

**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-LO-TCB

**MEMORANDUM IN SUPPORT OF PMI/ALTRIA'S MOTION FOR
LEAVE TO FILE DOCUMENTS UNDER SEAL**

Pursuant to Local Civil Rule 5(C), Plaintiffs Altria Client Services, LLC, Philip Morris USA Inc., and Philip Morris Products S.A. (collectively, "PMI/Altria") respectfully move the Court for leave to file their Motion to Exclude Improper Expert Testimony by James Figlar Previously Excluded by the Court ("Motion") and Exhibit A thereto ("Exhibit"), under seal.

PMI/Altria also respectfully move for leave to file publicly a redacted version of their Motion that omits confidential information. All of the materials PMI/Altria seek to file under seal have been designated as confidential under the stipulated protective order.

I. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED

PMI/Altria respectfully seek leave to file the following document under seal:

- An unredacted version of their Motion.
- Exhibit A to PMI/Altria's Motion, which is excerpts from the transcript of James Figlar, Ph.D. deposition, dated Friday, June 3, 2022.

II. 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 v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000) (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) articulate specific reasons and factual findings supporting its decision to seal. *Ashcraft*, 218 F.3d at 302; *Adams v. Object Innovation, Inc.*, No. 11-cv-00272, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011), *report and recommendation adopted*, 2012 WL 135428 (E.D. Va. Jan. 17, 2012). All three requirements are satisfied here.

First, the public has received notice of the request to seal and will have a reasonable opportunity to object. In accordance with Local Civil Rule 5 procedures, this sealing motion was publicly docketed, satisfying the first requirement. RJR will have an opportunity to respond, and once the “public has had ample opportunity to object” to PMI/Altria’s motion and “the Court has received no objections,” the first *Ashcraft* requirement may be deemed satisfied. *See GTSI Corp. v. Wildflower Int’l, Inc.*, No. 09-cv-00123, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *U.S. ex rel. Carter v. Halliburton Co.*, No. 10-cv-00864, 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, PMI/Altria seek to seal and to redact from the public record only information that the parties must keep confidential pursuant to the stipulated protective order. PMI/Altria will file publicly a redacted version of its Motion in addition to a sealed version. Moreover, the exhibit

filed under seal contains competitively sensitive information the disclosure of which would cause harm. This selective and narrow protection of confidential material constitutes “the least drastic method of shielding the information at issue.” *Adams*, 2011 WL 7042224, at *4. The public has no legitimate interest in information that is confidential to PMI/Altria and RJR. *See Adams*, 2011 WL 7042224, at *4 (“[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 PMI/Altria seek to seal and redact includes confidential, proprietary, and competitively sensitive business information.

Third, there is support for filing portions of PMI/Altria’s Motion under seal, with a publicly filed version containing strictly limited redactions. As an initial matter, the stipulated protective order requires that this information remain confidential. And the redacted portions of the Motion only pertain to this confidential information. Moreover, the exhibit filed under seal contains information that has been designated as competitively sensitive business information. Sealing these materials is therefore proper because the public’s interest in access is outweighed by a party’s interest in “preserving confidentiality” of limited amounts of confidential information that is “normally unavailable to the public.” *Flexible Benefits Council v. Feltman*, No. 08-cv-00371, 2008 WL 4924711, at *1; *U.S. ex rel. Carter*, 2011 WL 2077799, at *3.

III. CONCLUSION

PMI/Altria respectfully request that the Court grant this motion and enter the attached proposed Order.

Dated: June 7, 2022

Respectfully submitted,

By: /s/ Maximilian A. Grant

Maximilian A. Grant (VSB No. 91792)
max.grant@lw.com
Lawrence J. Gotts (VSB No. 25337)
lawrence.gotts@lw.com
Matthew J. Moore (*pro hac vice*)
matthew.moore@lw.com
Jamie Underwood (*pro hac vice*)
jamie.underwood@lw.com
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

Clement J. Naples (*pro hac vice*)
clement.naples@lw.com
LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
Tel: (212) 906-1200; Fax: (212) 751-4864

Gregory J. Sobolski (*pro hac vice*)
greg.sobolski@lw.com
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

Brenda L. Danek (*pro hac vice*)
brenda.danek@lw.com
LATHAM & WATKINS LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Tel: (312) 876-7700; Fax: (312) 993-9767

*Counsel for Plaintiffs Altria Client Services
LLC, Philip Morris USA Inc., and Philip Morris
Products S.A.*

By: /s/ Elizabeth Stotland Weiswasser
W. Sutton Ansley (VSB No. 80085)
sutton.ansley@weil.com
Robert T. Vlasis III (*pro hac vice*)
robert.vlasis@weil.com
Stephanie Adamakos (*pro hac vice*)
stephanie.adamakos@weil.com
WEIL, GOTSHAL & MANGES LLP
2001 M Street, NW, Suite 600
Washington, DC 20036
Tel: (202) 682-7000; Fax: 202-857-0940

Elizabeth Stotland Weiswasser (*pro hac vice*)
elizabeth.weiswasser@weil.com
Anish R. Desai (*pro hac vice*)
anish.desai@weil.com
WEIL, GOTSHAL & MANGES LLP
767 5th Avenue
New York, NY 10153
Tel: (212) 310-8000; Fax: 212-310-8007

Adrian C. Percer (*pro hac vice*)
adrian.percer@weil.com
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Tel: (650) 802-3000; Fax: 850-802-3100

*Counsel for Plaintiffs Altria Client Services
LLC and Philip Morris USA Inc.*

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