

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

07 20 2018  
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In the Matter of

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

Docket No. 9378

ORIGINAL

**RESPONDENT'S MOTION TO ADMIT CONTESTED EXHIBITS INTO EVIDENCE**

Respondent Otto Bock HealthCare North America, Inc. ("Ottobock") moves to admit RX-869, RX-1037, RX-1038, RX-1039, RX-1040, RX-1041, RX-1045, and RX-1046 into evidence.

**I. INTRODUCTION**

Respondent and Complaint Counsel have reached an agreement as to the admissibility of all proposed exhibits, with the exception of eight documents offered by Respondent - RX-869, RX-1037, RX-1038, RX-1039, RX-1040, RX-1041, RX-1045, and RX-1046 (collectively referred to as the "contested exhibits"). These eight contested exhibits, attached to this Motion, are all signed declarations made under penalty of perjury by prosthetists *provi Mde-cl*

Hearsay; Authenticity; Reliability; Prejudiced; For Settlement Purposes Only. None of these objections should preclude the admission of the contested exhibits – at most these objections go to the weight that the Court affords when analyzing the body of evidence presented at trial. Respondent addresses each of these objections in turn.

**Hearsay.** Respondent recognizes that the contested exhibits constitute Hearsay, but under Part 3 rules, that is not a reason to exclude them from evidence. *See* 16 C.F.R. § 3.43(b) (“Evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair”). Complaint Counsel has not disputed the relevance or materiality of the contested exhibits, and as the contested exhibits are declarations made under penalty of perjury, they “bear satisfactory indicia of reliability so that its use is fair.”

**Authenticity.** Each of the contested exhibits are declarations made under penalty of perjury which comply with 28 U.S.C. § 1746, which provides that such declaration has the same force and effect as a sworn, verified, document. As a result, the contested exhibits are self-authenticating. *See* Federal Rule of Evidence 902(8). Complaint Counsel recognizes this, as several declarations, similarly made under penalty of perjury, are included on Complaint Counsel’s exhibit list.

**Reliability.** Respondent submits that given that the declarations are made under penalty of perjury they bear sufficient indicia of reliability to be admitted into evidence. To the extent that the Court deems any of the contested exhibits unreliable in some manner, the Court can afford less weight to that exhibit.

**Prejudiced.** It is Respondent’s understanding that Complaint Counsel’s prejudice objection is timing-based –



Respectfully submitted,

Date: July 20, 2018

/s/ William Shotzbarger

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**DECLARATION OF SARAH KULIK IN SUPPORT OF  
RESPONDENT'S MOTION TO ADMIT CONTESTED EXHIBITS INTO EVIDENCE**

I, Sarah Kulik, pursuant to 28 U.S.C. § 1746, state and declare as follows:

1.

7. Attached as **Exhibit F** is a true and correct copy of Respondent's Exhibit RX-1041, Confidential Declaration of

# EXHIBIT A

**REDACTED IN ENTIRETY**

# **EXHIBIT B**

**REDACTED IN ENTIRETY**



# EXHIBIT C

**REDACTED IN ENTIRETY**

# EXHIBIT D

**REDACTED IN ENTIRETY**

# EXHIBIT E

**REDACTED IN ENTIRETY**



# EXHIBIT G

**REDACTED IN ENTIRETY**

# EXHIBIT H

**REDACTED IN ENTIRETY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 20, 2018, I caused a true and correct copy of the foregoing Respondent's Motion to Admit Contested Exhibits into Evidence to be served via the FTC E-Filing System and e-mail upon the following:

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/s/ William Shotzberger  
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