UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

RAI STRATEGIC HOLDINGS, INC. and
R.J. REYNOLDS VAPOR COMPANY,

Plaintiffs and Counterclaim Defendants,

v.

ALTRIA CLIENT SERVICES LLC; PHILIP
MORRIS USA INC.; and PHILIP MORRIS
PRODUCTS S.A.,

Defendants and Counterclaim Plaintiffs.

Case No. 1:20-cv-00393-LO-TCB

[PROPOSED] ORDER GRANTING PM/ALTRIA'S MOTION TO SEAL

This matter is before the Court on the motion (Dkt. 1099) filed by Philip Morris Products

S.A., Philip Morris USA Inc., and Altria Client Services, LLC (collectively, "PM/Altria") to seal

un-redacted versions of PMI/Altria's Reply in Support of PMI/Altria's Omnibus Motion *in*

Limine and Exhibits 1-6 and 8 pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil

Rule 5(C). Because the documents that PM/Altria seeks to seal contain confidential, proprietary,

and competitively sensitive business, financial, and design information of RAI Strategic

Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, "Reynolds"), Reynolds filed a

memorandum in support of PM/Altria's sealing request.

Before this Court may seal documents, it must: "(1) provide public notice of the request

to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic

alternatives to sealing the documents, and (3) provide specific reasons and factual findings

supporting its decision to seal the documents and for rejecting the alternatives." *Ashcraft v.*

Conoco, Inc., 218 F.3d 288, 302 (4th Cir. 2000) (internal citations omitted). Upon consideration of PM/Altria's motion to seal and its memorandum in support thereof, the Court hereby **FINDS** as follows:

1.   The public has received notice of the request to seal and has had a reasonable opportunity to object. PM/Altria's sealing motion was publicly docketed in accordance with Local Civil Rule 5. Reynolds has filed a memorandum in support of sealing. The "public has had ample opportunity to object" to PM/Altria's motion and, since "the Court has received no objections," the first requirement under *Ashcraft*, 218 F.3d at 302, has been satisfied. *GTSI Corp. v. Wildflower Int'l, Inc.*, No. 1:09CV123(JCC), 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *United States ex rel. Carter v. Halliburton Co.*, No. 1:10CV864 (JCC/TCB), 2011 WL 2077799, at *3 (E.D. Va. May 24, 2011) ("[T]he parties provided public notice of the request to seal that allowed interested parties a reasonable opportunity to object—nearly two weeks.").

2.   PM/Altria seeks to seal and redact from the public record only information designated by the parties as confidential. PM/Altria has filed publicly redacted versions of its Reply in Support of PMI/Altria's Omnibus Motion *in Limine* and Exhibits 1-6 and 8 (Dkt. 1093), in addition to sealed versions (Dkt. 1096), and has redacted only those limited portions it seeks to seal. This selective and narrow protection of confidential material constitutes the least drastic method of shielding the information at issue. *Adams v. Object Innovation, Inc.*, No. 3:11CV272-REP-DWD, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011) (The "proposal to redact only the proprietary and confidential information, rather than seal the entirety of his declaration, constitutes the least drastic method of shielding the information at issue."). The public has no legitimate interest in information that is confidential to Reynolds. *Id.* ("[T]here is no legitimate public interest in disclosing the proprietary and confidential information of [the defendant] …

and disclosure to the public could result in significant damage to the company."). The

information that PM/Altria seeks to seal includes confidential, proprietary, and competitively

sensitive business information of Reynolds and/or third parties, each of which could face harm if

such information were to be released publicly. Specifically, the sensitive information that

PM/Altria moves for leave to file under seal, and to redact from a publicly filed version, includes

proprietary and commercially sensitive business, financial, and design information of Reynolds

and/or third parties:

- PMI/Altria's Reply in Support of PMI/Altria's Omnibus Motion *in Limine*;

- Exhibit 1, an excerpt of an expert report;

- Exhibit 2, an email exchange between counsel;

- Exhibit 3, an excerpt of an infringement contention;

- Exhibit 4, an excerpt of an expert report;

- Exhibit 5, an excerpt of an expert report;

- Exhibit 6, an excerpt of an expert report; and

- Exhibit 8, an excerpt of an interrogatory response.

3.   There is support for filing portions of PMI/Altria's Reply in Support of

PMI/Altria's Omnibus Motion *in Limine* and Exhibits 1-6 and 8 under seal with publicly filed

versions containing strictly limited redactions. PMI/Altria's Reply in Support of PMI/Altria's

Omnibus Motion *in Limine* and Exhibits 1-6 and 8 contain materials that falls within the scope of

the stipulated protective order. Placing these materials under seal is proper because the public's

interest in access is outweighed by a party's interest in "preserving confidentiality" of the limited

amount of confidential information that is "normally unavailable to the public." *Flexible Benefits*

Council v. Feltman, No. 1:08-cv-371-JCC, 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008);

United States ex rel. Carter, 2011 WL 2077799, at *3.

Therefore, based on the findings above, for good cause shown, it is hereby

ORDERED that the motion is **GRANTED**, and PM/Altria is granted leave to file

REDACTED versions of PMI/Altria's Reply in Support of PMI/Altria's Omnibus Motion *in*

Limine and Exhibits 1-6 and 8.

And to file **UNDER SEAL** un-redacted versions of PMI/Altria's Reply in Support of

PMI/Altria's Omnibus Motion *in Limine* and Exhibits 1-6 and 8.

And **FURTHER ORDERED** that un-redacted versions of PMI/Altria's Reply in Support

of PMI/Altria's Omnibus Motion *in Limine* and Exhibits 1-6 and 8 shall remain **SEALED** until

further order of the Court.

ENTERED this _____ day of _____, 2022.

Alexandria, Virginia

_____

THERESA CARROLL BUCHANAN

UNITED STATES MAGISTRATE JUDGE