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and Otto Bock HealthCare North America, Inc. (“**Otto Bock**”) that they intend to introduce **Exhibits A-D** at trial. *See* Letter from FTC dated May 25, 2018 (attached as **Exhibit E**) and letter from Otto Bock dated May 29, 2018 (attached as

<u>No.</u>	<u>Description</u>	<u>Date</u>	<u>Beginning Bates</u>	<u>Ending Bates</u>
PX05147			PX05147-001	PX05147-043
RX-0734 (FTC-DAWI-000002) PX04002	Declaration of Stuart Marquette	12/15/2017	FTC-DAWI-000002 PX04002-001	FTC-DAWI-000004 PX04002-003
PX03158	Prosthetic; Price List	06/30/2017	DAW0000001	DAW0000004
PX03160	Sales, Unit, Profits, GM% and Description of item	3/21/2018	DAW0000147	DAW0000149
PX03161 RX-0856 (DAW0000150)	Sales, Unit, Profits, GM% and Description of item	3/21/2018	DAW0000150	DAW0000152
PX03162 RX-0859 (DAW0000153)	Sales, Unit, Profits, GM% and Description of Item	3/21/2018	DAW0000153	DAW0000155
RX-0091 (DAW0000156)	DAW Call Sheet	09/20/2015	DAW0000156	DAW0000158
PX03165 RX-0781 (DAW0000166)	5-Bar Adult Knee Selection Guide	02/1/2018	DAW0000166	DAW0000178
PX03167	DAW Answers to Subpoena	00/00/0000	DAW0000180	DAW0000180

II. Legal Standard

In camera treatment of material is appropriate where, as here, its “public disclosure will likely result in a clearly defined, serious injury to the ... corporation requesting such treatment.” 16 C.F.R. § 3.45(b). A proponent seeking *in camera* treatment 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 Lube Corp.*, 1999 F.T.C. Lexis 255, *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).

The Court’s consideration of the secrecy and materiality of the documents and testimony at issue involves the following factors: (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 inform

contained in the Confidential Documents (“Confidential and Sensitive Information”)—that is exactly the type of information for which the FTC has traditionally afforded *in camera* treatment. (Decl. Belzidsky ¶¶ 4-7); *see, e.g., The Matter of Champion Spark Plug Company*, 1982 FTC LEXIS 85 at *2 (April 5, 1982) (finding that “there is ample support for granting *in camera* treatment for sales data of a type not normally disclosed”).

DAW’s Confidential and Sensitive Information is secret. DAW maintains the confidentiality of such information by narrowly disclosing such information to employees within DAW who have a specific “need to know” it to perform their duties and not disclosing such information outside of DAW. (Decl. Belzidsky ¶ 11.) Within DAW, the Confidential and Sensitive Information is contained within its computer system that restricts access to only those individuals that require the information for performing their job duties. (Decl. Belzidsky ¶ 11.) No person or entity outside of DAW has access to the Confidential and Sensitive Information and only required employees within DAW have access to it. (Decl. Belzidsky ¶ 11.)

DAW’s efforts to maintain the secrecy of the Confidential and Sensitive Information extended to this matter. When DAW produced the Confidential Documents, it took steps to maintain their confidentiality by requesting confidential and attorney eyes only treatment under the Protective Order in this case. (Decl. Belzidsky ¶ 10.) It will be extremely damaging to DAW if the Court were to make public the highly sensitive and confidential business documents that are currently under the Protective Order. (Decl. Belzidsky ¶ 13.)

Disclosure of the Confidential Documents will undermine DAW’s ability to negotiate favorable terms in the future with its suppliers and customers; it would also give a business advantage to DAW’s competitors, including Otto Bock, by allowing them to more effectively target DAW’s customers and suppliers by undermining DAW’s pricing and other business

IV. The Confidential Documents Contain Trade Secrets, which will Remain Sensitive Over Time and Thus, Permanent *In Camera* Treatment is Justified.

Given the highly sensitive and technical nature of the information contained in the Confidential Documents, DAW requests that they be given *in camera* treatment indefinitely. The trade secret information contained in the Confidential Documents “is likely to remain sensitive or become more sensitive with the passage of time” such that the need for confidentiality is not likely to decrease over time. *In re Dura Lube Corp.*, 199 FTC LEXIS at **7-8. “Trade Secrets”—are granted much more protection than ordinary business documents. *Id.* at *5. Here, as described in the Belzidsky Declaration, the Confidential Documents contain business and trade secrets in the form of confidential competitively-sensitive sales data, pricing data, financial data, cost data, marketing practice, pricing decisions, information regarding contracts with distributors, profit/gross margins, DAW’s market analyses and business strategies and other secret and competitively-sensitive information. The competitive significance of the Confidential and Sensitive Information is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate. (*See Decl. Belzidsky* ¶ 15.)

[CONTINUED ON NEXT PAGE]

V. **Conclusion**

For the reasons set forth above and in the Belzidsky Declaration, DAW respectfully requests that this Court grant permanent *in camera* treatment to the Confidential Documents in their entirety.

DATED: June 22, 2018

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STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for non-party DAW Industries, Inc. (“DAW”) notified counsel for the parties via phone calls and emails on June 11, 2018, that it would be seeking *in camera* treatment of the Confidential Documents. Counsel for the Federal Trade Commission and Otto Bock Healthcare North America, Inc. indicated they would not object to DAW’s motion.

DATED: June 22, 2018

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EXHIBIT A

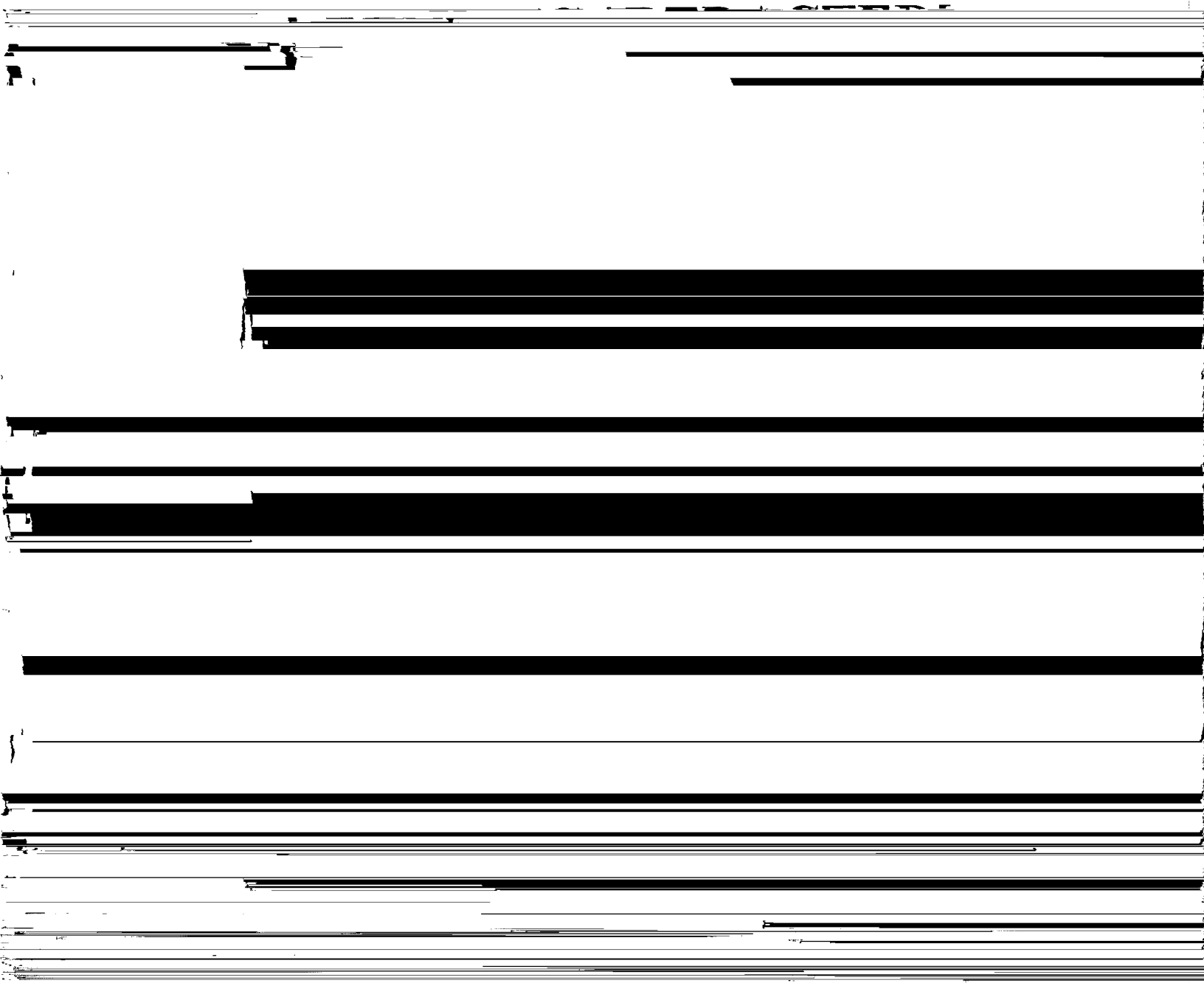


EXHIBIT D
[NON-PUBLIC / REDACTED]

EXHIBIT F

[REDACTED]

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EXHIBIT G
[NON-PUBLIC / REDACTED]

PUBLIC

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

_____)	
In the Matter of)	
)	
Otto Bock Healthcare North)	Docket No. D09378
America, Inc.,)	
)	
Respondents.)	
_____)	

**[PROPOSED] ORDER RE NON-PARTY DAW INDUSTRIES, INC.’S UNOPPOSED
MOTION FOR *IN CAMERA* TREATMENT**

Upon consideration of Non-Party DAW Industries, Inc.’s unopposed Motion for *In Camera* Treatment , it is hereby ordered that the following documents, listed below, is to be provided permanent *in in camera* treatment from the date of this Order, and it is further ORDERED that these documents may only be viewed by those permitted to view it under the Protective Order entered in this matter.

<u>No.</u>	<u>Description</u>	<u>Date</u>	<u>Beginning Bates</u>	<u>Ending Bates</u>
RX-1017 PX05146	Deposition transcript of Stuart Marquette	04/03/2018	RX-1017-0001 PX05146-001	RX-1017-00039 PX05146-039
RX-1018 PX05147	Deposition transcript of Hughes Belzidsky	04/03/2018	RX-1018-0001 PX05147-001	RX-1018-00043 PX05147-043
RX-0734 (FTC-DAWI-	Declaration of Stuart Marquette	12/15/2017	FTC-DAWI-	FTC-DAWI-

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