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23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 FEDERAL TRADE) Case No.: 8:24-cv-02684-FWS-ADS
26 COMMISSION,)

27 Plaintiff,) Judge: Fred W. Slaughter
28)

v.)

29 SOUTHERN GLAZER'S WINE) **SOUTHERN GLAZER'S WINE**
30 AND SPIRITS, LLC,) **AND SPIRITS, LLC'S**
31) **APPLICATION TO**
32) **PERMANENTLY SEAL**
33) **PORTIONS OF THE COMPLAINT**
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1 Defendant Southern Glazer’s Wine and Spirits (“SGWS”) respectfully requests
2 that this Court maintain under seal redacted portions of the FTC’s Complaint.
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4 During the FTC’s nonpublic investigation of alleged violations of the Robinson-
5 Patman Act, SGWS designated as confidential material that the FTC later included in
6 the Complaint. Pursuant to governing regulations, the FTC redacted that material from
7 the publicly filed version of the Complaint. *See* 16 C.F.R. § 4.10(g). Then, on
8 December 23, 2024, this Court issued its order granting the FTC leave to file portions
9 of the Complaint temporarily under seal, Dkt. 27. Consistent with that order, SGWS
10 now seeks to maintain certain confidential information under seal.
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13 SGWS has both good cause and compelling reasons to request permanent sealing
14 of portions of the complaint. As detailed in the attached Declaration of John Wittig, the
15 information SGWS seeks to maintain under seal consists of confidential financial and
16 pricing information, market share information, details regarding confidential contracts
17 and negotiations with customers, customer and pricing analyses, business strategies,
18 and trade secrets, the dissemination of which could substantially harm SGWS’s
19 competitive standing. Even accounting for the public’s interest in access, courts in this
20 district “have refused to permit their files to serve” as “sources of business information
21 that might harm a litigant’s competitive standing.” *In re ConAgra Foods, Inc.*, 2014
22 WL 12577132, at *5 (C.D. Cal. July 11, 2014) (internal quotations omitted). Indeed,
23 precedent—including the FTC’s own cases—have recognized that the inclusion of trade
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1 secrets in a filing provides a compelling reason to seal all or portions of that filing. *See*,
2 *e.g.*, *2ONE Labs Inc. v. ITG Brands, LLC*, 2024 WL 5185372, at *2 (C.D. Cal. Oct. 11,
3 2024) (“[T]he compelling reason standard is met because disclosure would harm
4 Plaintiffs and non-parties by forcing them to reveal valuable confidential proprietary
5 information regarding their business strategy and communications.”); *see also McCrary*
6 *v. Elations Co., LLC*, 2014 WL 1779243, at *5 (C.D. Cal. Jan. 13, 2014) (“Compelling
7 reasons exist when court files might have become a vehicle for improper purposes, such
8 as the ... release [of] trade secrets.”) (internal quotations omitted).

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12 ***Confidential financial and pricing information.*** Here, most of the material
13 SGWS seeks permanently sealed consists of confidential financial and pricing
14 information, which, if freely available to competitors could be used to put SGWS at a
15 competitive disadvantage. For this and other reasons, “[c]ourts in this Circuit have
16 found potential harms arising from public disclosure of trade secrets of a business’
17 confidential financial and pricing information to be sufficient reason to seal.’ *Virun,*
18 *Inc. v. Cymbiotika, LLC*, 2022 WL 17401698, at *2 (C.D. Cal. Aug. 19, 2022); *In re*
19 *Midland Nat. Life Ins. Co. Annuity Sales Pracs. Litig.*, 686 F.3d [1115,]1120 [(9th Cir.
20 2012) (per curiam)] (stating trade secrets constitute compelling reasons sufficient to
21 justify sealing court records); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir.
22 2008) (stating ‘pricing terms, royalty rates, and guaranteed minimum payment terms’
23 qualify as trade secrets properly subject to sealing); *Quidel Corp. v. Siemens Med.*

1 *Solutions USA, Inc.*, 2020 WL 1062949, at *2 (S.D. Cal. Mar. 4, 2020) (finding
2 compelling reasons to seal ‘confidential financial and pricing information’).” *Pluspass,*
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4 *Inc. v. Verra Mobility Corp.*, 2023 WL 6370236, at *2–3 (C.D. Cal. Aug. 29, 2023)
5 (Slaughter, J.); *see Nicolosi Distrib., Inc. v. Finishmaster, Inc.*, 2018 WL 10758114, at
6 *2 (N.D. Cal. Aug. 28, 2018) (finding compelling reasons to seal “proprietary and
7 confidential business information, including potential trade secrets and business
8 practices, such as product rates and purchase requirements”); *TVIIM, LLC v. McAfee,*
9 *Inc.*, 2015 WL 4448022, at *3 (N.D. Cal. July 19, 2015) (finding compelling reasons to
10 seal documents containing “confidential financial information such as product-specific
11 profit margins, average sales prices, and number of units sold”).
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14 The FTC suggests that courts do not seal this sort of information when it is
15 historical rather than current. Not so. As with present-day information, historical
16 pricing and financial information, if disseminated, can be used by competitors to gain a
17 present-day advantage. This remains a compelling reason to seal. *See Sw. Carpenters*
18 *Pension Tr. v. Paramount Scaffold, Inc.*, 2018 WL 6016134, at *1 (C.D. Cal. Jan. 12,
19 2018) (sealing “historical data for CAS’ customers and the amounts billed and collected
20 by CAS related to such customers” where it was “a trade secret and highly proprietary
21 information for CAS as access to this information would allow both potential customers
22 and competitors to learn of amounts billed on particular projects and therefore gain an
23 unfair advantage in reviewing any future CAS bids or proposals”).
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1 That is particularly so given the seriously incomplete and inaccurate nature of the
2 FTC’s portrayal of SGWS’s pricing practices, which could improperly impair
3 relationships with customers.¹ The FTC has cherry-picked pricing examples and taken
4 them out of context to distort the public’s view of SGWS’s pricing. The reality is that
5 SGWS offers different levels of discounts keyed to the costs SGWS incurs to sell
6 different volumes to consumers. SGWS has thousands of employees whose primary
7 focus is selling to independent retailers, and SGWS creates small quantity discounts to
8 ensure that these retailers receive similar or even lower prices on a per-case basis than
9 those offered through our large-quantity deals. In all events, release of specific current
10 and historical financial and pricing information included in the Complaint would harm
11 competition.
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16 ***Confidential market share information.*** Other material SGWS seeks sealed
17 consists of confidential market-share information. As this Court and others have
18 previously recognized, “dissemination of” market-share “information may provide []
19 competitors with an advantage,” warranting sealing. *See Pluspass, Inc. v. Verra*
20 *Mobility Corp.*, 2024 WL 4839162, at *2–3 (C.D. Cal. Jan. 5, 2024) (Slaughter, J.);
21 *Audionics Sys. Inc v. AAMP of Fla. Inc.*, 2014 WL 12586590, at *5 (C.D. Cal. Mar. 17,
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26 ¹ By requesting that portions of the Complaint be sealed, SGWS does not admit the truth or accuracy
27 of any averment or data in the Complaint (whether or not sealed); however, even, and perhaps
28 especially, release of inaccurate averments can create even greater harm, for example, by compelling
SGWS to release confidential accurate information to rebut the inaccurate information.

1 2014) (sealing documents regarding “sales volume, revenue, and market share
2 information”).

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4 ***Confidential details regarding third parties.*** Portions of the material SGWS
5 seeks sealed consists of confidential details regarding agreements with third parties that
6 could provide “competitors a competitive advantage in future negotiations.” *See*
7 *Pluspass, Inc.*, 2024 WL 4839162, at *2–3 (sealing portions of a hearing transcript
8 detailing confidential terms of an agreement). Courts often seal information like this
9 that could be damaging to third parties. *Sw. Carpenters Pension Tr.*, 2018 WL 6016134,
10 at *1 (sealing documents that involved “the financial information of non-parties/third-
11 parties who have their own separate financial confidentiality interests”); *Roadrunner*
12 *Intermodal Servs., LLC v. T.G.S. Transp., Inc.*, 2018 WL 432654, at *3 (E.D. Cal. Jan.
13 16, 2018) (sealing documents with customer information containing, among other
14 things “name,” “revenue amount,” and “work or loads performed” for each customer).
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18 ***Confidential analyses.*** Portions of the Complaint contain SGWS analyses,
19 including comparisons of customers and pricing analyses could be used by competitors
20 to target SGWS customers and undercut SGWS prices. Thus, they warrant permanent
21 sealing. *See Vogts v. Penske Media Corp.*, 2023 WL 7107276, at *3 (C.D. Cal. Aug.
22 30, 2023) (Slaughter, J.) (sealing “confidential analytics related to Defendants’ website
23 business”); *Universal Life Church Monastery Storehouse v. Am. Marriage Ministries*,
24 2022 WL 971561, at *2 (W.D. Wash. Mar. 31, 2022) (finding compelling reasons to
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1 seal party’s internal analytics bearing on movant’s business); *In re ConAgra Foods*,
2 2014 WL 12577132 at *5 (“[T]he inclusion of trade secrets such as a company’s . . .
3 marketing research.”).

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5 ***Business strategies.*** Compelling reasons exist to protect information regarding
6 SGWS’s confidential business strategies and plans, including, for example, decisions
7 made regarding interactions with suppliers and purchasing decisions. Courts regularly
8 seal valuable information of this sort. *2ONE Labs Inc.*, 2024 WL 5185372, at *2
9 (“[T]he compelling reason standard is met because disclosure would harm Plaintiffs and
10 non-parties by forcing them to reveal valuable confidential proprietary information
11 regarding their business strategy and communications.”); *In re Honest Co., Inc. Sec.*
12 *Litig.*, 2024 WL 1600311, at *1 (C.D. Cal. Mar. 18, 2024) (sealing documents
13 containing confidential information regarding a party’s “business strategies, plans, and
14 decision-making processes”); *Cat Coven LLC v. Shein Fashion Grp., Inc.*, 2019 WL
15 10856813, at *1 (C.D. Cal. Dec. 20, 2019) (granting motion to seal declarations
16 containing “confidential marketing strategies and business plans”).

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21 As detailed below, each proposed redaction of the Complaint falls within at least
22 one of these categories, which this court and others in this district have previously found
23 merit sealing.
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Complaint Portion	Corresponding Rationales
Page 1, portions of lines 20 and 25-28	<p>Portions of line 20 describe confidential pricing information, including discounts. Wittig Declaration ¶¶ 5-7, 9-13.</p> <p>Portions of lines 25-28 describe SGWS’s confidential business and pricing strategies. ¶¶ 5-7, 9-13, 18.</p>
Page 2, portions of lines 1-3 and 7-9	<p>Portions of lines 1-3 describe confidential information involving pricing and business strategy, including reasons for and structures of deals. ¶¶ 5-7, 9-13, 18.</p> <p>Portions of lines 7-9 describe confidential pricing and discount information as compared between retailers. ¶¶ 5-7, 9-13.</p>
Page 4, portions of line 26	Portions of line 26 describe the number of items and stock keeping units (“SKUs”) that SGWS distributes. ¶¶ 5-8.
Page 5, portions of lines 6-8	Portions of lines 6-8 describe confidential information regarding SGWS’s market share for wine and spirits markets in various states. ¶¶ 14-15.
Page 6, portions of line 4-5	Portions of lines 4-5 describe confidential financial information regarding SGWS’s sales quantities and revenue information. ¶¶ 5-8.

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<p>Page 7, portions of lines 17-18 and 27-28</p>	<p>Portions of lines 17-18 describe confidential information regarding the quantities of different products sold by SGWS and number of suppliers in different states. ¶¶ 5-8.</p> <p>Portions of lines 27-28 describe confidential information regarding SGWS’s forms of agreements with customers. ¶¶ 5-8, 18.</p>
<p>Page 8, portions of lines 1-4, 8-9, and 11-13</p>	<p>Portions of lines 1-4 describe confidential regarding the types of contractual agreements SGWS uses to sell products to consumers, as well as how specific terms differ for certain retailers. They also describe confidential financial information regarding total sales revenue from off-premise retailers in 2022. ¶¶ 5-13, 18.</p> <p>Portions of lines 8-9 describe confidential information regarding the distances customers travel to reach large retail chains. ¶ 16-17.</p> <p>Portions of lines 11-13 describe confidential information regarding trade secrets involving SGWS’s proprietary systems and applications, including their functionalities. ¶¶ 5-13.</p>
<p>Page 9, portions of lines 6-10 and 19-20</p>	<p>Portions of lines 6-10 describe confidential pricing information regarding specific locales where the FTC alleges that SGWS purportedly differentiated in price between independent purchasers and large chain purchasers. ¶¶ 5-8.</p> <p>Portions of lines 19-20 describe confidential pricing information regarding pricing schedules, solicitations, and negotiations. ¶¶ 5-13.</p>

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<p>Page 10, portions of lines 1-2 and 26-28</p>	<p>Portions of lines 1-2 describe the states where the FTC alleges independent retailers paid more than chain retailers. ¶¶ 5-13.</p> <p>Portions of lines 26-28 describe confidential pricing information, including the specific quantities required for pricing discounts. ¶¶ 5-13, 16.</p>
<p>Page 11, portions of lines 27-28</p>	<p>Portions of lines 27-28 describe confidential pricing information, including specific credits and discounts offered to specific companies. ¶¶ 5-13, 16.</p>
<p>Page 12, portions of lines 2, 4-5, 8-10, 21-23, and 28</p>	<p>Portions of line 2 describe confidential pricing information, including specific dollar amounts of credits offered. ¶¶ 5-13.</p> <p>Portions of lines 4-5 and 8-10 describe confidential pricing information, including specifics about pricing of one type of liquor and dollar amounts of discounts. ¶¶ 5-13, 16.</p> <p>Portions of lines 21-23 describe confidential pricing information focused on pricing and discounts for a specific named product. ¶¶ 5-13, 16.</p> <p>Portions of line 28 describe confidential pricing information, including discounts for specific customers. ¶¶ 5-13, 16.</p>
<p>Page 13, portions of lines 1-3, 9-13, 17-22, 25-26, and 6-28</p>	<p>Portions of lines 1-3 describe confidential pricing information, including discounts for specific customers. ¶¶ 5-13, 16.</p> <p>Portions of lines 9-13, 17-22, 25-26, and 28 describe confidential pricing information regarding specific products and consumers, as well as business strategies relating to pricing. ¶¶ 5-13, 16, 18.</p>

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<p>Page 14, portions of lines 1-2, 4, 7-9, 16-16, 18-19, 23-25, and 28</p>	<p>Portions of lines 12, 4, 7-9, 16-16, 18-19, 23-25, and 28 describe confidential pricing information regarding specific products and consumers, as well as business strategies relating to pricing. ¶¶ 5-13, 16, 18.</p>
<p>Page 15, portions of lines 1, 3-20 and 25-27</p>	<p>Portions of lines 1, 3-20 and 25-27 describe confidential pricing information regarding specific products and consumers, as well as business strategies relating to pricing. ¶¶ 5-13, 16, 18.</p>
<p>Page 16, portions of lines 2-3, 5-7, 10, 12-14, 16-19, 21-22, 24, and 26-28</p>	<p>Portions of lines 2-3, 5-7, 10, 12-14, 16-19, 21-22, 24, and 26-28 describe confidential pricing information regarding specific products and consumers, as well as business strategies relating to pricing. ¶¶ 5-13, 16, 18.</p>
<p>Page 17, portions of lines 1, 3-5, 7-8, 10-17, 20, and 22-28</p>	<p>Portions of lines 1, 3-5, 7-8, 10-17, 20, and 22-28 describe confidential pricing information regarding specific products and consumers, as well as business strategies relating to pricing. ¶¶ 5-13, 16, 18.</p>
<p>Page 18, portions of lines 1-6, 8, 11-16, and 28</p>	<p>Portions of lines 1-6 and 8 describe confidential pricing information regarding specific products and consumers, as well as business strategies relating to pricing. ¶¶ 5-13, 16, 18.</p> <p>Portions of lines 11-16 describe SGWS’s own confidential pricing analyses as well as confidential pricing information for specific products. ¶¶ 5-13, 17, 18.</p> <p>Portions of line 28 describe internal SGWS discussions regarding confidential business and pricing strategies, including regarding discounts. ¶¶ 5-8, 18.</p>

<p>Page 19, portions of lines 1-3, and 16-18</p>	<p>Portions of lines 1-3 describe internal SGWS discussions regarding confidential business and pricing strategies, including regarding discounts. ¶¶ 5-8, 18.</p> <p>Portions of lines 16-18 describe confidential business information regarding sales representatives' communications with customers about pricing and discounts. ¶ 18.</p>
<p>Page 20, portions of line 24</p>	<p>Portions of line 24 describe confidential pricing information and comparisons between SGWS customers. ¶¶ 5-13.</p>
<p>Page 22, portions of lines 19-20, 23-24, and 28</p>	<p>Portions of lines 19-20, 23-24, and 28 describe confidential business strategies informing SGWS purchases from suppliers. ¶ 18.</p>
<p>Page 23, portions of line 1</p>	<p>Portions of lines describe confidential information about SGWS's customers and business strategies informing SGWS purchases from suppliers. ¶ 18.</p>

Contrary to the FTC's past assertions, the fact that this is a price discrimination case does not mean that the public interest is so heightened as to outweigh the compelling reasons discussed above. Courts can and do seal information of the sort discussed above in price discrimination cases, including those under the Robinson-Patman Act. *See Nicolosi Distrib.*, 2018 WL 10758114 at*2-3 (sealing documents containing proprietary confidential and business information in a case involving claims under the Robinson-Patman Act).

1 For the foregoing reasons, SGWS respectfully requests that the Court grant its
2 Application to Permanently Seal Portions of the Complaint.
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6 DATED: January 8, 2025

Respectfully submitted,

7 */s/ Tammy A. Tsoumas*

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CERTIFICATE OF SERVICE

I certify that on January 8, 2025, a copy of the foregoing SGWS’S APPLICATION TO PERMANENTLY SEAL PORTIONS OF THE COMPLAINT was served electronically through the court’s electronic filing system upon all parties appearing on the court’s ECF service list.

DATED: January 8, 2025

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