

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 for Leave to Serve Supplemental Expert Reports, and accompanying exhibits 2-21, 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 30, 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 for Leave to Serve Supplemental Expert Reports and accompanying exhibits 2-21 (Dkt. 580), in addition to a sealed version (Dkt. 584), 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, Defendants, 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 for Leave to Serve Supplemental Expert Reports;
- Email correspondence between J. Koh and J. Michalik, dated November 5, 2020, labeled Exhibit 2;
- A document supporting regulatory submission for Vuse ALTO, Bates No. RJREDVA\_001449123, labeled Exhibit 3;
- Premarket Tobacco Product Application for ALTO, Bates No. RJREDVA\_001450878, labeled Exhibit 4;
- Excerpts from deposition of Eric Hunt, dated November 20, 2020, labeled Exhibit 5
- Email correspondence from J. Michalik to J. Koh, dated February 19, 2021, labeled Exhibit 6;
- Reynolds’s third supplemental response to interrogatory number 16, dated February 19, 2021, labeled Exhibit 7;
- Reynolds’s fourth supplemental response to interrogatory number 1, dated March 5, 2021, labeled Exhibit 8;
- Expert Report of Kelly Kodama, dated March 31, 2021, labeled Exhibit 9;
- Excerpts from deposition of Eric Hunt, dated April 14, 2021, labeled Exhibit 10;
- Expert Report of Paul Meyer, dated February 24, 2021, labeled Exhibit 11;
- Expert Report of John Abraham, dated February 24, 2021, labeled Exhibit 12;
- Letter from D. McNeely to J. Michalik, dated April 26, 2021, labeled Exhibit 13;
- Email correspondence from J. Michalik to D. McNeely, dated April 30, 2021, labeled Exhibit 14;
- Supplemental Expert Report of Paul Meyer, dated April 26, 2021, labeled Exhibit 15;

- Excerpts from deposition of Scott Peddycord, dated April 16, 2021, labeled Exhibit 16;
- Reynolds's initial disclosures, dated September 9, 2021, labeled Exhibit 17;
- Reynolds's third supplemental response to interrogatory 4, dated March 24, 2021, labeled Exhibit 18;
- Rebuttal Report of Ryan Sullivan, dated March 24, 2021, labeled Exhibit 19;
- Supplemental Expert Report of John Abraham, dated April 26, 2021, labeled Exhibit 20; and
- Email correspondence from L. Smith, dated April 26, 2021, labeled Exhibit 21.

3. There is support for filing portions of Defendants' Memorandum in Support of their Motion for Leave to Serve Supplemental Expert Reports and accompanying exhibits 2-21 under seal, with a publicly filed version containing strictly limited redactions. Defendants' Memorandum in Support of their Motion for Leave to Serve Supplemental Expert Reports and accompanying exhibits 2-21 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 for Leave to Serve Supplemental Expert Reports and accompanying exhibits 2-21.

And to file **UNDER SEAL** an un-redacted version of Defendants' Memorandum in Support of their Motion for Leave to Serve Supplemental Expert Reports and accompanying exhibits 2-21.

And **FURTHER ORDERED** that the un-redacted version of Defendants' Memorandum in Support of their Motion for Leave to Serve Supplemental Expert Reports and accompanying exhibits 2-21, shall remain **SEALED** until further order of the Court.

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

Alexandria, Virginia

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