

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

PHILIP MORRIS PRODUCTS S.A.,

Plaintiff,

v.

R.J. REYNOLDS VAPOR COMPANY,

Defendant.

Civil Action No. 1:20-cv-393-LO-TCB

[PROPOSED] ORDER GRANTING PHILIP MORRIS' MOTION TO SEAL

This matter is before the Court on the motion filed by Plaintiff Philip Morris Products S.A. (“Philip Morris”) to file its Brief On Jury Instructions And The Verdict Form Pertaining To The Permissible Measure Of Damages (“Brief”) and Exhibits 2-5, 7, and 9-10 thereto (“Exhibits”) under seal pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Upon consideration of Philip Morris’s motion to seal and its memorandum in support thereof (“Sealing Motion”), the Court hereby **FINDS** as follows:

1. The public has received notice of the request to seal and has had reasonable opportunity to object. Philip Morris’ Sealing Motion was publicly docketed in accordance with Local Civil Rule 5. Defendant R.J. Reynolds Vapor Co. (“Reynolds”) has had an opportunity to respond. The “public has had ample opportunity to object” to Philip Morris’ Sealing Motion and, since “the Court has received no objections,” the first requirement under *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000), has been satisfied. *GTSI Corp. v. Wildflower Int’l, Inc.*, No. 09-cv-123, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *see also 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. Philip Morris seeks to seal and to redact from the public record only information designated by the parties and/or third parties as confidential. Philip Morris will file publicly a redacted version of their Brief and Exhibits, in addition to a sealed version, and will redact 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. *See Adams v. Object Innovation, Inc.*, No. 11-cv-272, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011) (finding that plaintiffs’ “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 the parties’ confidential information. *See id.* 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 Philip Morris seeks to seal includes confidential, proprietary, and competitively sensitive business information of the parties and/or third parties, each of which could face harm if such information were to be released publicly.

3. There is support for filing portions of Philip Morris’ Brief and Exhibits, with a publicly filed version containing strictly limited redactions. The Brief and Exhibits contain material designated confidential under the stipulated protective order. Accordingly, Philip Morris is required to file this material under seal pursuant to 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-371, 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 show, it is hereby

ORDERED that the motion is **GRANTED**, and Philip Morris is granted leave to file a **REDACTED** version of its Brief and Exhibits 2-5, 7, and 9-10 thereto.

And to file **UNDER SEAL** an unredacted version of its Brief and Exhibits 2-5, 7, and 9-10 thereto.

And **FURTHER ORDERED** that the unredacted version of Philip Morris’ Brief and Exhibits 2-5, 7, and 9-10 thereto shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2022.

Alexandria, Virginia
