

**IN THE 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
FILED UNDER SEAL**

REYNOLDS'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DEPOSITION DATE

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INTRODUCTION

██████████ already testified once in this case on Defendants' Deposition Topics 54, 69 and 78. Reynolds also offered his deposition on a number of injunction-related deposition topics (Topics 22, 79, 80, 84, 85, 93, 94, 96) by mid-June as part of the orderly course of injunction-related discovery. Defendants' motion asks the Court to compel an additional, separate deposition of ██████████ in May on a single deposition topic—Topic 22—that ██████████ with the other topics on which ██████████ will testify again, if Defendants have their way, in June. The Court should not force ██████████ to testify twice in the span of a couple weeks ██████████.

To that end, during a meet and confer last week, the parties appeared to reach an agreement on an orderly process for completing injunction-related discovery in a timely fashion. The parties agreed to complete outstanding written discovery responses due this week, complete production of corresponding documents responsive to those and other recent document requests served by both parties, and finally, no sooner than five days after the completion of those document productions, schedule the depositions of the parties' three remaining fact witnesses—including ██████████. Consistent with that timeline, Reynolds indicated ██████████ would be available for deposition, including on Topic 22, in the first half of June. Moreover, unlike Defendants' stonewalling on Rule 30(b)(6) deposition topics that are the subject of Reynolds's May 14 motion to compel, ██████████ is slated to testify on the full scope of Topics 22, 79, 80, 84, 85, 93, 94, 96. Thus, there is nothing here for Defendants to compel.

Defendants appear to have filed a motion to compel ██████████ deposition date during May on a single Rule 30(b)(6) topic not on its own merits, but instead as a counterweight to Reynolds's legitimate complaints about Defendants' refusal to engage in discovery concerning PMP's request for an injunction. The Court should not be distracted by Defendants' whataboutism. ██████████ deposition should proceed consistent with the discovery timeline to which the parties agreed. That would see his deposition completed in early June if Defendants meaningfully participate in discovery and move forward with prosecuting a

claim they introduced into this case.¹ The Court should not force ██████ to testify twice on the same subject matter.

FACTUAL BACKGROUND

Defendants served their first Rule 30(b)(6) deposition notice on October 20, 2020. The notice included Topic 22, directed to “[t]he facts and circumstances relating to Plaintiffs’ planned or actual submission of RJR PMTAs for any of the RJR Accused Products.” (Defendants’ Ex. 1 [Defendants’ Oct. 20, 2020, 30(b)(6) Notice] at 10 (emphasis added).) Contrary to Defendants’ assertion that Reynolds refused to identify a witness on this topic when originally served, Reynolds designated ██████ on November 30, 2020, to testify on Topic 22. (Ex. A [Nov. 23, 2020, Smith Email to Koh] at 1.) His deposition was scheduled to go forward on January 8, 2021, before the case was stayed on December 4, 2020. (Ex. B [Nov. 27, 2020, Koh Email to Smith] at 1.) After the Court lifted the stay in February 2021, Defendants contacted Reynolds on February 26 about rescheduling the ██████ deposition. (Ex. C [Feb. 26, 2021, Koh Letter to Smith] at 1.) Following additional correspondence and a meet and confer in early March, Reynolds confirmed on March 8 that it would instead designate ██████ to testify on Topic 22. (Ex. D [Mar. 8, 2021, Smith Email to Koh] at 1.) On March 12, Reynolds told Defendants that Reynolds was trying to confirm an April 9 deposition for ██████. (Ex. E [Mar. 12, 2021, Smith Email to Koh] at 1.) That same day, however, Defendants served a third Rule 30(b)(6) deposition notice, this time including Topic 79 directed to PMP’s newly-added injunction claim:

The factual bases underlying [Reynolds’s] contention... (i) that PMP has not suffered irreparable injury, (ii) that remedies available at law, such as monetary damages, are adequate to compensate for that injury, (iii) that considering the balance of hardships between [Reynolds] and PMP, a remedy in equity is unwarranted, and (iv) that the public interest would be disserved by a permanent injunction.

¹ ██████ Rule 30(b)(6) deposition on injunction-related deposition topics would be mooted, for now, if the Court grants Reynolds’s forthcoming motion to stay all further proceedings (including fact and expert discovery) relating to PMP’s claim for injunctive relief based on the recent ruling in co-pending ITC Inv. No. 337-TA-1199. If Reynolds’s motion to stay is granted, Reynolds will make ██████ available for his Rule 30(b)(1) deposition along with his deposition as Reynolds’s Rule 30(b)(6) designee on Topic 22 in late May or early June, depending on his and counsel’s availability.

(Defendants' Ex. 5 [Defendants' Mar. 12, 2021, 30(b)(6) Notice] at 6.) Reynolds subsequently asked Defendants to reschedule [REDACTED] deposition from April 9 to April 16 or 19 in view of loosening COVID restrictions in [REDACTED] that would permit [REDACTED] to testify from an office with good connectivity, instead of from home. (Ex. F [Apr. 6, 2021, Smith Email to Koh] at 1.) Then, after analyzing Defendants' third notice of Rule 30(b)(6) deposition, Reynolds confirmed on April 13 that it would designate [REDACTED] on Topic 79 as well. (Ex. G [Apr. 13, 2021, Smith Email to Koh] at 1.) On April 14, Defendants agreed to reschedule [REDACTED] deposition so he could address all the deposition topics for which he had been designated in one sitting.² (Ex. H [Apr. 14, 2021, Koh Email to Smith] at 1.)

On April 15, the parties held a meet and confer in which Reynolds maintained that the deposition of PMP's corporate designee(s) covering injunction-related deposition topics should precede [REDACTED] given that PMP bears the burden of proof on that issue. Following the Court's ruling on Defendants' motion to compel testimony on Topics 54 and 78 (related to non-injunction issues) on April 16, Reynolds designated [REDACTED] to testify on those two topics. (Ex. I [Apr. 19, 2021, Smith Email to Koh] at 1.) Subsequently, on April 21, Reynolds offered [REDACTED] deposition on Topics 54 and 78 (the motion to compel topics) on May 6. (Ex. J [Apr. 21, 2021, Smith and Koh Emails] at 2.) Defendants rejected the date. (*Id.* at 1.)

That same day, April 21, Defendants served yet another Rule 30(b)(6) deposition notice—their fourth—with additional topics directed to PMP's claim for injunctive relief, including additional topics directed to the status of Reynolds's PMTAs. (Defendants' Ex. 6 [Defendants' Apr. 21, 2021, 30(b)(6) Notice].) These topics included:

[REDACTED]

² In that same April 14 correspondence, Defendants also postponed the deposition of [REDACTED], PMP's designee on numerous Rule 30(b)(6) topics because Defendants intended to designate her on at least a portion of the topics in Reynolds's Rule 30(b)(6) deposition notice directed to PMP's claim for injunctive relief. (Ex. H [Apr. 14, 2021, Koh Email to Smith] at 1.) As explained in Dkt. 610, and below, Defendants have obstructed Reynolds's efforts to complete the depositions of PMP's injunction-related designees, including [REDACTED]

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