

**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.

Case No. 1:20-cv-00393-LMB-WEF

**DEFENDANT’S RENEWED MOTION TO SEAL EXHIBITS ENTERED INTO  
EVIDENCE AT TRIAL**

R.J. Reynolds Vapor Company (“Reynolds”) respectfully renews its Motion to Seal Trial Exhibits. (Dkts. 1241, 1243.) The Court previously granted Reynolds’s Motion to Seal to the extent that Philip Morris Products S.A. (“Philip Morris”) does not object. (Dkt. 1266.) The Court instructed Reynolds to file the present motion listing the specific exhibits tendered into evidence that should be sealed. Trial Tr. at 424:11-18. Accordingly, Reynolds’s present motion concerns a narrow subset of the exhibits previously included in its original Motion to Seal Trial Exhibits. Attached to this motion are a Proposed Order (Exhibit A) and a list of exhibits (Exhibit B) that were tendered into evidence at trial that Reynolds seeks to seal or redact. Reynolds’s seeks to seal or redact from the public record a small subset of documents falling into four distinct categories: (1) computer aided design (“CAD”) files, (2) Vuse PMTAs, (3) third-party settlement agreements and negotiations, and (4) financial documents including forecasts and cost analyses.

To assist the Court in its review, and to avoid the need to file this motion under seal, courtesy copies of the trial exhibits listed in Exhibit B and the proposed redactions will be sent to

the Court in a digital file format on a thumb drive. However, copies of the CAD files have not been included because the CAD files cannot be viewed without a particular software.

Reynolds maintains that the CAD file exhibits should be sealed in their entirety and Philip Morris does not oppose. With respect to the Vuse PMTAs, third-party settlement, and financial documents, Philip Morris stated that it does not believe that the subject documents require sealing or redaction, but it does not oppose Reynolds's motion to seal.

As explained below and in Dkt. 1243,<sup>1</sup> Reynolds respectfully requests that the Court seal from the public record the confidential information in the trial exhibits identified below, in Exhibit B, and in the proposed redactions sent to the Court.

#### **A. CAD Files**

The CAD file exhibits, PX-262, PX-265, RX-0870, and RX-1327, should be sealed in their entirety from the public record because they reveal internal dimensions of the product, manufacturing tolerances, manufacturing notes, material compositions, version revision history, and design notes, among other highly confidential technical information. (Dkt. 1243 at 8, Ex. 2, Leyes Decl. ¶ 9.)

#### **B. Vuse PMTAs**

Reynolds maintains that the Vuse PMTAs, PX-023, PX-028, PX-030, and PX-122, should be sealed in their entirety from the public record. The Court indicated that it "would clearly be appropriate" to seal the PMTAs submitted to the FDA. Trial Tr. at 1069:6-25. As explained in

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<sup>1</sup> Reynolds's Motion to Seal Trial Exhibits and accompany memorandum in support (Dkts. 1241, 1243) are still the operative filings that satisfied the procedural and substantive requirements the movant must satisfy for the Court to seal materials. The Court granted Reynolds's Motion to Seal to the extent that Philip Morris Products S.A. ("Philip Morris") does not object. (Dkt. 1266.) Reynolds now files this renewed motion identifying a much narrower subset of trial exhibits compared to what was previously identified in Dkt. 1243 that it seeks to either partially redact or seal from the public record.

Reynolds's previously-filed memorandum in support of sealing, Reynolds submitted its PMTAs confidentially to FDA and FDA has maintained the confidentiality to the extent the information contained in the PMTAs is exempt from public disclosure under federal law. (Dkt. 1243 at 5.) Reynolds holds its regulatory strategy in strict confidence. Disclosure of these materials could provide competitors with an unfair advantage and cause irreparable harm to Reynolds because competitors could use the information contained within the PMTAs and the regulatory strategy documents to chart their successful regulatory path. (*Id.*; *id.* at Ex. 2, Leyes Decl. ¶¶ 6-8.)

### **C. Third-Party Settlement Agreements and Negotiations**

Reynolds requests that the Court seal entirely the exhibits related to Reynolds negotiations and exchange of draft agreements with non-party Fontem leading up to the Fontem-RJRV settlement agreement that were not discussed or otherwise displayed at trial. These exhibits are PX-672, PX-673, and PX-678. Reynolds maintains these negotiations as confidential. Disclosure of these documents would disadvantage Reynolds in future contract negotiations by making its business and patent-licensing strategies known to the public and its competitors. (*Id.* at Ex. 2, Leyes Decl. ¶ 10.)

With respect to the remaining exhibits in this category, PX-125, PX-668, PX-676, and PX-677, Reynolds proposes specific redactions to seal from the public record the confidential information that was not discussed or displayed at trial. The material that Reynolds requests be redacted from the public record includes settlement contract terms that Reynolds maintains as confidential. Disclosure of material that Reynolds seeks to redact from the public in these exhibits would disadvantage Reynolds in future contract negotiations by making its business and patent-licensing strategies known to the public and its competitors. (*Id.* at Ex. 2, Leyes Decl. ¶ 10.)

#### D. Financial Documents Including Forecasts and Cost Analyses

Reynolds requests that the Court seal entirely from the public record the following exhibits: PX-132, PX-345, PX-351, PX-357, PX-397, PX-644, PX-651, PX-323, PX-347, PX-350, PX-353 to PX-356, PX-359, PX-360, PX-370, PX-626 to PX-629<sup>2</sup>, PX-695, and PX-697. Reynolds's review of the trial transcript, trial demonstratives, and trial deposition videos and clip reports indicate that the content of these exhibits were not discussed or displayed at trial. These exhibits include future forecasts, detailed financial statements and cost analyses of individual Vuse products, and attachments to Philip Morris's damages expert report regarding the same information.

One of these exhibits, PX-697, is a cost bill of materials from Reynolds's third-party supplier. Revealing this document to the public would harm the current relationship between Reynolds and its third party supplier and jeopardize any future dealings while also providing Reynolds's competitors with confidential information regarding technical and cost details of the Vuse products. (*Id.* at Ex. 2, Leyes Decl. ¶ 11.) The document may also be subject to a confidentiality clause. (*Id.*)

For the remaining exhibits in this category, PX-345, PX-387, PX-643, and RX-1199, Reynolds requests the Court seal from the public record the information Reynolds has identified with proposed redactions. The proposed redactions reflect confidential information that was not discussed or displayed at trial. PX-345 and RX-1199 are Excel spreadsheets. Reynolds requests the Court redact and seal from the public record everything except the following: cells A3, A35, B35, E2, E3 in the "WACC" tab of PX-345 and cells A3, B33, D33 in the "solo+" tab of RX-1199.

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<sup>2</sup> PX-626 to PX-629 and PX-695 were inadvertently left off Dkt. 1243. They contain sensitive, non-public financial information on the individual Vuse product lines (returns data and a profit and loss statement).

Public disclosure of this confidential financial information would give Reynolds's competitors, suppliers, and potential business partners a competitive and financial advantage, allowing them to undercut Reynolds in competitive purchasing and sales situations, as well as in preparing competitive sales, consumer research, marketing, product design, licensing strategies, and product distribution strategies. (*Id.* at 23, *id.* at Ex. 2, Leyes Decl. ¶¶ 6-8.) For example, Reynolds's suppliers could use cost information to negotiate higher price terms. (*Id.* at 13, *id.* at Ex. 2, Leyes Decl. ¶ 12.)

### CONCLUSION

Reynolds respectfully requests that the Court grant its renewed motion to seal the trial exhibits identified in this motion and in Exhibit B. For the reasons explained above and in Dkt. 1243, Reynolds requests that the exhibits be permanently sealed. If the motion is granted, Reynolds will promptly submit redacted versions of trial exhibits for which Reynolds has requested redactions.

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