

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

ORDER GRANTING PM/ALTRIA'S MOTION TO SEAL

This matter is before the Court on the motion (Dkt. 920) filed by Philip Morris Products S.A., Phillip Morris USA Inc., and Altria Client Services, LLC (collectively, "PM/Altria") to seal un-redacted versions of PM/Altria's Brief in Support of PM/Altria's Daubert Motion to Exclude Design-Around Testimony of Reynolds's Expert, David Clissold and accompanying Exhibits 1-5, 9, and 10 (Dkt. 922) pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Because the documents that PM/Altria seeks to seal contain confidential, proprietary, and competitively sensitive business, financial, and design information of the RAI Strategic Holdings, Inc., and R.J. Reynolds Vapor Company (collectively, "Reynolds"), Reynolds filed a memorandum in support of PM/Altria's sealing request. (Dkt. 929.)

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 288, 302 (4th Cir. 2000) (internal citations omitted). Upon consideration of PM/Altria’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. PM/Altria’s sealing motion was publicly docketed in accordance with Local Civil Rule 5. Reynolds has filed a memorandum in support of sealing. The “public has had ample opportunity to object” to PM/Altria’s motion and, since “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. 1:09CV123(JCC), 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *United States ex rel. Carter v. Halliburton Co.*, No. 1:10CV864(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. PM/Altria seeks to seal and redact from the public record only information designated by the parties as confidential. PM/Altria has filed publicly a redacted version of its Brief in Support of PM/Altria’s Daubert Motion to Exclude Design-Around Testimony of Reynolds’s Expert, David Clissold and accompanying Exhibits 1-5, 9, and 10 (Dkt. 918), in addition to a sealed version (Dkt. 922), and has 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. 3:11CV272-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 PM/Altria and Reynolds. *Id.* (“[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 PM/Altria seeks to seal includes confidential, proprietary, and competitively sensitive business information of PM/Altria, Reynolds, and/or third parties, each of which could face harm if such information were to be released publicly. Specifically, the sensitive information that PM/Altria move for leave to file under seal, and to redact from a publicly filed version, includes 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 Daubert Motion to Exclude Design-Around Testimony of Reynolds’s Expert, David Clissold;
- Exhibit 1, which are excerpts from the confidential Expert Report of David B. Clissold, Esq. in Response to Amended and Supplemented Opening Report of Stacy Ehrlich;
- Exhibit 2, which are excerpts from the confidential deposition transcript of David Clissold taken May 14, 2021;
- Exhibit 3, which are excerpts from the confidential Report of Ryan Sullivan, Ph.D. (March 24, 2021);
- Exhibit 4, which are excerpts from the confidential Opening Expert Report of Paul K. Meyer (February 24, 2021);
- Exhibit 5, which are excerpts from the confidential deposition transcript of Ryan Sullivan, Ph.D. taken May 11, 2021;

- Exhibit 9, which are excerpts from the confidential Opening Expert Report of Stacy Ehrlich (February 24, 2021);
- Exhibit 10, which are excerpts from the confidential transcript of the Open/Closed Sessions from 337-TA-1199 (January 27, 2021).

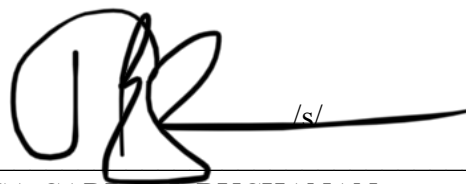
3. There is support for filing portions of PM/Altria's Brief in Support of PM/Altria's Daubert Motion to Exclude Design-Around Testimony of Reynolds's Expert, David Clissold and accompanying Exhibits 1-5, 9, and 10 under seal, with publicly filed versions containing strictly limited redactions. PM/Altria's Brief in Support of PM/Altria's Daubert Motion to Exclude Design-Around Testimony of Reynolds's Expert, David Clissold and accompanying Exhibits 1-5, 9, and 10 contain materials that fall 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. 1:08CV371-JCC, 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008); *United States 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 (Dkt. 920) is **GRANTED**, and PM/Altria is granted leave to file **REDACTED** versions of PM/Altria's Brief in Support of PM/Altria's Daubert Motion to Exclude Design-Around Testimony of Reynolds's Expert, David Clissold and accompanying Exhibits 1-5, 9, and 10 (Dkt. 918).

And to file **UNDER SEAL** un-redacted versions of PM/Altria's Brief in Support of PM/Altria's Daubert Motion to Exclude Design-Around Testimony of Reynolds's Expert, David Clissold and accompanying Exhibits 1-5, 9, and 10. (Dkt. 922.)

And it is **FURTHER ORDERED** that un-redacted versions of PM/Altria's Brief in Support of PM/Altria's Daubert Motion to Exclude Design-Around Testimony of Reynolds's Expert, David Clissold and accompanying Exhibits 1-5, 9, and 10 shall remain **SEALED** until further order of the Court.

ENTERED this 31st day of January, 2022.

A handwritten signature in black ink, appearing to be 'TCB', followed by a horizontal line and the text '/s/'.

THERESA CARROLL BUCHANAN
UNITED STATES MAGISTRATE JUDGE

Alexandria, Virginia