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**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

E. & J. GALLO WINERY and GALLO  
GLASS COMPANY

Plaintiffs,

v.

STRATEGIC MATERIALS, INC.,  
Defendant.

CASE NO. 1:17-cv-01709-EPG

**ORDER GRANTING IN PART AND  
DENYING WITHOUT PREJUDICE  
MOTIONS TO SEAL**

In connection with their motions for summary judgment, motions to strike, and the various oppositions and replies thereto, Plaintiffs E. & J. Gallo Winery and Gallo Glass Company (“Gallo”) and Defendant Strategic Materials, Inc. (“SMI”) each filed notices to seal their filings. (ECF Nos. 98, 100, 105, 113, 116, 120, 123, 126). At various times, they also filed memoranda in support of the other party’s sealing motions. (ECF Nos. 103, 104, 132, 133).

The underlying case has settled, (ECF No. 234),<sup>1</sup> but the Court must still consider the sealing motions. For the reasons below, the Court grants in part, and denies without prejudice in part the sealing motions as further detailed below.

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<sup>1</sup> For administrative purposes, the Court will mark the case as closed when the sealing motions have been finalized. If the parties do not wish to seal any documents, they should so inform the Court.

1 **I. LEGAL STANDARDS**

2 The Ninth Circuit has set forth substantial case law concerning sealing dispositive  
3 motions. Local Rule 141 provides additional standards for this district.

4 The parties appear to agree that the sealing requests are governed by the compelling-  
5 reason test for dispositive motions.

6 Under this stringent standard, a court may seal records only when it finds a  
7 compelling reason and articulates the factual basis for its ruling, without  
8 relying on hypothesis or conjecture. The court must then conscientiously balance  
9 the competing interests of the public and the party who seeks to keep certain  
10 judicial records secret. What constitutes a “compelling reason” is best left to the  
11 sound discretion of the trial court. Examples include when a court record might be  
used to gratify private spite or promote public scandal, to circulate libelous  
statements, or as sources of business information that might harm a litigant's  
competitive standing.

12 *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096–97 (9th Cir. 2016) (alterations,  
13 internal quotation marks, and citations omitted).

14 Parties must also be specific when identifying the information that they seek to keep  
15 sealed. As the Ninth Circuit has explained when denying a request by the United States to seal  
16 documents:

17 Although the United States identifies the redactions it seeks by page number and  
18 line number, it does not provide similarly specific compelling reasons to justify  
19 these redactions. Instead, the United States purports to justify each redaction by  
20 listing one of four general categories of privilege (privacy, law enforcement,  
confidential source, and ongoing investigation). Simply mentioning a general  
category of privilege, without any further elaboration or any specific linkage with  
the documents, does not satisfy the burden.

21 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1183–84 (9th Cir. 2006).

22 This district’s local rules add to the requirements. Under Local Rule 141(b), a party’s  
23 “Request to Seal Documents’ shall set forth the statutory or other authority for sealing” and,  
24 among other things, “the total number of submitted pages shall be stated in the request.”

25 **II. APPLICATION TO PARTIES’ REQUESTS**

26 In balancing the tests, the Court notes at the outset that it did not make any decisions  
27 based on the filings. Thus, the public’s interest at issue in the compelling reasons balancing test  
28

1 carries less weight. To the extent the Court orders sealing, it has weighed the public's interest  
2 against the requesting party's interest.

3 **A. FILINGS AT ECF NO. 99**

4 At ECF No. 98, Gallo requested to seal or redact certain documents it filed at ECF No. 99.  
5 At ECF No. 103, SMI filed a statement in support of such request.

6 1. ECF NO. 98 DENIED WITHOUT PREJUDICE

7 This request did not comply with the above standards. First, it did not list any statutory or  
8 other authority for sealing. Second, it did not list the number of pages. Third, it did not provide  
9 any specific reasons for why the Court should seal the documents. In fact, it provided no reasons  
10 at all.

11 Thus, request number 98 is denied without prejudice. Gallo has fourteen days to file a new  
12 sealing motion covering the documents it wishes to seal, if it chooses to do so. The Court will  
13 keep the documents it seeks to seal left under seal for fourteen days or until the Court rules on a  
14 renewed motion.

15 2. ECF NO. 103 IS GRANTED

16 SMI filed a statement in support of Gallo's request. (ECF No. 103). Its statement meets  
17 the relevant standards.

18 Thus, the following Exhibits to the Fieber Declaration (ECF No. 99-3) are sealed until the  
19 Court orders otherwise, and only the parties, their respective litigation counsels and the Court  
20 shall have access thereto:

<b>Exhibit to Fieber Declaration</b>	<b>ECF Number</b>	<b>Compelling reasons<sup>2</sup></b>
A	99-4	Contains SMI's pricing, material volumes
D	99-5	Contains SMI's pricing, supply chain, customers, material volumes
E	99-5	Contains SMI's pricing, supply chain, customers,

27  
28 <sup>2</sup> Each of the compelling reasons relates to the harm releasing the information would cause SMI.

1	<b>Exhibit to Fieber</b>	<b>ECF</b>	<b>Compelling reasons<sup>2</sup></b>
2	<b>Declaration</b>	<b>Number</b>	
3			material volumes
4	G	99-8	Contains SMI's pricing
5	I	99-8	Contains SMI's pricing, supply chain
6	J	99-8	Contains SMI's pricing.
7	K	99-8	Contains SMI's pricing, supply chain, customers,
8			material volumes
9	L	99-8	Contains SMI's pricing, material volumes
10	O	99-8	Contains SMI's supply chain, material volumes
11	P	99-8	Contains SMI's supply chain, material volumes,
12			pricing
13	R	99-8	Contains SMI's supply chain, material volumes,
14			pricing

**B. FILINGS AT ECF NO. 101**

At ECF No. 100, SMI requests to seal or redact certain documents filed at ECF No. 101. Gallo filed a statement in support at ECF No. 104.

1. ECF NO. 100 IS GRANTED

Here, SMI complied with the relevant local rule and legal standards. Therefore, the Court grants SMI's motion.

<b>Exhibit to Holocek Declaration (ECF No. 101-6)</b>	<b>Compelling reasons<sup>3</sup></b>
Exhibit 1	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 7	Pricing, volumes, supply chains, customers, sensitive financial

<sup>3</sup> Each of the compelling reasons relates to the type of information which, if made public, would harm SMI.

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<b>Exhibit to Holocek Declaration (ECF No. 101-6)</b>	<b>Compelling reasons<sup>3</sup></b>
	information
Exhibit 13	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 16	Pricing, volumes, supply chains, customers, sensitive financial information, business plans, strategies
Exhibit 21	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 22	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 26	Business plans, strategies
Exhibit 23	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 28	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 30	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 33	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 35	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 36	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 37	Pricing, volumes, supply chains, customers,

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<b>Exhibit to Holocek Declaration (ECF No. 101-6)</b>	<b>Compelling reasons<sup>3</sup></b>
	sensitive financial information
Exhibit 38	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 39	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 40	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 41	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 45	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 46	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 47	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 48	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 49	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 50	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 51	Pricing, volumes, supply chains, customers, sensitive financial

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<b>Exhibit to Holocek Declaration (ECF No. 101-6)</b>	<b>Compelling reasons<sup>3</sup></b>
	information
Exhibit 52	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 53	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 54	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 57	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 73	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 76	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 80	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 82	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 85	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 92	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 93	Pricing, volumes, supply chains, customers, sensitive financial information

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<b>Exhibit to Holocek Declaration (ECF No. 101-6)</b>	<b>Compelling reasons<sup>3</sup></b>
Exhibit 94	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 95	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 96	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 99	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 100	Pricing, volumes, supply chains, customers, sensitive financial information
Exhibit 101	Pricing, volumes, supply chains, customers, sensitive financial information

In addition, SMI’s memorandum of points and authorities in support of its motion for summary judgment and separate statement of undisputed facts in supported of its motion for summary judgment contain redactable information because they refer to the above. Therefore, the Court permanently redacts such information.

2. ECF NO. 104 IS DENIED WITHOUT PREJUDICE

Gallo’s Statement in Support of ECF No. 101-6 (ECF No. 104) does not meet the standards for sealing described above. Therefore, the Court denies it without prejudice. To the extent Gallo wishes to seal documents that are not already sealed by this order, Gallo may re-file its request within fourteen days of the date of this order, if it chooses to do so. The Court will keep the documents it seeks to seal left under seal for fourteen days or until the Court rules on a renewed motion.



1           **C.     FILINGS AT ECF NO. 106**

2           At ECF No. 105, Gallo sought to seal or redact certain documents it filed in connection  
3 with its *Daubert* motion at ECF No. 106. SMI filed a statement in support at ECF No. 118.

4                   1.     ECF NO. 105 IS GRANTED

5           Exhibits A, C, D and E to the Declaration of Joseph M. Alioto (ECF No. 106-2) each  
6 contain information concerning Gallo’s operations, suppliers and redacted terms of its supply  
7 agreement with SMI. Therefore, the Court GRANTS Gallo’s request to seal such information.

8                   2.     ECF NO. 118 IS DENIED AS MOOT

9           SMI’s statement in support of ECF No. 105 covers documents that the Court has already  
10 decided to seal. Therefore, it is DENIED AS MOOT.

11           **D.     FILINGS AT ECF NO. 114**

12           At ECF No. 113, Gallo requested to seal or redact certain documents it filed in connection  
13 to its opposition to SMI’s motion for summary judgment at ECF No. 114. SMI did not file a  
14 statement in support.

15                   1.     ECF NO. 113 IS DENIED WITHOUT PREJUDICE

16           This request was insufficiently specific and did not contain the total number of pages  
17 Gallo wants sealed. Therefore, it is DENIED WITHOUT PREJUDICE. The exhibits Gallo  
18 requests to have sealed will remain sealed at this time. Filings at ECF No. 114 and the exhibits  
19 thereto will remain sealed or redacted for fourteen days to give Gallo an opportunity to refile its  
20 request, if it chooses to do so. The Court will keep the documents it seeks to seal left under seal  
21 for fourteen days or until the Court rules on a renewed motion.

22           **E.     FILINGS AT ECF NO. 117**

23           At ECF No. 116, SMI sought to seal or redact certain documents it filed in connection  
24 with its opposition to Gallo’s motion for summary judgment at ECF No. 117. Gallo filed a  
25 statement in support at ECF No. 119.

26                   1.     ECF NO. 116 IS GRANTED IN PART AND DENIED IN PART  
27                   WITHOUT PREJUDICE

28           This request complies with the local rules and relevant case law to the extent SMI seeks to

1 seal documents it considers confidential to SMI. However, it makes no argument for why the  
 2 Court should seal documents that only Gallo has found confidential. Therefore, the Court seals  
 3 the following exhibits to the Holecek declaration (ECF No. 117-3):

<b>Exhibit to Holecek Declaration (ECF No. 117-3)</b>	<b>Compelling reasons<sup>4</sup></b>
1	Pricing, cullet volumes, supply chain, customers, sensitive financial information, business plans, strategies, business relationships
4	Pricing, cullet volumes, supply chain, customers, sensitive financial information, business plans, strategies
6	Pricing, cullet volumes, supply chain, customers, sensitive financial information, business relationships
12	Pricing, cullet volumes, supply chain, customers, sensitive financial information, business relationships
13	Pricing, cullet volumes, supply chain, customers, sensitive financial information
14	Business plans, strategies
16	Pricing, cullet volumes, supply chain, customers, sensitive financial information
17	Business plans, strategies
18	Business relationships
21	Pricing, cullet volumes, supply chain, customers, sensitive financial information
22	Pricing, cullet volumes, supply chain, customers, sensitive financial information, business relationships
31	Pricing, cullet volumes, supply chain, customers, sensitive financial information
34	Pricing, cullet volumes, supply chain, customers, sensitive financial information, business relationships
35	Pricing, cullet volumes, supply chain, customers, sensitive financial information, business plans, strategies, business relationships
37	Pricing, cullet volumes, supply chain, customers, sensitive financial information, business plans, strategies, business relationships
38	Business relationships
39	Pricing, cullet volumes, supply chain, customers, sensitive financial information

24 The following documents, which reference the above cited exhibits, are permanently  
 25 redacted:

- Defendant’s Memorandum of Points and Authority in Support of Defendant’s Opposition to Plaintiffs’ Motion for Partial Summary Judgment (ECF No. 117-1); and,

28 <sup>4</sup> Each of the compelling reasons relates to the type of information which, if made public, would harm SMI.

- 1           • Defendant's Opposition to Plaintiffs' Statement of Undisputed Facts (ECF No.  
2           117-2).

3           The Court otherwise denies SMI's motion without prejudice. If SMI chooses to, it may  
4           refile a motion to seal the exhibits it noted that only Gallo had marked as highly confidential,  
5           which are discussed immediately below.

6                           2.       ECF No. 119 IS DENIED WITHOUT PREJUDICE

7           Gallo's statement in support of ECF No. 116 does not comply with the legal standards.  
8           Therefore, it is DENIED WITHOUT PREJUDICE. The exhibits Gallo requests to have sealed  
9           will remain sealed at this time. The following exhibits to ECF No. 117-3 will remained sealed for  
10          fourteen days to give Gallo an opportunity to refile its request:

- 11                   • Exhibit 2  
12                   • Exhibit 3  
13                   • Exhibit 8  
14                   • Exhibit 10  
15                   • Exhibit 15  
16                   • Exhibit 20  
17                   • Exhibit 23  
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19                   • Exhibit 25  
20                   • Exhibit 27  
21                   • Exhibit 28  
22                   • Exhibit 29  
23                   • Exhibit 33

24                   **F.       FILINGS AT ECF NO. 121**

25           At ECF No. 120, Gallo sought to seal certain documents it filed at ECF No. 121. SMI did  
26           not file a statement in support.

27           \\

1                   1.     ECF NO. 120 IS GRANTED

2                   This request complies with the local rules and relevant case law. Therefore, the Court  
3 seals the Exhibit U to the Reply Declaration of Julie L. Fieber (ECF No. 121-4) because it  
4 contains confidential information regarding Gallo’s plant operations, the disclosure of which  
5 would harm Gallo’s competitive standing.

6                   **G.     FILINGS AT ECF NO. 124**

7                   At ECF No. 123, SMI requests to seal or redact certain documents it filed at ECF No. 124.  
8 Gallo did not file a statement in support.

9                   1.     ECF NO. 123 IS DENIED WITHOUT PREJUDICE

10                  This request is insufficiently specific. It merely states that the documents it wishes to have  
11 redacted “contain proprietary and commercially sensitive aspects of both SMI’s and Gallo’s  
12 business and mutual business relationship, including but not limited to pricing, clients, supply  
13 chains, internal processes, profits, and the terms of the parties’ Supply Agreement.” (ECF No.  
14 123, at 2). It also does not contain the total number of pages it seeks to have sealed or redacted.  
15 The filings SMI requests to have sealed (ECF Nos. 124, 124-2) will remain redacted at this time.  
16 SMI has fourteen days to refile its request, if it chooses to do so. The Court will keep the  
17 documents it seeks to seal left under seal for fourteen days or until the Court rules on a renewed  
18 motion.

19                  **H.     FILINGS AT ECF NOS. 127-129**

20                  At ECF No. 126, Gallo sought to seal or redact certain documents it filed at ECF Nos.  
21 127-129. SMI filed a statement in support at ECF No. 132.

22                  1.     ECF NO. 126 IS DENIED WITHOUT PREJUDICE

23                  This request is insufficiently specific because it merely states certain documents have  
24 confidential information “as discussed above,” but without detailing what type confidential  
25 information is at issue or how its release will harm Gallo. The filings Gallo requests to have  
26 sealed or redacted will remain sealed or redacted at this time. Gallo has fourteen days to refile its  
27 request.

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1                                   2.     ECF NO. 132 IS GRANTED

2                                   This statement in support of ECF No. 126 complies with the local rules and relevant case  
3 law. Therefore, the following shall remain sealed:

4	<b>Declaration and ECF Number</b>	<b>Exhibit</b>	<b>Compelling reasons<sup>5</sup></b>
5	Fieber, ECF No. 127-1	E	Business relationship and certain details about Supply Agreement
6	Fieber, ECF No. 127-1	J	Business relationship and certain details about Supply Agreement
7	Fieber, ECF No. 128-1	C	Business relationship between the parties
8	Fieber, ECF No. 128-1	D	Business relationship between the parties
9	Alioto, ECF No. 129-1	A	Information regarding SMI’s revenue, profit margins, business plans, strategies, supply chains, operational capabilities, and customers

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13                                   In addition, Gallo’s briefs in opposition to SMI’s motions to exclude Plaintiffs’ experts  
14 Stuart Harden and Mark Murray refer to the exhibits above. For the same reason, SMI’s request  
15 to permanently redact Gallo’s briefs at ECF Nos. 127 and 128 is granted.

16                                   **I.     FILINGS AT ECF NO. 131**

17                                   At ECF No. 130, SMI sought to seal or redact certain documents it filed at ECF No. 131.  
18 Gallo filed a statement in support at ECF No. 133.

19                                   1.     ECF NO. 130 IS GRANTED IN PART AND DENIED IN PART  
20                                   WITHOUT PREJUDICE

21                                   This request complies with the local rules and relevant case law to the extent SMI seeks to  
22 seal documents it considers confidential itself. Therefore, the Court seals the following exhibits to  
23 the Holecek declaration (ECF No. 131-2):

24	<b>Exhibit to ECF No. 131-2</b>	<b>Compelling reasons<sup>6</sup></b>
25	2	Information concerning SMI’s pricing, cullet volumes, supply chain, customers, sensitive financial information, business relationship between the parties
26	5	Information concerning SMI’s pricing, cullet volumes, supply chain,

27  
28 <sup>5</sup> Each of the compelling reasons relates to the harm releasing the information would cause SMI.

<sup>6</sup> Each of the compelling reasons relates to the harm releasing the information would cause SMI.

1	<b>Exhibit to ECF No. 131-2</b>	<b>Compelling reasons<sup>6</sup></b>
2		customers, sensitive financial information, business relationship between the
3		parties
4	7	Information concerning the business relationship between the parties
5	8	Information concerning the business relationship between the parties
6	9	Information concerning SMI's pricing, cullet volumes, supply chain, customers, sensitive financial information, business relationship between the parties

7 However, SMI does not argue that its brief in opposition to Plaintiff's Motion to Exclude  
8 Experts should be redacted. Therefore, the Court will grant SMI fourteen days to file a request to  
9 redact ECF No. 131, should it wish to do so. Until such time, ECF No. 131 will remain redacted.

10 2. ECF NO. 133 IS GRANTED

11 This statement in support of ECF No. 130 complies with the local rules and relevant case  
12 law. Therefore, the following shall remain sealed:

13	<b>Exhibit to ECF No. 131-2</b>	<b>Compelling reasons<sup>7</sup></b>
14	10	Information regarding Gallo's costs for specific batch components
15	11	Confidential details about Gallo's operations, including percentages of components used in its recipes
16	15	Information regarding Gallo's costs for specific batch components

17 **III. CONCLUSION AND ORDER**

18 The Court grants the following sealing requests: ECF Nos. 100, 103, 105, 120, 132, 133

19 The Court grants in part the following sealing requests: ECF Nos. 116, 130

20 The Court denies the following sealing requests without prejudice: ECF Nos. 98, 104,  
21 113, 119, 123, 126.

22 The Court denies the sealing request at ECF No. 118 as moot.

23 To the extent any sealing motion was denied, the parties have fourteen days from the date  
24 of this order to refile their requests. Until such time, the Court will keep the filings sealed or  
25 redacted.

26 Given the vast number of documents at issue here, the Court requests that additional  
27

28 <sup>7</sup> Each of the compelling reasons relates to the harm releasing the information would cause Gallo.

1 sealing requests contain tables that clearly indicate: (1) the document at issue, (2) the  
2 corresponding ECF number, and (3) the specific compelling reasons for the request. Along with  
3 Word versions of proposed orders, the Court requests the parties send Word versions of the  
4 sealing requests they may file.

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IT IS SO ORDERED.

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Dated: June 3, 2020

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/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE

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