

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

[PROPOSED] ORDER GRANTING REYNOLDS' MOTIONS TO SEAL

This matter is before the Court on the motions filed by RAI Strategic Holdings, Inc., and R.J. Reynolds Vapor Company (collectively, “Reynolds”) to file certain memorandums and accompanying exhibits under seal pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). *See* Dkts. 1054, 1061, 1067, 1072, 1077, 1083, and 1088 (collectively “Sealing Motions”). Because the documents that Reynolds seeks to seal contain confidential, proprietary, and competitively sensitive business information of Altria Client Services LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and/or Philip Morris Products S.A. (“PMP”) (collectively, “PMI/Altria”) and/or third parties, PMI/Altria filed a memorandum in support of Reynolds’ Sealing Motions.

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 282, 288 (4th Cir. 2000) (internal citations omitted). Upon consideration of Reynolds’ Sealing Motions 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 reasonable opportunity to object. Reynolds’ Sealing Motions were publicly docketed in accordance with Local Civil Rule 5. PMI/Altria filed a memorandum in support of sealing. The “public has had ample opportunity to object” to Reynolds’ motions and, since “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.”).

2. Reynolds seeks to seal and redact from the public record only information designated by the parties as confidential. Reynolds filed publicly redacted versions of the following documents and exhibits, in addition to a sealed version, and redacted only those limited portions that Reynolds seeks to seal:

- a. Reynold’s Reply in Support of Reynold’s Motions *in Limine* 1-3 (Dkt. 1054);
- b. Reynold’s Reply in Support of Reynolds’s Motion *in Limine* No. 7 (Dkt. 1061);
- c. Reynolds’s Reply in Support of Reynolds’s Motion *in Limine* No. 9 (Dkt. 1067);
- d. Reynolds’s Reply in Support of Reynolds’s Motion *in Limine* No. 10 (Dkt. 1072);

- e. Reynolds's Reply in Support of Reynolds's Motion *in Limine* No. 11 (Dkt. 1077);
- f. Reynolds's Reply in Support of Reynolds's Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander (Dkt. 1083); and
- g. Reynolds's Reply in Support of Reynolds's Motion to Exclude the Testimony of Paul K. Meyer and Accompanying Exhibit 5 (Dkt. 1088).

Reynolds further seeks to file entirely under seal:

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

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. 11-cv-272, 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 and PMI/Altria. *Id.* at *4. The information that Reynolds seeks to seal includes confidential, proprietary, and competitively sensitive business information of PMI/Altria and/or third parties, each of which could face harm if such information were to be released publicly. Specifically, the sensitive information that Reynolds moves for

¹ These memorandum and exhibits are collectively referred to as “Memorandums” and “Exhibits,” respectively, throughout.

leave to file under seal, and to redact from a publicly filed version, includes materials from PMI/Altria and/or third parties, such as confidential business information falling under the scope of the protective order.

3. There is support for filing portions of the Memorandums and accompanying Exhibits under seal, with a publicly filed version containing strictly limited redactions. These Memorandums and accompanying Exhibits contain material 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. 08-cv-00371, 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008); *U.S. 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 Reynolds is granted leave to file a **REDACTED** version of the Memorandums and accompanying Exhibits;

And to file **UNDER SEAL** an unredacted version of Memorandums and accompanying Exhibits;

And **FURTHER ORDERED** that the unredacted version of the Memorandums and accompanying Exhibits shall remain **SEALED** until further order of the Court:

ENTERED this ____ day of _____, 2022.

Alexandria, Virginia
