

**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-00393-LMB-TCB

**MEMORANDUM IN SUPPORT OF PHILIP MORRIS' MOTION FOR
LEAVE TO FILE DOCUMENTS UNDER SEAL**

Pursuant to Local Civil Rule 5(C), Plaintiff Philip Morris Products S.A. ("Philip Morris") respectfully moves the Court for leave to file its Memorandum in Support of Unopposed Motion to Lift the Partial Stay on Philip Morris' Claim for Permanent Injunctive Relief ("Motion") and Exhibits A and C thereto ("Exhibits") under seal.

I. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED

Philip Morris respectfully seeks leave to file the following document under seal:

- An unredacted version of its Motion.
- Exhibit A to Philip Morris' Motion, which includes excerpts from the June 8, 2022 a.m. trial transcript.
- Exhibit C to Philip Morris' Motion, which includes excerpts from the June 9, 2022 p.m. trial transcript.

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. Reynolds will have an opportunity to respond, and once the “public has had ample opportunity to object” to Philip Morris’ 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, Philip Morris seeks to seal and to redact from the public record only information that the parties must keep confidential pursuant to the stipulated protective order. Philip Morris will file publicly a redacted version of its Motion in addition to a sealed version. Moreover, the exhibits filed under seal contain 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 Philip Morris or Reynolds. 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 Philip Morris seeks to seal and redact includes confidential, proprietary, and competitively sensitive business information of Reynolds, and Reynolds could face harm if such information were released publicly.

Third, there is support for filing portions of Philip Morris’ 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 exhibits filed under seal contain information that Reynolds has 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-371, 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008); *U.S. ex rel. Carter*, 2011 WL 2077799, at *3.

III. CONCLUSION

Philip Morris respectfully requests that the Court grant this motion and enter the attached proposed Order.

Dated: June 28, 2022

Respectfully submitted,

/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
jamie.underwood@lw.com (*pro hac vice*)

LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Ste. 1000
Washington, DC 20004
Tel: (202) 637-2200; Fax: (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 K. Sobolski (*pro hac vice*)
Greg.sobolski@lw.com
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Tel: (415) 391-0600; Fax: (415) 395-8095

*Counsel for Plaintiff Philip Morris Products
S.A.*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2022, a true and correct copy of the foregoing was served using the Court's CM/ECF system, with electronic notification of such filing to all counsel of record:

/s/ Maximilian A. Grant

Maximilian A. Grant (VSB No. 91792)
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
Email: max.grant@lw.com

*Counsel for Plaintiff Philip Morris Products
S.A.*