

**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.)	
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Case No. 1:20-cv-00393-LO-TCB

[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION TO SEAL

This matter is before the Court on the motion filed by Plaintiffs RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, “Plaintiffs”) to file under seal un-redacted copies of Reynolds’s Reply in support of Motion to Dismiss Counterclaim and Affirmative Defenses and Opposition to Counterclaim Plaintiffs’ Cross-Motion for Attorneys’ Fees and Costs and accompanying Exhibits P, Q, R, S, T, and U.

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 Plaintiffs’ motion 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. Plaintiffs' sealing motion was publicly docketed in accordance with Local Civil Rule 5. Defendants have had an opportunity to respond. The "public has had ample opportunity to object" to Plaintiffs' motion and, because "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. Plaintiffs seek to seal and redact from the public record only information designated by the parties as confidential. Plaintiffs have filed a publicly redacted version of the Reynolds's Reply in support of Motion to Dismiss Counterclaim and Affirmative Defenses and Opposition to Counterclaim Plaintiffs' Cross-Motion for Attorneys' Fees and Costs and accompanying Exhibits P, Q, R, S, T, and U, in addition to sealed versions, and have redacted only those limited portions they seek 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 Plaintiffs. The information that Plaintiffs seek to seal includes confidential, proprietary, and competitively sensitive business information of Plaintiffs, Defendants, and/or third parties, each of which could face harm if such information were to be released publicly.

Specifically, the sensitive information that Plaintiffs move for leave to file under seal and to redact from the public version are:

1. Reynolds's Reply in support of Motion to Dismiss Counterclaim and Affirmative Defenses and Opposition to Counterclaim Plaintiffs' Cross-Motion for Attorneys' Fees and Costs;
 2. Exhibit P, letter from Nicole Smith to Jennifer Koh, March 3, 2021;
 3. Exhibit Q, excerpts of the deposition transcript of Robert L. Ripley (March 15, 2021);
 4. Exhibit R, excerpt of the deposition transcript of Grier S. Fleischhauer (March 11, 2021);
 5. Exhibit S, email correspondence from Jennifer Koh to Nicole Smith, March 10, 2021;
 6. Exhibit T, email correspondence from Nicole Smith to Jennifer Koh, March 18, 2021;
 7. Exhibit U, pages 13 and 14 of the Expert Report of Dr. Travis Blalock.
3. There is support for filing an un-redacted copy of Reynolds's Reply in support of Motion to Dismiss Counterclaim and Affirmative Defenses and Opposition to Counterclaim Plaintiffs' Cross-Motion for Attorneys' Fees and Costs and accompanying Exhibits P, Q, R, S, T, and U under seal. Reynolds's Reply in support of Motion to Dismiss Counterclaim and Affirmative Defenses and Opposition to Counterclaim Plaintiffs' Cross-Motion for Attorneys' Fees and Costs and accompanying Exhibits P, Q, R, S, T, and U 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 Plaintiffs are granted leave to file **REDACTED** versions of Reynolds’s Reply in support of Motion to Dismiss Counterclaim and Affirmative Defenses and Opposition to Counterclaim Plaintiffs’ Cross-Motion for Attorneys’ Fees and Costs and accompanying Exhibits P, Q, R, S, T, and U.

And to file **UNDER SEAL** un-redacted versions of Reynolds’s Reply in support of Motion to Dismiss Counterclaim and Affirmative Defenses and Opposition to Counterclaim Plaintiffs’ Cross-Motion for Attorneys’ Fees and Costs and accompanying Exhibits P, Q, R, S, T, and U.

And **FURTHER ORDERED** that the un-redacted versions of Reynolds’s Reply in support of Motion to Dismiss Counterclaim and Affirmative Defenses and Opposition to Counterclaim Plaintiffs’ Cross-Motion for Attorneys’ Fees and Costs and accompanying Exhibits P, Q, R, S, T, and U shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2021.

Alexandria, Virginia

THERESA CARROLL BUCHANAN

UNITED STATES MAGISTRATE JUDGE