

**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 FOR
LEAVE TO FILE DOCUMENTS UNDER SEAL**

Pursuant to Local Civil Rule 5(C), Counterclaim Plaintiff Philip Morris Products S.A. ("PMP") hereby moves the Court for leave to file Counterclaim Plaintiff's Opposition to Reynolds' Motion for Relief from Stipulated Deposition Dates ("Opposition") and Exhibits 2, 8, 9, and 10 under seal.

PMP also moves for leave to file publicly a redacted version of the Opposition that omits confidential information. All of the materials PMP seeks to file under seal are confidential under the stipulated protective order.

I. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED

PMP seeks leave to file the following documents under seal:

- An un-redacted version of PMP's Opposition;
- Exhibit 2, which is confidential correspondence from Jennifer Koh to John

Michalik, (June 11, 2021);

- Exhibit 8, which is excerpts of the confidential deposition of Noori Brifceni (April 9, 2021);
- Exhibit 9, which is excerpts of the confidential deposition of Masja Hoogland (April 7, 2021); and
- Exhibit 10, which is excerpts of the confidential deposition of Edward Kiernan (April 16, 2021).

II. ARGUMENT

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, 180 (4th Cir. 1988). To determine whether the interests in sealing the records outweigh the public’s right of access, a court must follow a three-step process: (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) articulate specific reasons and factual findings supporting its decision to seal. *Ashcraft*, 218 F.3d at 302; *Adams v. Object Innovation, Inc.*, No. 11-cv-00272-REP-DWD, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011), *report and recommendation adopted*, 2012 WL 135428 (E.D. Va. Jan. 17, 2012). All three requirements are satisfied here.

First, the public has received notice of the request to seal and will have a reasonable opportunity to object. In accordance with Local Civil Rule 5 procedures, this sealing motion was publicly docketed, satisfying the first requirement. Counterclaim Defendants will have an opportunity to respond, and once the “public has had ample opportunity to object” to PMP’s

motion and “the Court has received no objections,” the first *Ashcraft* requirement may be deemed satisfied. See *GTSI Corp. v. Wildflower Int’l, Inc.*, No. 09-cv-00123-JCC, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *U.S. ex rel. Carter v. Halliburton Co.*, No. 10-cv-00864-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.”).

Second, PMP seeks to seal and to redact from the public record only information that the parties must keep confidential by the stipulated protective order. PMP will file publicly a redacted version of its Opposition in addition to a sealed version. Moreover, the exhibits filed under seal contain competitively sensitive information the disclosure of which would cause harm. This selective and narrow protection of confidential material constitutes “the least drastic method of shielding the information at issue.” *Adams*, 2011 WL 7042224, at *4. The public has no legitimate interest in information that is confidential to PMP and Counterclaim Defendants. 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 PMP seeks to seal and redact includes confidential, proprietary, and competitively sensitive business information of PMP, Counterclaim Defendants, and/or third parties, each of which could face harm if such information were to be released publicly.

Third, there is support for filing portions of PMP’s Opposition under seal, with a publicly filed version containing strictly limited redactions. As an initial matter, the stipulated protective order requires that this information remain confidential. And the redacted portions of the Opposition only pertain to this confidential information. Moreover, the exhibits filed under seal

contain competitively sensitive business information. Sealing these materials 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 that is "normally unavailable to the public." *Flexible Benefits Council v. Feltman*, No. 08-cv-00371-JCC, 2008 WL 4924711, at *1; *U.S. ex rel. Carter*, 2011 WL 2077799, at *3.

III. CONCLUSION

For the foregoing reasons, PMP respectfully requests that the Court grant this Motion and enter the attached proposed Order.

Dated: June 16, 2020

Respectfully submitted,

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