

**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-LO-TCB

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

Pursuant to Local Civil Rule 5(C), Counterclaim Plaintiffs Altria Client Services, LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “Counterclaim Plaintiffs”) hereby move the Court for leave to Their Motion to Compel Reynolds’ 30(b)(b) Deposition on Topics 28, 54, and 78, and exhibits 1-23 thereto under seal.

Counterclaim Plaintiffs also move for leave to file a public redacted version of the Memorandum that omits confidential information. All of the materials Counterclaim Plaintiffs seek to file under seal are confidential under the stipulated protective order.

**I. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED**

Counterclaim Plaintiffs seek leave to file the following documents under seal:

- An un-redacted version of Counterclaim Plaintiffs’ Memorandum in Support of

Their Motion to Compel Reynolds' 30(b)(b) Deposition on Topics 28, 54, and 78;

- Exhibit 1, excerpts from the deposition transcript of Nicholas Gilley, taken on December 3, 2020;
- Exhibit 2, excerpts from the Expert Report of Ryan Sullivan, Ph.D., dated March 24, 2021;
- Exhibit 3, excerpts of Counterclaim Plaintiffs' 30(b)(6) Notice of Deposition of Reynolds, dated October 20, 2020;
- Exhibit 4, excerpts of Counterclaim Plaintiffs' 30(b)(6) Notice of Deposition of Reynolds, dated November 23, 2020;
- Exhibit 5, December 8, 2020 email from D. McNeely;
- Exhibit 6, correspondence between J. Koh and N. Smith, dated February 26, 2021;
- Exhibit 7, March 30, 2021 Email from J. Koh;
- Exhibit 8, excerpts from the Opening Expert Report of Paul K. Meyer, dated February 24, 2021;
- Exhibit 9, April 1, 2021 email from J. Koh;
- Exhibit 10, April 7, 2021 email from N. Smith;
- Exhibit 11, April 7, 2021 email from J. Koh;
- Exhibit 12, April 6, 2021 email from T. Vitt;
- Exhibit 13, excerpts from the Responsive Expert Report of Kelly R. Kodama Regarding U.S. Patent No. 10,555,556, dated March 24, 2021;
- Exhibit 14, April 8, 2021 email from N. Smith;
- Exhibit 15, production document RJREDVA\_000948368;
- Exhibit 16, production document RJREDVA\_001271556;

- Exhibit 17, production document RJREDVA\_001271567;
- Exhibit 18, production document RJREDVA\_001271814;
- Exhibit 19, excerpts from the Opening Expert Report of Joseph C. McAlexander, dated February 24, 2021;
- Exhibit 20, excerpts from the Rebuttal Expert Report of Dr. Travis Blalock, dated March 24, 2021;
- Exhibit 21, excerpts from the Rebuttal Expert Report of Joseph C. McAlexander, dated March 24, 2021;
- Exhibit 22, excerpts from Reynolds' First Supplemental Responses to Counterclaim Plaintiffs' Third Set of Requests for Admission (Nos. 108-111), dated March 29, 2021; and
- Exhibit 23, excerpts from Reynolds' Responses to Counterclaim Plaintiffs' Fifth Set of Requests for Admission (Nos. 264-287), dated April 2, 2021.

## 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. Counterclaim Defendants will have an opportunity to respond, and once the “public has had ample opportunity to object” to Counterclaim Plaintiffs’ 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, Counterclaim Plaintiffs seek to seal and to redact from the public record only information that the parties must keep confidential by the stipulated protective order. Counterclaim Plaintiffs will file publicly a redacted version of its Memorandum 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 Counterclaim Plaintiffs and Counterclaim Defendants. *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 Counterclaim Plaintiffs seek to seal and redact includes

confidential, proprietary, and competitively sensitive business information of Counterclaim Plaintiffs, Counterclaim Defendants, 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 Counterclaim Plaintiffs' Memorandum 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 Memorandum only pertain to this confidential information. Moreover, the exhibits filed under seal contain 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-00371-JCC, 2008 WL 4924711, at \*1; *U.S. ex rel. Carter*, 2011 WL 2077799, at \*3.

### III. CONCLUSION

For the foregoing reasons, Counterclaim Plaintiffs respectfully request that the Court grant this Motion and enter the attached proposed Order.

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