

# EXHIBIT E

**From:** Michalik, John M.  
**Sent:** Wednesday, June 2, 2021 6:28 PM  
**To:** Will.Orlady@lw.com; Jennifer.Koh@lw.com; pmiedva.lwteam@lw.com  
**Cc:** RJREDVA; cmolster@molsterlaw.com  
**Subject:** RE: RAI Strategic Holdings v. Altria Client Services (EDVa) - Summary Judgment

Will - -

We do not agree it is appropriate or necessary to stipulate to judgment on the defenses Reynolds has indicated it does not intend to pursue. The cases you cite present a different procedural posture from our case where Reynolds, in an effort to streamline the case, has confirmed it will not pursue the defenses identified in my email yesterday. Further, your proposed stipulated judgment regarding Reynolds's counterclaim for inequitable conduct contains inaccuracies. Accordingly, you do not have our consent to file your proposed stipulation. We will prepare an appropriate stipulation of dismissal of that claim.

John M. Michalik  
Partner  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
77 West Wacker  
Chicago, Illinois 60601-1692  
Office +1.312.269.4215  
Mobile +1.312.315.5926  
[jmichalik@jonesday.com](mailto:jmichalik@jonesday.com)

---

**From:** Will.Orlady@lw.com <Will.Orlady@lw.com>  
**Sent:** Wednesday, June 2, 2021 3:43 PM  
**To:** Michalik, John M. <jmichalik@JonesDay.com>; Jennifer.Koh@lw.com; pmiedva.lwteam@lw.com  
**Cc:** RJREDVA <RJREDVA@jonesday.com>; cmolster@molsterlaw.com  
**Subject:** RE: RAI Strategic Holdings v. Altria Client Services (EDVa) - Summary Judgment

**\*\* External mail \*\***

Counsel,

PMP/Altria is entitled to judgment on the defenses and related counterclaim for two reasons. First, you have admitted they are meritless and unsupported by any facts. Second, Courts (including Judge O'Grady) enter judgment in favor of plaintiffs where a defendant fails to prove their affirmative defenses. *See, e.g., TecSec, Inc. v. Adobe Sys.*, 326 F. Supp. 3d 105, 111 (E.D. Va. 2018) (J. O'Grady); *see also David's Bridal, Inc. v. House of Brides, Inc.*, No. 06-5660 (SRC), 2010 WL 323306, at \*12 (D.N.J. Jan. 20, 2010) ("Plaintiff's cross-motion for partial summary judgment is granted and, **as to this affirmative defense [of nominative fair use], Judgment is entered** in Plaintiff's favor."). Accordingly, PMP and Altria are entitled to judgment. Please confirm by 6:30 PM ET whether we have your consent to file the stipulated judgment.

Now is not the appropriate time for Counterclaim-plaintiffs to evaluate further narrowing the case for trial based on dropping existing asserted claims and that assessment is confirmed by the basis you disclosed last night for Reynolds' anticipated dispositive motion. PMP/Altria will be prepared to try a focused case, as confirmed by our estimate of necessary days to conduct the trial, which is less than that of Reynolds.

Regards,  
Will Orlady

Pronouns: he/him/his

**LATHAM & WATKINS LLP**

555 Eleventh Street, NW | Suite 1000 | Washington, D.C. 20004-1304  
D: +1.202.637.3391 | M: +1.213.760.6738

---

**From:** Michalik, John M. <[jmichalik@JonesDay.com](mailto:jmichalik@JonesDay.com)>

**Sent:** Wednesday, June 2, 2021 2:02 PM

**To:** Orlandy, Will (DC) <[Will.Orlandy@lw.com](mailto:Will.Orlandy@lw.com)>; Koh, Jennifer (SD) <[Jennifer.Koh@lw.com](mailto:Jennifer.Koh@lw.com)>; #C-M PMIEDVA - LW TEAM <[pmiedva.lwteam@lw.com](mailto:pmiedva.lwteam@lw.com)>

**Cc:** RJREDVA <[RJREDVA@jonesday.com](mailto:RJREDVA@jonesday.com)>; [cmolster@molsterlaw.com](mailto:cmolster@molsterlaw.com)

**Subject:** RE: RAI Strategic Holdings v. Altria Client Services (EDVa) - Summary Judgment

Will - -

Please provide support or authority for your position that Altria/PM are entitled to “judgment” on the defenses Reynolds no longer plans to pursue.

In addition, we received no response to our inquiry last night (or from May 18) asking if Counterclaim-Plaintiffs intend to drop any of their asserted claims. Please confirm Counterclaim-Plaintiffs still intend to try all 45 asserted patent claims in the April 2022 jury trial.

John M. Michalik

Partner

[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)

77 West Wacker

Chicago, Illinois 60601-1692

Office +1.312.269.4215

Mobile +1.312.315.5926

[jmichalik@jonesday.com](mailto:jmichalik@jonesday.com)

---

**From:** [Will.Orlandy@lw.com](mailto:Will.Orlandy@lw.com) <[Will.Orlandy@lw.com](mailto:Will.Orlandy@lw.com)>

**Sent:** Wednesday, June 2, 2021 11:35 AM

**To:** Michalik, John M. <[jmichalik@JonesDay.com](mailto:jmichalik@JonesDay.com)>; [Jennifer.Koh@lw.com](mailto:Jennifer.Koh@lw.com); [pmiedva.lwteam@lw.com](mailto:pmiedva.lwteam@lw.com)

**Cc:** RJREDVA <[RJREDVA@jonesday.com](mailto:RJREDVA@jonesday.com)>; [cmolster@molsterlaw.com](mailto:cmolster@molsterlaw.com)

**Subject:** RE: RAI Strategic Holdings v. Altria Client Services (EDVa) - Summary Judgment

**\*\* External mail \*\***

Counsel,

Please find attached a stipulated judgment memorializing the suggestion in your 6:46pm email last night that Reynolds will not pursue certain affirmative defenses and a related counterclaim at trial. Please let us know by 2 PM ET whether we have your consent to file. To be clear, we’re happy to consider non-substantive edits, but PMP/Altria are entitled to “judgment” and the stipulation will reflect that, so no need for edits on the form of the relief.

Best,

Will Orlandy

**Will Orlandy**

Pronouns: he/him/his

**LATHAM & WATKINS LLP**

555 Eleventh Street, NW | Suite 1000 | Washington, D.C. 20004-1304  
D: +1.202.637.3391 | M: +1.213.760.6738

---

**From:** Michalik, John M. <[jmichalik@JonesDay.com](mailto:jmichalik@JonesDay.com)>  
**Sent:** Tuesday, June 1, 2021 6:46 PM  
**To:** Koh, Jennifer (SD) <[Jennifer.Koh@lw.com](mailto:Jennifer.Koh@lw.com)>; #C-M PMIEDVA - LW TEAM <[pmiedva.lwteam@lw.com](mailto:pmiedva.lwteam@lw.com)>  
**Cc:** RJREDVA <[RJREDVA@jonesday.com](mailto:RJREDVA@jonesday.com)>; [cmolster@molsterlaw.com](mailto:cmolster@molsterlaw.com)  
**Subject:** RE: RAI Strategic Holdings v. Altria Client Services (EDVa) - Summary Judgment

Jennifer - -

Reynolds confirms it will not pursue a claim of inequitable conduct on the '545 patent. Reynolds does not withdraw the Liao reference as prior art to the '374 patent.

With respect to the issues raised in your prior email, Reynolds will not pursue estoppel, acquiescence, waiver, or unclean hands with respect to the '911 patent; Reynolds will not pursue estoppel, acquiescence, waiver, or unclean hands with respect to the '556 patent; Reynolds will not pursue unclean hands with respect to the '545 patent; Reynolds will not pursue estoppel, waiver, or acquiescence with respect to the '374 patent; and Reynolds will not pursue estoppel, waiver, or acquiescence with respect to the '265 patent. Reynolds will not pursue its limitation on damages defense for the PMP patents. Reynolds will not pursue its extraterritorial claims defense.

For its part, Reynolds intends to move for summary judgment of no willful infringement of any asserted patent and summary judgment of invalidity of the '374 patent. In addition, please confirm tonight if Counterclaim-Plaintiffs are dropping any claims or infringement theories from its infringement allegations for the '911 patent. Otherwise, Reynolds intends to move for summary judgment of noninfringement (literal or under the doctrine of equivalents) of the '911 patent. We assume Counterclaim-Plaintiffs oppose Reynolds's motion. Otherwise, we are available to meet and confer at 9 am PT as you propose.

John M. Michalik  
Partner  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](http://www.jonesday.com)  
77 West Wacker  
Chicago, Illinois 60601-1692  
Office +1.312.269.4215  
Mobile +1.312.315.5926  
[jmichalik@jonesday.com](mailto:jmichalik@jonesday.com)

---

**From:** [Jennifer.Koh@lw.com](mailto:Jennifer.Koh@lw.com) <[Jennifer.Koh@lw.com](mailto:Jennifer.Koh@lw.com)>  
**Sent:** Tuesday, June 1, 2021 3:16 PM  
**To:** RJREDVA <[RJREDVA@jonesday.com](mailto:RJREDVA@jonesday.com)>  
**Cc:** [pmiedva.lwteam@lw.com](mailto:pmiedva.lwteam@lw.com)  
**Subject:** RAI Strategic Holdings v. Altria Client Services (EDVa) - Summary Judgment

**\*\* External mail \*\***

Counsel,

Please confirm whether Reynolds will withdraw its claim of inequitable conduct on the '545 patent, and whether Reynolds will withdraw the "Liao" reference as prior art to the '374 patent. If Reynolds does not agree, we intend to seek summary judgment. Further, since Reynolds has not withdrawn its

other affirmative defenses identified in our May 14 email, we plan to seek summary judgment on those defenses as well. We assume Reynolds opposes a motion for summary judgment on these issues, otherwise, please confirm your availability to meet and confer on these issues tomorrow at 9 a.m. PT.

Regards,  
Jennifer

**Jennifer Koh**

**LATHAM & WATKINS LLP**  
12670 High Bluff Drive  
San Diego, CA 92130  
Direct Dial: +1.858.523.3949  
Email: [jennifer.koh@lw.com](mailto:jennifer.koh@lw.com)  
<https://www.lw.com>

---

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements. Any personal information contained or referred to within this electronic communication will be processed in accordance with the firm's privacy notices and Global Privacy Standards available at [www.lw.com](http://www.lw.com).  
\*\*\*This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.\*\*\*  
\*\*\*This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.\*\*\*