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May 13, 2022

**VIA ECF FILING**

The Honorable Liam O’Grady  
United States District Judge  
Albert V. Bryan U.S. Courthouse  
401 Courthouse Square  
Alexandria, Virginia 22314

The Honorable Rodney Gilstrap  
Sam B. Hall, Jr. Federal Building and U.S. Courthouse  
100 East Houston Street  
Marshall, Texas 75670

Re: *RAI Strategic Holdings, Inc. et al. v. Altria Client Services LLC, et al.*,  
No. 1:20-cv-393-LO-TCB (E.D. Va.); *AGIS Software Dev. LLC v. Waze Mobile  
Ltd.*, No. 2:19-cv-00359-JRG-RSP (E.D. Tex.); and *AGIS Software Dev. LLC v.  
Samsung Elecs. Co., Ltd.*, No. 2:19-cv-00362-JRG-RSP (E.D. Tex.)

Dear Judges O’Grady and Gilstrap:

We write to respectfully request the two Courts’ assistance with trial conflicts for two experts: Joseph McAlexander and Paul Meyer. Both are currently set to testify in separate trials in your Courts starting on June 6: (i) *RAI Strategic Holdings, Inc. et al. v. Altria Client Services LLC, et al.*, No. 1:20-cv-393 (“*PMI*”), currently pending in the Eastern District of Virginia; and (ii) *AGIS Software Dev. LLC v. Google LLC*, No. 2:19-cv-361 (“*Google*”); *AGIS Software Dev. LLC v. Samsung Elecs. Co., Ltd.*, No. 2:19-cv-362 (“*Samsung*”); and *AGIS Software Dev. LLC v. Waze Mobile Limited*, No. 2:19-cv-359 (“*Waze*”, collectively the “*AGIS*” cases), currently pending in the Eastern District of Texas. This letter is jointly submitted on behalf of the Plaintiffs in *PMI* (“*PMI/Altria*,” represented by Latham & Watkins, LLP and Weil, Gotshal & Manges LLP), the Plaintiff in the *AGIS* cases (“*AGIS*,” represented by Fabricant LLP) and the Defendants in the *AGIS* cases (Google, Samsung, and Waze, represented by O’Melveny & Myers LLP).

In *PMI*, Mr. McAlexander is *PMI/Altria*’s technical expert for two asserted patents, and Mr. Meyer is *PMI/Altria*’s damages expert for all five asserted patents. In *AGIS*, Mr. McAlexander is *AGIS*’s technical expert, and Mr. Meyer is Samsung and Waze’s damages expert.

On January 21, 2022, the *PMI* trial was continued when a criminal trial was rescheduled from February 7, 2022 to April 4, 2022. *PMI*, Dkt. 924. On January 28, 2022, Judge Gilstrap set three cases for trial on June 6, 2022. *Google*, Dkt. 232. On February 7, after several status conferences with the parties, Judge O’Grady set the *PMI* trial for June 6, 2022. *PMI*, Dkt. 946.

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On February 18, Judge Gilstrap deconsolidated the cases pending before him, keeping the June 6 trial for two (against Samsung and Waze), and moving the third case (against Google) to August. *Google*, Dkt. 251. On March 1, the East Texas defendants moved to reset the trial schedules or have all three cases tried together in August 2022 because, *inter alia*, Mr. Meyer and Mr. McAlexander were both set to testify at the *PMI* trial. *See, e.g., id.*, Dkt. 289 at 6, 9-10. On May 2, Judge Gilstrap denied that motion. *Id.*, Dkt. 371 at 2.

The parties now face the following scheduling conflict:

- In *AGIS*, Mr. McAlexander is expected to testify on June 7 and 8; Mr. Meyer is expected to testify on June 9; and the parties will close evidence on June 9, give closing arguments on June 10, and send the case to the jury for deliberation that afternoon.
- In *PMI*, Mr. McAlexander is expected to testify on June 8 (and again the following week), and Mr. Meyer is expected to testify on June 9.

Counsel in both cases have worked diligently to resolve the conflicts but, due to the overlap in trial dates, the conflicts are unavoidable with the existing schedules. Mr. McAlexander cannot testify in both the Virginia case around June 8 and the East Texas case on June 7 and 8. Nor can Mr. Meyer testify in both cases on June 9.

We obviously defer to the Courts' judgments on how best to navigate these conflicts and control their dockets, but we respectfully offer the following potential solution: If the *PMI* trial begins a day later, on June 7, and both Mr. McAlexander and Mr. Meyer complete their testimony in the *AGIS* trial by 2 pm CT on June 8 (including testifying out of order, if needed), that would likely eliminate their scheduling conflicts.

We require the Courts' assistance with resolving these scheduling conflicts. We stand ready to attend a telephonic status conference or file additional submissions as the Courts require.

Sincerely,

/s/ Maximillian A. Grant

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of LATHAM & WATKINS LLP

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