

**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

REDACTED

COUNTERCLAIM PLAINTIFFS' MOTION TO COMPEL DEPOSITION DATES

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I. INTRODUCTION

This case has been pending for 13 months, and the Final Pretrial Conference will take place next week, on May 21. Throughout this case, Counterclaim Defendants (“Reynolds”) have stalled, delayed, and frustrated the Court’s schedule and needlessly complicated the parties’ trial preparations.

First, Reynolds has refused to move the deposition date for its technical expert on two of the asserted patents, Mr. Kelly Kodama, in order to accommodate the attorney who is taking it and became seriously ill. This issue should be straightforward. PMP/Altria informed Reynolds that the attorney with principal responsibility for the patents at issue and Mr. Kodama’s deposition unexpectedly developed a serious illness. This illness prevents him from taking the deposition on May 17, or facilitating another attorney’s ability to take the deposition. Reynolds refused to make Mr. Kodama available on any other date. PMP/Altria requests that the Court order Reynolds to provide an alternate date for Mr. Kodama’s deposition.

Second, Counterclaim Plaintiffs (“PMP/Altria”) have already been forced to compel Reynolds to provide basic discovery, including source code, technical documents, and depositions. Yet, Reynolds continues its pattern of delay tactics, and now refuses to provide dates for its remaining fact depositions—some of which have been pending for *seven months*. Reynolds has refused to provide (i) a date for the personal deposition of Reynolds’ witness REDACTED, and (ii) dates for PMP/Altria’s 30(b)(6) Topics 22, and 79-96. The Court recently ordered that any remaining fact depositions “will be done closely within” the date of the Final Pretrial Conference, May 21. Ex. 1 (4/16/2021 Transcript) at 12. The Court should compel Reynolds to provide dates for the requested depositions before the end of May.

II. FACTUAL BACKGROUND

A. Reynolds Refuses To Provide An Alternate Date For Mr. Kodama's Deposition

The parties initially agreed that Mr. Kodama's deposition would take place on May 10. On May 7, PMP/Altria notified Reynolds that the attorney scheduled to take Mr. Kodama's deposition had fallen seriously ill and requested that the deposition be rescheduled. On Wednesday evening, May 12, Reynolds informed PMP/Altria that Mr. Kodama was available for deposition on May 17. PMP/Altria's counsel called Reynolds' counsel the next day, informing counsel that the attorney's medical condition unfortunately remained serious and ongoing, which prevented him from taking the deposition or facilitating another attorney's ability to take the deposition. PMP/Altria asked whether Mr. Kodama could be made available the week of May 24. Reynolds responded on May 14, refusing to provide an alternate date and stating that Mr. Kodama would appear on May 17 only and would not be made available for deposition again. Ex. 2 (5/14/2021 N. Smith email).

B. Reynolds Refuses To Provide A Date For REDACTED Deposition

On October 20, 2020, PMP/Altria served a 30(b)(6) notice on Reynolds, which included numerous topics pertaining to PMP/Altria's counterclaims. Ex. 3 (10/20/20 30(b)(6) Deposition Notice to Reynolds). One of the noticed topics was Topic 22, which seeks the facts and circumstances relating to REDACTED

. *Id.* at 10. Reynolds did not provide a witness on Topic 22 before the Court stayed the case on December 4, 2020. Dkts. 426, 432.

When the Court lifted the stay on PMP/Altria's Counterclaim Patents only on February 16, 2021 (Dkt. 456), PMP/Altria promptly sought a new deposition date for Reynolds' designee on

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