

**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

**PMP/ALTRIA’S MEMORANDUM IN RESPONSE TO, AND IN SUPPORT OF,  
COUNTERCLAIM DEFENDANTS’ MOTION TO SEAL EXHIBITS 1-2 & 4-5 TO  
THEIR MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM  
STIPULATION ON DEPOSITION DATES**

Pursuant to Local Civil Rule 5(C), Counterclaim Plaintiffs Altria Client Services LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “PMP/Altria”) submit this memorandum in response to, and in support of, Counterclaim Defendants RAI Strategic Holdings, Inc.’s and R.J. Reynolds Vapor Company’s (collectively, “Counterclaim Defendants”) Motion to Seal Exhibits 1-2 and 4-5 to their Memorandum in Support of Motion for Relief from Stipulation on Deposition Dates (“Memorandum in Support of Motion for Relief”). (Dkts 707, 710.) The proposed sealed material includes confidential, proprietary, and competitively sensitive business information of PMP/Altria, Counterclaim Defendants, and/or third parties that falls within the scope of the Stipulated Protective Order. (Dkt. 103.) These confidential materials should remain under seal.

## **I. LEGAL STANDARD**

Local Civil Rule 5 requires that, when a party moves to file material under seal that another party has designated as confidential, “the party designating the material as confidential must file a response to the motion complying with requirements (2), (3), and (4) [] along with a proposed order” that “shall recite the findings required by governing case law to support the proposed sealing.”

The materials that Counterclaim Defendants move for leave to seal include highly confidential and proprietary business and technological information of PMP/Altria and should be kept under seal permanently for the reasons described below.

## **II. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED**

Counterclaim Defendants seek leave to file under seal un-redacted versions of Exhibits 1-2 and 4-5 to their Memorandum in Support of Motion for Relief. Specifically, the sensitive information that Counterclaim Defendants move for leave to file under seal, and to redact from a publicly filed version, includes proprietary and confidential business information from Counterclaim Defendants, PMP/Altria, and/or third parties, such as confidential financial and technical information, communications, and discovery responses.

## **III. 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. Counterclaim Defendants' sealing motions were publicly docketed a week ago on June 11, 2021, in accordance with Local Civil Rule 5, and PMP/Altria now files this memorandum in support of sealing. Since the "public has had ample opportunity to object" to Counterclaim Defendants' motion and "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.").

Second, Counterclaim Defendants seek to seal from the public record only information that the parties must keep confidential by the stipulated protective order. Counterclaim Defendants have filed under seal only a limited number of exhibits that contain proprietary business information of Counterclaim Defendants and PMP/Altria. 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 "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 Counterclaim Defendants, PMP/Altria, and/or third parties. *Id.* at \*4. The

information that Counterclaim Defendants seek to seal includes confidential, proprietary, and competitively sensitive business information of PMP/Atria, who could face harm if such information were to be released publicly. No procedure other than filing this information under seal is sufficient to preserve the confidential and sensitive nature of the information.

Third, there is support for filing Exhibits 1-2 and 4-5 to Counterclaim Defendants' Memorandum in Support of Motion for Relief under seal. 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. As noted, Exhibits 1-2 and 4-5 concern confidential information of PMP/Atria and/or third parties.

#### **IV. CONCLUSION**

For the foregoing reasons, PMP/Atria respectfully requests that Counterclaim Defendants' Motion to Seal be granted and that such sealing be maintained until further Order of this Court.

Dated: June 18, 2021

Respectfully submitted,

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