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S NOW, Respondent McWane, Inc. (“McWane”), and moves for *in camera* very limited set of documents, containing McWane’s sensitive and proprietary information, designated by the parties as potential exhibits in the trial of this matter and Exhibits A and B attached hereto (hereinafter the “Subject Documents”).

¹ Full

copies of the twenty-six (26) Subject Documents have been submitted to the Administrative Law Judge concurrently herewith by hand delivery.

Federal law provides that information in evidence is worthy of *in camera* treatment where “its public disclosure will likely result in a clearly defined, serious injury to a corporation whose records are covered by 16 C.F.R. § 3.45(b); *see also* FTC Rule of Practice *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 1984 FTC LEXIS 60, at *1 quoting *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). A party seeking *in*

¹ Counsel for McWane has conferred with Complaint Counsel regarding the issues raised in this motion, and has been authorized to state that Complaint Counsel takes no position with respect to this motion and does not intend to file an opposition.

camera

sensitive business records such as strategic plans, marketing plans, pricing policies, or sales documents is typically extended for a limited time period. *E.g.*, *In re Union Oil Co. of Cal.*, 2004 FTC LEXIS 223, at *2 (Nov. 22, 2004); *In re Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14 (June 26, 1996); *Champion Spark Plug*, 1982 FTC LEXIS 85 at *2 and 1982 FTC LEXIS 92, at *2 (March 4, 1982).

As Exhibits A and B, and the Affidavit of Rick Tatman demonstrate, the Subject Documents meet the standard set forth in 16 C.F.R. §3.45(b). *See* Exhibits A - C, attached hereto. Twenty-one of the 26 Subject Documents are Tyler/Union's Blue Books, which contain both detailed financial statements and the General Manager's Report, which discusses pending and potential litigation and other liabilities.² Tatman Aff., ¶ 2. The remaining Subject Documents are consist of monthly financial statements during the year 2011;³ Tyler/Union's current non-public job pricing information;

potential lawsuits and other liabilities are discussed – but also highly detailed proprietary information pertaining to every aspect of Tyler/Union’s financial status, are kept confidential within McWane and not disclosed to the public. *See* Exh. A, CX-2394-2400, 2415-2419; Exh. B, RX-630-632; Tatman Aff. Public disclosure of the Blue Books would substantially harm McWane, by providing its competitors a wide open look into its innermost financial strengths and weaknesses, that the competitors could use to unfair advantage over McWane. *See Id.* Disclosure of the current customer-specific price and rebate plans would enable McWane’s competitors to leverage more favorable prices and plans for themselves, or even poach McWane’s customers.

McWane has attempted in good faith to limit, to the greatest extent possible, the amount of information for which it is seeking *in camera* treatment. This good faith limitation weighs in favor of granting this motion. *See, e.g., In re Union Oil Co. of Calif.*, 2005 LEXIS 9, at *1 (Jan. 19, 2005) (granting *in camera* treatment where parties sought it only for “narrowly tailored” portions of deposition testimony). Only seven of the Subject Documents contain information over three years old. *See* Exhs A and B. One of those documents is Tyler/Union’s ongoing price protection log; however, McWane’s request for *in camera* protection of the log extends only to the items with prices set to expire in or after 2012. *See* Exh. B, RX-396 (these items appear under the 2012 Tab, 2011 Tab, and one appears under the 2010 Tab). Such current customer-specific pricing information should be protected from McWane’s competitors because it relates to ongoing jobs, and would provide competitors with the identities of customers, locations of specific jobs and sensitive pricing information not otherwise available to the public, which the competitors could then use to analyze and undermine both McWane’s internal pricing and business strategy, and its relationships with customers. *See Id.*

With regard to the other six Subject Documents containing information over three years old, all are Blue Books, and McWane seeks *in camera*

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via overnight delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

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

Edward Hassi, Esq.
Geoffrey M. Green, Esq.
Linda Holleran, Esq.
Thomas H. Brock, Esq.
Michael L. Bloom, Esq.
Jeanine K. Balbach, Esq.
J. Alexander Ansaldo, Esq.
Andrew K. Mann, Esq.

By: /s/ William C. Lavery
William C. Lavery
Counsel for McWane, Inc.

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

In the Matter of)	
)	
McWANE, INC.,)	
)	
a corporation, and)	DOCKET NO. 9351
)	
STAR PIPE PRODUCTS, LTD.,)	
a limited partnership,)	
)	
Respondents.)	

PROPOSED ORDER

On July 31, 2012, McWane, Inc. filed its Motion for In Camera Protection of

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