

**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.

Civil Action No. 1:20-cv-393

**PMI/ALTRIA'S MEMORANDUM IN RESPONSE TO, AND IN SUPPORT OF,
REYNOLDS' MOTIONS TO SEAL**

Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure and Local Civil Rule 5(C), Altria Client Services LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “PMI/Altria”) respectfully submit this memorandum in response to, and in support of the following motions to seal (collectively, “Motions to Seal”) filed by RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, “Reynolds”):

1. Motion for Leave to Seal Reynold’s Reply in Support of Reynold’s Motions *in Limine* 1-3 and accompanying Exhibits 1-4 (Dkt. 1054);
2. Motion for Leave to Seal Reynolds’s Reply in Support of Reynolds’s Motion *in Limine* No. 7 and accompanying Exhibit 2 (Dkt. 1061);
3. Motion for Leave to Seal Reynolds’s Reply in Support of Reynolds’s Motion *in Limine* No. 9 and accompanying Exhibits 1-4 (Dkt. 1067);
4. Motion for Leave to Seal Reynolds’s Reply in Support of Reynolds’s Motion *in Limine* No. 10 (Dkt. 1072);
5. Motion for Leave to Seal Reynolds’s Reply in Support of Reynolds’s Motion *in Limine* No. 11 (Dkt. 1077);
6. Motion for Leave to Seal Reynolds’s Reply in Support of Reynolds’s Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander and accompanying Exhibit 1 (Dkt. 1083);
7. Motion for Leave to Seal Reynolds’s Reply in Support of Reynolds’s Motion to Exclude the Testimony of Paul K. Meyer and Accompanying Exhibits 1-5 (Dkt. 1088);

The proposed sealed material identified above includes PMI/Altria’s confidential, financial, proprietary, and competitively sensitive business information that falls within the scope of the Stipulated Protective Order. Dkt. 103. These confidential materials should remain under seal.

I. LEGAL STANDARD

Local Civil Rule 5(C) requires that, when a party moves to file material under seal that another party has designated as confidential, “the party designating the material as confidential must file a response to the motion complying with requirements (2), (3), and (4) above along with

a proposed order” that “shall recite the findings required by governing case law to support the proposed sealing.” Loc. R. Civ. P. 5(C). These requirements are: “(2) A statement why sealing is necessary, and why another procedure will not suffice, as well as appropriate evidentiary support for the sealing request; (3) References to the governing case law, an analysis of the appropriate standard to be applied for that specific filing, and a description of how that standard has been satisfied; [and] (4) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon unsealing.” *Id.*

The Supreme Court has held that “the right [of the public] to inspect and copy judicial records is not absolute.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). For example, access to court records has been denied where “court files might have become a vehicle for improper purposes.” *Id.* In particular, a corporation’s “strong interest in preserving the confidentiality of its proprietary and trade-secret information ... may justify partial sealing of court records.” *Doe v. Public Citizen*, 749 F.3d 246, 269 (4th Cir. 2014). As the Fourth Circuit has explained, a court has the authority to seal court documents “if the public’s right of access is outweighed by competing interests.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000).

II. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED

Reynolds moved for leave to file under seal the unredacted versions of memorandums submitted in support of Reynolds’ replies in support of its motions *in limine* and certain *Daubert* motions, as well as certain exhibits accompanying those motions. Specifically, the sensitive information that Reynolds moved for leave to file under seal, and to redact from a publicly filed version, includes proprietary and commercially sensitive information and documents of PMI/Altria and/or third parties.

Reynolds seeks to file under seal, and to file a redacted public version of:

1. Reynold's Reply in Support of Reynold's Motions *in Limine* 1-3 (Dkt. 1054);
2. Reynold's Reply in Support of Reynolds's Motion *in Limine* No. 7 (Dkt. 1061);
3. Reynolds's Reply in Support of Reynolds's Motion *in Limine* No. 9 (Dkt. 1067);
4. Reynolds's Reply in Support of Reynolds's Motion *in Limine* No. 10 (Dkt. 1072);
5. Reynolds's Reply in Support of Reynolds's Motion *in Limine* No. 11 (Dkt. 1077);
6. Reynolds's Reply in Support of Reynolds's Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander (Dkt. 1083); and
7. Reynolds's Reply in Support of Reynolds's Motion to Exclude the Testimony of Paul K. Meyer and Accompanying Exhibit 5 (Dkt. 1088).¹

Reynolds further seeks to file entirely under seal:

1. Exhibits 1-4 accompanying Reynold's Reply in Support of Reynold's Motions *in Limine* 1-3 (Dkt. 1054);
2. Exhibit 2 accompanying Reynold's Reply in Support of Reynolds's Motion *in Limine* No. 7 (Dkt. 1061);
3. Exhibits 1-4 accompanying Reynolds's Reply in Support of Reynolds's Motion *in Limine* No. 9 (Dkt. 1067);
4. Exhibit 1 accompanying Reynolds's Reply in Support of Reynolds's Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander (Dkt. 1083); and
5. Exhibits 1-4 accompanying Reynolds's Reply in Support of Reynolds's Motion to Exclude the Testimony of Paul K. Meyer (Dkt. 1088).

¹ The memorandum and exhibits identified in Section II are collectively referred to as "Memorandum" and "Exhibits," respectively.

III. ARGUMENT

Although there is a general presumption that the public has the right to access documents in the files of the courts, this presumption may be overcome “if the public’s right of access is outweighed by competing interests.” *Ashcraft*, 218 F.3d at 302 (citation omitted); *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). To determine whether the interests in sealing the records outweigh the public’s right of access, a court must follow a three-step process: “(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*, 218 F.3d at 302; *see also Adams v. Object Innovation, Inc.*, No. 11-cv-272, 2011 WL 7042224, at *4 (Dec. 5, 2011), *report & recommendation adopted*, 2012 WL 135428 (E.D. Va. Jan. 17, 2012). Here, three requirements are met.

First, the public has received notice of the request to seal and has had a reasonable opportunity to object. Reynolds’ Sealing Motions were publicly docketed on February 25, 2022, in accordance with Local Civil Rule 5, and PMI/Altria now files this memorandum in support of sealing. Since the “public has had ample opportunity to object” to Reynolds’ Sealing Motions and “the Court has received no objections,” the first requirement under *Ashcraft* is met. 218 F.3d at 302; *see also GTSI Corp. v. Wildflower Int’l, Inc.*, No. 09-cv-123, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *U.S. ex rel Carter v. Halliburton Co.*, No. 10-cv-864, 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.”).

Second, Reynolds seeks to seal and redact from the public record only information that the parties must keep confidential pursuant to the Stipulated Protective Order. Dkt. 103.

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