kim to David Smith, et al., cc: Claudia Gehrmann, et al., re: Prep Materials for Freedom Innovations Board Meeting, 4/19/17, w/attachments BOD presentation, 2017 04 19, master, final.pd	4/18/2017	HEP003218	HEP003299
RX-0452	Email from Lee Kim to David Smith, et al., cc: John Robertson, et al., re: Freedom Innovations - June 2017 Flash Report, w/attachment Monthly Flash Report 063017.pdf	7/7/2017	HEP003342	HEP003344
RX-0480	Email from David Smith to Paul Vallone, et al., bcc: Braden Kelly re: Fwd: Parker Slides, w/attachment Parker update 2017 08 01.pdf	8/1/2017	HEP003345	HEP003365
RX-0407	Email from Lee Kim to Joseph McDermott, cc: David Smith, et al., re: Freedom Innovations, Annual Compliance Documents, 2016, w/attachments Madison Capital compliance certificate 2016 12 31, annual, signed.pdf; Madison Capital ECF certificate 2016 12 31, signed.pdf; 2016 Audited Financial Report - Final PDF.pdf; 2016 Letter of Negative Assurance.pdf; Reconciliation of Net Loss EBITDA and Adjusted EBITDA 2016, bank.pdf	4/20/2017	HEP003802	HEP003843

RX-0083	Email from Lee Kim to Joseph McDermott, cc: Adam Willis, et al., re: Freedom Innovations - Compliance Package, July 2015, w/attachment Madison Capital compliance package 2015 07 31.pdf	8/30/2015	HEP004081	HEP004093
RX-0107	Email from Lee Kim to Joseph McDermott, cc: Adam Willis, et al., re: Freedom Innovations, Compliance Package, October 2015, w/attachment Madison Capital compliance package 2015 10 31.pdf	11/25/2015	HEP004152	HEP004164
RX-0125	Email from Lee Kim to Ned Brown re: BMO	1/13/2016	HEP004606	HEP004608
RX-0134	Email from Ned Brown to Kay Yun, et al., bcc: Braden Kelly, re: Freedom Update	2/7/2016	HEP005443	HEP005443
RX-0135	Email from Ned Brown to Rolf Classon and Thomas Chung re: Fwd: Freedom Update	2/8/2016	HEP005448	HEP005449
RX-0139	Email from Thomas Chung to David Smith, Rolf Classon, cc: Ned Brown, re: 2015 Freedom Revenue Summary, w/attachment Freedom Revenue Breakdown_160222_v5.pdf	2/22/2016	HEP005823	HEP005826
RX-0141	Email from Ned Brown to Braden Kelly, cc: Thomas Chung, et al., re: 2015 Freedom Revenue Summary	2/23/2016	HEP005868	HEP005869
RX-0145	Email from David Smith to Ned Brown cc: Braden Kelly re: Confidential: re: Reaction from Parker CTO	2/29/2016	HEP006202	HEP006205
RX-0146	Email from Ned Brown to David Smith cc: Braden Kelly re: Confidential Re: Reaction from Parker CTO	2/29/2016	HEP006211	HEP006215
RX-0147	Email from David Smith to Ned Brown cc: Braden Kelly re: Confidential Re: Reaction from Parker CTO	2/29/2016	HEP006116	HEP006221
RX-0148	Email from Ned Brown to David Smith re: Confidential: Re: Reaction from Parker CTO	3/1/2016	HEP006320	HEP006342
RX-0144	Email from Rolf Classon to David Smith re: Fwd: Question	2/29/2016	HEP006511	HEP006512
RX-0149	Email from Lee Kim to Rolf Classon, et al., cc: Maynard Carkhuff, et al., re: Slides for BOD Working Sessions on 3/3/16, w/attachment BOD presentation, 2016 03 03, master, draft 2016 03 01.pd	3/2/2016	HEP006595	HEP006627
RX-0151	Email from David Smith to Ned Brown, cc: Rolf Classon, Thomas Chung, re: Freedom Board Working Session: To-Dos and Notes	3/4/2016	HEP006829	HEP006830
RX-0152	Email from Thomas Chung to David Smith, et al., cc: Rolf Classon, et al., re: Freedom IC Update Deck, w/attachment Freedom IC Update_v2.pdf	3/5/2016	HEP006945	HEP006969
RX-0154	Email from Thomas Chung to Ned Brown re: Freedom Q1 2016 Valuation	3/11/2016	HEP007086	HEP007092

RX-0155	Email from Thomas Chung to Kay Yun and Ned Brown re: Updated Q1 2016 Freedom Valuation,	3/15/2016	HEP007311	HEP007317
RX-0156	Email from Braden Kelly to David Brailer and Kay Yun re: Fwd: Prep Material For Freedom Board Meeting, March 16, 2016, w/attachment ATT03759.pdf	3/15/2016	HEP007333	HEP007347
RX-0157	Email from Ned Brown to David Smith, cc: Thomas Chung, et al., re: Prep Material for Freedom Board Meeting, March 16, 2016	3/15/2016	HEP007390	HEP007391
RX-0158	Email from Lee Kim to Thomas Chung re: Prep Material for Freedom Board Meeting, March 16, 2016, w/attachment 2016 Outlook Rollup 2+10_V14 Corporate FCST +Quatro_+NP Bank 0311, LK changes 0315.xlsx	3/15/2016	HEP007500	HEP007502
RX-0159	Email from Thomas Chung to Partners, bcc: Braden Kelly, re: Freedom HV Presentation and Freedom 3/16 Board Mtg Presentation, w/attachments Freedom BOD presentation 2016 03 16_abridged.pdf; Freedom Update_v6.pdf	3/16/2016	HEP007642	HEP007649
RX-0161	Email from Ned Brown to Thomas Chung, cc: Partners (Health Evolution Partners), bcc: K. Yun, et al., re: Freedom HV Presentation and Freedom 3/16 Board Mtg Presentation	3/17/2016	HEP007693	HEP007694
RX-0162	Email from Ned Brown to Thomas Chung, cc: Partners, bcc: Braden Kelly, re: Freedom HV Presentation and Freedom 3/16 Board Mtg Presentation	3/17/2016	HEP007695	HEP007696
RX-0165	Email from Braden Kelly to Rolf Classon, cc: Ned Brown, re: Fwd: Updated DS Term Sheet and Illustrative Supporting Calculations, w/attachments Redline.pdf; Freedom Illustrative DS Comp Calculations_2016 03 23.pdf; Draft FIH Employment Term Sheet_2016 03 23.pdf	3/23/2016	HEP007914	HEP007922
RX-0168	Email from Karla Frosburg to Joe Martin, et al., re: Key Messages JM KF 3 23 2016.docx, w/attachment FAQ - Freedom.docx	3/24/2016	HEP007957	HEP007960
RX-0169	Email from Joe Martin to Karla Fosburg, et al., cc: David Smith, re: Another Iteration, w/attachments FAQ - JMartin 3-24.docx; Key Messages JM KF 3 24 2016.docx	3/24/2016	HEP007999	HEP008009
RX-0177	Email from David Smith to Lee Kim, Rob Cripe, cc: Thomas Chung, re: FW: Freedom: Plie Trials vs Invoice Analysis, w/attachment Plie Trials to Invoice Summary_2016 03 28.pdf	4/6/2016	HEP008543	HEP8544
RX-0197	Email from David Smith to Thomas Chung, et al., bcc: Braden Kelly, re: Fwd: Incremental Plie 3 Price Reduction to Hanger Clinics	5/10/2016	HEP009486	HEP009487

RX-0201	Email from Lee Kim to Ned Brown and Thomas Chung re: Freedom Projection, w/attachment 2016 Outlook Rollup 4+8_050516V3.xlsx	5/12/2016	HEP009588	HEP009589
RX-0204	Email from David Smith to Ned Brown and Braden Kelly, bcc: Braden Kelly	5/13/2016	HEP009598	HEP009598
RX-0225	Email from Braden Kelly to Ned Brown, cc: David Brailer, et al., re: Carry Vesting Proposal	6/10/2016	HEP010690	HEP010691
RX-0226	Email from Braden Kelly to Ned Brown cc: David Brailer, et al. bcc: Braden Kelly re: Carry vesting proposal	6/10/2016	HEP010692	HEP010693
RX-0227	Email chain from Ned Brown to Braden Kelly, cc: David Brailer, et al., re: Carry Vesting Proposal	6/10/2016	HEP010714	HEP010715
RX-0228	Email from David Brailer to Ned Brown, cc: Kay Yun and Braden Kelly, bcc: Braden Kelly, re: Agreement	6/13/2016	HEP010749	HEP010749
RX-0231	Email from Thomas Chung to Ned Brown, cc: Braden Kelly, w/attachment Freedom Update_v1.pdf	6/17/2016	HEP010915	HEP010920
RX-0234	Email from Thomas Chung to Braden Kelly, Ned Brown, re: Updated HV Freedom Presentation	6/22/2016	HEP011132	HEP011137
RX-0235	Email from Thomas Chung to Braden Kelly and Ned Brown, bcc: Braden Kelly, re: Updated HV Freedom Presentation, w/attachment Freedom Update_v12.pdf	6/22/2016	HEP011138	HEP011143
RX-0250	Email from Thomas Chung to David Brailer, Kay Yun, cc: Braden Kelly re: Prep Materials for Freedom Board Meeting/Teleconference, July 20, 2016	7/20/2016	HEP011848	HEP011850
RX-0263	Email from David Smith to Rolf Classon, et al., cc: Thomas Chung, re: Communication Update - 8-22-16, w/attachments Comm Update 8-22-2016.doc; BUCKET SLIDE.pptx	8/22/2016	HEP011982	HEP011984
RX-0272	Email from Maynard Carkhuff to Thomas Chung re: Mechanical Knee Market, w/attachments Mechanical Knee Market 8-31-16.ppt; Copy of 2004-2014 Medicare Usage Data - Units.xlsx	8/31/2016	HEP011985	HEP012011
RX-0289	Email from Thomas Chung to Braden Kelly re: Preliminary Freedom Returns, w/attachment Freedom Equity Model_2016 10_v8.pdf	9/28/2016	HEP012573	HEP012579
RX-0290	Email from Thomas Chung to Matthew Stariha re: Valuation Back-Up, w/attachments Freedom Valuation Report_16 09 30_v7.xlsx; Freedom Valuation Report_16 09 30_v6.pdf; Kisimul Valuation Excel Backup_2016 09 30_v1.xlsx; Kisimul Valuation Report_2016 09 30_v1.pdf; LLC Agreement - FIH Group Holdings, LLC.pdf; FIH Group Holdings, LLC - Amendment No. 1 to A&R LLC Agreement.docx; Freedom - FIH Group Holdings, LLC - Amendment No. 2 to A&R LLC Agreement....docx	9/28/2016	HEP012587	HEP12698

Exhibits and other documents can be found in DocSmart