

**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

**REYNOLDS'S MEMORANDUM IN RESPONSE TO, AND IN SUPPORT OF, PM/ALTRIA'S
MOTION TO SEAL PM/ALTRIA'S BRIEF IN SUPPORT OF PM/ALTRIA'S OMNIBUS
MOTION *IN LIMINE* AND ACCOMPANYING EXHIBITS 2-5, 8-9, 12-15, 17-18, 20-29, AND 35**

Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure and Rule 5(C) of the Local Civil Rules, RAI Strategic Holdings, Inc., and R.J. Reynolds Vapor Company (collectively, “Reynolds”) respectfully submit this memorandum in response to, and in support of, Philip Morris Products S.A., Phillip Morris USA Inc., and Altria Client Services, LLC’s (or collectively “PM/Altria”) Motion to Seal PM/Altria’s Brief in Support of PM/Altria’s Omnibus Motion *in Limine* and Exhibits 2-5, 8-9, 12-15, 17-18, 20-29 and 35 (Dkt. 899). The proposed sealed material includes Reynolds’s confidential, proprietary, and competitively sensitive business, financial, and design information and falls within the scope of the Stipulated Protective Order. (Dkt. 103.) These confidential materials should remain under seal.

I. LEGAL STANDARD

Local Civil Rule 5(C) requires that, when a party moves to file material under seal that another party has designated as confidential, “the party designating the material as confidential must file a response to the motion complying with requirements (2), (3), and (4) above along with a proposed order” that “shall recite the findings required by governing case law to support the proposed sealing.” Loc. R. Civ. P. 5(C). These requirements are: “(2) A statement why sealing is necessary, and why another procedure will not suffice, as well as appropriate evidentiary support for the sealing request; (3) References to the governing case law, an analysis of the appropriate standard to be applied for that specific filing, and a description of how that standard has been satisfied; [and] (4) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon unsealing.” *Id.*

“[T]he right [of the public] to inspect and copy judicial records is not absolute.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). Access to court records has been denied where “court files might have become a vehicle for improper purposes.” *Id.* In particular, a corporation’s

“strong interest in preserving the confidentiality of its proprietary and trade-secret information ... may justify partial sealing of court records.” *Doe v. Public Citizen*, 749 F.3d 246, 269 (4th Cir. 2014). As set forth in the Fourth Circuit’s decision in *Ashcraft v. Conoco, Inc.*, a court has the authority to seal court documents “if the public’s right of access is outweighed by competing interests.” 218 F.3d 288, 302 (4th Cir. 2000). Before granting a motion to seal, a court must consider the following: “(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.” *Id.*; *Adams v. Object Innovation, Inc.*, No. 3:11CV272-REP-DWD, 2011 WL 7042224, at *4 (Dec. 5, 2011), *report & recommendation adopted*, 2012 WL 135428 (E.D. Va. Jan. 17, 2012). All three requirements are met here.

The materials that PM/Altria moves for leave to seal include highly confidential, proprietary, and competitively sensitive business, financial, and design information of Reynolds and should be kept under seal permanently for the reasons described below.

II. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED

PM/Altria seeks leave to file under seal un-redacted versions of PM/Altria’s Brief in Support of PM/Altria’s Omnibus Motion *in Limine* and Exhibits 2-5, 8-9, 12-15, 17-18, 20-29 and 35 (Dkt. 899). Specifically, the sensitive information that PM/Altria moves for leave to file under seal, and to redact from a publicly filed version, includes confidential, proprietary, and commercially sensitive business, financial, and design information of PM/Altria, Reynolds, and/or third parties:

- PM/Altria’s Brief in Support of PM/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 Reynolds 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 Reynolds'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 Reynolds's confidential interrogatory responses (November 3, 2020);
- Exhibit 17, which are excerpts from PM/Altria's 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 Reynolds'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

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