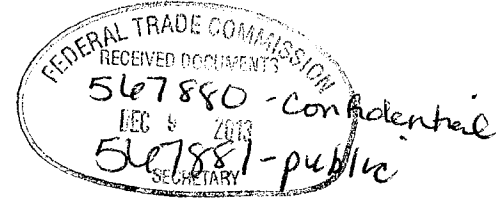




NICHOLAS E.O. GAGLIO  
(212) 728-2228  
NGAGLIO@AXINN.COM

ORIGINAL



December 9, 2013

VIA HAND DELIVERY

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, H-113  
Washington, DC 20580

Re: Ardagh Group S.A. et al., Dkt. No. 9356

Mr. Clark,

I represent non-party Ball Corporation in the above referenced adjudicative proceeding. Please find enclosed the following documents:

- The original and one copy of the *in camera* version of Non-Party Ball Corporation's Unopposed Motion for *In Camera* Treatment of Proposed Evidence, and all accompanying exhibits;
- The original and one copy of the public version of Non-Party Ball Corporation's Unopposed Motion for *In Camera* Treatment of Proposed Evidence, and all accompanying exhibits;
- Electronic versions of the above documents on the enclosed disk.

Sincerely,

Nicholas E.O. Gaglio

Enclosures

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



In the matter of

Ardagh Group S.A.,  
a public limited liability company, and

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation

DOCKET NO. 9356

**NON-PARTY BALL CORPORATION'S UNOPPOSED MOTION FOR  
IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party Ball Corporation ("Ball") respectfully submits this motion for *in camera* treatment of certain competitively-sensitive, confidential business documents. Ball's counsel conferred with counsel for the Federal Trade Commission and for the respondents, and none of the parties in this matter oppose this motion.

The sixteen documents and nine excerpts of deposition testimony for which Ball is seeking *in camera* treatment were produced in response to a third-party subpoena in this matter, and both the Federal Trade Commission and Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers ("Respondents") have notified Ball that they intend to introduce the documents that are the subject of this motion into evidence at the administrative trial in this matter. *See* Letter from the Federal Trade Commission dated November 18, 2013 (attached as Exhibit A); Letter from Counsel for Respondents, dated November 19, 2013 and emails from Counsel for Respondents, dated November 20, November 26, and December 4, 2013 (attached as Exhibit B).

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This motion seeks to prevent disclosure of documents and testimony that contain confidential business information that Ball has kept secret and that are material to Ball's business. Ball would be seriously harmed in its ability to compete in the beverage container industry if this information was publicly disclosed. For the reasons discussed in this Motion, Ball requests that this Court afford Ball's confidential business information *in camera* treatment for a period of at least three or five years, depending on the specific document. In support of this Motion, Ball relies on the Affidavit of Bruce H. Doelling, attached as Exhibit C, which provides additional details on the documents and testimony for which Ball is seeking *in camera* treatment.

### I. THE DOCUMENTS AND TESTIMONY FOR WHICH PROTECTION IS SOUGHT

Ball seeks *in camera* treatment for sixteen documents and nine excerpts from the deposition of Bruce Doelling, which are attached as Exhibit D along with a summary index. The information contained within the documents and testimony falls into the following four categories:

- Ball's business strategies and plans
- Pricing information
- Customer information
- Documents that contain information Ball has agreed with third-parties to maintain as confidential

The above documents and testimony contain highly sensitive confidential information that would seriously injure Ball should they be publicly disclosed, as described more fully below.

### II. BALL'S DOCUMENTS AND TESTIMONY ARE SECRET AND MATERIAL SUCH THAT DISCLOSURE WOULD RESULT IN SERIOUS INJURY

Third party Ball's documents and testimony listed in the index in Exhibit D warrant *in camera* treatment as provided by 16 C.F.R. § 3.45(b). As an initial matter, as a third-party, Ball

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deserves “special solicitude” in its request for *in camera* treatment of its confidential business information. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”).

Requests for business sensitive documents to be given *in camera* treatment should be granted where public disclosure of the document “will likely result in clearly defined, serious injury to the . . . corporation requesting *in camera* treatment. . . .” 16 C.F.R. § 3.45(b). Serious injury is demonstrated by showing that the documents have been kept secret and that they are material to the company’s business. *In re Dura Lube Corp.*, Dkt. No. 9292, 1999 FTC LEXIS 255, at \*6 (Dec. 23, 1999); *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). “The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *Dura Lube*, 1999 FTC LEXIS 255, at \*7 (quoting *General Foods*, 95 F.T.C. at 355). Generally, courts “protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Six factors typically are weighed in determining whether the document or testimony in question is sufficiently material and secret to warrant *in camera* treatment:

- (1) the extent to which the information is known outside of his business;
- (2) the extent to which it is known by employees and others involved in his business;
- (3) the extent of measures taken by him to guard the secrecy of the information;
- (4) the value of the information to him and to his competitors;
- (5) the amount of effort or money expended by him in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Dura Lube*, 1999 F.T.C. LEXIS 255, at \*6-7 (quoting *Bristol-Myers*, 90 F.T.C. at 456-57).

A. Ball Has Preserved the Confidentiality of the Documents and Information in Question

Ball has taken substantial measures to protect the secrecy of the information contained in the documents. Ball has limited dissemination of the information contained in the documents by only disseminating the documents to particular Ball employees. (Doelling Decl. ¶ 5.) In fact, one of the cover emails specifically informs the recipients that the document is confidential and should not be shared or forwarded on to anyone outside Ball. *See* Ex. D, document BALL00011320-351. Ball only produced the documents pursuant to a subpoena, and took care to maintain confidentiality by designating the documents as confidential. As such, Ball has taken all reasonable steps to guard the secrecy of the information. Further, the information is not known outside of Ball, and it would be difficult for Ball's competitors or others within the industry to access or duplicate the information contained therein. (Doelling Decl. ¶ 5.) The "secrecy" prong of the "serious injury" standard is therefore met.

B. Public Disclosure of the Information Would Result in Serious Competitive Injury to Ball

As discussed in Section I, the sixteen documents and nine excerpts of deposition testimony for which Ball seeks *in camera* treatment fall into four categories of information:

- First, documents and testimony discussing business strategies and plans are entitled to *in camera* treatment. *See, e.g., In re McWane, Inc.*, Dkt. No. 9351, 2012 WL 3862131, at \*3-4 (F.T.C. Aug. 17, 2012) (granting *in camera* treatment to business plans); *In re Polypore Int'l, Inc.*, Dkt. No. 9327, 2009 WL 1353461, at \*4-5 (F.T.C. May 6, 2009) (granting *in camera* treatment for global business plans and strategies for customers). Ball's business plans contain prospective general commercial strategies, Ball's views on the industry's present and future, Ball's views on its competitors, specific goals for particular Ball customers, and information relevant to negotiations with those customers, such as the status of contracts.<sup>1</sup> (Doelling Decl. ¶ 6.)

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<sup>1</sup> Documents and testimony which fall in this category are BALL0000095-107, BALL00000120, BALL00000121 (also referred to as DX3), BALL00003405-06, BALL3418-19, BALL00004173-74, BALL00008559-60, BALL00008564, BALL00008566, BALL00011320-51, Dep. Tr. 26:13-27:11.

For example, Ball's three-year strategic plans, such as BALL00004173-74, titled "North American Metal Beverage Strategic Plan 2012-2014," detail Ball's market predictions, customer business strategies, and Ball's development strategies for those customers. (Other three-year strategic plans are BALL00008559-60, 8564, and 8566.) BALL00003406, titled "Beverage Business Review," contains customer-specific and competitor-specific prospective strategies. BALL00000121, which is an excerpt from a Ball N.A. Metal Beverage three-year strategic plan, contains customer-specific prospective business strategies, as well as specific cost and sales information. These documents are of the highest sensitivity to Ball and any public disclosure of the information would place Ball at a competitive disadvantage with both its competitors and customers. (Doelling Decl. ¶¶ 6-7.)

- Second, information relating to pricing is also appropriate for *in camera* treatment. *See, e.g., McWane*, 2012 WL 3862131, at \*3-4, 6 (granting *in camera* treatment to pricing and cost information); *Polypore Int'l*, 2009 WL 1353461, at \*4-5 (granting *in camera* treatment for and pricing data). Public disclosure of Ball's internal pricing lists, which are not made available to any of Ball's customers or competitors, as well as testimony on Ball's pricing strategies, would have a very damaging effect on Ball. (Doelling Decl. ¶ 9.)<sup>2</sup>
- Third, *in camera* treatment is also appropriate for information relating to customers. *See, e.g., McWane*, 2012 WL 3862131, at \*3-4, 6, 8-9 (granting *in camera* treatment to customer sales data and other specific customer information); *Polypore Int'l*, 2009 WL 1353461, at \*4-5 (granting *in camera* treatment for customer strategies). Public disclosure of summary calls with Ball's customers, a list of Ball's top customers, communications with customers or confidential contract terms would inflict a serious injury on Ball.<sup>3</sup> (Doelling Decl. ¶ 10.)
- Finally, *in camera* treatment is appropriate for information that a producing party has previously agreed to keep confidential. *In re OSF Healthcare System*, Dkt. No. 9349, 2012 WL 1355598, at \*1 (F.T.C. Mar. 29, 2012) (granting *in camera* treatment to deposition testimony based on information subject to non-disclosure agreements). Ball has previously agreed with MillerCoors and BeveragePulse to keep certain information confidential.<sup>4</sup> (Doelling Decl. ¶ 11.) These documents and testimony should remain confidential, as public disclosure would undermine Ball's future relationships with these clients and customers. *Id.*

<sup>2</sup> Documents and testimony which fall in this category are BALL00000268-69, Dep. Tr. 120:16-121:9, 149:6-25, and 150:14-23.

<sup>3</sup> Documents and testimony which fall in this category are BALL00000109-11, BALL00000237, BALL00011273-74, Dep. Tr. 9:19-25, 96:7-11, 121:20-122:5, 135:24-136:8 and 153:7-25.

<sup>4</sup> Documents and testimony which fall into this category are BALL00000094, BALL00006340, Dep. Tr. 121:20-122:5, 153:7-25.

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The “materiality” prong of the serious injury standard is therefore met for the sixteen documents and nine deposition excerpts.<sup>5</sup>

C. Protection for the Information Should Last for at Least Three or Five Years, Depending on the Document

The highly confidential information contained in the materials in Exhibit D is central to Ball’s competitive position and business strategy. Ball respectfully requests, therefore, that all the documents for which Ball has requested in camera treatment be afforded *in camera* protection for a period of at least three years. For the most highly sensitive documents, however, which relate to Ball’s business strategy and plans and are identified in paragraph 7 of the Doelling Declaration, Ball respectfully requests that they be afforded *in camera* protection for a period of at least five years.

Respectfully submitted,

Nicholas Gaglio c/cp  
Nicholas E.O. Gaglio  
AXINN VELTROP & HARKRIDER LLP  
114 West 47th Street  
New York, New York 10036  
Tel: (212) 728-2200  
Email: ngaglio@axinn.com

*Counsel for Non-Party Ball Corporation*

---

<sup>5</sup> The analysis applies equally to the few documents for which Ball seeks *in camera* treatment that are more than three years old. While there is a presumption that information three or more years old is not to be provided in camera treatment, *see Dura Lube*, at \*4, the presumption is overcome when an applicant demonstrates that the information remains commercially sensitive. *McWane, Inc.*, 2012 WL 3862131, at \*2; *see also In re ProMedica Health System, Inc.*, Dkt. No. 9346, 2011 WL 2258040, at \*18 (F.T.C. May 25, 2011) (finding presumption overcome where respondent demonstrated that documents remained relevant and significant, as the documents reflected business strategies which could impact future negotiations). The sensitive information contained within these documents could impact Ball’s relationships and negotiations with customers, competitors and other third-parties if it is made public. For example, BALL00000120, BALL0000121 and BALL00008560 are strategy plan documents which contain information that remains relevant to Ball’s current and future business. (Doelling Decl. ¶ 8.)

**CERTIFICATE OF SERVICE**

I, Nicholas E.O. Gaglio, certify that on December 9, 2013 I caused the foregoing to be served on the following in the manner indicated:

**Hand Delivery – Original, one copy and electronic copy**

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room H-113  
Washington, DC 20580

**VIA Federal Express and Electronic mail – One copy and electronic copy**

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room H-106  
Washington, DC 20580

I also certify that on December 9, 2013, I caused one copy of the Motion (both public and *in camera* versions) to be served by electronic mail and Federal Express on the following:

Complaint Counsel

Steven Wilensky, Esq. ([swilensky@ftc.gov](mailto:swilensky@ftc.gov))  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20001

Counsel for Respondents

Jason M. Swergold ([Jason.Swergold@shearman.com](mailto:Jason.Swergold@shearman.com))  
Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022

By: Nicholas Gaglio CCP  
Nicholas E.O. Gaglio

Counsel for Non-Party  
Ball Corporation



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**CERTIFICATE OF CONFERENCE**

On December 5, 2013, the undersigned personally conferred with Complaint Counsel and counsel for Respondents. All counsel indicated that they do not oppose the relief requested in this Motion.

By: Nicholas Gaglio CCP  
Nicholas E.O. Gaglio

**CERTIFICATE FOR ELECTRONIC COPIES**

I certify that the electronic copies sent to the Secretary of the Commissioner are true and correct copies of the paper originals, and that paper copies with original signatures are included in the same package that was delivered via Federal Express.

By: Nicholas Gaglio CCP  
Nicholas E.O. Gaglio

**NOTICE OF USE TO NON-PARTY**

In the event the Commission intends to disclose any materials for which *in camera* treatment was sought in this Motion, the name and address of the individual to be contacted pursuant to Rule 3.45(b) is Nicholas E.O. Gaglio, Axinn, Veltrop & Harkrider LLP, 114 W. 47<sup>th</sup> St., New York, NY 10036, 212-728-2200, [ngaglio@axinn.com](mailto:ngaglio@axinn.com).

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

In the matter of

Ardagh Group S.A.,  
a public limited liability company, and

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation

DOCKET NO. 9356

**PROPOSED ORDER**

Upon consideration of non-party Ball Corporation's Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided *in camera* treatment for a period of five years from the date of this Order: BALL00004173-174; BALL00008564; BALL00008566; BALL00008559-560; BALL00003405-406; and BALL00000121.

It is further HEREBY ORDERED that the following documents are to be provided *in camera* treatment for a period of three years from the date of this Order: BALL00000094; BALL00000095-107; BALL00000109-111; BALL00000120; BALL00000237; BALL00000268-269; BALL00003418-419; BALL00006340; BALL00011273-274; and BALL00011320-351.

It is further HEREBY ORDERED that the following excerpts from the transcript of the deposition of Bruce Doelling of Ball Corporation are to be provided *in camera* treatment for a period of three years from the date of this Order: 9:19-25; 26:13-27:11; 96:7-11; 120:16-121:9; 121:20-122:5; 135:24-136:8; 149:6-25; 150:14-23; and 153:7-25.

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ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

\_\_\_\_\_, 2013



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Competition  
Mergers II Division

November 18, 2013

Steven Wilensky, Esq.  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Ave, N.W.  
Washington, DC 20001  
(202) 326-2650  
swilensky@FTC.gov

**Via Federal Express**

Nicholas Gaglio, Esq.  
Axinn Veltrop Harkrider LLP  
114 West 47th Street  
New York, NY 11036

RE: *In the Matter of Ardagh Group S.A., and Saint-Gobain Containers, Inc., and Compagnie de Saint Gobain*, Docket No. 9356

Dear Mr. Gaglio:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. §3.45(b), that Complaint Counsel intend to offer the documents and testimony referenced in the enclosed Attachments A and B into evidence in the administrative trial in the above-captioned matter. Please note that the list of deposition designations in Exhibit B does not include any of Complaint Counsel's counter-designations, if any, which are not due until November 25, 2013.

The administrative trial is scheduled to begin on December 19, 2013. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status.

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Because counter-

designations are not yet due, this includes all passages of deposition testimony that warrant *in camera* treatment, whether or not Complaint Counsel has designated those passages. Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004).

Please be aware that under the current scheduling order, the deadline for filing motions seeking *in camera* status is November 26, 2013.

Additionally, in lieu of a deposition on the admissibility of the documents listed in Exhibit A, we ask that you sign and return the attached declaration regarding the admissibility of these documents. Please return the signed declaration to my attention by December 3, 2013, if possible, as a scanned .pdf attached to an e-mail.

If you have any questions, please feel free to contact me at (202) 326-2650.

Sincerely,



Steven Wilensky, Esq.  
Counsel Supporting the Complaint

Attachments

**ATTACHMENT A**

Exhibit Number	Date	BegBates	EndBates	Document Description
PX4141	2/7/2012	BALL00003623	BALL00003627	E-mail from Ann Scott to Robert Miles re: Baird/OI/Panjabi: Hawkish Pricing Comments from Verallia-- Positive for OI
PX4142	6/17/2010	BALL00006340	BALL00006340	MillerCoors Presentation: Aluminum Glass Plastic Study 2010
PX4474	11/??/2012	BALL00000094	BALL00000094	BeveragePulse.com Presentation: Beer Profitability Analysis
PX4476	5/14/2010	BALL00000120	BALL00000120	Ball Presentation: Craft Beer in Cans?
PX4477	1/18/2012	BALL00000268	BALL00000269	E-mail from Suzette Compagno to Alexandra Brandt, Mark Hughes, Denise Rodgers, et al. Re: 2012 List Price 2012 vs. 2011 w/upcharges w/ Attach: 2012 List Price 2012 vs 2011 w-upcharges.xls
PX4478	1/26/2012	BALL00003574	BALL00003575	E-mail from Mariko Yamanouchi to Robert Miles re: Comparison of packaging substrates w/ Attach: Comparison of packaging substrates.pptx
PX4480	9/18/2012	BALL00004173	BALL00004174	E-mail from Alexander Barefoot to Robert Miles re: 2012-2014 Strategic Plan North American Beverage (Sales).pptx w/ Attach: 2012-2014 Strategic Plan North American Beverage (Sales).pptx
PX4481	2/21/2013	BALL00005479	BALL00005483	E-mail from James Billings to Robert Miles, Bruce Doelling, Michael Hranicka, et al. re: SAM Q4 call
PX4484	11/3/2010	BALL00008559	BALL00008560	E-mail from Mary Caroselli to Alexandra Brandt, Suzette Campagno, Casey Dodson, et al. re: w/ Attach: Beverage NA Strategic Plan Presentation 1.0.pptx
PX4485	12/17/2010	BALL00008564	BALL00008564	Ball Presentation: NA Metal Beverage Strategic Plan 2011-2013
PX6024	8/21/2013	N/A	N/A	RESERVED for Designated Deposition Transcript of Bruce Doelling (Ball Corporation)

## ATTACHMENT B

Name: Doelling, Bruce

Company: Ball Corporation

Date & Type: 8/21/2013 Deposition (PX6024)

3:2 - 5

3:9 - 17

8:4 - 9:25

20:15 - 21:7

25:13 - 20

28:11 - 18

80:21 - 81:14

83:15 - 17

105:7 - 24

106:23 - 107:18

108:23 - 109:18

111:3 - 19

120:16 - 121:9

121:20 - 122:5

122:16 - 24

123:3 - 124:11

125:25 - 127:22

128:8 - 17

135:14 - 21

135:24 - 136:8

137:2 - 141:4

141:7 - 14

143:3 - 16

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

In the Matter of

Ardagh Group S.A.,  
a public limited liability company, and

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation.

DOCKET NO. 9356

**DECLARATION**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746, make the following statement:

1. I am an employee of Ball Corporation. I have personal knowledge of the facts set forth in this declaration, and if called as a witness I could and would testify competently under oath to such facts.
  
2. I have reviewed the documents referenced in Attachment A to this Declaration, which have been identified by Complaint Counsel with PX numbers for use as exhibits in the above-captioned matter.
  
3. I hereby certify that each document referenced in Attachment A herein: (a) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (b) was kept in the course of regularly



conducted activity; and (c) was made by the regularly conducted activity as a regular practice.

Pursuant to 28 U.S.C. § 1746, I declare, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

---

**From:** Jason Swergold [<mailto:Jason.Swergold@Shearman.com>]

**Sent:** Wednesday, December 04, 2013 7:14 PM

**To:** Gaglio, Nicholas E.O.

**Subject:** RE: FTC v. Ardagh -- Ball redaction request

Thanks, Nick. Following up on our earlier discussion, we do intend to offer the power point presentation bearing bates number Ball00003406, which is the attachment to Ball00003405.

Best,  
Jason

Jason M. Swergold

---

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---

---

**From:** Jason Swergold [mailto:Jason.Swergold@Shearman.com]  
**Sent:** Tuesday, November 26, 2013 2:54 PM  
**To:** Gaglio, Nicholas E.O.  
**Cc:** Mark Lanpher  
**Subject:** RE: In the Matter of Ardagh Group - Letter to N. Gaglio

Nicholas,

Pursuant to the scheduling order in this case, yesterday the parties were required to identify any counter-designations of deposition testimony that they may seek to introduce during the hearing. I write to advise you that Respondents have identified the following additional testimony:

21:20-25, 22:2-5, 26:13-16, 26:19-25, 27:2-6, 27:9-11,  
83:18-21, 108:14-22, 119:4-9, 127:23-25, 128:2-7, 148:2-  
25, 149:2-4, 153:7-16, 153:18-25, 154:23-25, 155:2-5

Best,  
Jason

Jason M. Swergold

---

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---

**From:** Jason Swergold  
**Sent:** Thursday, November 21, 2013 3:01 PM  
**To:** 'neog@avhlaw.com'  
**Cc:** Mark Lanpher  
**Subject:** RE: In the Matter of Ardagh Group - Letter to N. Gaglio

Nicholas,

This is to advise you that the Administrative Law Judge has granted a motion filed by Ardagh to extend the deadline for motions for in camera treatment of confidential materials. Accordingly, any motion that you may seek to file for in camera treatment is now due on December 9. A copy of the judge's order is attached.

Best,

Jason

Jason M. Swergold

---

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[jason.swergold@shearman.com](mailto:jason.swergold@shearman.com) | [www.shearman.com](http://www.shearman.com)

---

**From:** Jason Swergold  
**Sent:** Wednesday, November 20, 2013 9:01 AM  
**To:** 'neog@avhlaw.com'  
**Cc:** Mark Lanpher  
**Subject:** RE: In the Matter of Ardagh Group - Letter to N. Gaglio

As a follow up to my email last night, these are the excerpts of the deposition that we plan to introduce at the hearing. A copy of the transcript is attached for reference.

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Jason M. Swergold

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[jason.swergold@shearman.com](mailto:jason.swergold@shearman.com) | [www.shearman.com](http://www.shearman.com)

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**From:** Jason Swergold  
**Sent:** Tuesday, November 19, 2013 7:27 PM  
**To:** 'neog@avhlaw.com'  
**Cc:** Mark Lanpher  
**Subject:** In the Matter of Ardagh Group - Letter to N. Gaglio

Dear Mr. Gaglio,

Please see the attached letter. A hard copy of the letter and enclosures will arrive via US mail.

Regards,

Jason M. Swergold

---

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Any tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties and is not intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement.

\*\*\*\*\*

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**From:** Jason Swergold [<mailto:Jason.Swergold@Shearman.com>]  
**Sent:** Wednesday, November 20, 2013 9:01 AM  
**To:** Gaglio, Nicholas E.O.  
**Cc:** Mark Lanpher  
**Subject:** RE: In the Matter of Ardagh Group - Letter to N. Gaglio

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**Document Redacted From Public Version**



## C

**Effective: August 22, 2011**

Code of Federal Regulations Currentness

Title 16. Commercial Practices

Chapter I. Federal Trade Commission

Subchapter A. Organization, Procedures and  
Rules of Practice

▣ Part 3. Rules of Practice for Adjudicative Proceedings (Refs & Annos)

▣ Subpart E. Hearings

→ § 3.45 In camera orders.

(a) Definition. Except as hereinafter provided, material made subject to an in camera order will be kept confidential and not placed on the public record of the proceeding in which it was submitted. Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such in camera material to the extent necessary for the proper disposition of the proceeding.

(b) In camera treatment of material. A party or third party may obtain in camera treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge. Parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days notice of the proposed use of such material. Each such motion must include an attachment containing a copy of each page of the document in question on which in camera or otherwise confidential excerpts appear. The Administrative Law Judge shall order that such material, whether admitted or rejected, be placed in camera only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting in camera treat-

ment or after finding that the material constitutes sensitive personal information. "Sensitive personal information" shall include, 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. For material other than sensitive personal information, a finding that public disclosure will likely result in a clearly defined, serious injury shall be based on the standard articulated in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); see also *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977), which established a three-part test that was modified by *General Foods Corp.*, 95 F.T.C. 352, 355 (1980). The party submitting material for which in camera treatment is sought must provide, for each piece of such evidence and affixed to such evidence, the name and address of any person who should be notified in the event that the Commission intends to disclose in camera information in a final decision. No material, or portion thereof, offered into evidence, whether admitted or rejected, may be withheld from the public record unless it falls within the scope of an order issued in accordance with this section, stating the date on which in camera treatment will expire, and including:

- (1) A description of the material;
- (2) A statement of the reasons for granting in camera treatment; and
- (3) A statement of the reasons for the date on which in camera treatment will expire, except in the case of sensitive personal information, which shall be accorded permanent in camera treatment unless disclosure or an expiration date is required or provided by law. For in

camera material other than sensitive personal information, an expiration date may not be omitted except in unusual circumstances, in which event the order shall state with specificity the reasons why the need for confidentiality of the material, or portion thereof at issue is not likely to decrease over time, and any other reasons why such material is entitled to in camera treatment for an indeterminate period. If an in camera order is silent as to duration, without explanation, then it will expire 3 years after its date of issuance. Material subject to an in camera order shall be segregated from the public record and filed in a sealed envelope, or other appropriate container, bearing the title, the docket number of the proceeding, the notation "In Camera Record under § 3.45," and the date on which in camera treatment expires. If the Administrative Law Judge has determined that in camera treatment should be granted for an indeterminate period, the notation should state that fact. Parties are not required to provide documents subject to in camera treatment, including documents obtained from third parties, to any individual or entity other than the Administrative Law Judge, counsel for other parties, and, during an appeal, the Commission or a federal court.

(c) Release of in camera material. In camera material constitutes part of the confidential records of the Commission and is subject to the provisions of § 4.11 of this chapter.

(d) Briefs and other submissions referring to in camera or confidential information. Parties shall not disclose information that has been granted in camera status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order in the public version of proposed findings, briefs, or other documents. This provision does not preclude references in such proposed findings, briefs, or other documents to in camera or other confidential information or general statements

based on the content of such information.

(e) When in camera or confidential information is included in briefs and other submissions. If a party includes specific information that has been granted in camera status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order in any document filed in a proceeding under this part, the party shall file 2 versions of the document. A complete version shall be marked "In Camera" or "Subject to Protective Order," as appropriate, on every page and shall be filed with the Secretary and served by the party on the other parties in accordance with the rules in this part. Submitters of in camera or other confidential material should mark any such material in the complete versions of their submissions in a conspicuous matter, such as with highlighting or bracketing. References to in camera or confidential material must be supported by record citations to relevant evidentiary materials and associated Administrative Law Judge in camera or other confidentiality rulings to confirm that in camera or other confidential treatment is warranted for such material. In addition, the document must include an attachment containing a copy of each page of the document in question on which in camera or otherwise confidential excerpts appear, and providing the name and address of any person who should be notified of the Commission's intent to disclose in a final decision any of the in camera or otherwise confidential information in the document. Any time period within which these rules allow a party to respond to a document shall run from the date the party is served with the complete version of the document. An expurgated version of the document, marked "Public Record" on every page and omitting the in camera and confidential information and attachment that appear in the complete version, shall be filed with the Secretary within 5 days after the filing of the complete version, unless the Administrative Law Judge or the Commission directs otherwise, and shall be served by the party on the other parties in accordance with the rules in this part. The expurgated version shall

indicate any omissions with brackets or ellipses, and its pagination and depiction of text on each page shall be identical to that of the in camera version.

(f) When in camera or confidential information is included in rulings or recommendations of the Administrative Law Judge. If the Administrative Law Judge includes in any ruling or recommendation information that has been granted in camera status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the Administrative Law Judge shall file 2 versions of the ruling or recommendation. A complete version shall be marked “In Camera” or “Subject to Protective Order,” as appropriate, on every page and shall be served upon the parties. The complete version will be placed in the in camera record of the proceeding. An expurgated version, to be filed within 5 days after the filing of the complete version, shall omit the in camera and confidential information that appears in the complete version, shall be marked “Public Record” on every page, shall be served upon the parties, and shall be included in the public record of the proceeding.

(g) Provisional in camera rulings. The Administrative Law Judge may make a provisional grant of in camera status to materials if the showing required in § 3.45(b) cannot be made at the time the material is offered into evidence but the Administrative Law Judge determines that the interests of justice would be served by such a ruling. Within 20 days of such a provisional grant of in camera status, the party offering the evidence or an interested third party must present a motion to the Administrative Law Judge for a final ruling on whether in camera treatment of the material is appropriate pursuant to § 3.45(b). If no such motion is filed, the Administrative Law Judge may either exclude the evidence, deny in camera status, or take such other action as is appropriate.

[52 FR 22293, June 11, 1987; 54 FR 49279, Nov. 30, 1989; 60 FR 37748, July 21, 1995; 61 FR 50650, Sept. 26, 1996; 66 FR 17630, April 3, 2001; 66 FR 20527, April 23, 2001; 74 FR 1832, Jan. 13, 2009; 76 FR 52253, Aug. 22, 2011]

SOURCE: 32 FR 8449, June 13, 1967; 64 FR 46269, Aug. 25, 1999, unless otherwise noted.

AUTHORITY: 15 U.S.C. 46, unless otherwise noted.

16 C. F. R. § 3.45, 16 CFR § 3.45

Current through November 14, 2013; 78 FR 68657

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END OF DOCUMENT

ORIGINAL

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



\_\_\_\_\_)  
In the Matter of )  
 )  
Ardagh Group S.A., )  
a public limited liability company, and )  
 )  
Saint-Gobain Containers, Inc., )  
a corporation, and )  
 )  
Compagnie de Saint-Gobain, )  
a corporation, )  
Respondents. )  
\_\_\_\_\_)

DOCKET NO. 9356

**PROTECTIVE ORDER GOVERNING DISCOVERY 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: July 1, 2013

## 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. 9356" 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. 9356" 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.

# SHEARMAN & STERLING LLP

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mark.lanpher@shearman.com  
202.508.8120

November 19, 2013

**CONFIDENTIAL**  
**Via Email and U.S. Mail**

Nicholas E.O. Gaglio  
Axinn, Veltrop, Harkrider LLP  
114 West 47<sup>th</sup> Street  
New York, New York 10036

*Re: In the Matter of Ardagh Group S.A. et al., Docket No. 9356 (F.T.C.)*

Dear Mr. Gaglio,

Pursuant to Paragraph 10 of the Protective Order in the above-referenced matter (enclosed), the Scheduling Order in the above-referenced matter, Paragraph 7 of the Stipulated Side Agreement to Protective Order between the parties and Ball Corporation entered into on July 31, 2013, and 16 C.F.R. § 3.45 (enclosed), this letter is providing notice to Ball Corporation that Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers plan to introduce confidential material produced by Ball Corporation into evidence at the Commission's hearing in the above-referenced matter, scheduled to commence on December 19, 2013.

Respondents intend to introduce into evidence the following confidential material produced by Ball Corporation in the above-referenced matter or *FTC v. Ardagh Group S.A., et al.*, No. 13-cv-1021 (BJR) (D.D.C.):

- Transcript excerpts of the oral deposition of Bruce Doelling, taken on August 21, 2013
- Document with bates range BALL00000095 – BALL00000107
- Document with bates range BALL00000109 – BALL00000111
- Document with bates range BALL00000124 – BALL00000129
- Document with bates range BALL00000236 – BALL00000236
- Document with bates range BALL00000237 – BALL00000237
- Document with bates range BALL00002089 – BALL00002089
- Document with bates range BALL00003405 – BALL00003405
- Document with bates range BALL00003418 – BALL00003419

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PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

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November 19, 2013

- Document with bates range BALL00005504 – BALL00005505
- Document with bates range BALL00005613 – BALL00005622
- Document with bates range BALL00008566 – BALL00008566.0030
- Document with bates range BALL00011273 – BALL00011274
- Document with bates range BALL00011320 – BALL00011351
- Additional documents without bates stamps (enclosed)

Pursuant to the Scheduling Order, a party may file a motion for *in camera* treatment of its confidential material with the Administrative Law Judge by November 26, 2013. The strict standard for motions for *in camera* treatment of confidential material is set forth in 16 C.F.R. § 3.45, and is explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan 25, 2006). Motions must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

If you have any questions, please feel free to contact me at 202.508.8120.

Best regards,

/s/ Mark Lanpher

Mark Lanpher

Enclosures

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

In the Matter of

Ardagh Group S.A.,  
a public limited liability company, and

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation

DOCKET NO. 9356

**DECLARATION OF BRUCE H. DOELLING IN  
SUPPORT OF NON-PARTY BALL CORPORATION'S  
MOTION FOR IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

I, Bruce H. Doelling, declare as follows:

1. I am currently the Director of Sales, North America, at Ball Corporation ("Ball"), and submit this declaration in support of Non-Party Ball Corporation's Motion for *In Camera* Treatment of Proposed Evidence which was produced by Ball in response to a subpoena *duces tecum* issued by Complaint Counsel in this matter.

2. Counsel for Ball informs me that the parties in this matter have identified as potential trial exhibits several Ball documents and many excerpts from my deposition.

3. Of the materials the parties have identified, sixteen documents and nine deposition excerpts contain information that Ball considers highly confidential.

4. I have reviewed these documents, which I understand are attached as Exhibit D to Ball's motion.

5. Ball has taken substantial measures to guard the information contained in the documents and testimony attached in Exhibit D by limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Information contained in Exhibit D would be extremely difficult for Ball's competitors, customers or other outside parties to access or duplicate.

6. Ten of the documents and one of the excerpts contained in Exhibit D reveal information relating to Ball's business strategy and plans, including Ball's prospective business and marketing strategies, Ball's views on the industry's present and future, Ball's views on its competitors, specific goals for particular Ball customers, and information relevant to negotiations with those customers. Ball has expended considerable time and effort in developing these strategies and plans, which have allowed it to gain a competitive advantage in the marketplace. This is information that Ball's competitors could potentially use for their own advantage. These documents are of the highest sensitivity to Ball and any public disclosure of this information could result in serious damage to Ball's competitive advantage in the marketplace. These materials include: BALL0000095-107, BALL00000120, BALL00000121 (Exhibit DX3 from my deposition), BALL00003405-06, BALL00003418-19, BALL000004173-74, BALL00008559-60, BALL00008564, BALL00008566, BALL00011320-51, and Dep. Tr. 26:13-27:11.

7. Among the documents that reveal information relating to Ball's business strategy and plans, a handful are of the utmost sensitivity to Ball. Specifically, Ball's three-year strategy plans distill and analyze the business and planning information that we consider most critical to our competitive success. This critical information includes, for example, sales and margin data (customer-specific and general), business development strategies for both industry sectors (such as craft beer) and specific customers, market analysis and intelligence, projections for sales,

profit, demand and production, and cost information. These documents are BALL000004173-74, BALL00008559-60, BALL00008564 and BALL00008566, and also include BALL00000121 (Exhibit DX3 from my deposition), which is a two page excerpt from a Ball three-year strategic plan. Similarly, the strategic business review at BALL00003405-06 contains both customer-specific and competitor-specific prospective strategies. Disclosure of the information contained in these most highly sensitive documents would disadvantage me in contract negotiations with my customers and would seriously disadvantage Ball in the marketplace.

8. Three of the strategy documents listed in paragraph six are more than three years old. These documents are BALL00000120, BALL00000121 and BALL00008560. Notwithstanding the date of these documents, the information within these documents remains commercially sensitive today. All three discuss Ball's specific business strategies on both a market- or segment-wide and customer-specific basis, which remain relevant to Ball's current and future business.

9. One of the documents and three of the excerpts contained in Exhibit D reveal information relating to Ball's pricing, including Ball's internal pricing lists and Ball's pricing strategies for specific products. Ball's internal pricing lists are not made available to its competitors or customers. This is information that Ball's competitors and customers could potentially use for their own advantage. Any public disclosure of this information could result in serious damage to Ball's competitive advantage in the marketplace. These materials include: BALL00000268-69, Dep. Tr. 120:16-121:9, 149:6-25, and 150:14-23.

10. Three of the documents and five of the excerpts contained in Exhibit D reveal information relating to specific Ball customers, including Ball's internal summaries of calls with specific customers, the identity of Ball's largest customers, direct communications with Ball's

customers relating to production levels, Ball's profit margins for sales to certain customers, and a confidential term of an agreement with a customer. Any public disclosure of this information could result in serious damage to Ball's relationships with its customers, while undermining Ball's competitive advantage in the marketplace. These materials include: BALL00000109-11, BALL00000237, BALL00011273-74, Dep. Tr. 9:19-25, 96:7-11, 121:20-122:5, 135:24-136:8, and 153:7-25.

11. Two of the documents and two of the excerpts contained in Exhibit D reveal information that Ball has undertaken an obligation to maintain as confidential. BALL00000094 is a consultant report presented to Ball by Bob Falkenberg of BeveragePulse. Bob Falkenberg is a highly regarded industry consultant who provides his analyses to Ball on a confidential basis. Ball undertook an obligation not to disclose Mr. Falkenberg's proprietary analysis. Similarly, BALL00006340 is a proprietary market survey conducted by Ball customer MillerCoors, to which Ball owes a obligation of confidentiality pursuant to a January 1, 2012 Master Packaging Purchase and Sale Agreement. The excerpts from my deposition transcript at (A) page 121 line 20 through page 122 line 5, and (B) page 153 lines 7 through 25 both reveal a confidential term of Ball's agreement with MillerCoors. Public disclosure of this information could limit Ball's ability to access and utilize BeveragePulse market analyses in the future, and could jeopardize Ball's relationship with MillerCoors, one of its most important customers.

12. In sum, the documents and testimony contained in Exhibit D fall into four categories of confidential business information that Ball routinely takes substantial measures to protect from disclosure: (i) information relating to Ball's business strategy and plans; (ii) information relating to Ball's pricing; (iii) information relating to specific Ball customers; and

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(iv) information that Ball has previously undertaken an obligation to keep confidential. Ball could be harmed, therefore, by these materials' disclosure.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Bruce Doelling

Signed this 6<sup>th</sup> day of December 2013.

**EXHIBIT D**

**Document Redacted From Public Version**