

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

RAI STRATEGIC HOLDINGS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:20-cv-393 (LO/TCB)
)	
ALTRIA CLIENT SERVICES LLC, <i>et al.</i> ,)	
)	
Defendants.)	
)	

ORDER

This matter comes before the Court on Defendants/Counterclaim Plaintiffs Altria Client Services LLC, Philip Morris USA Inc., and Philip Morris Products S.A.’s (“Defendants”) Motion for Leave to Serve Supplemental Expert Reports. (Dkt. 579.) Defendants filed their motion on April 30, 2021 and set it for a hearing on May 7, 2021. Plaintiffs/Counterclaim Defendants RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (“Plaintiffs”) filed an opposition to Defendants’ motion on May 5, 2021 (Dkt. 593) and Defendants filed a reply on May 6, 2021 (Dkt. 594). Finding oral argument unnecessary, the undersigned determines that Defendants have shown good cause to supplement the two expert reports at issue.

Federal Rule of Civil Procedure 16(b)(4) provides the proper standard here. Rule 16 states that “[a] schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “The ‘good cause’ standard focuses on the timeliness of the amendment to the scheduling order and the reasons for its tardy submission; the primary consideration is the diligence of the moving party.” *United States v. 1.604 Acres of Land*, No. 10-cv-320, 2011 WL 1810594, at *2 (E.D. Va. May 11, 2011) (internal quotations omitted); *see also Cook v. Howard*,

484 F. App'x 805, 815 (4th Cir. 2012) (“the good-cause standard will not be satisfied if the district court concludes that the party seeking relief (or the party’s attorney) has not acted diligently in compliance with the schedule.”).

Here, Defendants seek leave to supplement the opening expert reports of Paul Meyer and Dr. John Abraham. Defendants served their supplemental reports on April 26, 2021 pursuant to this Court’s order imposing an April 26, 2021 deadline for the parties experts to “identify citations to fact testimony to support already-disclosed opinions[.]” (Dkts. 534, 535.) Further, Plaintiffs contend that they do “not [oppose] the majority of additions Defendants introduced in their seven supplemental expert reports served on April 26” and only contest two of the additions. (Dkt. 593 at 5.) Specifically, Plaintiffs oppose the addition of a single footnote and five attachments to Mr. Meyer’s report and limited supplementation to Dr. Abraham’s report. It is clear from this Court’s prior order and Plaintiffs’ acceptance of the majority of Defendants’ supplementations, that the parties contemplated supplementing their reports, and Defendants did so diligently and in compliance with the parties jointly proposed deadline of April 26, 2021.

Additionally, pursuant to the parties’ proposed modified scheduling order, which the Court approved, expert depositions are set to take place from April 28 through May 12 and the final pretrial conference is not until May 21, 2021. (*See* Dkts. 534, 535, 566.) Accordingly, there is ample time for Plaintiffs to complete expert depositions prior to the final pretrial conference.

For the reasons explained above, it is hereby

ORDERED that Defendants’ Motion for Leave to Serve Supplemental Expert Reports (Dkt. 579) is **GRANTED**. Defendants are permitted leave to serve the supplemental opening expert reports of Paul Meyer and Dr. John Abraham.

ENTERED this 7th day of May, 2021.



/s/

THERESA CARROLL BUCHANAN
UNITED STATES MAGISTRATE JUDGE

Alexandria, Virginia