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. 9377**
	)	
	)	

MOTION TO QUASH SUBPOENAS DUCES TECUM
and
MOTION TO QUASH SUBPOENA AD TESITFICATUM

COMES NOW Fourroux Prosthetics, Inc., pursuant to Section 3.34(c) of the Commission's Rules of Practice and requests an order quashing two subpoenas duces tecum and one subpoena ad testificatum. As grounds therfor, Fourroux would show the following.

Section 3.22(g) Statement

Section 3.22(g) of the Commission's rules of practice requires counsel for Fourroux to include a statement that he "has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement." Unfortunately, counsel cannot make that statement with regard to Respondent Otto Bock HealthCare North America, Inc. ("Otto Bock"). Otto Bock's subpoenas were served on March 5, 2018. On March 6, 2018, undersigned counsel telephoned the Otto Bock attorney who issued the subpoenas, but was required to leave a voice mail requesting a return call. When undersigned counsel did not receive a return call, he e-mailed the Otto Bock attorney on the morning of March 7, 2018. When that e-mail was not returned, he e-mailed lead counsel for Otto Bock requesting a discussion on the matter.[1] Otto Bock counsel have neither picked up the phone

[1] Copies of e-mails to Otto Bock's attorneys are attached hereto as Exhibit "A." Copies of the subpoenas are attached as Exhibits "C," "D" and "E."

nor sent a reply e-mail. In short, Otto Bock has made no effort to confer in good faith regarding the subpoenas.

Counsel for Complainant FTC has returned all communications regarding the subpoenas. While Counsel for the FTC has indicated a willingness to compromise regarding the FTC's subpoena duces tecum, any such compromise is impossible without knowing whether Otto Bock will also compromise.

Introduction

Fourroux provides assistance to amputees whose lives are improved by prosthetics. Based in Huntsville, Alabama, Fourroux also has offices in: Birmingham, Alabama; Atlanta, Georgia; and, Memphis, Tennessee. Fourroux evaluates each patient; designs a custom prosthetic socket; fits the prosthesis; and, conducts comprehensive follow-ups with each patient. Fourroux is a purchaser of prosthetic knees. Fourroux then uses those prosthetic knees as part of a patented process for ensuring a custom design and fit for each patient.

The dispute between Otto Bock and the FTC has absolutely nothing to do with Fourroux. Fourroux is not owned by Otto Bock or Freedom. It has no ongoing contractual relationships with Otto Bock or Freedom. Fourroux had no input whatsoever on the transaction between Otto Bock and Freedom. Nevertheless, it appears that Otto Bock and the FTC want to leverage Fourroux's experience with prosthetics into *pro bono* expert testimony concerning the impact of the Otto Bock/Freedom transaction on the prosthetics market.

Fourroux has no desire to offer expert testimony in this action and should not be compelled to do so. Beyond the expert testimony, however, the subpoenas will impose a substantial burden on Fourroux's business. Much of the information requested infringes upon Fourroux's patented processes and confidential business information – and has no bearing whatsoever on the issues in

this case. Moreover, to the extent that any documents might have some bearing on this dispute, Fourroux's small administrative team is not equipped to conduct the type of deep-dive into records that is usually reserved for parties who are actually accused of wrongdoing – not innocent bystander third-parties. As a result, as detailed below, the subpoenas should be quashed.

ARGUMENT

I. Standards for Motions to Quash

Parties to FTC proceedings are limited to discovery that "may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." FTC Rule of Practice 3.31(c)(1). Moreover, an Administrative Law Judge may further limit discovery based upon a finding that:

> (i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
>
> (iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.

FTC Rule of Practice 3.31(c)(2). "The Administrative Law Judge may also deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding." FTC Rule of Practice 3.31(d). With regard to undue burden, it is appropriate to quash a subpoena that "threatens to unduly disrupt or seriously hinder normal operations of a business." *F.T.C. v. Texcaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977). Historically, ALJs are reluctant to grant motions to quash based upon burden, "where the party initiating the subpoena

has expressed a willingness to mitigate whatever burden may exist by negotiation and compromise." *In re General Motors Corp.*, No. 9077, 1977 FTC LEXIS 18, at *1 (Nov. 25, 1977). In this case, however, Otto Bock has wholly refused to communicate with Fourroux – much less negotiate or compromise.

II. The Information Sought By the Subpoenas Is Available From Another Source

It appears that Fourroux has been dragged into this dispute solely because it is a purchaser of prosthetic knee joints. Rather than picking and choosing among purchasers, however, Otto Bock and the FTC would be better-served by obtaining their desired information from a different third-party. In particular, there are several trade organizations that can provide exactly the information that these parties desire; and, those organizations are better-equipped and better-organized to provide the types of information sought. There are several national trade organizations that are focused upon the prosthetics market, including: the American Association of Orthotics and Prosthetics; the American Academy of Orthotists and Prosthetists; and, the American Board for Certification in Orthotics and Prosthetics. The Commission traditionally favors issuing subpoenas to a single-source, like a trade organization, that can provide all of the information requested. *In the matter of Subpoena Duces Tecum issued to Humana, Inc.*, F.T.C. File No. 161-0026 at 5 (Jun. 5, 2017). Rather than burdening individual businesses like Fourroux, the FTC and Otto Bock can obtain the requested information directly from the foregoing trade organizations. *See In re Exxon Valdez*, 142 F.R.D. 380, 382-83 (D.D.C. 1992)(finding subpoena to trade association was "more convenient, less burdensome [and] less expensive.")

III. Subpoena *Ad Testificatum*

The FTC has not requested testimony from Fourroux. Nevertheless, Otto Box has issued a Subpoena *Ad Testificatum* compelling a Rule 30(b)(6) representative as to certain matters. The

vast majority of the matters requested for examination require expert testimony from Fourroux (which Fourroux does not agree to provide). Moreover, many of the matters are not "known or reasonably available" to Fourroux. See FTC Rules of Practice § 3.33(c)(1).

1. The current orthotic and prosthetic industry and market, including, but not limited to, the market and any submarkets or market segments of prosthetic knee joints.

Fourroux is a prosthetics company, not an economist. It is not qualified in any way to define the "market" or "any submarkets or market segments." Unquestionably, this topic would also require Fourroux to offer opinions on alleged markets – a matter that is within the realm of expert testimony (which Fourroux does not agree to provide). Finally, this topic is so vague and potentially overbroad that there is no way that Fourroux could prepare any individual to testify. The matter requested is not known or reasonably available to Fourroux. Because Otto Bock can hire its own expert, this topic is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

2. The various microprocessor prosthetic knees and mechanical knees the Company currently purchases, sells or distributes in the United States and/or has purchased, sold or distributed in the past five years.

Fourroux does not sell or distribute prosthetic knees. To the extent that this topic seeks information about prosthetic knees purchased, it is overbroad and vague. What does Otto Bock want to know about the purchased knees? Otto Bock and Freedom already possess the information about numbers of knees purchased from them in their sales history. This material is already in Otto Bock and Freedom's possession. This request also is broad enough to encompass every other objectionable topic contained in Otto Bock's subpoena.

3. Facts and circumstances related to the Company's decision to purchase, sell or distribute each manufacturer's models of microprocessor prosthetic knees.

While phrased in terms of "facts and circumstances," this topic is a thinly-veiled request for expert testimony. Otto Bock wants Fourroux to opine on which manufacturer's microprocessor prosthetic knees are better than others. This topic is also extremely vague and wrongly assumes that Fourroux has made a corporate decision on purchasing any microprocessor prosthetic knee. In actuality, professional judgments on prosthetic knees are made by individual prosthetists based upon a myriad of factors. This topic imposes the impossible task of forcing Fourroux to interview each of its employees, and then synthesize a "one size fits all" answer for any particular decision. Because Otto Bock can hire its own expert on these issues, this topic is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive

4. The orthotic and prosthetic industry and market over the past five years, including, but not limited to, the market and submarkets of prosthetic knee joints.

See response to topic number 1.

5. Freedom's position in the prosthetic industry and market in the United States over the past five years.

See response to topic number 1. Additionally, this topic is vague because it does not define the term "position in the prosthetic industry." That term is so vague that Fourroux could not prepare to answer any potential questions on the matter.

6. Any communications between the Company and Freedom regarding potential acquisition of any of Freedom's assets or business(es) by the Company.

Fourroux has never communicated with Freedom about Fourroux potentially acquiring Freedom's assets or businesses.

7. Available microprocessor prosthetic knee and mechanical knee choices by K-Level patients.

This request is vague, because it does not define the term "available." To the extent that this topic requests Fourroux to identify microprocessor prosthetic knees that are available for purchase, this should not seriously be a fact at issue in this case. This topic is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

8. Strengths and weaknesses of each manufacturer's (i) microprocessor prosthetic knees and (ii) mechanical knees.

Otto Bock wants Fourroux to provide expert opinion testimony on which manufacturer's microprocessor prosthetic knees are better than others. This topic is also extremely vague and wrongly assumes that Fourroux has made a corporate decision on strength or weakness of any manufacturer's microprocessor prosthetic knee or mechanical knee. In actuality, professional judgments on strengths and weaknesses of prosthesis are made by individual prosthetists based upon a myriad of factors. This topic imposes the impossible task of forcing Fourroux to interview each of its employees, and then synthesize a "one size fits all" answer for any particular knee. Because Otto Bock can hire its own expert on this topic, it is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

9. The competition in the manufacture, sale and distribution of (i) microprocessor prosthetic knees and (ii) mechanical knees in the United States.

Fourroux purchases microprocessor prosthetic knees. It does not manufacture, sell or distribute them. Fourroux possesses no firsthand knowledge of competition in those areas. Thus, this topic is neither known nor reasonably available to Fourroux. Because Otto Bock can hire its own expert on this topic, it is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

10. The impact that Otto Bock's acquisition of Freedom had on the microprocessor prosthetic knee market, including, but not limited to, cost savings, quality improvements, expanded consumer choice, and innovation.

Fourroux is a prosthetics company, not an economist. It is not qualified in any way to define the "market" or any "impact" on a market. Unquestionably, this topic would also require Fourroux to offer opinions on alleged markets – a matter that is within the realm of expert testimony. Finally, this topic is so vague and potentially overbroad that there is no way that Fourroux could prepare any individual to testify. The matter requested is not known or reasonably available to Fourroux. Because Otto Bock can hire its own expert on this topic, it is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

11. The microprocessor prosthetic knees that the Company currently fits on patients in the United States or has fitted in the past five years, including, but not limited to, number of units fitted and revenue received by source and gross margin by manufacturer and model.

Fourroux's revenues and gross margins have absolutely no relevance to this action. Moreover, Fourroux does not maintain records to demonstrate revenues or gross margins by manufacturer and model. An order quashing this topic is also appropriate to protect Fourroux from annoyance, embarrassment, oppression, or undue burden or expense related to disclosure of its private finances.

12. The competition and/or differences between microprocessor prosthetic knees and mechanical knees.

Fourroux is a prosthetics company, not an economist. Fourroux purchases microprocessor prosthetic knees. It does not manufacture, sell or distribute them. Fourroux possesses no firsthand knowledge of competition between prosthetic knees and mechanical knees. Unquestionably, this topic would also require Fourroux to offer opinions on alleged competition or differences between knees – a matter that is within the realm of expert testimony (which Fourroux does not agree to provide). The term "differences" is so vague and potentially overbroad that there is no way that Fourroux could prepare any individual to testify. The matter requested is not known or reasonably available to Fourroux. Because Otto Bock can hire its own expert on this topic, it is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

13. The impact that a price change of one manufacturer's microprocessor prosthetic knee has on the willingness of (i) patients or (ii) clinicians to substitute to another manufacturer's microprocessor prosthetic knee.

By definition, this request asks for information that is not known or reasonably available to Fourroux. It asks for information in the possession of (i) patients or (ii) individual clinicians, not Fourroux. Any answer that Fourroux could provide would be wholly speculative.

14. The functional interchangeability and differences among microprocessor prosthetic knees of different manufacturers.

Product functionality is described by individual manufacturers in their product education forums, descriptions, and written material, which both Otto Bock and Freedom already possess. This topic is unduly vague and overbroad because it does not define the terms "interchangeability" or "differences." Presumably, Otto Bock wants Fourroux to offer an opinion on whether microprocessor knees are "interchangeable." Again, that request is the province of expert testimony. Because Otto Bock can hire its own expert on this topic, it is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

15. The functional interchangeability and differences between microprocessor prosthetic knees and mechanical knees.

Product functionality is described by individual manufacturers in their product education forums, descriptions, and written material, which both Otto Bock and Freedom already possess. This topic is unduly vague and overbroad because it does not define the terms "interchangeability" or "differences." Presumably, Otto Bock wants Fourroux to offer an opinion on whether microprocessor and mechanical knees are "interchangeable." Again, that request is the province of expert testimony. Because Otto Bock can hire its own expert on this topic, it is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

16. Information surrounding the (i) Company's, (ii) patients', or (iii) clinicians' views of microprocessor prosthetic knees of different manufacturers.

To the extent that this request seeks information surrounding the views of patients or clinicians, it seeks information that is not known or available to Fourroux. Fourroux has made no corporate decision regarding its "view" of microprocessor prosthetic knees of different manufacturers.

17. Patients' reasons for (i) initially choosing or (ii) subsequently switching at the time of replacing the prosthesis, between microprocessor prosthetic knees sold by different manufacturers.

By definition, this request asks for information that is not known or reasonably available to Fourroux. It asks for reasons that might, or might not, be possessed by patients. Any answer that Fourroux could provide would be wholly speculative.

18. The factors affecting prosthetists' decisions concerning which type of prosthetic knee to fit on a particular patient.

Otto Bock and Freedom are product manufacturers who possess recommendations pertaining to the usage of the particular prosthetic knee they manufacture, sell, and warranty. This topic requests information in the possession of individual prosthetists' regarding a myriad of factors that they may, or many not consider when fitting a prosthesis. Fourroux has made no corporate decision specifying any such factors.

19. The Company's decision-making process in fitting patients with prosthetic knee joints, including, but not limited to the revenue received per patient and the acquisition cost per prosthetic knee.

This topic wrongly assumes that revenue received per patient and the acquisition cost per prosthetic knee are factors that the Company relies upon in fitting patients with prosthetic knee joints. Again, the decision on fitting any particular patient with a prosthesis is an individualized

decision made by a prosthetist. There is no corporate "decision-making process" other than the existence of certain trade-secret, patented techniques for the actual fitting process, which have no relevance to this dispute. Fourroux's revenue received per patient has absolutely no relevance to this dispute. An order quashing this topic is also appropriate to protect Fourroux from annoyance, embarrassment, oppression, or undue burden or expense related to disclosure of its private finances.

20. The limitations and/or ceiling on prices for microprocessor knees imposed by Medicare and private insurers.

This topic is vague because it does not define the terms "limitations" or "ceiling." To the extent that this request is asking what amounts Medicare or private insurers will pay for microprocessor knees, this information is readily available from another party – particularly Medicare and private insurers. Moreover, this information is already in the possession of Otto Bock and Freedom.

21. The sales, gross margin, and profits for microprocessor prosthetic knees fitted and sold by the Company.

Fourroux uses prosthetic knees as part of a patented process for ensuring a custom design and fit for each patient. Fourroux's gross margins and profits have absolutely no relevance to this action. An order quashing this topic is also appropriate to protect Fourroux from annoyance, embarrassment, oppression, or undue burden or expense related to disclosure of its private finances.

22. Recovery Audit Contractor (RAC) audits, their impact on clinics and any impact on clinical assessments regarding prosthetic devices containing microprocessor controlled knees or mechanical knees.

Fourroux has not undergone a RAC audit related to microprocessor knees or mechanical knees in the time period of January 1, 2016 to the present. Therefore, Fourroux possesses no direct knowledge of any impact. Any answer by Fourroux would be speculative.

IV. Subpoenas *Duces Tecum*

Otto Bock issued its subpoena *duces tecum* on March 2, 2018. The FTC followed suit on March 5, 2018 with a "me too" subpoena that was identical to Otto Bock's. Following are the document requests and Fourroux's objections:

1. Any and all documents regarding the qualifications for use of a microprocessor controlled knee or reimbursement policy or terms of any public or payor, including contracts with payors covering microprocessor controlled knees.

This request is vague and unduly burdensome because it does not define "qualifications for use of a microprocessor controlled knee," and Fourroux has no idea what Otto Bock is requesting. To the extent that Otto Bock requests contracts with payors, that information is irrelevant to these proceedings, except to the amount that payors will pay – which is information already in Otto Bock's possession. That information is also readily available from the payors themselves.

2. Any and all documents regarding the terms offered or applied for the Company's purchase of microprocessor controlled knees by any manufacturer, supplier, distributor or seller, including any proposed or agreed terms.

This request is so vague that Fourroux has no idea how to respond. In particular, the word "terms" is both vague and overbroad. If Otto Bock is asking how much Fourroux pays for microprocessor controlled knees, that information is already in the possession of Otto Bock and/or Freedom. This request also has no limitations whatsoever in terms of time or scope. Virtually

every document in every patient file for a patient fitted with a microprocessor controlled knee will have "terms" applying to the purchase of a knee.

3. **Any and all documents evidencing the number of the Company's clinic locations in the United States and each U.S. State, District or Territory and the number of clinicians at any of the Company's clinic locations who fitted patients with any type of prosthetic knee.**

This request is vague and overbroad. Every piece of Fourroux letterhead could be responsive to this request. Fourroux has no document that says: "Here are the number of clinicians at each clinic location who fitted patients with prosthetic knees." Every marketing document that lists clinic locations would be responsive. The number of clinics and/or clinicians is not relevant to this dispute.

4. **Documents sufficient to show all microprocessor knees the company currently fits on patients in the United States and each U.S. State, District or Territory or has fitted for the past five years, indicating for each: (a) manufacturer and model of each microprocessor knee; (b) the number of units fitted and the revenue received by source (e.g., third party payor, patient, etc.) and by K level for microprocessor knees with HCPCS Codes L5856 or L5858; (c) cost to acquire microprocessor knees with HCPCS Codes L5856 or L5858 by manufacturer and model in units and dollars by channel of purchase (e.g. distributor, direct sale from manufacturers); (d) the cost to service, repair or maintain microprocessor knees over the duration of the Company's warranty to the patient; and, (d) the gross margins for each microprocessor knee by manufacturer and model.**

This request is so vague and unintelligible that a response is impossible. On the one hand it asks for documents "for each" microprocessor knee fitted on a patient, but then "for each" such

knee it asks for "the number of units fitted and revenue received...." Fourroux's revenues and gross margins have no relevance to this action. An order quashing this request is also appropriate to protect Fourroux from annoyance, embarrassment, oppression, or undue burden or expense related to disclosure of its private finances. Fourroux does not keep documents or records in the manner requested by Otto Bock. This request would require Fourroux to custom-create documents for Otto Bock. *See, e.g., Harris v. Advance Cash Amer. Advance Ctrs., Inc.*, 288 F.R.D. 170, 173 (S.D. Oh. 2010)("a party need only produce existing documents, and not create documents, in response to a Rule 34 document request.")

5. Any and all documents, including, but not limited to, market studies, forecasts, surveys, marketing plans, business plans, presentations to the Board of Directors, discussing: (a) any available (i) microprocessor knee and (ii) non-microprocessor (i.e., "mechanical") knee choices by K level; (b) strengths and weaknesses of each manufacturer's (i) microprocessor knees and (ii) mechanical knees; (c) competition in the manufacture, sale and distribution of (i) microprocessor knees and (ii) mechanical knees in the United States and each U.S. State, District or Territory.

This request is impossibly vague because it does not define the terms "market studies," "forecasts," "surveys," "marketing plans," "business plans," or "presentations to the Board of Directors." To the extent that this request asks for "any and all documents ... discussing" microprocessor knees, it is exceedingly overbroad and encompasses virtually every document in patient files. Fourroux possesses no documents discussing "strengths and weaknesses of each manufacturer's knees" or "competition in the manufacture, sale and distribution" of knees.

6. Any and all documents that discuss the Company's or patients' views of microprocessor knees of different manufacturers, particularly, but without exclusion, those

discussing: (a) functional interchangeability among microprocessor knees of different manufacturers as well as between microprocessor knees and mechanical knees; (b) information on (i) the general willingness of patients to substitute and (ii) actual incident of patients substituting, among microprocessor knees of different manufacturers; (c) information evidencing patients' reasons for (i) initially choosing or (ii) subsequently switching at the time of replacing the prosthesis, between microprocessor knees sold by different manufacturers; (d) vices of (i) the company, (ii) patients, or (iii) clinicians' views of microprocessor knees of different manufacturers; and (e) factors affecting or which may affect decisions concerning which type of prosthetic knee to fit to a particular patient.

This request is overly vague because it does not define the term "views." It further wrongly assumes that Fourroux has made any corporate decision regarding any particular knee. To the extent that this request asks for "patients' views" of knees, it encompasses virtually every document in a patient record. As Fourroux understands this request, it possesses no responsive corporate documents, other than potential patented, proprietary and confidential information on decisions about how to "fit a particular patient".

7. **Any and all documents discussing (a) any impact of small but significant increases in price (e.g. 5%-10%) of one manufacturer's microprocessor knee (with no accompanying change in quality or product features) on the willingness of (i) patients or (ii) clinicians to substitute to another manufacturer's microprocessor knee; (b) specifically, any impact of a small by significant increases in price (e.g. 5%-10%) of Otto Bock's or Freedom Innovation's microprocessor knees (with no accompanying change in quality or product features) on the willingness of (i) patients or (ii) clinicians to substitute to another manufacturer's microprocessor knee; (c) the impact of a manufacturers small, incremental**

quality improvement or small, incremental design change in its microprocessor knees on patients' willingness to choose that microprocessor knee over that of another manufacturer, including specifically Otto Bock and Freedom Innovation as the other manufacturers (where "incremental" specifically excludes major product changes); and (d) any recommendations of alternative microprocessor knees the Company's clinicians make to patients who wished to switch among manufacturers' microprocessor knees.

Fourroux possesses no documents that would be responsive to any of these requests, other than potentially subpart (d). That request is vague, overly burdensome and unlimited in time or scope. It would require Fourroux to pull every patient record and speculate if a patient "wished to switch among manufacturer' microprocessor knees." In addition to speculating about patient "wishes," Fourroux would be required to interview every prosthetist and assistant to determine if they possessed any additional recollection about patient "wishes." Then, Fourroux would have to determine what "recommendations," if any, were made.

8. **Any and all documents that discuss the Company's margin between revenue received per patient and acquisition cost per prosthetic knee, specifically with respect to: (a) the minimum acceptable margin in dollars as a percent of revenue; and (b) any effect of difference in margins among prosthetic knees on clinicians' choices of (i) microprocessor knees or (ii) mechanical knees.**

Fourroux's revenues and acquisition costs have absolutely no relevance to this action. An order quashing this request is also appropriate to protect Fourroux from annoyance, embarrassment, oppression, or undue burden or expense related to disclosure of its private finances. Fourroux does not possess any documents that "discuss" the minimum acceptable

margin in dollars as a percent of revenue; or any effect of difference in margins among prosthetic knees on clinicians' choices of (i) microprocessor knees or (ii) mechanical knees.

9. Any and all documents pertaining to the current orthotic and prosthetic industry and market, including, but not limited to, the market and any submarkets or market segments of prosthetic knee joints.

This request is overbroad and unduly vague because it does not define the term "current orthotic and prosthetic industry and market." Virtually every piece of paper in Fourroux's possession "pertains," in some way to the orthotic and prosthetic industry. An order quashing this request is appropriate to protect Fourroux from annoyance, embarrassment, oppression, or undue burden or expense.

10. Any and all documents discussing, describing, or analyzing Freedom Innovations or Otto Bock's position in prosthetic industry and market in the United States over the past five years.

This request is unduly vague because it does not define the term "position in the prosthetic industry and market." Fourroux has certainly not created any responsive documents. Conceivably, Freedom, Otto Bock or some other third party have created materials discussing particular manufacturer's position in the "industry and market." For example, a trade journal might, or might not, possess such a discussion. But, Fourroux does not keep such materials in any format that would be searchable or disclosable. An order quashing this request is appropriate to protect Fourroux from annoyance, embarrassment, oppression, or undue burden or expense.

11. Any and all documents evidencing the limitations imposed or ceiling on the prices of microprocessor knees imposed by Medicare and private insurers.

This topic is vague because it does not define the terms "limitations" or "ceiling." To the extent that this request is asking for documents about amounts Medicare or private insurers will pay for microprocessor knees, those documents are readily available from another party – particularly Medicare and private insurers. Moreover, this information is already in the possession of Otto Bock and Freedom.

12. Any and all documents regarding Recovery Audit Contractor (RAC) audits with respect to their (i) impact on the Company or other clinics; (ii) their impact on the clinical analysis of prosthetic devices containing microprocessor controlled knees or mechanical knees; and (iii) their impact on prosthetists' recommendations of microprocessor controlled knees or mechanical knees.

Fourroux has not undergone a RAC audit related to microprocessor knees or mechanical knees since January 1, 2016. Therefore, Fourroux has created not documents discussing any impact. Conceivably, Freedom, Otto Bock or some other third party have created materials discussing RAC audits. But, Fourroux does not keep such materials in any format that would be searchable or disclosable. An order quashing this request is appropriate to protect Fourroux from annoyance, embarrassment, oppression, or undue burden or expense.

Respectfully submitted this the 12th day of March, 2018.

Wilmer & Lee, P.A.

By: /s/ Robert C. Lockwood
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 12, 2018, I caused a true and correct copy of the foregoing **MOTION TO QUASH SUBPOENAS DUCES TECUM and MOTION TO QUASH SUBPOENA AD TESTIFICATUM** to be served via the FTC E-Filing System and e-mail upon the following:

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I hereby certify that on March 12, 2018, I filed an electronic copy of the foregoing **MOTION TO QUASH SUBPOENAS DUCES TECUM and MOTION TO QUASH SUBPOENA AD TESTIFICATUM**, with:

D. Michael Chappell
Chief Administrative Law Judge
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I hereby certify that on March 12, 2018, I served via E-Service an electronic copy of the foregoing **MOTION TO QUASH SUBPOENAS DUCES TECUM and MOTION TO QUASH SUBPOENA AD TESTIFICATUM** upon:

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Lisa De Marchi Sleigh
Attorney Federal Trade Commission
ldemarchisleigh@ftc.gov
Complaint

Catherine Sanchez
Attorney Federal Trade Commission
csanchez@ftc.gov
Complaint

Sarah Wohl
Attorney Federal Trade Commission
swohl@ftc.gov
Complaint

Joseph Neely
Attorney Federal Trade Commission
jneely@ftc.gov
Complaint

Sean Zabaneh
Duane Morris LLP
SSZabaneh@duanemorris.com
Respondent

Dylan Brown
Attorney Federal Trade Commission
dbrown4@ftc.gov
Complaint

Betty McNeil
Attorney Federal Trade Commission
bmcneil@ftc.gov
Complaint

Stephen Rodger
Attorney Federal Trade Commission
srodger@ftc.gov
Complaint

Robert Lockwood

From: Robert Lockwood
Sent: Wednesday, March 07, 2018 5:30 PM
To: 'wamack[redacted]'
Cc: Cathy Silva
Subject: FW: In the matter of Otto Bock Healthcare North America, Inc.

Mr. Mack:

Based upon the answer filed by Otto Bock with the FTC, I assume that you are their lead counsel. I have not heard from Ms. Fruiterman after a voice mail on Tuesday and my e-mail this morning. I assume that she is working on another matter and has not had time to follow-up with me. Unfortunately, the tight time line for filing a motion to quash requires that I contact you instead of waiting for her schedule to free-up.

Is your client willing to agree to an extension of the 10-day deadline imposed on Forroux for filing a motion to quash? As noted below, I suggest that counsel for Forroux, Otto Bock and the FTC discuss ways to resolve the subpoenas. But, if resolution is not possible, Forroux's motion to quash would be due on March 26.

Please let me know your position on this extension.

Thanks,

Robert

Robert C. Lockwood
Wilmer & Lee, P.A.
100 Washington Street, Suite 100
Huntsville, Alabama 35801
(256) 533-0202 - telephone
(256) 533-0302 – facsimile
rlockwood@wilmerlee.com

EXHIBIT A

From: Robert Lockwood
Sent: Wednesday, March 07, 2018 11:06 AM
To: 'efruiterman[redacted]' <efruiterman[redacted]>
Cc: Cathy Silva <csilva[redacted]>; Richard Raleigh <rraleigh[redacted]>; 'jneely@[redacted]' <jneely@[redacted]>
Subject: In the matter of Otto Bock Healthcare North America, Inc.

Ms. Fruiterman:

I represent Forroux Prosthetics in Huntsville, Alabama. I am in receipt of subpoenas that you issued on or about March 2, 2018 relating to the Otto Bock / FTC matter. Yesterday, I left you a voice mail to discuss the subpoenas, but I have not heard back from you.

PUBLIC

As you know, my client has a very short period of time to object to the subpoenas. Prior to making a formal objection, I would like to work with you and counsel for the FTC to limit the subpoenas. To that end, would you be willing to agree to an extension of time for my client to respond and/or object to the subpoenas? I suggest that we agree to a deadline of March 26, 2018.

I spoke briefly with Joe Neely yesterday, but he and I did not discuss a potential extension of time. Therefore, by copy of this e-mail, I am making the same request to him.

Thank you for your time and attention. I look forward to working with you.

Robert

Robert C. Lockwood

Wilmer & Lee, P.A.
100 Washington Street, Suite 100
Huntsville, Alabama 35801
(256) 533-0202 - telephone
(256) 533-0302 – facsimile
rlockwood@wilmerlee.com

SUBPOENA AD TESTIFICANDUM DEPOSITION

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

1. TO	2. FROM
Keith Watson, Owner of Fourroux Prosthetics c/o Rich Raleigh, Wilmer & Lee P.A. 100 Washington Street Northeast Huntsville, AL 35801	UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION	4. YOUR APPEARANCE WILL BE BEFORE
Wilmer & Lee P.A. 100 Washington Street Northeast Huntsville, AL 35801	Joseph Neely, Esq.
	5. DATE AND TIME OF DEPOSITION
	March 16, 2018 at 9:00 am

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE	8. COUNSEL AND PARTY ISSUING SUBPOENA
The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	Daniel Zach, or designee Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2118

DATE SIGNED	SIGNATURE OF COUNSEL ISSUING SUBPOENA
2/26/2018	Stephen Malin

GENERAL INSTRUCTIONS

APPEARANCE

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.

MOTION TO LIMIT OR QUASH

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 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

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 8 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 8.

A copy of the Commission's Rules of Practice is available online at http://bit.ly/FTCRulesofPractice. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

EXHIBIT B
tabbies
PUBLIC

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 26, 2018

(Month, day, and year)

Joseph Neely, Esq.

(Name of person making service)

Attorney

(Official title)

CERTIFICATE OF SERVICE

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

Rich Raleigh
Wilmer & Lee P.A.
100 Washington Street Northeast
Huntsville, AL 35801
rraleigh@wilmerlee.com

Counsel for Fourroux Prosthetics

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
Sean Zabaneh
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103
egbiester@duanemorris.com
spmcconnell@duanemorris.com
WAMack@duanemorris.com
efruiterman@duanemorris.com
sckulik@duanemorris.com
wshotzbarger@duanemorris.com
SSZabaneh@duanemorris.com

Counsel for Respondent Otto Bock HealthCare North America, Inc.

February 26, 2018

By: */s/ Joseph Neely*
Joseph Neely
Federal Trade Commission
Bureau of Competition
400 7th Street SW
Washington, DC 20024
jneely@ftc.gov
Telephone: (202) 326-3431

Counsel Supporting the Complaint

PUBLIC

SUBPOENA AD TESTIFICANDUM DEPOSITION

PUBLIC

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

1. TO	2. FROM
Fourroux Prosthetics c/o Keith Watson (Registered Agent) 2743 Bob Wallace Avenue SW Huntsville, AL 35805	**UNITED STATES OF AMERICA** **FEDERAL TRADE COMMISSION**

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION	4. YOUR APPEARANCE WILL BE BEFORE
Wilmer & Lee, P.A. 100 Washington Street Northeast Huntsville, AL 35801	Erica Fruiterman
	5. DATE AND TIME OF DEPOSITION
	March 16, 2018 at 9:00 am

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE	8. COUNSEL AND PARTY ISSUING SUBPOENA
The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	Otto Bock Healthcare North America, Inc. Duane Morris LLP 30 S. 17th St. Philadelphia, PA 19103 (215) 979-1000

DATE SIGNED	SIGNATURE OF COUNSEL ISSUING SUBPOENA
3/2/2018	Fruiterman

GENERAL INSTRUCTIONS

APPEARANCE

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.

MOTION TO LIMIT OR QUASH

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 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

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A copy of the Commission's Rules of Practice is available online at http://bit.ly/FTCRulesofPractice. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

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 COUNSEL'S SUBPOENA *AD TESTIFICANDUM* ATTACHMENT TO FOURROUX PROSTHETICS

Pursuant to the Federal Trade Commission's Rules of Practice 16 C.F.R. §§ 3.33(a) and 3.33(c)(1), and the Definitions set forth below, Respondent Counsel will take the deposition of the Company or its designee(s), who shall testify on behalf of the Company about matters known or reasonably available to the Company.

DEPOSITION TOPICS

The Company is advised that it must designate one or more officer, director, managing agent, or other person who consents to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the Company relating to the following deposition topics:

1. The current orthotic and prosthetic industry and market, including, but not limited to, the market and any submarkets or market segments of prosthetic knee joints.

2. The various microprocessor prosthetic knees and mechanical knees the Company currently purchases, sells or distributes in the United States and/or has purchased, sold or distributed in the past five years.

3. Facts and circumstances related to the Company's decision to purchase, sell or distribute each manufacturer's models of microprocessor prosthetic knees.

4. The orthotic and prosthetic industry and market over the past five years, including, but not limited to, the market and submarkets of prosthetic knee joints.

5. Freedom's position in the prosthetic industry and market in the United States over the past five years.

6. Any communications between the Company and Freedom regarding potential acquisition of any of Freedom's assets or business(es) by the Company.

7. Available microprocessor prosthetic knee and mechanical knee choices by K-Level patients.

8. Strengths and weaknesses of each manufacturer's (i) microprocessor prosthetic knees and (ii) mechanical knees.

9. The competition in the manufacture, sale and distribution of (i) microprocessor prosthetic knees and (ii) mechanical knees in the United States.

10. The impact that Otto Bock's acquisition of Freedom had on the microprocessor prosthetic knee market, including, but not limited to, cost savings, quality improvements, expanded consumer choice, and innovation.

11. The microprocessor prosthetic knees that the Company currently fits on patients in the United States or has fitted in the past five years, including, but not limited to, number of units fitted and revenue received by source and gross margin by manufacturer and model.

12. The competition and/or differences between microprocessor prosthetic knees and mechanical knees.

13. The impact that a price change of one manufacturer's microprocessor prosthetic knee has on the willingness of (i) patients or (ii) clinicians to substitute to another manufacturer's microprocessor prosthetic knee.

14. The functional interchangeability and differences among microprocessor prosthetic knees of different manufacturers.

15. The functional interchangeability and differences between microprocessor prosthetic knees and mechanical knees.

16. Information surrounding the (i) Company's, (ii) patients', or (iii) clinicians' views of microprocessor prosthetic knees of different manufacturers.

17. Patients' reasons for (i) initially choosing or (ii) subsequently switching at the time of replacing the prosthesis, between microprocessor prosthetic knees sold by different manufacturers.

18. The factors affecting prosthetists' decisions concerning which type of prosthetic knee to fit on a particular patient.

19. The Company's decision-making process in fitting patients with prosthetic knee joints, including, but not limited to the revenue received per patient and the acquisition cost per prosthetic knee.

20. The limitations and/or ceiling on prices for microprocessor prosthetic knees imposed by Medicare and private insurers.

21. The sales, gross margin, and profits for microprocessor prosthetic knees fitted and sold by the Company.

22. Recovery Audit Contractor (RAC) audits, their impact on clinics and any impact on clinical assessments regarding prosthetic devices containing microprocessor controlled knees or mechanical knees.

DEFINITIONS

The following definitions and instructions apply without regard to whether the defined terms used herein are capitalized or lowercase and without regard to whether they are used in the plural or singular form:

1. The term "Company" means Fourroux Prosthetics, including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which the Company manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on the Company's behalf. The terms "subsidiaries," and "affiliates" 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., including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which Otto Bock HealthCare North America, Inc. manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on Otto Bock's behalf. The terms "subsidiaries," and "affiliates" 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, including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which FIH Group Holdings, LLC manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on Freedom's behalf. The terms "subsidiaries," and "affiliates" refer to any person in which there is partial (25 percent or more) or total ownership or control between Freedom and any other person.

4. The terms "And" and "Or" are interchangeable. "And" is understood to include and encompass "or," and vice versa.

5. The terms "Communication" or "Communications" means, without limitation, oral or written communication of any kind, all electronic communications, emails, facsimiles, telephone communications, correspondence, exchange of written or recorded information, face-to-face meetings, or one-way communication.

6. "Relating to," "related to," "concerning," "regarding," and "surrounding" mean, without limitation, the following concepts: concerning, discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, or otherwise involving, in whole or in part.

PROOF OF SERVICE

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows:

_____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

_____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $_____.

My fees are $_____ for travel and $_____ for services for a total of $_____

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's Signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc.:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was personally delivered to:

Fourroux Prosthetics
c/o Keith Watson (Registered Agent)
2743 Bob Wallace Ave. SW
Huntsville, AL 35805

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

William Cooke
Jonathan Ripa
Federal Trade Commission
Bureau of Competition
400 7th Street SW
Washington, DC 20024
wcooke@ftc.gov
jripa@ftc.gov

Counsel Supporting the Complaint

March 2, 2018

By: /s/ Erica Fruiterman

Erica Fruiterman
Duane Morris LLP
30 S. 17th Street
Philadelphia, PA 19103
efruiterman@duanemorris.com

Counsel for Respondent Otto Bock HealthCare North America, Inc.

PUBLIC

SUBPOENA AD TESTIFICANDUM DEPOSITION PUBLIC

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

1. TO

Keith Watson, Fourroux Prosthetics
2743 Bob Wallace Avenue, SW
Huntsville, AL 35805

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

Wilmer & Lee, P.A.
100 Washington Street Northeast
Huntsville, AL 35801

4. YOUR APPEARANCE WILL BE BEFORE

Erica Fruiterman

5. DATE AND TIME OF DEPOSITION

March 16, 2018 at 9:00 am

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell
Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA

Otto Bock Healthcare North America, Inc.
Duane Morris LLP
30 S. 17th St.
Philadelphia, PA 19103
(215) 979-1000

DATE SIGNED

3/2/2018

SIGNATURE OF COUNSEL ISSUING SUBPOENA

Fruiterman

GENERAL INSTRUCTIONS

APPEARANCE

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.

MOTION TO LIMIT OR QUASH

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 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

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A copy of the Commission's Rules of Practice is available online at http://bit.ly/FTCRulesofPractice. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was personally delivered to:

Keith Watson, Fourroux Prosthetics
2743 Bob Wallace Avenue, SW
Huntsville, AL 35805

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

William Cooke
Jonathan Ripa
Federal Trade Commission
Bureau of Competition
400 7th Street SW
Washington, DC 20024
wcooke@ftc.gov
jripa@ftc.gov

Counsel Supporting the Complaint

March 2, 2018

By: /s/ Erica Fruiterman
Erica Fruiterman
Duane Morris LLP
30 S. 17th Street
Philadelphia, PA 19103
efruiterman@duanemorris.com

Counsel for Respondent Otto Bock HealthCare North America, Inc.

PUBLIC

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

Fourroux Prosthetics
c/o Keith Watson (Registered Agent)
2743 Bob Wallace Avenue SW
Huntsville, AL 35805

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying 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

Duane Morris LLP
30 S. 17th St.
Philadelphia, PA 19103
(215) 979-1000

4. MATERIAL WILL BE PRODUCED TO

Erica Fruiterman

5. DATE AND TIME OF PRODUCTION

March 9, 2018 at 9:00 am

6. SUBJECT OF PROCEEDING

In the Matter of Otto Bock Healthcare North America, 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

Otto Bock Healthcare North America, Inc.
Duane Morris LLP
30 S. 17th St.
Philadelphia, PA 19103
(215) 979-1000

EXHIBIT C

DATE SIGNED

3/2/2018

SIGNATURE OF COUNSEL ISSUING SUBPOENA

Fruiterman

GENERAL INSTRUCTIONS

APPEARANCE

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.

MOTION TO LIMIT OR QUASH

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.

TRAVEL EXPENSES

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.

A copy of the Commission's Rules of Practice is available online at http://bit.ly/FTCRulesofPractice. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

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 COUNSEL'S SUBPOENA *DUCES TECUM* ATTACHMENT TO FOURROUX PROSTHETICS

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.34, and the Definitions and Instructions set forth below, Respondent 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:

1. Any and all documents regarding the qualifications for use of a microprocessor controlled knee or reimbursement policy or terms of any public or private payor, including contracts with payors covering microprocessor controlled knees.

2. Any and all documents regarding the terms offered or applied for the Company's purchase of microprocessor controlled knees by any manufacturer, supplier, distributor or seller, including any proposed or agreed terms.

3. Any and all documents evidencing the number of the Company's clinic locations in the United States and each U.S. State, District, or Territory and the number of clinicians at any of the Company's clinic locations who fitted patients with any type of prosthetic knee.

4. Documents sufficient to show all microprocessor knees the Company currently fits on patients in the United States and each U.S. State, District, or Territory or has fitted for the past five years, indicating for each: (a) manufacturer and model of each microprocessor knee; (b) the number of units fitted and the revenue received by source (e.g., third party payor, patient, etc.) and by K Level for microprocessor knees with HCPCS Codes L5856 or L5858; (c) cost to acquire microprocessor knees with HCPCS Codes L5856 or L5858 by manufacturer and model in units and dollars by channel of purchase (e.g., distributor, direct sale from manufacturers); (d) the cost to service, repair or maintain microprocessor knees over the duration of the Company's warranty to the patient; and (e) the gross margin for each microprocessor knee by manufacturer and model.

5. Any and all documents, including, but not limited to, market studies, forecasts, surveys marketing plans, business plans, presentations to the Board of Directors, discussing: (a) any available (i) microprocessor knee and (ii) non-microprocessor (i.e., "mechanical") knee choices by K level; (b) strengths and weaknesses of each manufacturer's (i) microprocessor knees and (ii) mechanical knees; (c) competition in the manufacture, sale and distribution of (i) microprocessor knees and (ii) mechanical knees in the United States and each U.S. State, District, or Territory.

6. Any and all documents that discuss the Company's or patients' views of microprocessor knees of different manufacturers, particularly, but without exclusion, those discussing: (a) functional interchangeability among microprocessor knees of different manufacturers as well as between microprocessor knees and mechanical knees; (b) information on (i) the general willingness of patients to substitute and (ii) actual incidence of patients substituting, among microprocessor knees of different manufacturers; (c) information evidencing patients' reasons for (i) initially choosing or (ii) subsequently switching at the time of replacing the prosthesis, between microprocessor knees sold by different manufacturers; (d) views of (i) the company, (ii) patients, or (iii) clinicians' views of microprocessor knees of different manufacturers; and (e) factors affecting or which may affect prosthetists' decisions concerning which type of prosthetic knee to fit to a particular patient.

7. Any and all documents discussing (a) any impact of small but significant increases in price (e.g., 5% - 10%) of one manufacturer's microprocessor knee (with no accompanying change in quality or product features) on the willingness of (i) patients or (ii) clinicians to substitute to another manufacturer's microprocessor knee; (b) specifically, any impact of a small but significant increases in price (e.g., 5% - 10%) of Otto Bock's or Freedom Innovation's microprocessor knees (with no accompanying change in quality or product features) on the willingness of (i) patients or (ii) clinicians to substitute to another manufacturer's microprocessor knee; (c) the impact of a manufacturer's small, incremental quality improvement or small, incremental design change in its microprocessor knees on patients' willingness to choose that microprocessor knee over that of another manufacturer, including specifically Otto Bock and Freedom Innovation as the other manufacturer (where "incremental" specifically excludes major product changes); and (d) any recommendations of alternative microprocessor knees the Company's clinicians make to patients who wished to switch among manufacturers' microprocessor knees.

8. Any and all documents that discuss the Company's margin between revenue received per patient and acquisition cost per prosthetic knee, specifically with respect to: (a) the minimum acceptable margin in dollars and as a percent of revenue; and (b) any effect of differences in margins among prosthetic knees on clinicians' choices of (i) microprocessor knees or (ii) mechanical knees.

9. Any and all documents pertaining to the current orthotic and prosthetic industry and market, including, but not limited to, the market and any submarkets or market segments of prosthetic knee joints.

10. Any and all documents discussing, describing, or analyzing Freedom Innovations or Otto Bock's position in prosthetic industry and market in the United States over the past five years.

11. Any and all documents evidencing the limitations imposed or ceiling on the prices of microprocessor prosthetic knees imposed by Medicare and private insurers.

12. Any and all documents regarding Recovery Audit Contractor (RAC) audits with respect to: (i) their impact on the Company or other clinics; (ii) their impact on the clinical analysis of prosthetic devices containing microprocessor controlled knees or mechanical knees; and (iii) their impact on prosthetists' recommendations of microprocessor controlled knees or mechanical knees.

DEFINITIONS

The following definitions and instructions apply without regard to whether the defined terms used herein are capitalized or lowercase and without regard to whether they are used in the plural or singular form:

1. The term "Company" or "You" means Fourroux Prosthetics, including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which Company manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on the Company's behalf. The terms "subsidiaries," and "affiliates" 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., including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which Otto Bock HealthCare North America, Inc. manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on Otto Bock's behalf. The terms "subsidiaries," and "affiliates" 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, including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which FIH Group Holdings, LLC manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on Freedom's behalf. The terms "subsidiaries," and "affiliates" refer to any person in which there is partial (25 percent or more) or total ownership or control between Freedom and any other person.

4. The terms "And" and "Or" are interchangeable. "And" is understood to include and encompass "or," and vice versa.

5. The terms "Communication" or "Communications" means, without limitation, oral or written communication of any kind, all electronic communications, emails, facsimiles, telephone communications, correspondence, exchange of written or recorded information, face-to-face meetings, or one-way communication.

6. The term "Merger" means the Agreement and Plan of Merger, dated as of 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.

7. The term "Documents" means all written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term "Documents" includes, without limitation: electronic correspondence and drafts of Documents; electronic mail messages; metadata; copies of Documents that are not identical duplicates of the originals in that Person's files; and copies of the Documents the originals of which are not in the possession, custody, or control of the Company.

8. The terms "each," "any," and "all" mean "each and every."

9. "Relating to," "related to," "concerning," "regarding," and "surrounding" mean, without limitation, the following concepts: concerning, discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, or otherwise involving, in whole or in part.

INSTRUCTIONS

1. Unless the request specifically, or in context, indicates otherwise, the timeframe applicable to these requests shall be January 1, 2016, through the present.

2. 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.

3. If You claim any form of privilege, whether based on statute or otherwise, as a ground for not answering any Request, state the nature of the privilege claimed (*e.g.*, attorney-client, work product, or other) and set forth all facts upon which the claim of privilege is based.

4. Except for privileged material, You shall 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. You 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, You will not redact, mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

5. Wherever a Request calls for documents and/or communications which are not available to You in the form requested, but is available in another form or can be obtained at least in part from other sources in Your possession, You should so state and either supply the information requested in the form in which it is available or supply the sources from which the information can be obtained.

6. To the extent that You possess any requested documents or information in electronic form, the electronic data, and all underlying metadata, should be produced in a matter that does not modify the metadata.

7. The following instructions apply to electronically stored information:

   a. Provide single-page black and white Group IV TIFF images with metadata contained in a separate file.
   b. All electronic documents attached to an e-mail are to be produced contemporaneously and sequentially immediately after the parent e-mail.
   c. Each production must include a standard Concordance delimited ASCII data (.dat) file as well as an Ipro (.lfp) image load file.
   d. Microsoft Excel files should be produced in native file format with a TIFF placeholder stating "This Document Produced in Native File Format Only."

e. Microsoft Project Plans and Microsoft PowerPoint should be produced in both native file format and as TIFF images.

f. All available metadata, including but not limited to the following fields, should be produced:

BegDoc
EndDoc
BegAttach
EndAttach
NumAttach
Custodian
SourceApp
SourceFile
From
To
CC
BCC
Author
Title
Subject
EMailSubject
ConversationIndex
InReplyToID
DateCreated (Combined Date & Time Field)
DateLastMod (Combined Date & Time Field)
DateLastPrnt (Combined Date & Time Field)
DateRcvd (Combined Date & Time Field)
DateSent (Combined Date & Time Field)
PgCount
RecordType
DocExt
FileDescription
Filename
Filesize
Headers
EntryID
IntMsgID
MD5Hash
Sha1Hash
NativeFile
OCRPath

If You are unable to produce responsive documents in this format, You or, if You are represented by counsel, Your counsel, shall discuss the format in which documents are to be produced with counsel issuing this subpoena and agree upon a format before the date for response.

8. This subpoena does not request patient health records or HIPAA protected-information, and no request should be construed to request them. If contained in a responsive document, such information should be redacted in a manner to confirm with HIPAA and expectations of patient privacy.

9. If any Documents are withheld from production based on a claim of privilege, You 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 Respondent Counsel to assess the claim of privilege.

10. You must provide Respondent 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.

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)

PROOF OF SERVICE

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows:

_____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

_____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $_____.

My fees are $_____ for travel and $_____ for services for a total of $_____

I declare under penalty of perjury that this information is true.

Date:_____ _____

Server's Signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc.:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was personally delivered to:

Fourroux Prosthetics
c/o Keith Watson (Registered Agent)
2743 Bob Wallace Ave. SW
Huntsville, AL 35805

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

William Cooke
Jonathan Ripa
Federal Trade Commission
Bureau of Competition
400 7th Street SW
Washington, DC 20024
wcooke@ftc.gov
jripa@ftc.gov

Counsel Supporting the Complaint

March 2, 2018

By: /s/ Erica Fruiterman
Erica Fruiterman
Duane Morris LLP
30 S. 17th Street
Philadelphia, PA 19103
efruiterman@duanemorris.com

Counsel for Respondent Otto Bock HealthCare North America, Inc.

PUBLIC

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

Fourroux Prosthetics
c/o Rich Raleigh, Wilmer & Lee P.A.
100 Washington Street Northeast
Huntsville, AL 35801

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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 Street, SW
Washington, DC 20024

4. MATERIAL WILL BE PRODUCED TO

Joseph Neely, Esq.

5. DATE AND TIME OF PRODUCTION

March 9, 2018 at 9:00 am

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

EXHIBIT
tabbies
D

DATE SIGNED

Mar 5, 2018

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

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.

MOTION TO LIMIT OR QUASH

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.

TRAVEL EXPENSES

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.

A copy of the Commission's Rules of Practice is available online at http://bit.ly/FTCRulesofPractice. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

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 FedEx

on the person named herein on:

March 5, 2018

(Month, day, and year)

Joseph Neely, Esq.

(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**

COMPLAINT COUNSEL'S SUBPOENA *DUCES TECUM* ATTACHMENT TO FOURROUX PROSTHETICS

Pursuant to the Federal Trade Commission's Rules 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:

1. Any and all documents regarding the qualifications for use of a microprocessor controlled knee or reimbursement policy or terms of any public or private payor, including contracts with payors covering microprocessor controlled knees.

2. Any and all documents regarding the terms offered or applied for the Company's purchase of microprocessor controlled knees by any manufacturer, supplier, distributor or seller, including any proposed or agreed terms.

3. Any and all documents evidencing the number of the Company's clinic locations in the United States and each U.S. State, District, or Territory and the number of clinicians at any of the Company's clinic locations who fitted patients with any type of prosthetic knee.

4. Documents sufficient to show all microprocessor knees the Company currently fits on patients in the United States and each U.S. State, District, or Territory or has fitted for the past five years, indicating for each: (a) manufacturer and model of each microprocessor knee; (b) the number of units fitted and the revenue received by source (e.g., third party payor, patient, etc.) and by K Level for microprocessor knees with HCPCS Codes L5856 or L5858; (c) cost to acquire microprocessor knees with HCPCS Codes L5856 or L5858 by manufacturer and model in units and dollars by channel of purchase (e.g., distributor, direct sale from manufacturers); (d) the cost to service, repair or maintain microprocessor knees over the duration of the Company's warranty to the patient; and (e) the gross margin for each microprocessor knee by manufacturer and model.

5. Any and all documents, including, but not limited to, market studies, forecasts, surveys marketing plans, business plans, presentations to the Board of Directors, discussing: (a) any available (i) microprocessor knee and (ii) non-microprocessor (i.e., "mechanical") knee choices by K level; (b) strengths and weaknesses of each manufacturer's (i) microprocessor knees and (ii) mechanical knees; (c) competition in the manufacture, sale and distribution of (i) microprocessor knees and (ii) mechanical knees in the United States and each U.S. State, District, or Territory.

6. Any and all documents that discuss the Company's or patients' views of microprocessor knees of different manufacturers, particularly, but without exclusion, those discussing: (a) functional interchangeability among microprocessor knees of different manufacturers as well as between microprocessor knees and mechanical knees; (b) information on (i) the general willingness of patients to substitute and (ii) actual incidence of patients substituting, among microprocessor knees of different manufacturers; (c) information evidencing patients' reasons for (i) initially choosing or (ii) subsequently switching at the time of replacing the prosthesis, between microprocessor knees sold by different manufacturers; (d) views of (i) the company, (ii) patients, or (iii) clinicians' views of microprocessor knees of different manufacturers; and (e) factors affecting or which may affect prosthetists' decisions concerning which type of prosthetic knee to fit to a particular patient.

7. Any and all documents discussing (a) any impact of small but significant increases in price (e.g., 5% - 10%) of one manufacturer's microprocessor knee (with no accompanying change in quality or product features) on the willingness of (i) patients or (ii) clinicians to substitute to another manufacturer's microprocessor knee; (b) specifically, any impact of a small but significant increases in price (e.g., 5% - 10%) of Otto Bock's or Freedom Innovation's microprocessor knees (with no accompanying change in quality or product features) on the willingness of (i) patients or (ii) clinicians to substitute to another manufacturer's microprocessor knee; (c) the impact of a manufacturer's small, incremental quality improvement or small, incremental design change in its microprocessor knees on patients' willingness to choose that microprocessor knee over that of another manufacturer, including specifically Otto Bock and Freedom Innovation as the other manufacturer (where "incremental" specifically excludes major product changes); and (d) any recommendations of alternative microprocessor knees the Company's clinicians make to patients who wished to switch among manufacturers' microprocessor knees.

8. Any and all documents that discuss the Company's margin between revenue received per patient and acquisition cost per prosthetic knee, specifically with respect to: (a) the minimum acceptable margin in dollars and as a percent of revenue; and (b) any effect of differences in margins among prosthetic knees on clinicians' choices of (i) microprocessor knees or (ii) mechanical knees.

9. Any and all documents pertaining to the current orthotic and prosthetic industry and market, including, but not limited to, the market and any submarkets or market segments of prosthetic knee joints.

10. Any and all documents discussing, describing, or analyzing Freedom Innovations or Otto Bock's position in prosthetic industry and market in the United States over the past five years.

11. Any and all documents evidencing the limitations imposed or ceiling on the prices of microprocessor prosthetic knees imposed by Medicare and private insurers.

12. Any and all documents regarding Recovery Audit Contractor (RAC) audits with respect to: (i) their impact on the Company or other clinics; (ii) their impact on the clinical analysis of prosthetic devices containing microprocessor controlled knees or mechanical knees; and (iii) their impact on prosthetists' recommendations of microprocessor controlled knees or mechanical knees.

DEFINITIONS

The following definitions and instructions apply without regard to whether the defined terms used herein are capitalized or lowercase and without regard to whether they are used in the plural or singular form:

1. The term "Company" or "You" means Fourroux Prosthetics, including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which Company manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on the Company's behalf. The terms "subsidiaries," and "affiliates" 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., including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which Otto Bock HealthCare North America, Inc. manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on Otto Bock's behalf. The terms "subsidiaries," and "affiliates" 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, including without limitation, any of its predecessors, successors, subsidiaries, departments, divisions and/or affiliates, or any organization or entity which FIH Group Holdings, LLC manages or controls, together with all present and former directors, officers, employees, agents, representatives, independent contractors, or any person acting or purporting to act on Freedom's behalf. The terms "subsidiaries," and "affiliates" refer to any person in which there is partial (25 percent or more) or total ownership or control between Freedom and any other person.

4. The terms "And" and "Or" are interchangeable. "And" is understood to include and encompass "or," and vice versa.

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6. The term "Merger" means the Agreement and Plan of Merger, dated as of 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.

7. The term "Documents" means all written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term "Documents" includes, without limitation: electronic correspondence and drafts of Documents; electronic mail messages; metadata; copies of Documents that are not identical duplicates of the originals in that Person's files; and copies of the Documents the originals of which are not in the possession, custody, or control of the Company.

8. The terms "each," "any," and "all" mean "each and every."

9. "Relating to," "related to," "concerning," "regarding," and "surrounding" mean, without limitation, the following concepts: concerning, discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, or otherwise involving, in whole or in part.

INSTRUCTIONS

1. Unless the request specifically, or in context, indicates otherwise, the timeframe applicable to these requests shall be January 1, 2016, through the present.

2. 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.

3. If You claim any form of privilege, whether based on statute or otherwise, as a ground for not answering any Request, state the nature of the privilege claimed (*e.g.*, attorney-client, work product, or other) and set forth all facts upon which the claim of privilege is based.

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7. The following instructions apply to electronically stored information:

a. Provide single-page black and white Group IV TIFF images with metadata contained in a separate file.

b. All electronic documents attached to an e-mail are to be produced contemporaneously and sequentially immediately after the parent e-mail.

c. Each production must include a standard Concordance delimited ASCII data (.dat) file as well as an Ipro (.lfp) image load file.

d. Microsoft Excel files should be produced in native file format with a TIFF placeholder stating "This Document Produced in Native File Format Only."

e. Microsoft Project Plans and Microsoft PowerPoint should be produced in both native file format and as TIFF images.

f. All available metadata, including but not limited to the following fields, should be produced:

BegDoc
EndDoc
BegAttach
EndAttach
NumAttach
Custodian
SourceApp
SourceFile
From
To
CC
BCC
Author
Title
Subject
EMailSubject
ConversationIndex
InReplyToID
DateCreated (Combined Date & Time Field)
DateLastMod (Combined Date & Time Field)
DateLastPrnt (Combined Date & Time Field)
DateRcvd (Combined Date & Time Field)
DateSent (Combined Date & Time Field)
PgCount
RecordType
DocExt
FileDescription
Filename
Filesize
Headers
EntryID
IntMsgID
MD5Hash
Sha1Hash
NativeFile
OCRPath

If You are unable to produce responsive documents in this format, You or, if You are represented by counsel, Your counsel, shall discuss the format in which documents are to be produced with counsel issuing this subpoena and agree upon a format before the date for response.

8. This subpoena does not request patient health records or HIPAA protected-information, and no request should be construed to request them. If contained in a responsive document, such information should be redacted in a manner to confirm with HIPAA and expectations of patient privacy.

9. If any Documents are withheld from production based on a claim of privilege, You 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.

10. You 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.

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)

PUBLIC

CERTIFICATE OF SERVICE

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

Rich Raleigh
Wilmer & Lee P.A.
100 Washington Street Northeast
Huntsville, AL 35801
rraleigh@wilmerlee.com

Counsel for Fourroux Prosthetics

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
Sean Zabaneh
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103
egbiester@duanemorris.com
spmcconnell@duanemorris.com
WAMack@duanemorris.com
efruiterman@duanemorris.com
sckulik@duanemorris.com
wshotzbarger@duanemorris.com
SSZabaneh@duanemorris.com

Counsel for Respondent Otto Bock HealthCare North America, Inc.

March 5, 2018

By: */s/ Joseph Neely*

Joseph Neely
Federal Trade Commission
Bureau of Competition
400 7th Street SW
Washington, DC 20024
jneely@ftc.gov
Telephone: (202) 326-3431

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,	DOCKET NO. 9378
Respondent.	

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:

DM Chappell
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.