

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

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Civil Action No. 1:19-cv-11586-FDS

**UNOPPOSED MOTION TO IMPOUND/SEAL DESIGNATED  
MATERIAL**

Pursuant to Local Rule 7.2 and the Order Adopting Discovery Stipulation and Modified Protective Order in this case (ECF No. 59, the “Protective Order”), Plaintiff Philips North America LLC (“Philips”) respectfully requests the Court to impound (seal) Plaintiff’s Presentation for Motions to Strike and Preclude Expert Testimony (“Plaintiff’s Presentation”).

The Protective Order allows parties to designate discovery material that contains or constitutes confidential business information as “CONFIDENTIAL.” As grounds for this Motion, Philips states that Plaintiff’s Presentation contains discussion of Philips and third-party confidential business information. Specifically, seven slides in Plaintiff’s presentation include excerpts from the report of Philips’s damages expert, Dr. Michael Akemann, that contain Philips’s confidential licensing information and has been designated as confidential under the protective order.

Additionally, in response to a subpoena, Icon Health & Fitness (“Icon”), a third party to this matter, produced documents related to the design and operation of several of their fitness products and services and marked these documents as confidential under the Protective Order because Icon believed them to include confidential business information. Icon likewise designated

the transcript of the deposition of one of their employees, Ms. Logan, as confidential under the Protective Order. Two of the slides in Plaintiff's Presentation include excerpts from Fitbit's technical expert's invalidity report (designated by Fitbit as confidential under the Protective Order) that discuss the documents and testimony of Ms. Logan that was marked by Icon as confidential.

Additionally, Philips has filed a redacted version of Plaintiff's Presentation with redactions of only the nine slides (out of sixty-five total) that discuss Philips or Icon confidential business information.

For the foregoing reasons, Philips respectfully requests that the Court permit Philips to file under seal Plaintiff's Presentation for Motions to Strike and Preclude Expert Testimony. Philips further requests that the document remains impounded until further Order by the Court, and that upon expiration of the impoundment, the document be returned to Philips's counsel.

Dated: March 15, 2022

Respectfully Submitted,

/s/ John W. Custer

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**LOCAL RULE 7.2 CERTIFICATION**

I, John W. Custer, counsel for Philips North America LLC, hereby certify that counsel for Philips has conferred with counsel for Fitbit, Inc. to resolve the issues presented in this motion and that counsel for Fitbit indicated that Fitbit does not oppose the relief requested by this motion.

Dated: March 15, 2022

*/s/ John W. Custer*

John W. Custer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was filed with the Court through the ECF system and that a copy will be electronically served on registered participants as identified on the Notice of Electronic Filing.

Dated: March 15, 2022

*/s/ John W. Custer*

John W. Custer