

**IN THE 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 REYNOLDS’S MOTION TO SEAL

This matter is before the Court on the motion filed by RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, “Reynolds”) to file under seal Reynolds’s Memorandum in Support of Its Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander; and accompanying Exhibits 1–3 to Reynolds’s Memorandum pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C).

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 Reynolds’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. Reynolds's sealing motion was publicly docketed in accordance with Local Civil Rule 5. PM/Altria has had an opportunity to respond. The "public has had ample opportunity to object" to Reynolds's 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. Reynolds seeks to seal and redact from the public record only information designated by the parties as confidential. Reynolds has filed publicly a redacted version of their Memorandum in Support of Its Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander; and accompanying Exhibits 1 and 3 to Reynolds's Memorandum, in addition to a sealed version, and have 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 Reynolds or PM/Altria. The information that Reynolds seeks to seal includes confidential, proprietary, and competitively sensitive business information of Reynolds, PM/Altria, and/or third parties, each of which could face harm if such information were to be released publicly. Specifically, the sensitive information that Reynolds moves for leave to

file under seal and to redact from the public version relates to and discusses confidential information of Reynolds and of PM/Altria relating to federal regulatory proceedings for approval of tobacco products, the commercialization of the technologies at issue and relationship with third-party suppliers, marketing strategies for the use of the products at issue, and expert reports and deposition testimony regarding confidential business information.

3. There is support for filing Reynolds's Memorandum in Support of Its Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander; and accompanying Exhibits 1–3 to Reynolds's Memorandum under seal. Reynolds's Memorandum in Support of Its Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander; and accompanying Exhibits 1–3 to Reynolds's Memorandum 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 Reynolds is granted leave to file a **REDACTED** version of Reynolds's Memorandum in Support of Its Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander; and accompanying Exhibits 1 and 3 to Reynolds's Memorandum.

And to file **UNDER SEAL** an un-redacted version of Reynolds's Memorandum in Support of Its Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander; and accompanying Exhibits 1–3 to Reynolds's Memorandum.

And **FURTHER ORDERED** that the un-redacted version of Reynolds's Memorandum in Support of Its Motion to Exclude Certain Expert Opinions of Joseph C. McAlexander; and accompanying Exhibits 1–3 to Reynolds's Memorandum shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2022.

Alexandria, Virginia

THERESA CARROLL BUCHANAN

UNITED STATES MAGISTRATE JUDGE