

EXHIBIT 80

From: Sandford, Brett (Bay Area)
Sent: Friday, September 9, 2022 3:54 PM
To: Smith, Alexis Adian; RJREDVA; cmolster@molsterlaw.com
Cc: #C-M PMIEDVA - LW TEAM
Subject: RE: PMP v. RJR - Depositions

Lexi,

Your assertions are incorrect and neither resolve the issues nor cure the prejudice to Philip Morris. First, you concede Mr. Ferris was not disclosed at any point in this case. Second, you concede that Dr. Sullivan relies on a document that was not produced before Reynolds filed its opposition and, even then, a native version was not served until five days after Reynolds filed its opposition (after Philip Morris requested it). Further, the metadata in the spreadsheet you provided appears to have been wiped and thus contains no data regarding the author, the date created, or the person who last modified the document. The suspect circumstances surrounding this spreadsheet, coupled with your refusal to make any declarants available for deposition, compounds the prejudice to Philip Morris. It is improper for Reynolds to inject a new witness and document into the case at this stage, particularly given our prior agreement that the parties would not rely on internal documents that were not previously produced. Philip Morris upheld that agreement and has played by the rules; Reynolds has not.

Your claim that there was no prior agreement that the parties would not rely on previously unproduced internal documents is wrong. As you should recall, after Reynolds insisted that Philip Morris make clear it would not rely on any such documents for the injunctive relief/ongoing royalty briefing, we had a meet and confer on June 28, 2022 to discuss the issue. See 6/27/22 Email from Smith (“If PMP is now saying that it intends to rely on wholly new facts that have never been made available to Reynolds to support PMP’s motion, Reynolds does not agree to any proposal that would limit Reynolds’s right to full and appropriate fact discovery.”). During that meet and confer, I confirmed to you, Mr. Molster, and Mr. Burnette that Philip Morris would not rely on such documents. I reiterated this in my June 28th email. See 6/28/22 Email from Sandford (“In response to your question, **we agree neither party will rely on internal company documents not produced in this case** as part of the injunctive relief briefing.”). The June 28, 2022 email that you cite below does not suggest that the parties did not reach agreement. It merely states: “We reserve all rights with respect to responsive evidence, including the right to seek additional fact discovery, if appropriate.” If Reynolds believed it was “reserving” some right to rely on unproduced documents (while holding Philip Morris to its representation not to do so—which we upheld), Reynolds should have sought leave from the Court to rely on this new evidence. Reynolds did not. Instead, you (falsely) told the Court in your opposition to our motion to lift the stay that Philip Morris “indicated that it may rely on facts Reynolds *has never seen before*, such as facts that are not yet public, but may become public at some future date, presumably of PMP’s own choosing.” Dkt. 1385 at 3 (emphasis original). Suffice to say, Reynolds’ after-the-fact attempt to unwind the parties’ good-faith negotiations is disappointing.

Given that you refuse to withdraw any reliance on this newly-produced “evidence” (and have not made any of the declarants, or Mr. Ferris, available for deposition), we understand that the parties are at an impasse on these issues and will seek appropriate relief from the Court.

Regards,

Brett M. Sandford

LATHAM & WATKINS LLP

505 Montgomery Street | Suite 2000 | San Francisco, CA 94111-6538
D: +1.415.395.8150

From: Smith, Alexis Adian <asmith@jonesday.com>

Sent: Wednesday, September 7, 2022 11:47 AM



To: Sandford, Brett (Bay Area) <Brett.Sandford@lw.com>; RJREDVA <RJREDVA@jonesday.com>; cmolster@molsterlaw.com
Cc: #C-M PMIEDVA - LW TEAM <pmiedva.lwteam@lw.com>
Subject: RE: PMP v. RJR - Depositions

Brett,

First, without addressing the inaccuracies in your response below, we understand from your email that depositions are not in dispute.

Second, with respect to the information provided by Mr. Ferris, that information was obtained in direct response to new theories and arguments raised for the first time by PMP in its opening brief and the declaration of Mr. Meyer. As you know, Mr. Meyer previously opined and testified at trial that the royalty rate the parties would agree to for the '265 patent would be set by looking to the "spot on" comparable Fontem-Reynolds license. In PMP's motion, however, Mr. Meyer took an entirely new approach, deriving a royalty rate based on his assessment of the operating profit margin of Alto cartridge sales from January through June 2022. In its Opposition, Reynolds appropriately responded to this brand new theory. Finally, your suggestion that the parties had an agreement that would have prohibited Reynolds from fully responding to PMP's new theories in its Opposition, is incorrect. Reynolds made no such agreement. See email from A. Smith to Sandford on 6/28/2022.

We trust this resolves the issues.

Regards,
Lexi

Alexis Smith (Lexi) ([bio](#))
Partner
[JONES DAY® - One Firm WorldwideSM](#)
[555 South Flower Street, Fiftieth Floor](#)
[Los Angeles, CA 90071](#)
Office +1.213.243.2653
asmith@jonesday.com

From: Brett.Sandford@lw.com <Brett.Sandford@lw.com>
Sent: Tuesday, September 6, 2022 2:21 PM
To: Smith, Alexis Adian <asmith@jonesday.com>; RJREDVA <RJREDVA@jonesday.com>; cmolster@molsterlaw.com
Cc: pmiedva.lwteam@lw.com
Subject: RE: PMP v. RJR - Depositions

**** External mail ****

Lexi,

We never stated that "further fact discovery ... is required," as you state. We simply asked if Reynolds would make its declarants available for deposition at a reasonable time before our reply brief is due (not "over the holiday weekend," as you state). That is consistent with our prior positions. See, e.g., Dkt. 1389 at 2 n.2 ("Philip Morris will follow the Court's guidance on whether to include declarations. But the parties should be permitted to depose any declarants before filing response/reply briefs."). We understand from your email that you will not make the declarants available for deposition.

Separately, Dr. Sullivan relies extensively on information from hearsay discussions (occurring, according to Dr. Sullivan, on August 18 and 25, 2022) with RAI Services employee Robert Ferris in his declaration. See, e.g., Dkt. 1421-3 (Sullivan Decl.) ¶¶ 9, 20-25. Reynolds never disclosed Mr. Ferris at any point in this case before serving Dr. Sullivan's declaration on September 2, 2022. And Dr. Sullivan relies on two internal Reynolds documents "provided by Robert Ferris," which were not produced in this case. See *id.* at Attachments A-6, A-7. Reynolds' reliance on documents that were never produced and information from a

witness that was never disclosed is improper, violates party agreement (*see* 6/28/22 Sandford email), and prejudices Philip Morris. Please confirm by 5 pm ET tomorrow that you will withdraw any reliance on the aforementioned documents and paragraphs of Dr. Sullivan's declaration. If you refuse, we intend to seek relief from the Court.

Regards,

Brett M. Sandford

LATHAM & WATKINS LLP

505 Montgomery Street | Suite 2000 | San Francisco, CA 94111-6538
D: +1.415.395.8150

From: Smith, Alexis Adian <asmith@jonesday.com>

Sent: Saturday, September 3, 2022 1:24 PM

To: Sandford, Brett (Bay Area) <Brett.Sandford@lw.com>; RJREDVA <RJREDVA@jonesday.com>; cmolster@molsterlaw.com

Cc: #C-M PMIEDVA - LW TEAM <pmiedva.lwteam@lw.com>

Subject: RE: PMP v. RJR - Depositions

Brett:

In light of Judge Brinkema's instruction that the Court does not hear evidence for injunction motions, as well as PMP's repeated statements that no further depositions relating to injunction/ongoing royalty should be allowed, we were surprised to receive your email on the day our response brief was due. You now assert for the first time that further fact discovery on injunction/ongoing royalty issues is required, and that RJRV must make its declarants available for deposition, and on an accelerated basis over the holiday weekend. Presentation of fact and/or expert declarations was contemplated by the parties and the Court when the briefing schedule was set. PMP offered three such declarations as part of its own briefing. RJRV abided by this structure, including PMP's representations that no additional discovery was permitted, and by the Court's briefing schedule. We trust that PMP will do the same, and that this resolves the issue.

Regards,

Lexi

Alexis Smith (Lexi) ([bio](#))

Partner

[JONES DAY® - One Firm WorldwideSM](#)

[555 South Flower Street, Fiftieth Floor](#)

[Los Angeles, CA 90071](#)

Office +1.213.243.2653

asmith@jonesday.com

From: Brett.Sandford@lw.com <Brett.Sandford@lw.com>

Sent: Friday, September 2, 2022 9:03 AM

To: RJREDVA <RJREDVA@jonesday.com>; cmolster@molsterlaw.com

Cc: pmiedva.lwteam@lw.com

Subject: PMP v. RJR - Depositions

**** External mail ****

Counsel,

To the extent Reynolds intends to submit fact or expert declarations in support of its opposition to Philip Morris' motion for a permanent injunction or, alternatively, an ongoing royalty, Philip Morris reserves the right to depose any declarant. While Philip Morris will decide whether to proceed with any depositions after reviewing Reynolds' opposition brief and any supporting

declarations, we write in advance to ensure that any declarant(s) are made available for deposition sufficiently in advance of the September 9 reply brief filing deadline. In view of that date, which is only a week after Reynolds will file its opposition brief and supporting declarations, please confirm that Reynolds will make any declarant available for deposition on September 5 or 6, so that Philip Morris has adequate time to review and incorporate the deposition testimony in its reply brief. If Reynolds refuses, we reserve the right to seek appropriate relief from the Court, including moving for an extension of the reply brief filing date or leave to file a supplemental reply brief to incorporate any deposition testimony.

Regards,

Brett M. Sandford

LATHAM & WATKINS LLP

505 Montgomery Street | Suite 2000 | San Francisco, CA 94111-6538

D: +1.415.395.8150

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements. Any personal information contained or referred to within this electronic communication will be processed in accordance with the firm's privacy notices and Global Privacy Standards available at www.lw.com.

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.