

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

562786

In the Matter of  
  
McWANE, INC.,  
a corporation.

PUBLIC

Docket No. 9351

**UNOPPOSED MOTION OF NON-PARTY SIGMA CORPORATION FOR *IN CAMERA*  
TREATMENT OF CERTAIN ADDITIONAL DESIGNATED HEARING EXHIBITS**

Non-party SIGMA Corporation (“SIGMA”), through its undersigned counsel, hereby files this Unopposed Motion for *In Camera* Treatment of Certain Additional Designated Hearing Exhibits that Complaint counsel for the Federal Trade Commission (“FTC”) and counsel for Respondent McWane, Inc. (“McWane”) have designated for introduction into the record of the administrative trial of this matter. Both of these documents were treated by SIGMA as “Confidential” in accordance with the terms of the Protective Order Governing Discovery Material entered by D. Michael Chappell, Administrative Law Judge, on January 5, 2012. SIGMA respectfully requests that the Administrative Law Judge enter an Order pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), granting *in*

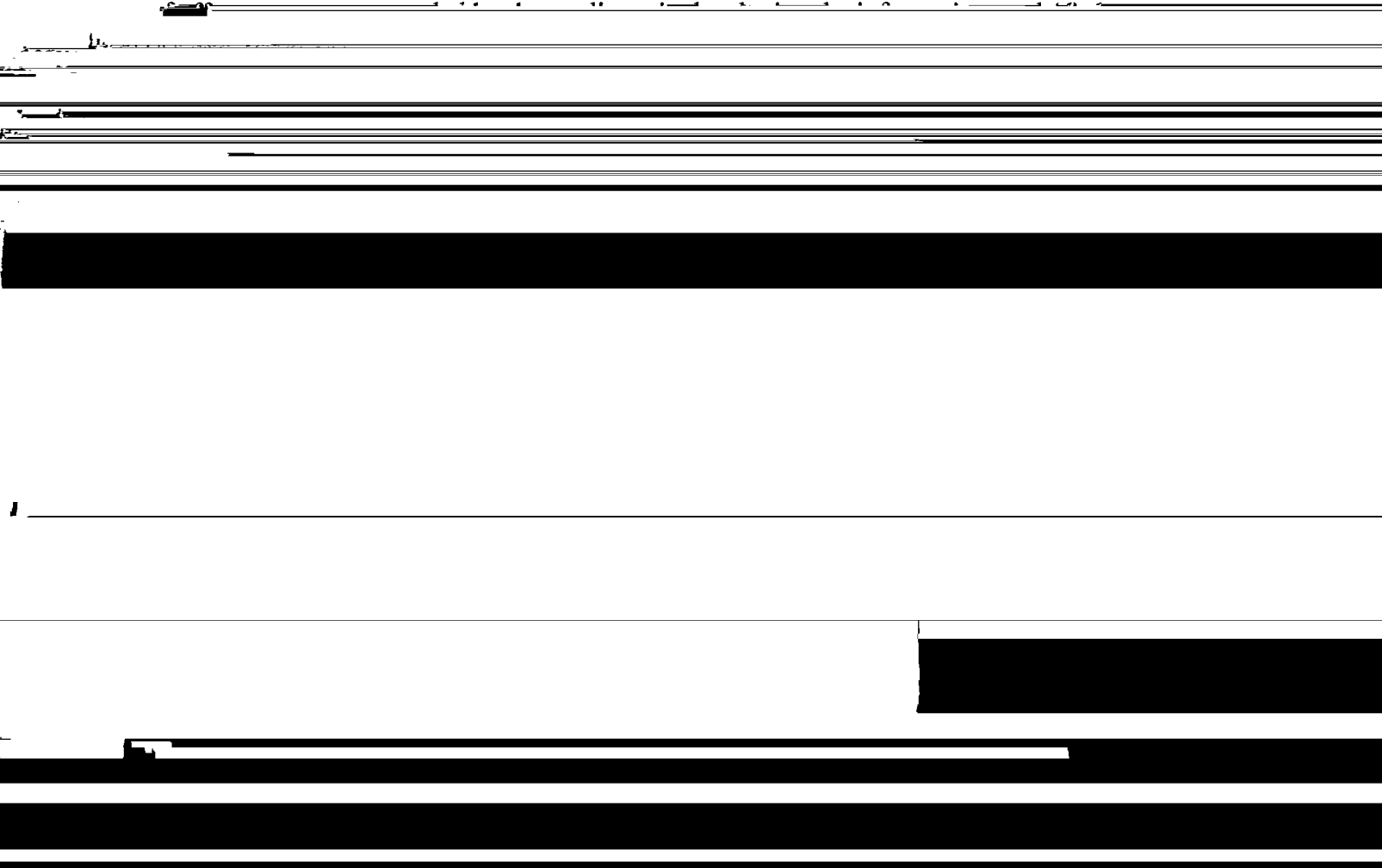
accompanying Declaration of James McGivern, and states as follows:

**I. Introduction**

On August 17, 2012, the Court granted SIGMA's initial Motion for *In Camera*

## II. Standard for In Camera Treatment

Materials merit *in camera* treatment when disclosure “will result in a clearly defined, serious injury to the person or corporation whose records are involved.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). An applicant for *in camera* treatment can establish such serious injury by showing that the information at issue is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). The following factors should be weighed in considering both secrecy and materiality: (1) the extent to which the information is known outside of the applicant’s business; (2) the extent to which the information is known by employees and others involved in the applicant’s business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount



scrutiny of its competitors"); accord *In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500

(1984) (requests for *in camera* treatment by third parties should be given special solicitude

because as a policy matter such treatment encourages the third party to cooperate with future

adjudicative discovery requests).

Both of the documents contain highly sensitive information related to SIGMA's financial information and SIGMA's strategic planning initiatives for the future of the company.

*Id.* at ¶ 4. Documents containing information relevant to SIGMA's financial health and its

profitability. Were a competitor to know this sensitive information, such a competitor would



harm SIGMA and create a loss of business advantage. Thus, the balance of interests favors *in camera* treatment for the subject documents. See *In re Bristol-Myers*, 90 F.T.C. at 456-57.

Further, SIGMA's request that *in camera* treatment for the subject documents be maintained for brief period is reasonable in light of the fact that the subject documents qualify as the types of business records for which the Commission regularly has granted *in camera* treatment. *In re Champion Spark Plug Co.*, 1982 FTC LEXIS 85, at \*2; *Hood*, 58 F.T.C. at 1188-89; *In re Kaiser Aluminum*, 103 F.T.C. at 500. Moreover, the market is such that disclosure of this information creates an unreasonable and unnecessary risk of competitive harm

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*Attorneys for SIGMA Corporation*

Dated: November 7, 2012



NON PARTY SIGMA CORPORATION'S UNOPPOSED MOTION FOR JUDICIAL REVIEW

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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DECLARATION OF JAMES MCGIVERN IN SUPPORT OF NON-PARTY SIGMA  
CORPORATION'S UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT OF

discovery in this proceeding, been designated "Confidential" pursuant to the Protective Order

Governing Discovery Material entered on January 5, 2010

3. I have reviewed CX 1002 and CX 1745. By virtue of my current position at SIGMA, I am familiar with the type of information contained in these documents. Based on my review of the documents, my knowledge of SIGMA's business, and my familiarity with the

confidentiality protection afforded this type of information by SIGMA, I believe that the

covenants, profitability margins, plans to reduce expenses, and overall narratives on the state of the company. The disclosure of this information would reveal to STOMA's competitors [REDACTED]

9. SIGMA takes considerable measures to protect the secrecy of the information

contained in the documents for which it receives its services. Details of these

planning documents and the financial information are disclosed only to a limited number of

employees of SIGMA. In addition to the Board of Directors

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**ORDER GRANTING NON-PARTY SIGMA CORPORATION'S UNOPPOSED MOTION  
FOR IN CAMERA TREATMENT OF CERTAIN DESIGNATED HEARING EXHIBITS**

Upon consideration of Non Party SIGMA Corporation's Unopposed Motion for

*In Camera* Treatment of Certain Additional Designated Hearing Exhibits and the Declaration of James McGivern in support thereof, it is hereby ORDERED that SIGMA's Motion is GRANTED. It is FURTHER ORDERED that the identified portions of documents CX 1002 and

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Certificate of Service and Regarding Electronic Submission

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Treatment of Certain Additional Designated Hearing Exhibits" along with a proposed order and

