

**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' MOTION TO SEAL

This matter is before the Court on the motion (Dkt. 1205) filed by RAI Strategic Holdings, Inc., and R.J. Reynolds Vapor Company (collectively, “Reynolds”) to file Reynolds’ Opposition to PM/Altria’s Objections to Magistrate Judge Buchanan’s Order Denying Motion to Show Cause Why Sanctions Should Not Be Imposed (Dkt. 1207) under seal pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Because the document that Reynolds seeks to seal contain confidential, proprietary, and competitively sensitive business information of Plaintiffs’ Altria Client Services LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “PMI/Altria”) and/or third parties, PMI/Altria filed a memorandum in support of Reynolds’ 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 282, 288 (4th Cir. 2000) (internal citations omitted). Upon consideration of Reynolds’ 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 reasonable opportunity to object. Reynolds’ sealing motion was publicly docketed in accordance with Local Civil Rule 5. Defendants have filed a memorandum in support of sealing. The “public has had ample opportunity to object” to Reynolds’ 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. 1:09-cv-123-JCC, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *U.S. ex rel Carter v. Halliburton Co.*, No. 1:10-cv-864-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. Reynolds seeks to seal and redact from the public record only information designated by the parties and/or third parties as confidential. Reynolds has filed publicly a redacted version of Reynolds’ Opposition to PM/Altria’s Objections to Magistrate Judge Buchanan’s Order Denying Motion to Show Cause Why Sanctions Should Not Be Imposed, in addition to a sealed version, and has redacted only those limited portions that Reynolds 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. 3:11-cv-272-REP-DWS, 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 PMI/Altria and/or third parties. *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 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 Reynolds' Opposition to PM/Altria's Objections to Magistrate Judge Buchanan's Order Denying Motion to Show Cause Why Sanctions Should Not Be Imposed under seal, with a publicly filed version containing strictly limited redactions. Reynolds' Opposition to PM/Altria's Objections to Magistrate Judge Buchanan's Order Denying Motion to Show Cause Why Sanctions Should Not Be Imposed contains 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. 1:08-cv-00371-JCC, 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008); *see also, e.g., 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 Reynolds' Opposition to PM/Altria's Objections to Magistrate Judge Buchanan's Order Denying Motion to Show Cause Why Sanctions Should Not Be Imposed.

And to file **UNDER SEAL** an unredacted version of Reynolds' Opposition to

PM/Altria's Objections to Magistrate Judge Buchanan's Order Denying Motion to Show Cause Why Sanctions Should Not Be Imposed.

And **FURTHER ORDERED** that the unredacted version of Reynolds' Opposition to PM/Altria's Objections to Magistrate Judge Buchanan's Order Denying Motion to Show Cause Why Sanctions Should Not Be Imposed shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2020.

Alexandria, Virginia
