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May 19, 2022

VIA EFC FILING

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

Re: *RAI Strategic Holdings, Inc. et al. v. Altria Client Services LLC, et al.*,
No. 1:20-cv-393-LO-TCB (E.D. Va.)

Dear Judge O’Grady:

This replies to Reynolds’ May 17th letter (Dkt. 1230), responding to the May 13, 2022 letter jointly submitted by PMI/Altria, Google/Samsung/Waze, and AGIS to Your Honor and Judge Gilstrap requesting the two Courts’ assistance with trial conflicts for two experts, Joseph McAlexander and Paul Meyer (Dkt. 1227).

First, Reynolds asserts that “Mr. McAlexander and Mr. Meyer both are available to testify early in the week of June 6.” Dkt. 1230 at 1. That is incorrect. Given the direct scheduling conflicts described in the May 13th letter, even if both experts testified earlier in PMI/Altria’s case-in-chief, the conflict remains.

Second, Reynolds’ attempt to blame PMI/Altria for not previously raising the conflicts with the Court ignores the record.¹ As the PMI/Altria/Google/Samsung/Waze/AGIS letter explained but Reynolds ignored (Dkt. 1227 at 1-2), (1) the *AGIS* case was not definitively set for trial until after this case was set for June 6th and (2) there was a motion pending in the *AGIS* case to move the June 6th trial date that was only denied by Judge Gilstrap on May 2nd. *Google*, Dkt. 371 at 2. Only after Judge Gilstrap denied that motion did the conflicts become ripe and PMI/Altria promptly raised it with the Court (after conferring with counsel for both parties in the *AGIS* case).

Third, Reynolds’ argument that starting trial on June 7th, rather than June 6th, would somehow “push th[e] end date out by four days” (from June 16th to June 20th) is false. Dkt. 1230 at 2-3. PMI/Altria understands from the Court’s clerk that the Court plans to conduct trial on Friday, June 10th. Thus, even if trial begins on June 7th, it will end no later than Reynolds’ expected June 16th end date. Moreover, because the Court set the eight-day trial before Reynolds

¹ The Court may recall that the scheduling conflict surrounding the Court’s preferred trial dates were imposed by the three-week vacation (from Italy to the US) of Reynolds’ *retired* corporate representative, Dr. Figlar. See Dkt. 1135 (2/7/22 Hr’g Tr.) at 5:1-8.

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agreed not to challenge the '545 and '556 patents as anticipated or obvious (*see* Dkt. 965 at 3), PMI/Altria expects that the trial may well be completed in less than the eight trial days.

Regardless, Reynolds' proposal—having Mr. McAlexander and Mr. Meyer testify out-of-order—is a second potential solution. If Messrs. McAlexander and Meyer testify on Monday, June 13th, that should resolve the conflicts. That may require the Court to hold open PMI/Altria case-in-chief and require Reynolds to start its case-in-chief before PMI/Altria rests, but having witnesses testify out of order is something this Court has done to accommodate witness conflicts in the past. *See, e.g., TecSec Inc. v. Adobe Inc.*, No. 1:10-cv-115, Dkt. 1321 (12/07/18 Hr'g Tr.) at 3:10-17 (“THE COURT: All right. Well, I mean, in every case I have there is -- or almost every case, there is witness availability that is an issue. For medical reasons, for lots of different reasons witnesses are called out of order. Juries don't have a problem of understanding why that happens. I will explain it and make it clear that this is – you're not sponsoring that witness[.]”). PMI/Altria is amenable to that approach, which would resolve the conflicts.

We remain in close contact with both sides' lawyers in the *AGIS* case and will continue to work cooperatively with them to keep both Chambers apprised of any developments.

Sincerely,

/s/ Maximillian A. Grant
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