

**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 PLAINTIFFS'
MOTION TO SEAL**

This matter is before the Court on the motion filed by Counterclaim Plaintiffs Altria Client Services LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “PMP/Altria”) to file Exhibits 2 and 3 to PMP/Altria’s Opposition to RJR’s Motion to Dismiss Inequitable Conduct Counterclaim and Affirmative Defenses and Memorandum in Support of their Cross-Motion for Attorneys’ Fees and Costs under seal pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Upon consideration of PMP/Altria’s 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. PMP/Altria’s sealing motion was publicly docketed in accordance with Local Civil Rule 5. Counterclaim Defendants RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Co. have had an opportunity to respond. The “public has had ample opportunity to object”

to PMP/Altria's motion and, since "the Court has received no objections," the first requirement under *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000), 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. PMP/Altria seeks to seal from the public record only information designated by the parties as confidential. The exhibits to be sealed are properly designated as confidential. 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) (finding that plaintiffs' "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 the parties. *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 PMP/Altria seeks to seal includes confidential, proprietary, and competitively sensitive business information of PMP/Altria, Counterclaim Defendants, and/or third parties, each of which could face harm if such information were to be released publicly.

3. There is support for filing Exhibits 2 and 3 to PMP/Altria's Opposition to RJR's Motion to Dismiss Inequitable Conduct Counterclaim and Affirmative Defenses and Memorandum in Support of their Cross-Motion for Attorneys' Fees and Costs under seal. The exhibits to be sealed contain material designated confidential under the stipulated protective order,

which requires PMP/Altria to file this material under seal. Furthermore, 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 show, it is hereby

ORDERED that the motion is **GRANTED**, and PMP/Altria is granted leave to file **UNDER SEAL** Exhibits 2 and 3 to PMP/Altria's Opposition to RJR's Motion to Dismiss Inequitable Conduct Counterclaim and Affirmative Defenses and Memorandum in Support of their Cross-Motion for Attorneys' Fees and Costs.

And **FURTHER ORDERED** that Exhibits 2 and 3 to PMP/Altria's Opposition to RJR's Motion to Dismiss Inequitable Conduct Counterclaim and Affirmative Defenses and Memorandum in Support of their Cross-Motion for Attorneys' Fees and Costs shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2021.

Alexandria, Virginia
