

**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 PMI/ALTRIA’S MOTION TO SEAL

This matter is before the Court on the motion filed by Plaintiffs Altria Client Services, LLC, Philip Morris USA Inc., and Philip Morris Products S.A. (collectively, “PMI/Altria”) to file their Brief in Support of PMI/Altria’s *Daubert* Motion to Exclude Design-Around Testimony of RJR’s Expert, David Clissold (“Brief”) and Exhibits 1-5, 9, 10 under seal pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Upon consideration of PMI/Altria’s motion to seal and its memorandum in support thereof (“Sealing Motion”), the Court hereby **FINDS** as follows:

1. The public has received notice of the request to seal and has had reasonable opportunity to object. PMI/Altria’s Sealing Motion was publicly docketed in accordance with Local Civil Rule 5. Defendants RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Co. (collectively, “Reynolds”) have had an opportunity to respond. The “public has had ample opportunity to object” to Plaintiff’s Sealing 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. 09-cv-123, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); see also *U.S. ex rel. Carter v. Halliburton Co.*, No. 10-cv-864, 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. PMI/Altria seek to seal and to redact from the public record only information designated by the parties as confidential. PMI/Altria will file publicly a redacted version of their *Daubert* Motion to Exclude Design-Around Testimony of RJR’s Expert, David Clissold, in addition to a sealed version, and will redact 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. 11-cv-272, 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 the parties’ confidential information. *See 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 PMI/Altria seek to seal 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 to be released publicly.

3. There is support for filing portions of PMI/Altria’s Brief, with a publicly filed version containing strictly limited redactions. The Brief contains material designated confidential

under the stipulated protective order. Accordingly, PMI/Altria are required to file this material under seal pursuant to 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. 08-cv-371, 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008); *see also 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 PMI/Altria are granted leave to file a **REDACTED** version of their Brief in Support of PMI/Altria's *Daubert* Motion to Exclude Design-Around Testimony of RJR's Expert, David Clissold.

And to file **UNDER SEAL** an unredacted version of their Brief in Support of PMI/Altria's *Daubert* Motion to Exclude Design-Around Testimony of RJR's Expert, David Clissold.

And **FURTHER ORDERED** that the unredacted version of PMI/Altria's *Daubert* Motion to Exclude Design-Around Testimony of RJR's Expert, David Clissold shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2022.

Alexandria, Virginia
