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 Defendant Philip Morris Products S.A. ("PMP") and Altria Client Services, LLC ("Altria") (or collectively "PMP/Altria" or "Defendants") to seal an un-redacted version of Defendants PMP/Altria's Memorandum in Support of Their Motion for Summary Judgment and accompanying Exhibits 5-11, 18, and 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, financial, and design 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 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 their Memorandum in Support of Their Motion for Summary Judgment and accompanying Exhibits 5-11, 18, and 21 (Dkt. 696), in addition to a sealed version (Dkt. 694), and has 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-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 Defendants and 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 Defendants, 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 proprietary and commercially sensitive business, financial, and design information of Defendants, Plaintiffs, and/or third parties.

3. There is support for filing portions of Defendants PMP/Altria's Memorandum in Support of Their Motion for Summary Judgment and accompanying Exhibits 5-11, 18, and 21 under seal, with a publicly filed version containing strictly limited redactions. Defendants' Memorandum in Support of Their Motion for Summary Judgment and accompanying Exhibits 5-11, 18, and 21 contain materials that fall 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 **REDACTED** version of Defendants PMP/Altria's Memorandum in Support of Their Motion for Summary Judgment and accompanying Exhibits 5-11, 18, and 21 .

And to file **UNDER SEAL** an un-redacted version of Defendants PMP/Altria's Memorandum in Support of Their Motion for Summary Judgment and accompanying Exhibits 5-11, 18, and 21.

And **FURTHER ORDERED** that the un-redacted version of Defendants PMP/Altria's Memorandum in Support of Their Motion for Summary Judgment and accompanying Exhibits 5-11, 18, and 21 shall remain **SEALED** until further order of the Court.

ENTERED this _____ day of _____, 2021.

Alexandria, Virginia

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