

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

RAI STRATEGIC HOLDINGS, INC. and  
R.J. REYNOLDS VAPOR COMPANY,

Plaintiffs,

v.

ALTRIA CLIENT SERVICES LLC; PHILIP  
MORRIS USA INC.; and PHILIP MORRIS  
PRODUCTS S.A.

Defendants.

Civil Action No. 1:20-cv-393

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**PHILIP MORRIS PRODUCTS S.A.'S OPPOSITION TO REYNOLDS' MOTION TO  
COMPEL RULE 30(B)(6) WITNESSES RELATING TO INJUNCTIVE RELIEF**

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## I. INTRODUCTION

This is yet another in a litany of motions by Counterclaim Defendant (“Reynolds”) that should never have been filed. Perhaps hoping to obscure the issues surrounding its own discovery delay and dissembling, as set forth in Counterclaim Plaintiffs Altria Client Services, LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) motion to compel near-term deposition dates (Dkt. 615), Reynolds filed this motion knowing well that no genuine dispute remains with regard to virtually all of the relief Reynolds seeks (*i.e.*, as to Topics 68, 70, 72, 76, and 83). With regard to the sole remaining topic in dispute, Topic 69, Reynolds provides no support for its relevance and its motion is at best premature. Reynolds’ motion should be denied.

*First*, Reynolds seeks to compel a witness on Topics 68, 70, and 72, directed to the factual bases underlying PMP’s contention that PMP is entitled to injunctive relief. In responses to these topics, PMP unequivocally designated two witnesses, [REDACTED], to address the full scope of Reynolds’ topics (subject only to PMP’s objections), and has provided proposed dates for their depositions—all well before Reynolds moved. PMP could not have been clearer on this, stating: “Together, [REDACTED] will cover all aspects of Topics 68, 70, and 72, subject to PMP’s objections.” (Dkt. 610-12 at 1.) Reynolds’ assertion that PMP has somehow narrowed the topics or refused to provide a witness on their full scope is belied by the correspondence. In order to facilitate Reynolds’ preparation, PMP elaborated on the categories of subject matter that each witness would address, and further offered to discuss any remaining questions Reynolds might have regarding the specific subject matters each witness would cover. PMP *did not* refuse to provide a witness on the full non-objectionable scope, and expressly said so

to Reynolds.<sup>1</sup> Reynolds' attempt to manufacture a dispute as to Topics 68, 70, and 72, where there is none, should be rejected because it was moot before Reynolds moved.

*Second*, Reynolds seeks to compel a witness on Topics 76 and 83, which seek the “drivers of demand for the Reynolds Accused Products” and “PMP’s contentions regarding whether and to what extent Reynolds would suffer any hardships if the Reynolds Accused Products were enjoined,” respectively. As is apparent from the topics themselves, these topics are directed to information in Reynolds’ possession—not PMP’s. Reynolds, not PMP, has information regarding the demand for *its* products, and Reynolds, not PMP, has knowledge regarding its contentions of hardships. While this could be a subject of expert testimony, PMP’s corporate fact witnesses most certainly are not competent to testify as to the demand for *Reynolds’* products or hardships to Reynolds. PMP made plain that its corporate fact witnesses have no testimony to offer on these topics. PMP has already provided its detailed contentions on these topics in a 35-page interrogatory response (Dkt. 610-13), and will provide any expert testimony at the appropriate time. Reynolds’ motion to compel Topics 76 and 83 should also be denied.

*Third*, Reynolds seeks to compel a witness on Topic 69, which seeks “each fact that PMP alleges supports PMP’s request for a permanent injunction and that was not present and/or known to PMP on or before June 29, 2020 [when PMP filed its counterclaims], including when each such fact became known to PMP.” Although the timing of when PMP learned each supporting fact may arguably have had some bearing on the timeliness of PMP’s motion to amend to seek a permanent injunction (a matter already decided), it has no relevance to the grant of a permanent injunction. And despite PMP’s repeated requests for any authority otherwise, Reynolds provided none. If

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<sup>1</sup> PMP’s objections did not narrow the scope of PMP’s designations to the topics enumerated for each witness, but rather were directed to issues such as privilege, calling for expert testimony, and the like. (Dkt. 610-2 at 5-10.)

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