

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. )  
\_\_\_\_\_ )

Case No. 1:20-cv-00393-LO-TCB

**[PROPOSED] ORDER GRANTING DEFENDANTS’ MOTION TO SEAL**

This matter is before the Court on the motion filed by Defendants Altria Client Services, LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “Defendants”) to seal an un-redacted version of Defendants’ Memorandum in Support of Their Motion to Compel Reynolds’ 30(b)(6) Deposition and accompanying exhibits 1-23, pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Because the documents that Defendants seek to seal contain confidential, proprietary, and competitively sensitive business information of the Plaintiffs RAI Strategic Holdings, Inc., and R.J. Reynolds Vapor Company (collectively, “Plaintiffs”), Plaintiffs filed a memorandum in support of Defendants’ sealing request.

Before this Court may seal documents, it must: “(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 v.*

*Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000) (internal citations omitted). Upon consideration of Defendants' motion to seal and its memorandum in support thereof, the Court hereby **FINDS** as follows:

1. The public has received notice of the request to seal and has had reasonable opportunity to object. Defendants' sealing motion was publicly docketed on April 9, 2021, in accordance with Local Civil Rule 5. Plaintiffs have filed a memorandum in support of sealing. The "public has had ample opportunity to object" to Defendants' motion and, since "the Court has received no objections," the first requirement under *Ashcraft*, 218 F.3d at 302, has been satisfied. *GTSI Corp. v. Wildflower Int'l, Inc.*, No. 1:09-cv-123-JCC, 2009 WL 1248114, at \*9 (E.D. Va. Apr. 30, 2009); *U.S. ex rel. Carter v. Halliburton Co.*, No. 1:10-cv-864-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.").

2. Defendants seek to seal and redact from the public record only information designated by the parties as confidential. Defendants have filed publicly a redacted version of Defendants' Memorandum in Support of Their Motion to Compel Reynolds' 30(b)(6) Deposition and accompanying exhibits 1-23, (Dkt. 543), in addition to a sealed version (Dkt. 547), and have redacted only those limited portions they seek to seal. This selective and narrow protection of confidential material constitutes the least drastic method of shielding the information at issue. *Adams v. Object Innovation, Inc.*, No. 3:11-cv-272-REP-DWD, 2011 WL 7042224, at \*4 (E.D. Va. Dec. 5, 2011) (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 Plaintiffs. *Id.* 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 includes confidential, proprietary, and competitively sensitive business information of Plaintiffs and/or third parties, each of which could face harm if such information were to be released publicly. Specifically, the sensitive information that Defendants move for leave to file under seal, and to redact from a publicly filed version, includes:

- An un-redacted version of Defendants’ Memorandum in Support of Their Motion to Compel Reynolds’ 30(b)(b) Deposition on Topics 28, 54, and 78;
- Excerpts from the deposition transcript of Nicholas Gilley, taken on December 3, 2020, labeled Exhibit 1;
- Excerpts from the Expert Report of Ryan Sullivan, dated March 24, 2021, labeled Exhibit 2;
- Excerpts of Defendants’ 30(b)(6) Notice of Deposition of Reynolds, dated October 20, 2020, labeled Exhibit 3;
- Excerpts of Defendants’ 30(b)(6) Notice of Deposition of Reynolds, dated November 23, 2020, labeled Exhibit 4;
- December 8, 2020, email from D. McNeely, labeled Exhibit 5
- Correspondence between J. Koh and N. Smith, dated February 26, 2021, labeled Exhibit 6;
- March 30, 2021 Email from J. Koh, labeled Exhibit 7;
- Excerpts from the Opening Expert Report of Paul K. Meyer, dated February 24, 2021, labeled Exhibit 8;
- April 1, 2021, email from J. Koh, labeled Exhibit 9;
- April 7, 2021, email from N. Smith, labeled Exhibit 10;
- April 7, 2021, email from J. Koh, labeled Exhibit 11;
- April 6, 2021, email from T. Vitt, labeled Exhibit 12;
- Excerpts from the Responsive Expert Report of Kelly R. Kodama Regarding U.S. Patent No. 10,555,556, dated March 24, 2021, labeled Exhibit 13;
- April 8, 2021, email from N. Smith, labeled Exhibit 14;
- Production document RJREDVA\_000948368, labeled Exhibit 15;

- Production document RJREDVA\_001271556, labeled Exhibit 16;
- Production document RJREDVA\_001271567, labeled Exhibit 17;
- Production document RJREDVA\_001271814, labeled Exhibit 18;
- Excerpts from the Opening Expert Report of Joseph C. McAlexander, dated February 24, 2021, labeled Exhibit 19;
- Excerpts from the Rebuttal Expert Report of Travis Blalock, dated March 24, 2021, labeled Exhibit 20;
- Excerpts from the Rebuttal Expert Report of Joseph C. McAlexande, dated March 24, 2021, labeled Exhibit 21;
- Excerpts from Reynolds’s First Supplemental Responses to Defendants’ Third Set of Requests for Admission (Nos. 108-111), dated March 29, 2021, labeled Exhibit 22; and
- Excerpts from Reynolds’s Responses to Defendants’ Fifth Set of Requests for Admission (Nos. 264-287), dated April 2, 2021, labeled Exhibit 23.

3. There is support for filing portions of Defendants’ Memorandum in Support of Their Motion to Compel Reynolds’ 30(b)(6) Deposition and accompanying exhibits 1-23 under seal, with a publicly filed version containing strictly limited redactions. Defendants’ Memorandum in Support of Their Motion to Compel Reynolds’ 30(b)(6) Deposition and accompanying exhibits 1-23 contain material that falls within the scope of the stipulated protective order. Placing these materials under seal is proper because the public’s interest in access is outweighed by a party’s interest in “preserving confidentiality” of the limited amount of confidential information that is “normally unavailable to the public.” *Flexible Benefits Council v. Feltman*, No. 1:08-cv-371-JCC, 2008 WL 4924711, at \*1 (E.D. Va. Nov. 13, 2008); *U.S. ex rel. Carter*, 2011 WL 2077799, at \*3.

Therefore, based on the findings above, for good cause shown, it is hereby

**ORDERED** that the motion is **GRANTED**, and Defendants are granted leave to file a **REDACTED** version of Defendants' Memorandum in Support of Their Motion to Compel Reynolds' 30(b)(6) Deposition and accompanying exhibits 1-23.

And to file **UNDER SEAL** an un-redacted version of Defendants' Memorandum in Support of Their Motion to Compel Reynolds' 30(b)(6) Deposition and accompanying exhibits 1-23.

And **FURTHER ORDERED** that the un-redacted version of Defendants' Memorandum in Support of Their Motion to Compel Reynolds' 30(b)(6) Deposition and accompanying exhibits 1-23, shall remain **SEALED** until further order of the Court.

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2021.

Alexandria, Virginia

---