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14 **UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF CALIFORNIA**  
16 **FRESNO DIVISION**

18 **E. & J. GALLO WINERY**, a California  
corporation; **GALLO GLASS COMPANY**,  
19 a Nevada Corporation;

20 Plaintiff,

21 v.

22 **STRATEGIC MATERIALS, INC.**, a  
Delaware corporation;

23 Defendant.  
24

**CASE NO. 1:17-CV-01709-AWI-EPG**

**STIPULATED PROTECTIVE ORDER**

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1        1.        PURPOSES AND LIMITATIONS

2                Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures  
7 or responses to discovery and that the protection it affords from public disclosure and use extends  
8 only to the limited information or items that are entitled to confidential treatment under the  
9 applicable legal principles. The parties further acknowledge that this Stipulated Protective Order  
10 does not entitle them to file confidential information under seal; Civil Local Rules 140-141 set forth  
11 the procedures that must be followed and the standards that will be applied when a party seeks  
12 permission from the court to file material under seal.

13                Statement Under L.R. 141.1(c)(1): Examples of confidential information that the parties may  
14 seek to protect from unrestricted or unprotected disclosure include: product costs; pricing; volumes;  
15 names of vendors, distributors, or customers; budgets; and similar confidential information related to  
16 their use and supply of recycled beneficiated glass cullet (“cullet”), which Plaintiffs have been  
17 obtaining from Defendant pursuant to the contract at issue in this litigation.

18                Statement Under L.R. 141.1(c)(2): Information and documents shall only be designated  
19 under this protective order because the Designating Party believe the information or documents are  
20 proprietary or confidential, and not publicly released. Unrestricted or unprotected disclosure of such  
21 information or documents would result in prejudice or harm to the Producing Party by revealing its  
22 competitive confidential information, which represents valuable tangible and intangible assets of that  
23 party. Accordingly, the parties respectfully submit that there is good cause for entry of this order.

24                Statement Under L.R. 141.1(c)(3): Protecting the confidential nature of information this way  
25 will be most efficient for the parties and the Court. The contract issues in this case turn largely on the  
26 parties’ performance of contract terms which concern the prices, volumes and similar information  
27 for cullet. Information the parties believe to be confidential will need to be exchanged, in discovery  
28 and motion practice. A private agreement to safeguard this information would be insufficient

1 because it would need to be replicated in orders of this Court at the time of any filings of this  
2 information.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
5 information or items under this Order.

6 2.2a “CONFIDENTIAL” Information or Items: information (regardless of how it is  
7 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
8 Civil Procedure 26(c). Examples of the “CONFIDENTIAL” information that the Parties may seek to  
9 protect include information which is not available to the general public, which the Designating Party  
10 maintains in confidence, which it believes in good faith provides a competitive advantage, such as:  
11 correspondence amongst the Parties pertaining to their business relationship and performance of  
12 their agreement; pricing, volume, quality control, averaged/summarized/blended landed costs, and  
13 other information exchanged by the Parties; and freight costs and arrangements between the Parties.

14 2.2b “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
15 extremely sensitive “CONFIDENTIAL” Information or Items, disclosure of which to another Party  
16 or Non-Party would create a substantial risk of serious harm that could not be avoided by less  
17 restrictive means. Examples of the “HIGHLY CONFIDENTIAL” information that the Parties may  
18 seek to protect include information which is not available to the general public, which the  
19 Designating Party maintains in confidence, and which it believes in good faith provides a  
20 competitive advantage, such as: identities of suppliers of raw materials to SMI for the manufacture  
21 of cullet; prices for raw materials for the manufacture of cullet by SMI; volumes of raw materials for  
22 the manufacture of cullet delivered or promised by suppliers to SMI; prices for cullet charged by  
23 SMI to other customers aside from Gallo; volumes of cullet delivered or promised by SMI to other  
24 customers aside from Gallo; Gallo’s and SMI’s revenues, margins, and profits; Gallo’s internal  
25 analyses of alternate cullet supplies; Gallo’s negotiations or relationships with alternate cullet  
26 sources; Gallo’s supplier relationships unrelated to cullet, Gallo’s business planning related to cullet  
27 supplies.

28 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well

1 as their support staff).

2           2.4     Designating Party: a Party or Non-Party that designates information or items that it  
3 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
4 CONFIDENTIAL.”

5           2.5     Disclosure or Discovery Material: all items or information, regardless of the medium  
6 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
7 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
8 discovery in this matter.

9           2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to  
10 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
11 consultant in this action.

12           2.7     House Counsel: attorneys or paralegals who are employees of a party to this action.  
13 House Counsel does not include Outside Counsel of Record or any other outside counsel.

14           2.8     Non-Party: any natural person, partnership, corporation, association, or other legal  
15 entity not named as a Party to this action.

16           2.9     Outside Counsel of Record: attorneys who are not employees of a party to this action  
17 but are retained to represent or advise a party to this action and have appeared in this action on  
18 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

19           2.10    Party: any party to this action, including all of its officers, directors, employees,  
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

21           2.11    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
22 Material in this action.

23           2.12    Professional Vendors: persons or entities that provide litigation support services  
24 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
25 storing, or retrieving data in any form or medium) and their employees and subcontractors.

26           2.13    Protected Material: any Disclosure or Discovery Material that is designated as  
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

28           2.14    Receiving Party: a Party that receives Disclosure or Discovery Material from a

1 Producing Party.

2 3. SCOPE

3 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
4 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
5 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
6 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
7 However, the protections conferred by this Stipulation and Order do not cover the following  
8 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
9 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
10 publication not involving a violation of this Order, including becoming part of the public record  
11 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
12 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
13 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
14 Protected Material at trial shall be governed by a separate agreement or order.

15 4. DURATION

16 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
18 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
19 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
20 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the  
21 time limits for filing any motions or applications for extension of time pursuant to applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
24 Non-Party that designates information or items for protection under this Order must take care to  
25 limit any such designation to specific material that qualifies under the appropriate standards. The  
26 Designating Party must designate for protection only those parts of material, documents, items, or  
27 oral or written communications that qualify – so that other portions of the material, documents,  
28 items, or communications for which protection is not warranted are not swept unjustifiably within

1 the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
3 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
4 encumber or retard the case development process or to impose unnecessary expenses and burdens on  
5 other parties) expose the Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it designated for  
7 protection do not qualify for protection, that Designating Party must promptly notify all other Parties  
8 that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
10 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
11 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
12 designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents, but  
15 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
16 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to each page that contains  
17 protected material. If only a portion or portions of the material on a page qualifies for protection,  
18 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
19 markings in the margins).

20 A Party or Non-Party that makes original documents or materials available for inspection  
21 need not designate them for protection until after the inspecting Party has indicated which material it  
22 would like copied and produced. During the inspection and before the designation, all of the material  
23 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL." After the inspecting  
24 Party has identified the documents it wants copied and produced, the Producing Party must  
25 determine which documents, or portions thereof, qualify for protection under this Order. Then,  
26 before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL"  
27 or "HIGHLY CONFIDENTIAL" legend to each page that contains Protected Material. If only a  
28 portion or portions of the material on a page qualifies for protection, the Producing Party also must

1 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

2 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
3 Designating Party identify on the record, before the close of the deposition, hearing, or other  
4 proceeding, all protected testimony.

5 (c) for information produced in some form other than documentary and for any other  
6 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
7 or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
8 “HIGHLY CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
9 protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
11 designate qualified information or items does not, standing alone, waive the Designating Party’s  
12 right to secure protection under this Order for such material. Upon timely correction of a  
13 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
14 accordance with the provisions of this Order.

## 15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
17 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
19 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
20 confidentiality designation by electing not to mount a challenge promptly after the original  
21 designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
23 by providing written notice of each designation it is challenging and describing the basis for each  
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
25 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
26 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
27 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
28 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging

1 Party must explain the basis for its belief that the confidentiality designation was not proper and  
2 must give the Designating Party an opportunity to review the designated material, to reconsider the  
3 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
4 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
5 has engaged in this meet and confer process first or establishes that the Designating Party is  
6 unwilling to participate in the meet and confer process in a timely manner.

7           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
8 intervention, the Designating Party shall first seek an informal discovery conference pursuant to  
9 the Magistrate’s Standard Procedures and may thereafter, if a resolution is not reached, file and  
10 serve a motion to retain confidentiality under Civil Local Rule 251 (and in compliance with Civil  
11 Local Rules 141 and 141.1, if applicable) within 21 days of the informal conference. Each such  
12 motion must be accompanied by a competent declaration affirming that the movant has complied  
13 with the meet and confer requirements imposed in the preceding paragraph. Failure by the  
14 Designating Party to make such a motion including the required declaration within 21 days shall  
15 automatically waive the confidentiality designation for each challenged designation. In addition,  
16 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
17 there is good cause for doing so, including a challenge to the designation of a deposition transcript  
18 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
19 competent declaration affirming that the movant has complied with the meet and confer  
20 requirements imposed by the preceding paragraph.

21           The burden of persuasion in any such challenge proceeding shall be on the Designating  
22 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
23 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
24 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
25 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
26 material in question the level of protection to which it is entitled under the Producing Party’s  
27 designation until the court rules on the challenge.

28     7.     ACCESS TO AND USE OF PROTECTED MATERIAL



1           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
2 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
3 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
4 the categories of persons and under the conditions described in this Order. When the litigation has  
5 been terminated, a Receiving Party must comply with the provisions of section 12 below (FINAL  
6 DISPOSITION).

7           Protected Material must be stored and maintained by a Receiving Party at a location and in  
8 a secure manner that ensures that access is limited to the persons authorized under this Order.

9           7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
10 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
11 information or item designated “CONFIDENTIAL” only to:

12           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
13 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
14 for this litigation;

15           (b) the officers, directors, and employees (including House Counsel) of the Receiving  
16 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A) and served it upon the Designating  
18 Party;

19           (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
20 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
21 Agreement to Be Bound” (Exhibit A), and for whom the Receiving Party is obligated to serve the  
22 signed “Acknowledgment and Agreement to Be Bound” upon the Designating Party no later than  
23 the time of Expert Disclosures (for a Party’s affirmative experts) or Rebuttal Expert Disclosures  
24 (for a Party’s rebuttal experts and any non-testifying experts);

25           (d) the court and its personnel;

26           (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
27 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
28 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

- 1 (f) during their depositions, witnesses of the Designating Party;
- 2 (g) during their depositions, officers, directors, and employees (including House Counsel)
- 3 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
- 4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) and served it upon the
- 5 Designating Party; and
- 6 (h) the author or recipient of a document containing the information or a custodian or
- 7 other person who otherwise possessed or knew the information.

8 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless otherwise

9 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may

10 disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of

12 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information;

13 (b) Designated House Counsel of the Receiving Party (1) to whom disclosure is reasonably

14 necessary for this litigation, (2) who has signed the “Designated House Counsel Acknowledgment

15 and Agreement to Be Bound” (Exhibit B) and served it upon the Designating Party, and (3) who

16 has no involvement in competitive decision-making related to recycled glass or cullet.

17 (c) Experts of the Receiving Party to whom disclosure is reasonably necessary for this

18 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

19 and for whom the Receiving Party is obligated to serve the signed “Acknowledgment and

20 Agreement to Be Bound” upon the Designating Party no later than the time of Expert Disclosures

21 (for a Party’s affirmative experts) or Rebuttal Expert Disclosures (for a Party’s rebuttal experts

22 and any non-testifying experts);

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants, and Professional

25 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the

26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (f) during their depositions, witnesses of the Designating Party; and

28 (g) the author or recipient of a document containing the information or a custodian or other

1 person who otherwise possessed or knew the information;

2 (h) “Competitive decision-making,” as used herein, includes negotiations with suppliers  
3 regarding the supply of cullet or raw materials for the manufacture of cullet.

4 7.4 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items to Industry Experts.  
5 Solely with regards to experts from, or with expertise in, the cullet manufacturing, glass  
6 manufacturing, or bottling industries:

7 (a) A Receiving Party that seeks to disclose materials that have been designated “HIGHLY  
8 CONFIDENTIAL” pursuant to paragraph 7.3 to an Expert (as defined in this Order) also must  
9 serve on the Designating Party, no later than the time of first disclosure, materials that (1) set forth  
10 the full name of the Expert, (2) attach a copy of the Expert’s current resume identifying the  
11 Expert’s current employer(s), and (3) identify all professional services, including in connection  
12 with a litigation, that the Expert has provided to the Receiving Party within the preceding five  
13 years.

14 (b) Upon disclosure of all the information required by the preceding paragraph, the  
15 Receiving Party’s Expert may access “HIGHLY CONFIDENTIAL” materials unless and until the  
16 Designating Party has provided a written objection to the Receiving Party within 5 business days  
17 of that disclosure. Such objection shall be made by informing the Receiving Party in writing that  
18 it is invoking the Court’s Informal Discovery Conference Procedure (see the Court’s Standard  
19 Procedures, paragraph 2, et seq.) Within 2 business days of the Designating Party’s written  
20 objection, the Parties shall contact the Court to schedule an informal discovery conference with  
21 attendant submission of letters to the Court. The Designating Party opposing disclosure to the  
22 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
23 (under the safeguards proposed) outweighs the Receiving Party’s need to disclose “HIGHLY  
24 CONFIDENTIAL” materials to its Expert. The Receiving Party’s Expert shall cease accessing  
25 “HIGHLY CONFIDENTIAL” until the Designating Party’s objections are resolved by the Court,  
26 or as otherwise agreed by the Parties.

27 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
28 LITIGATION

1           If a Party is served with a subpoena or a court order issued in other litigation that compels  
2 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party  
3 must:

4           (a) promptly notify in writing the Designating Party. Such notification shall include a copy  
5 of the subpoena or court order;

6           (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
7 other litigation that some or all of the material covered by the subpoena or order is subject to this  
8 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

9           (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
10 Designating Party whose Protected Material may be affected.

11           If the Designating Party timely seeks a protective order, the Party served with the subpoena  
12 or court order shall not produce any information designated in this action as “CONFIDENTIAL”  
13 before a determination by the court from which the subpoena or order issued, unless the Party has  
14 obtained the Designating Party’s permission. The Designating Party shall bear the burden and  
15 expense of seeking protection in that court of its confidential material – and nothing in these  
16 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
17 disobey a lawful directive from another court.

18 9.     A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
19 LITIGATION

20           (a) The terms of this Order are applicable to information produced by a Non-Party in this  
21 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Such information  
22 produced by Non-Parties in connection with this litigation is protected by the remedies and relief  
23 provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-  
24 Party from seeking additional protections.

25           (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
26 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
27 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

28           (1) promptly notify in writing the Requesting Party and the Non-Party that some or

1 all of the information requested is subject to a confidentiality agreement with a  
2 Non-Party;

3 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order  
4 in this litigation, the relevant discovery request(s), and a reasonably specific  
5 description of the information requested; and

6 (3) make the information requested available for inspection by the Non-Party.

7 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
8 days of receiving the notice and accompanying information, the Receiving Party may produce the  
9 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
10 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
11 control that is subject to the confidentiality agreement with the Non-Party before a determination  
12 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and  
13 expense of seeking protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
16 Material to any person or in any circumstance not authorized under this Stipulated Protective  
17 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
18 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
19 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
20 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
23 MATERIAL

24 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
25 produced material is subject to a claim of privilege or other protection, the obligations of the  
26 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
27 provision is not intended to modify whatever procedure may be established in an e-discovery order  
28 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence

1 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
2 communication or information covered by the attorney-client privilege or work product protection,  
3 the parties may incorporate their agreement in the stipulated protective order submitted to the  
4 court.

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
7 its modification by the court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
9 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
11 Party waives any right to object on any ground to use in evidence of any of the material covered  
12 by this Protective Order.

13 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
14 court order secured after appropriate notice to all interested persons, a Party may not file in the  
15 public record in this action any Protected Material. A Party that seeks to file under seal any Protected  
16 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal  
17 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant  
18 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the  
19 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
20 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant  
21 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information  
22 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

23 13. FINAL DISPOSITION

24 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
25 Receiving Party must return all Protected Material to the Producing Party or destroy such material  
26 at the Receiving Party's discretion. As used in this subdivision, "all Protected Material" includes  
27 all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any  
28 of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for the  
6 Eastern District of California on [date] in the case of *E. & J. Gallo Winery, et al. v. Strategic*  
7 *Materials, Inc.*, Case No. 1:17-CV-01709. I agree to comply with and to be bound by all the terms of  
8 this Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
10 disclose in any manner any information or item that is subject to this Stipulated Protective Order to  
11 any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Eastern  
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even  
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint \_\_\_\_\_ [print or type full name] of  
16 \_\_\_\_\_ [print or type full address and telephone number] as  
17 my California agent for service of process in connection with this action or any proceedings related  
18 to enforcement of this Stipulated Protective Order.

19  
20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22  
23 Printed name: \_\_\_\_\_

24  
25 Signature: \_\_\_\_\_



1 EXHIBIT B

2 DESIGNATED HOUSE COUNSEL

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
6 understand the Stipulated Protective Order that was issued by the United States District Court for the  
7 Eastern District of California on [date] in the case of *E. & J. Gallo Winery, et al. v. Strategic*  
8 *Materials, Inc.*, Case No. 1:17-CV-01709. I agree to comply with and to be bound by all the terms of  
9 this Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
11 disclose in any manner any information or item that is subject to this Stipulated Protective Order to  
12 any person or entity except in strict compliance with the provisions of this Order. I further certify  
13 that I am not involved in competitive decision-making related to recycled glass or cullet, and that I  
14 am not involved in the provision of legal advice with regards to negotiation with suppliers of glass  
15 cullet other than the instant litigation. "Competitive decision-making," as used herein, includes  
16 negotiations with suppliers regarding the supply of cullet or raw materials for the manufacture of  
17 cullet.

18 I further agree to submit to the jurisdiction of the United States District Court for the Eastern  
19 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even  
20 if such enforcement proceedings occur after termination of this action.

21 I hereby appoint \_\_\_\_\_ [print or type full name] of  
22 \_\_\_\_\_ [print or type full address and telephone number] as my California  
23 agent for service of process in connection with this action or any proceedings related to enforcement  
24 of this Stipulated Protective Order.

25  
26 Date: \_\_\_\_\_

27 City and State where sworn and signed: \_\_\_\_\_

28

1 Printed name: \_\_\_\_\_

2

3 Signature: \_\_\_\_\_

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