

**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

**[PROPOSED] ORDER GRANTING COUNTERCLAIM
DEFENDANTS' MOTION TO SEAL**

This matter is before the Court on the motion filed by Counterclaim Defendants RAI Strategic Holdings, Inc., and R.J. Reynolds Vapor Company (collectively, “Counterclaim Defendants”) to file their Opposition to Counterclaim Plaintiffs’ Motion for Leave to Supplement Expert Reports (“Opposition”) and accompanying Exhibits A–C, E, H–P, and R–V under seal pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). (Dkts. 589, 592.) Because the documents that Counterclaim Defendants seek to seal contain confidential, proprietary, and competitively sensitive business information of Counterclaim Plaintiffs Altria Client Services LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “PMP/Altria”) and/or third parties, PMP/Altria filed a memorandum in support of Counterclaim 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 Counterclaim Defendants’ motions to seal and their 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. Counterclaim Defendants’ sealing motion was publicly docketed in accordance with Local Civil Rule 5. PMP/Altria has filed a memorandum in support of sealing. The “public has had ample opportunity to object” to Counterclaim 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. Counterclaim Defendants seek to seal and redact from the public record only information designated by the parties as confidential. Counterclaim Defendants have filed publicly a redacted version of their Opposition to Counterclaim Plaintiffs’ Motion for Leave to Supplement Expert Reports (Dkt. 593), in addition to a sealed version, and have redacted only those limited portions it seeks 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-DWS, 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 PMP/Altria and Counterclaim Defendants. *Id.* at *4. The information that Counterclaim Defendants seek to seal includes confidential, proprietary, and competitively sensitive business information of PMP/Altria and/or third parties, each of which could face harm if such information were to be released publicly. Specifically, the sensitive information that Counterclaim Defendants move for leave to file under seal, and to redact from a publicly filed version, includes materials from PMP/Altria and/or third parties, such as confidential business information falling under the protective order.

3. There is support for filing portions of Counterclaim Defendants’ Opposition to Counterclaim Plaintiffs’ Motion for Leave to Supplement Expert Reports and accompanying Exhibits A–C, E, H–P, and R–V under seal, with a publicly filed version of the Opposition containing strictly limited redactions. Counterclaim Defendants’ Opposition to Counterclaim Plaintiffs’ Motion for Leave to Supplement 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 Counterclaim Defendants are granted leave to file a **REDACTED** version of their Opposition to Counterclaim Plaintiffs’ Motion for

Leave to Supplement Expert Reports.

And to file **UNDER SEAL** an un-redacted version of their Opposition to Counterclaim Plaintiffs' Motion for Leave to Supplement Expert Reports and accompanying Exhibits A–C, E, H–P, and R–V.

And **FURTHER ORDERED** that the un-redacted version of Counterclaim Defendants' Opposition to Counterclaim Plaintiffs' Motion for Leave to Supplement 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
