

**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

No. 1:20-cv-393-LMB-TCB

**PHILIP MORRIS' MEMORANDUM IN RESPONSE TO, AND IN SUPPORT OF,  
REYNOLDS' RENEWED MOTION TO SEAL**

Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure and Local Civil Rule 5(C), Plaintiff Philip Morris Products S.A. (“Philip Morris”) respectfully submits this memorandum in response to, and in support of the following motion to seal (“Sealing Motion”) filed by R.J. Reynolds Vapor Company (“Reynolds”):

- Motion for Leave to Seal Reynolds’ Opposition to Plaintiff’s Motion for a Permanent Injunction, or Alternatively, an Ongoing Royalty and Exhibits 1-4, 10-14, 19, 25, 28-31, 39, 42, and 44 thereto (Dkt. 1458).

The proposed sealed materials identified above include Philip Morris’ confidential, financial, proprietary, and competitively sensitive business information that falls within the scope of the Stipulated Protective Order (Dkt. 103), which could cause harm if such information were to be released publicly. These confidential materials should remain under seal.

## **I. LEGAL STANDARD**

Local Civil Rule 5(C) requires that, when a party moves to file material under seal that another party has designated as confidential, “the party designating the material as confidential must file a response to the motion complying with requirements (2), (3), and (4) above along with a proposed order” that “shall recite the findings required by governing case law to support the proposed sealing.” Loc. R. Civ. P. 5(C). These requirements are: “(2) A statement why sealing is necessary, and why another procedure will not suffice, as well as appropriate evidentiary support for the sealing request; (3) References to the governing case law, an analysis of the appropriate standard to be applied for that specific filing, and a description of how that standard has been satisfied; [and] (4) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon unsealing.” *Id.*

The Supreme Court has held that “the right [of the public] to inspect and copy judicial records is not absolute.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). For

example, access to court records has been denied where “court files might have become a vehicle for improper purposes.” *Id.* In particular, a corporation’s “strong interest in preserving the confidentiality of its proprietary and trade-secret information ... may justify partial sealing of court records.” *Doe v. Public Citizen*, 749 F.3d 246, 269 (4th Cir. 2014). As the Fourth Circuit has explained, a court has the authority to seal court documents “if the public’s right of access is outweighed by competing interests.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000).

## II. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED

After conferring with Philip Morris, Reynolds moved for leave to file under seal the unredacted versions of its memorandum submitted in support of Reynolds’ Opposition to Plaintiff’s Motion for a Permanent Injunction, or Alternatively, an Ongoing Royalty (“Opposition”), as well as certain exhibits accompanying Reynolds’ Opposition. *See* Dkt. 1458. Specifically, the sensitive information from Reynolds’ Opposition, and Exhibits 4, 10-14, 19, 25, 28-31, 39, and 42 thereto, that Reynolds moved for leave to file under seal, and to redact from a publicly filed version, includes proprietary and commercially sensitive information and documents of Philip Morris and/or third parties (e.g., Altria Client Services LLC), which could cause harm if they were to be released publicly.

## III. 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*, 218 F.3d at 302 (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) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” *Ashcraft*, 218 F.3d at 302; *see also Adams v. Object Innovation, Inc.*, No. 11-cv-272, 2011 WL 7042224, at \*4 (Dec. 5, 2011), *report & recommendation adopted*, 2012 WL 135428 (E.D. Va. Jan. 17, 2012). Here, the three requirements are met.

First, the public has received notice of the request to seal and has had reasonable opportunity to object. Reynolds’ Sealing Motion was publicly docketed on April 5, 2023, in accordance with Local Civil Rule 5, and Philip Morris now files this memorandum in support of sealing. Since the “public has had ample opportunity to object” to Reynolds’ Sealing Motion and “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.”).

Second, Reynolds seeks to seal and redact from the public record only information that the parties must keep confidential pursuant to the Stipulated Protective Order. Dkt. 103. Reynolds filed a publicly redacted version of its Opposition and Exhibits, in addition to a sealed version, and redacted only the 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*, 2011 WL 7042224, at \*4 (“[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 Philip Morris and/or third parties. *Id.* The

information that Reynolds seeks to seal includes confidential, proprietary, and competitively sensitive business information belonging to Philip Morris and/or third parties (e.g., Altria Client Services LLC), and thus Philip Morris and such third parties could face harm if such information were to be released publicly. For example, certain of the materials sought to be sealed include highly confidential terms of agreements that Philip Morris has entered into that, if disclosed, would allow third parties to increase their negotiating position against Philip Morris in the future. Similarly, certain of the materials sought to be sealed include highly confidential sales data that, if disclosed, would allow competitors to gain an unfair advantage over Philip Morris in the market. Further, other materials sought to be sealed describe Philip Morris' highly confidential future plans in the market which, if disclosed, could harm Philip Morris by, for example, allowing competitors to position themselves such that they may more effectively compete against Philip Morris. Other materials sought to be sealed include information that third parties have designated confidential, which Philip Morris is required to keep confidential. No procedure other than filing this information under seal is sufficient to preserve the confidential and sensitive nature of the information.

Third, there is support for filing portions of Reynolds' unredacted Opposition and Exhibits under seal, with a publicly filed version containing strictly limited redactions. Reynolds' Opposition and Exhibits contain material that falls within the scope of the Stipulated Protective Order. Dkt. 103. The Stipulated Protective Order requires that this information remain confidential. Moreover, the Opposition and Exhibits filed under seal contain information that Philip Morris or third parties have designated as competitively sensitive business information, the disclosure of which would cause harm. Placing these materials under seal is proper because the public's interest in access is outweighed by a party's interest in "preserving confidentiality"

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