

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 PLAINTIFFS’ MOTION TO SEAL

This matter is before the Court on the motion filed by Plaintiffs RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, “Plaintiffs”) to file under seal Plaintiffs’ Opposition to Defendants’ Motion for Leave To Serve Supplemental Expert Reports and accompanying Exhibits A-C, E, H-P, and R-V, pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C).

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 Plaintiffs’ 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. Plaintiffs' sealing motion was publicly docketed in accordance with Local Civil Rule 5. Defendants have had an opportunity to respond. The "public has had ample opportunity to object" to Plaintiffs' motion and, because "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. Plaintiffs seek to seal and redact from the public record only information designated by the parties as confidential. Plaintiffs have filed publicly a redacted version of Plaintiffs' Opposition to Defendants' Motion for Leave To Serve Supplemental Expert Reports and accompanying Exhibits A-E, H-P, and R-V, in addition to a sealed version, 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. The information that Plaintiffs seek to seal includes confidential, proprietary, and competitively sensitive business information of Plaintiffs, Defendants, and/or third parties, each of which could face harm if such information were to be released publicly.

Specifically, the sensitive information that Plaintiffs move for leave to file under seal and to redact from the public version is:

- Plaintiffs' Opposition to Defendants' Motion for Leave To Serve Supplemental Expert Reports;
- Exhibit A: excerpts from corrected amended supplemental expert report of Stacy Ehrlich
- Exhibit B: correspondence between counsel regarding deposition of David Clissold and supplemental report of Stacy Ehrlich
- Exhibit C: excerpts from amended and supplemental expert report of Paul K. Meyer
- Exhibit E: technical information regarding the Alto product
- Exhibit H: excerpts from Defendant PMP's second supplemental response to Plaintiffs' second set of interrogatories
- Exhibit I: March 12, 2021 letter from J. Michalik to J. Koh
- Exhibit J: excerpts from Defendant PMP's fifth supplemental response to Plaintiffs' second set of interrogatories
- Exhibit K: excerpts from March 12, 2021 supplemental report of John Abraham
- Exhibit L: correspondence between counsel regarding consent modification of the scheduling order
- Exhibit M: excerpts from March 31, 2021 supplemental responsive expert report of Kelly Kodama
- Exhibit N: October 27, 2020 letter from J. Michalik to J. Koh
- Exhibit O: November 19, 2020 letter from J. Michalik to J. Koh
- Exhibit P: excerpts from Plaintiffs' eighth supplemental response to Defendants' first set of interrogatories
- Exhibit R: excerpts from Defendants' October 10, 2020 30(b)(6) notice to Plaintiffs
- Exhibit S: excerpts from deposition of Reynolds' corporate witness

- Exhibit T: excerpts from RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company's Initial Disclosures
- Exhibit U: excerpts from report of Ryan Sullivan
- Exhibit V: excerpts from the deposition of Defendants' corporate witness

That information includes confidential financial information, design documents, communications, and discovery responses.

3. There is support for filing Plaintiffs' Opposition to Defendants' Motion for Leave To Serve Supplemental Expert Reports and accompanying Exhibits A-C, E, H-P, and R-V under seal. Plaintiffs' Opposition to Defendants' Motion for Leave To Serve Supplemental Expert Reports and accompanying Exhibits A-C, E, H-P, and R-V 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-00371-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 Plaintiffs are granted leave to file **REDACTED** versions of Plaintiffs' Opposition to Defendants' Motion for Leave To Serve Supplemental Expert Reports and accompanying Exhibits A-C, E, H-P, and R-V.

And to file **UNDER SEAL** un-redacted versions of Plaintiffs' Opposition to Defendants' Motion for Leave To Serve Supplemental Expert Reports and accompanying Exhibits A-C, E, H-P, and R-V.

And **FURTHER ORDERED** that the un-redacted versions of Plaintiffs' Opposition to Defendants' Motion for Leave To Serve Supplemental Expert Reports and accompanying Exhibits A-C, E, H-P, and R-V shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2021.

Alexandria, Virginia

THERESA CARROLL BUCHANAN
UNITED STATES MAGISTRATE JUDGE