

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

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

Pursuant to Local Civil Rule 5(C), Defendants Altria Client Services, LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “Defendants”) hereby move the Court for leave to file Defendants’ Opposition to Plaintiffs’ Second Motion to Compel Production of Documents Related to Defendants’ ’374 Patent Infringement Counterclaim and certain accompanying exhibits under seal.

Defendants also move for leave to file a public, redacted version of Defendants’ Opposition, certain declarations, and accompanying exhibits that omit confidential information. All of the material Defendants seek to file under seal is confidential under the stipulated protective order.

I. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED

Defendants seek leave to file the following documents under seal:

1. An un-redacted version of Defendants' Opposition to Plaintiffs' Second Motion to Compel Production of Documents Related to Defendants' '374 Patent Infringement Counterclaim.
2. The confidential declaration of Daniel McNeely regarding certain facts pertinent to discovery in this case;
3. Confidential correspondence between counsel for the parties of this case, labeled as Exhibit Nos. 1, 2, 9-13;
4. Confidential business documents, labeled as Exhibit Nos. 3-6;
5. The confidential declaration of Mr. Henry Lam, labeled as Exhibit No. 7;
6. Confidential agreement, labeled as Exhibit No. 8.

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-REP-DWD, 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. Plaintiffs will have an opportunity to respond, and once the "public has had ample opportunity to object" to Defendants' 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-JCC, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *U.S. ex rel. Carter v. Halliburton Co.*, No. 10-cv-00864-JCC-TCB, 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, Defendants seek to seal and to redact from the public record only information that the parties must keep confidential by the stipulated protective order. Defendants will file publicly a redacted version of its Opposition, declarations, and sealed exhibits in addition to a sealed version. 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 Defendants and Plaintiffs. *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 Defendants seek to seal and redact includes confidential, proprietary, and competitively sensitive business information of Defendants, Plaintiffs, and/or third parties, each of which could face harm if such information were to be released publicly.

Third, there is support for filing portions of Defendants’ Opposition (including the sealed declarations and exhibits) 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 Opposition only pertain to this confidential information. The same is true with the sealed declarations and exhibits. Sealing portions of the Opposition, declarations, and exhibits 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-JCC, 2008 WL 4924711, at *1; *U.S. ex rel. Carter*, 2011 WL 2077799, at *3.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant this Motion and enter the proposed Order filed herewith.

Dated: March 17, 2021

Respectfully submitted,

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