

**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 PMI/ALTRIA'S MOTION FOR  
LEAVE TO FILE DOCUMENTS UNDER SEAL**

Pursuant to Local Civil Rule 5(C), Plaintiffs Altria Client Services, LLC, Philip Morris USA Inc., and Philip Morris Products S.A. (collectively, "PMI/Altria") hereby move the Court for leave to file their Brief in Support of PMI/Altria's Omnibus Motion *in Limine* ("Brief") and Exhibits 2-5, 8-9, 12-15, 17-18, 20-29, and 35 thereto under seal.

PMI/Altria also respectfully move for leave to file publicly a redacted version of the Brief that omits confidential information. All of the materials PMI/Altria seek to file under seal have been designated by at least one party as confidential under the stipulated protective order.

**I. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED**

PMI/Altria seek leave to file the following documents under seal:

- An unredacted version of their Brief in Support of PMI/Altria's Omnibus Motion *in Limine*;
- Exhibit 2, which are excerpts from the confidential opening expert report of Paul

Meyer;

- Exhibit 3, which are excerpts from the confidential rebuttal expert report of Ryan Sullivan;
- Exhibit 4, which are excerpts from the confidential deposition transcript of Ryan Sullivan;
- Exhibit 5, which are excerpts from Defendants RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company's (collectively, "RJR") confidential interrogatory responses (November 25, 2020);
- Exhibit 8, which are excerpts from the confidential opening expert report of Travis Blalock;
- Exhibit 9, which are excerpts from the confidential opening expert report of Kelly Kodama regarding U.S. Patent No. 10,555,556;
- Exhibit 12, which are excerpts from RJR's confidential interrogatory responses (April 12, 2021);
- Exhibit 13, which are excerpts from the confidential rebuttal expert report of Travis Blalock;
- Exhibit 14, which are excerpts from the confidential rebuttal expert report of Jeffrey Suhling;
- Exhibit 15, which are excerpts from RJR's confidential interrogatory responses (November 3, 2020);
- Exhibit 17, which are excerpts from Defendants' confidential interrogatory responses (April 28, 2021);
- Exhibit 18, which are excerpts from the confidential deposition transcript of James Figlar (June 24, 2021);
- Exhibit 20, which are excerpts from the confidential ITC rebuttal expert report of Stacy Ehrlich;
- Exhibit 21, which are excerpts from the confidential opening expert report of Stacy Ehrlich;
- Exhibit 22, which are excerpts from the confidential rebuttal expert report of David Clissold;
- Exhibit 23, which are excerpts from a confidential settlement and license agreement;

- Exhibit 24, which are excerpts from a confidential settlement and license agreement;
- Exhibit 25, which are excerpts from RJR's confidential interrogatory responses (March 29, 2021);
- Exhibit 26, which are excerpts from the confidential deposition transcript of Nicholas Ray Gilley;
- Exhibit 27, which is confidential correspondence from Jennifer Koh (March 19, 2021);
- Exhibit 28, which is confidential correspondence from Jennifer Koh (March 6, 2021);
- Exhibit 29, which is confidential correspondence from Jennifer Koh (November 10, 2020); and
- Exhibit 35, which are excerpts from the confidential rebuttal expert report of Kelly Kodama regarding U.S. Patent No. 10,555,556.

## 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, 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. RJR will have an opportunity to respond, and once the “public has had ample opportunity to object” to PMI/Altria’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, 2009 WL 1248114, at \*9 (E.D. Va. Apr. 30, 2009); *U.S. ex rel. Carter v. Halliburton Co.*, No. 10-cv-00864, 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, PMI/Altria seek to seal and to redact from the public record only information that the parties must keep confidential pursuant to the stipulated protective order. PMI/Altria will file publicly a redacted version of its Brief 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 PMI/Altria and RJR. *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 PMI/Altria seek to seal and redact includes confidential, proprietary, and competitively sensitive business information of the parties and/or third parties, each of which could face harm if such information were released publicly.

Third, there is support for filing portions of PMI/Altria’s Brief 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 Brief only pertain to this confidential information. Moreover, the exhibits filed under seal contain information that the parties have designated as 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, 2008 WL 4924711, at \*1; *U.S. ex rel. Carter*, 2011 WL 2077799, at \*3.

### III. CONCLUSION

For the foregoing reasons, PMI/Altria respectfully request that the Court grant this Motion and enter the attached proposed Order.

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