

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

requests leave to file its public version of its Pre-Trial Brief, to five days after this Court rules on the pending *in camera* motions in this matter.

**ARGUMENT**

*camera* treatment for material offered into evidence by submitting a motion to the Administrative Law Judge. The Rule provides that, “[t]he Administrative Law Judge shall order that such material . . . 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 its

**I. Respondents Have Not Met Their Burden Of Showing A Clearly Defined, Serious Injury.**

Respondents seek *in camera* treatment for 548 of the approximately 1,500 proposed trial exhibits submitted by the parties for use at the hearing. Respondents thus seek protection for approximately one-third of the total exhibits that the parties propose to use at the hearing. Yet

Respondents do not offer a “clearly defined, serious injury,” that would occur as a result of public disclosure. Rather, Respondents broadly group their documents into three general

categories, and offer a general, cursory explanation of the harm that would result from public disclosure, using the six-part test set forth in *Bristol-Meyers Co.*, 90 FTC 455 (1977).

than three years old.” *Promedica Heath System, Inc.*, 2011 FTC LEXIS 70, at \*2 (quoting *Conference Interpreters*, 1996 FTC LEXIS 298, at \*15). A non-exhaustive review of Respondents’ motion reveals the following documents that are more than three years old: PX 1053 (2007), PX 1082 (2009), PX 1087 (2009), PX 1110 (2007), PX 1142 (2008), PX 1182 (2009), PX 1185 (2009), PX 2244 (2009).

public will not be afforded in camera treatment.” *Promedica Heath System, Inc.*, 2011 FTC

Finally, Respondent's motion seeks to have the following documents:

Efficiencies Expert Report of Mr. Gabe Dagen, including his entire deposition transcript.

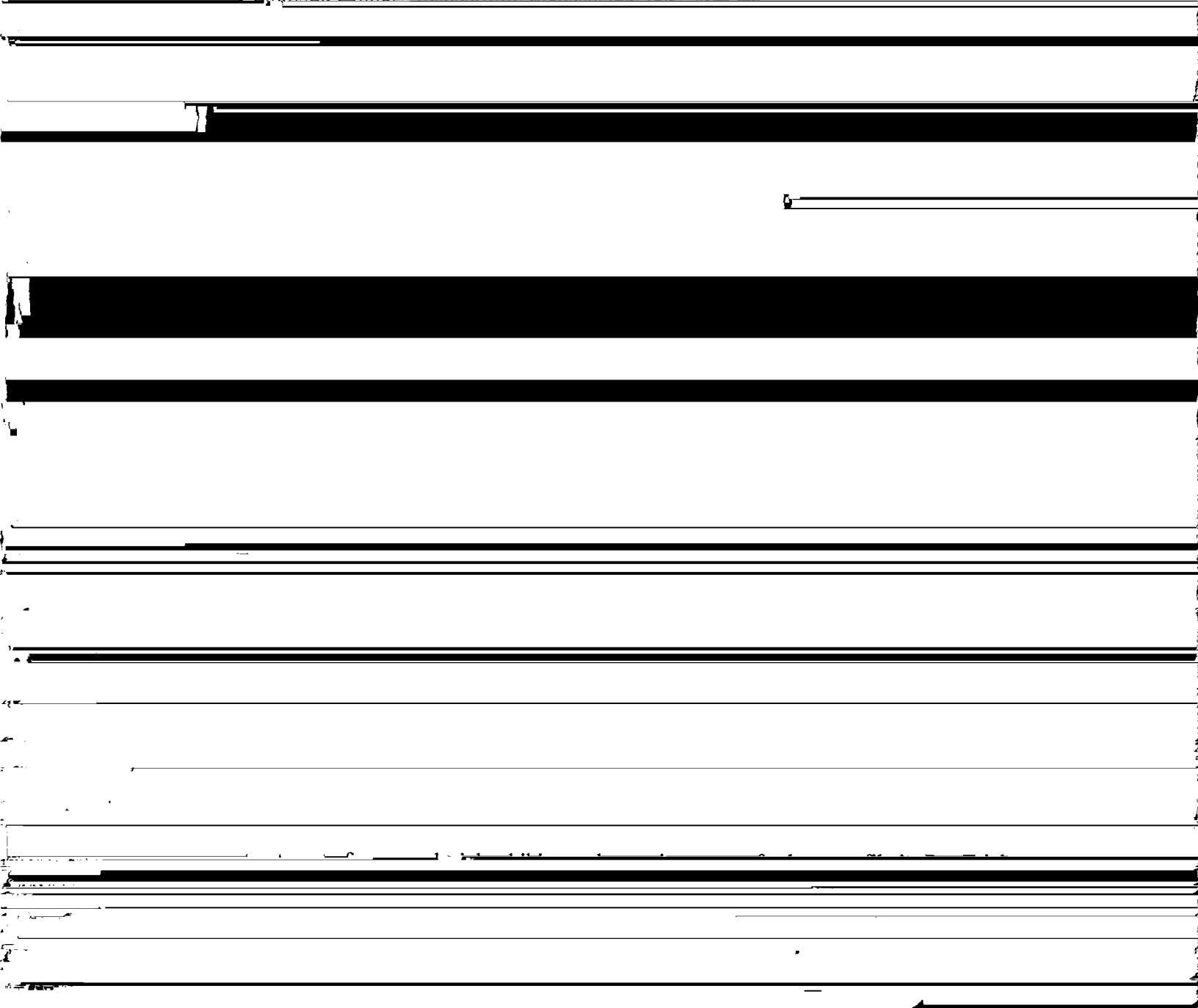
Respondent offers no explanation for why Mr. Dagen's report and deposition transcript should

be deemed to be relevant to this case.

This Court has the authority to grant this request. FTC Rule 3.45 states that the Public Brief “shall be filed with the Secretary within 5 days after the filing of the complete version, unless the Administrative Law Judge . . . directs otherwise . . . .” 16 C.F.R. § 3.45(e). Thus, we respectfully ask the Court to use its discretion under FTC Rule 3.45 to allow Complaint Counsel to file its Public Brief five days after this Court has ruled on the *in camera* motions so that Complaint Counsel’s redactions are consistent with the Court’s rulings.

**CONCLUSION**

Complaint Counsel respectfully requests that the Court deny Respondent’s motion for a



**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**

**Saint-Gobain Containers, Inc., a  
corporation, and**

**Compagnie de Saint-Gobain, a corporation.**

**Docket No. 9356**

Upon consideration of Complaint Counsel's Opposition to Respondents' Motion for In Camera Treatment Of Proposed Trial Exhibits, it is hereby ORDERED that Respondents' Motion be DENIED.

Upon consideration of Complaint Counsel's Request For Leave To File Its Redacted,

**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2013, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Alan Goudiss  
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*Counsel for Respondent Saint-Gobain Containers, Inc.*

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that

December 13, 2013

By: s/ Edward D. Hassi  
Attorney