

**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 TO
REDACT PORTIONS OF THE MARCH 19, 2021 HEARING TRANSCRIPT**

Counterclaim Plaintiffs Altria Client Services LLC, Philip Morris USA Inc. and Philip Morris Products S.A. (“Counterclaim Plaintiffs”) submit this memorandum in support of their motion to designate as “Confidential” pursuant to the Stipulated Protective Order (Dkt. 103) and to redact certain portions of the transcript of the hearing on March 19, 2021. The transcript of the March hearing was made available to the parties on March 27, 2021 (Dkt. 531). Certain portions of the transcripts reflect Counterclaim Plaintiffs’ confidential business information under the protective order. Accordingly, Counterclaim Plaintiffs respectfully request that this Court enter an order directing that lines 5:23-6:1, 6:6-7, 6:8-9, 6:16, 6:25, 7:17-18, 7:24-8:2, 8:4, 8:12, and 10:1-2 of the March 19, 2021 transcript be redacted and not made available to the public.

I. ARGUMENT

Counterclaim Plaintiffs respectfully request that the Court grant their motion based on the grounds set forth as follows.

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, 181 (4th Cir. 1988).

Counterclaim Plaintiffs seek to redact from the public record only information that the parties must keep confidential by the stipulated protective order. The following transcript portions contain or discuss the parties’ confidential business information: lines 5:23-6:1, 6:6-7, 6:8-9, 6:16, 6:25, 7:17-18, 7:24-8:2, 8:4, 8:12, and 10:1-2. 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. 11-cv-272, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011), *report and recommendation adopted*, 2012 WL 135428 (E.D. Va. Jan. 17, 2012). The public has no legitimate interest in information confidential to Counterclaim 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 Counterclaim Plaintiffs seek to redact includes confidential, proprietary, and competitively sensitive business information of Counterclaim Plaintiffs, which could face harm if such information were to be released publicly.

Moreover, Counterclaim Plaintiffs’ request is quite limited. As an initial matter, the stipulated protective order requires that this information remain confidential. Counterclaim Plaintiffs seek only to redact certain confidential portions of the transcript from the March 19, 2021 hearing. Redacting this information 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 "normally unavailable to the public." *Flexible Benefits Counsel v. Feltman*, No. 08-cv-371, 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008).

II. CONCLUSION

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

Dated: April 26, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2021, a true and correct copy of the foregoing was served using the Court's CM/ECF system, with electronic notification of such filing to all counsel of record:

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