

**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

**REPLY IN SUPPORT OF COUNTERCLAIM PLAINTIFFS'  
MOTION TO COMPEL DEPOSITION DATES**

**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. ARGUMENT .....	2
A. After Requiring A Motion, Reynolds Has Withdrawn Its Refusal To Make Mr. Kodama Available For Deposition .....	2
B. Reynolds Must Provide A Date For [REDACTED] Deposition.....	2
III. CONCLUSION.....	5

**TABLE OF AUTHORITIES**

**CASES**

*Mizyed v. Travelers Home & Marine Ins. Co.*,  
No. 12-1016, 2013 WL 12242011 (C. D. Ill. Apr. 9, 2013)..... 3

*Projects Mgmt Co. v. DynCorp Int’l LLC*,  
734 F.3d 366 (4th Cir. 2013)..... 2

*Trs. of Boston Univ. v. Everlight Elecs. Co.*,  
No. 12-cv-12326, 2014 WL 12927018 (D. Mass. Sept. 26, 2014) ..... 3, 4

## I. INTRODUCTION

Reynolds is persisting in thwarting Counterclaim Plaintiffs' ("PMP/Altria") completion of their deposition discovery at every turn. Reynolds disregarded the basic principles of civility in refusing to reschedule Mr. Kodama's deposition due to the serious illness of the responsible PMP/Altria attorney. Instead, Reynolds put PMP/Altria to the task of seeking Court intervention, only to then withdraw its unreasonable, uncivil and tactical refusal to reschedule without explanation.

Similarly, Reynolds has put PMP/Altria to the task of once again seeking Court intervention simply to obtain a date for deposition that is not otherwise objected to. There is no dispute that Reynolds must provide a personal and Rule 30(b)(6) deposition of [REDACTED]. Yet Reynolds steadfastly refuses to provide a near-term date certain for his deposition—candidly admitting that "Reynolds has not offered a specific date for [REDACTED] deposition on Topic 22 (or the other remaining deposition topics)." Dkt. 627 at 6.

Reynolds accuses PMP of "whataboutism" (*i.e.*, the technique or practice of responding to an accusation or difficult question by making a counteraccusation or raising a different issue), while epitomizing just that. Rather than address the merits, or explain why Reynolds even now refuses to provide a deposition date until some unspecified time over a month after the filing of this motion to compel, Reynolds attempts to distract from its own refusal by pointing fingers at the status of PMP's discovery. Reynolds argues that it will only provide a deposition date for [REDACTED] "if Defendants commit to fulfilling their end of the bargain" and produce their documents and witnesses first. Dkt. 627 at 5-6. Reynolds' conditioning of its discovery compliance on PMP's discovery is facially improper. And in any event, PMP has been both timely and forthcoming in its discovery obligations. PMP already provided its 35-page contention interrogatory responses

regarding its request for injunctive relief, agreed to provide fact witnesses to testify on the full scope of Reynolds' relevant 30(b)(6) topics on its claim for injunctive relief (*see* Dkt. 629), provided dates for those depositions, and committed to produce any remaining documents at least five days beforehand.

Reynolds should not be permitted to delay indefinitely PMP's depositions further, and certainly not to some unspecified date a month or more after the filing of PMP's motion to compel. History shows that Reynolds will continue to refuse to provide undisputedly relevant depositions and discovery unless compelled to do so by the Court. *See* Dkt. 566. Reynolds should be compelled to provide a date for [REDACTED] personal deposition and deposition on remaining Topics 22 and 79-96.

## II. ARGUMENT

### A. After Requiring A Motion, Reynolds Has Withdrawn Its Refusal To Make Mr. Kodama Available For Deposition

Reynolds has now withdrawn its refusal to make Mr. Kodama available for deposition on a different date. Reynolds has agreed to provide Mr. Kodama for deposition on May 28—but only after requiring a motion to this Court. Dkt. 627 at 6-7. Reynolds' obstreperousness must come to an end.<sup>1</sup>

### B. Reynolds Must Provide A Date For [REDACTED] Deposition

Reynolds mischaracterizes PMP/Altria's motion to compel. PMP/Altria are not seeking a "separate deposition of [REDACTED] on Topic 22 in May." Dkt. 627 at 5-6. Nothing in PMP/Altria's motion, in the correspondence, or the meet and confer process, suggests otherwise. This "straw

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<sup>1</sup> *See Projects Mgmt Co. v. DynCorp Int'l LLC*, 734 F.3d 366, 375 (4th Cir. 2013) ("a district court exercising its inherent authority to impose sanctions may do so *sua sponte* and must consider the whole of the case in choosing the appropriate action.")

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