

**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

**CONFIDENTIAL –  
FILED UNDER SEAL**

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' SECOND MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS RELATED TO DEFENDANTS'  
'374 PATENT INFRINGEMENT COUNTERCLAIM**

**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND.....	4
A. Defendants’ Production Of Documents Leading Up To The Denial Of Reynolds’ First Motion To Compel And The Events Since Then.....	4
B. Defendants’ Requests For And Production Of Smart Chip And MiniLogic Documents .....	8
III. ARGUMENT .....	13
A. Reynolds’ Renewed Motion To Compel Should Be Denied As An Improper Request For Reconsideration .....	13
B. Reynolds’ Motion To Compel Further Production Of Defendants’ Documents Should Be Denied .....	15
1. There Was No Dispute At The Time Of Reynolds’ Filing Of Its Renewed Motion To Compel – And The Motion Is Now Moot in any Event .....	15
2. Reynolds’ Conjecture That “Other Such Documents Exist” Is Unfounded and Unsupported .....	16
C. Reynolds’s Motion To Compel Additional Documents From Smart Chip And MiniLogic Should Be Denied .....	19
1. Defendants Have Produced All Documents Received From Smart Chip And All Documents Within Smart Chip’s Possession, Custody, And Control .....	19
2. Although Not Within Defendants’ Control, Defendants Have Sought Documents From MiniLogic .....	20
IV. CONCLUSION.....	22

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

*Albritton v. Johnson*,  
No. 2:07-cv-356, 2008 WL 8178124 (E.D. Va. Sept. 19, 2008)..... 15, 20

*Knisely v. Nat’l Better Living Ass’n*,  
No. 3:14-CV-15, 2014 U.S. Dist. LEXIS 202924 (N.D. W.Va. Oct. 15, 2014) ..... 17, 19

*McLean v. Branch Banking & Trust Co.*,  
No. 1:19-cv-1413, 2020 U.S. Dist. LEXIS 249204 (E.D. Va. June 24, 2020)..... 13

*Navient Sols., LLC v. Law Offices of Jeffrey Lohman, P.C.*,  
No. 1:19-cv-461, 2020 WL 6379233 (E.D. Va. Sept. 4, 2020)..... 13

*Pritchard v. Wal-Mart Stores, Inc.*,  
3 F. App’x 52 (4th Cir. 2001)..... 13

*Susko v. City of Weirton*,  
No. 5:09-cv-1, 2011 WL 98557 (N.D. W.Va. Jan. 12, 2011) ..... 3, 17, 18

**RULES**

Fed. R. Civ. P. 26(e) ..... 14, 16

..

## I. INTRODUCTION

Reynolds' Second Motion to Compel ("Renewed Motion to Compel") is nothing more than an improper request for reconsideration of its *previously denied* November 2020 motion to compel (Dkt. No. 385, 388; "First Motion to Compel"). While the relief Reynolds seeks is anything but clear, what is plain is that Defendants conducted a reasonable search for documents within their custody, possession, and/or control, and have produced all responsive, non-privileged documents located during that search. This was true when the Court denied Reynolds' First Motion to Compel on December 4, 2020, and it remains true today. Nothing has changed, much less anything warranting granting Reynolds' improper self-styled "Second Motion"/ request for reconsideration. Reynolds' Renewed Motion to Compel should be denied for at least four reasons.

*First*, Reynolds provides no basis for reconsidering this Court's order denying Reynolds' First Motion to Compel. The standard for reconsideration—which Reynolds wholly ignores and does not even attempt to meet—is exacting, and this Court disfavors such motions. There have been no intervening changes in existing law, no meaningful new evidence, and certainly no clear error or manifest injustice in the Court's prior ruling that warrants correction. Instead of taking on this exacting standard, Reynolds simply rehashes and repeats the very facts previously presented to this Court when it denied Reynolds' First Motion. This is insufficient to meet Reynolds' burden.

The only alleged "new" documents on which Reynolds relies are three documents that were located, identified and produced shortly after the stay lifted, pursuant to Rule 26(e) and different discovery requests. Defendants' production of those three documents provides no basis for reconsidering the Court's denial of the First Motion to Compel. None of those documents are responsive to Request for Production No. ("RFP") 293—the only document request identified in Reynolds' Renewed Motion to Compel. Even if they were responsive, only one of these three

documents—a product specification on an [REDACTED]—is even technical in nature. But the [REDACTED] was already produced and, at a minimum, the new document is duplicative of numerous other documents produced months ago, which Reynolds’ motion ignores. And none of the three documents are relevant to Defendants’ validity positions. Further, Reynolds does not even attempt to identify new facts since its First Motion to Compel warranting reconsideration of this Court’s denial of Reynolds’ First Motion to Compel on the Smart Chip and MiniLogic documents, and that relief should likewise be denied.

*Second*, on March 2, 2021, Reynolds asked—for the first time—that Defendants search for certain specific additional documents within their custody and control. Defendants agreed to search for and produce for any such documents. Defendants were in the process of doing so, when Reynolds improperly and prematurely filed this Motion. Contrary to Reynolds’ representations (Br. at 5), which tellingly omits any evidentiary support, the parties were never at an impasse and Defendants never refused any of the relief Reynolds now seeks. Reynolds’ motion is premature and should be separately denied on that basis. In any event, Defendants have now complied with Reynolds’ new request, thereby mooting Reynolds’ requested relief.

*Third*, the crux of Reynolds’ motion—that the production of several duplicative documents “strongly suggest[s] that Defendants have so far failed to live up to” their duties to produce documents—is incorrect and rank speculation. Reynolds provides no basis for its unsupported attorney speculation.<sup>1</sup> None exists. Defendants have conducted reasonable searches in response to RFP 293 (or otherwise) and have gone above and beyond to comply with Reynolds’ unreasonable requests. Defendants have produced hundreds of thousands of pages of documents

---

<sup>1</sup> A more suspicious party may attribute Plaintiffs’ speculation to the theory of “projection,” a psychological phenomenon where one thinks everyone else is doing and thinking what they are.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.