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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, vs. (1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC.; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (9) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; and (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants.	§ §	STATE OF OKLAHOMA } S.S. CLEVELAND COUNTY FILED In The Office of the Court Clerk DEC 27 2017 In the office of the Court Clerk MARILYN WILLIAMS Case No. CJ-2017-816 JURY TRIAL DEMANDED

STATE OF OKLAHOMA'S MOTION FOR ENTRY OF SCHEDULING ORDER AND OPPOSITION TO DEFENDANTS' MOTION FOR APPOINTMENT OF DISCOVERY MASTER

To avoid additional unnecessary delay and further prejudice in the resolution of this case, Plaintiff seeks entry of a scheduling order setting trial in May 2019 and opposes the appointment of a discovery master. The State of Oklahoma faces an unprecedented public health crisis in the form of the opioid epidemic. Given the severity and immediacy of this crisis, it is critical that this case adhere to the directive that the scheduling of matters should "expedite the disposition of the action." 12 O.S. Ch. 2, Appx., R. 5(E)(1). A May 2019 trial date—nearly two years after this lawsuit was filed — will serve this purpose. Appointment of a discovery master will not.

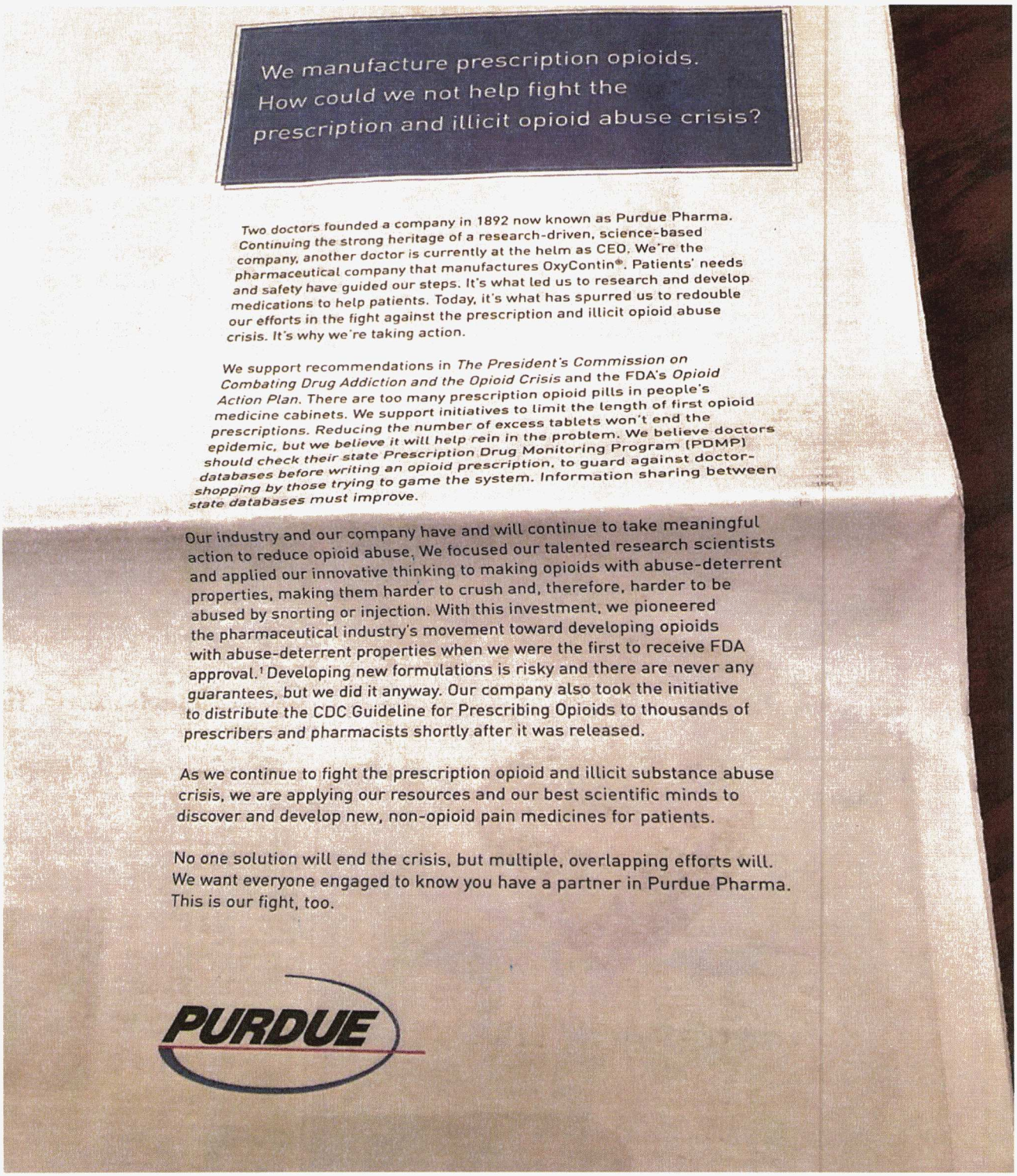
Defendants' request for a discovery master is an intentional delay tactic to avoid liability for the crisis Defendants' created. Accordingly, Plaintiff respectfully requests that the Court (1) enter the attached scheduling order setting, *inter alia*, a trial date of May 28, 2019 and (2) deny Defendants' motion for appointment of a discovery master.

I. A Scheduling Order Setting a May 2019 Trial Date is Eminently Reasonable

The State of Oklahoma respectfully requests that the Court enter a scheduling order setting a trial date of May 28, 2019. Exhibit A (Plaintiff's Proposed Scheduling Order). A trial date of May 28, 2019, which is 23 months from the date this action was filed, is eminently reasonable. And, the State believes it can and will be prepared for trial by May 2019.

The immediacy of the opioid epidemic cannot be disputed. President Donald J. Trump has created the Commission on Combating Drug Addiction and the Opioid Crisis, and the Commission recently issued a lengthy report with detailed recommendations. Attorneys general across the nation are working to stem its tide, with eight states having filed suit and most of the remaining states working jointly to investigate Defendants and others. Even Defendants themselves acknowledged the devastation of the opioid epidemic before this Court at the hearing on Defendants' motions to dismiss. And, Defendant Purdue recently ran a full-page ad in the New

York Times on December 14, 2017—targeting the public, ***including the jury pool in this case***—that acknowledged the immediacy of the opioid epidemic and pledged that Purdue would be part of the solution:



We manufacture prescription opioids. How could we not help fight the prescription and illicit opioid abuse crisis?

Two doctors founded a company in 1892 now known as Purdue Pharma. Continuing the strong heritage of a research-driven, science-based company, another doctor is currently at the helm as CEO. We're the pharmaceutical company that manufactures OxyContin®. Patients' needs and safety have guided our steps. It's what led us to research and develop medications to help patients. Today, it's what has spurred us to redouble our efforts in the fight against the prescription and illicit opioid abuse crisis. It's why we're taking action.

We support recommendations in *The President's Commission on Combating Drug Addiction and the Opioid Crisis* and the FDA's *Opioid Action Plan*. There are too many prescription opioid pills in people's medicine cabinets. We support initiatives to limit the length of first opioid prescriptions. Reducing the number of excess tablets won't end the epidemic, but we believe it will help rein in the problem. We believe doctors should check their state Prescription Drug Monitoring Program (PDMP) databases before writing an opioid prescription, to guard against doctor-shopping by those trying to game the system. Information sharing between state databases must improve.

Our industry and our company have and will continue to take meaningful action to reduce opioid abuse. We focused our talented research scientists and applied our innovative thinking to making opioids with abuse-deterrent properties, making them harder to crush and, therefore, harder to be abused by snorting or injection. With this investment, we pioneered the pharmaceutical industry's movement toward developing opioids with abuse-deterrent properties when we were the first to receive FDA approval.[1] Developing new formulations is risky and there are never any guarantees, but we did it anyway. Our company also took the initiative to distribute the CDC Guideline for Prescribing Opioids to thousands of prescribers and pharmacists shortly after it was released.

As we continue to fight the prescription opioid and illicit substance abuse crisis, we are applying our resources and our best scientific minds to discover and develop new, non-opioid pain medicines for patients.

No one solution will end the crisis, but multiple, overlapping efforts will. We want everyone engaged to know you have a partner in Purdue Pharma. This is our fight, too.

PURDUE

Purdue's ad is a transparent public-relations ploy, but it admits that the opioid epidemic is a crisis:

> **"We manufacture prescription opioids.**
> **How could we not help fight the**
> **prescription and illicit opioid abuse crisis?"**

Purdue's admission is important because a "crisis" by definition indicates immediacy:

> **Definition of crisis**
>
> *plural* crises \'krī-ˌsēz\
>
> **1** **a :** the turning point for better or worse in an acute disease or fever
> **b :** a paroxysmal attack of pain, distress, or disordered function
> **c :** an emotionally significant event or radical change of status in a person's life - a midlife *crisis*
>
> **2** **:** the decisive moment (as in a literary plot) - The *crisis* of the play occurs in Act 3
>
> **3** **a :** an unstable or crucial time or state of affairs in which a decisive change is impending; especially **:** one with the distinct possibility of a highly undesirable outcome - a financial *crisis* - the nation's energy *crisis*
> **b :** a situation that has reached a critical phase - the environmental crisis - the unemployment *crisis*

See Meriam-Webster.com (Dec. 20, 2017), https://www.merriam-webster.com/dictionary/crisis (emphasis in original). The statistics certainly support Purdue's admission that there is an opioid crisis requiring immediate action. As the State has repeatedly pressed upon this Court, every day that the opioid crisis goes unaddressed brings more harm to the State and its citizens in the form of addiction, disease, crime, and death. *See, e.g.*, State's Omnibus Response to Defendants' Joint Motion to Dismiss for Failure to State a Claim, § I. Accordingly, the immediacy of this crisis, as acknowledged by Purdue, in particular, and the other defendants in general, makes the prompt disposition of this case all the more important.

Indeed, six months after the State served its discovery requests, Defendants have only just begun producing discovery responses, which are riddled with objections and have been unilaterally narrowed in scope by Defendants. Purdue and its Co-Defendants/Co-Conspirators are not part of the solution, and they are not fighting the opioid crisis. Rather, they created the opioid crisis and they continue to perpetuate it. Defendants are actively fighting *against* solving this crisis and *against* resolving this case. Having lost the motions to dismiss, the primary weapon in their fight is now delay.

Notably, the President's Commission has recognized the dire immediacy of addressing the opioid crisis. Purdue claims that it supports efforts to remediate the opioid crisis:

> **"We support recommendations in *The President's Commission on Combating Drug Addiction and the Opioid Crisis* and the FDA's *Opioid Action Plan*. There are too many prescription opioid pills in people's medicine cabinets."**

Purdue's concession is important. Indeed, among other recommendations, the Commission calls for:

- Equipping of all law enforcement officers with naloxone;
- Urgent implementation of an expansive national multi-media campaign to fight the opioid crisis;
- Better education of teenagers and college students with the help of trained professionals;
- Access to non-opioid pain management options for individuals with acute or chronic pain; and
- Removal of pain questions from patient surveys.

See President's Commission on Combating Drug Addiction and the Opioid Crisis 7–9 (2018). The State agrees with Purdue that these recommendations (and many others) must be implemented.

This lawsuit therefore seeks to further effectuate these measures through abatement, injunctive relief, and damages to fund these and other types of programs aimed at educating the public regarding the severe risks of opioid use. Purdue has admitted that something needs to be

done and agrees with the recommendations of the President's Commission. Thus, this case should not be drawn out any longer than necessary. A trial date in May 2019 will ensure that implementation of these vital remedial measures is not unnecessarily delayed any further.

In addition to setting a trial date commensurate with the immediacy of the crisis underlying this case, Plaintiff's proposed scheduling order provides sufficient time for discovery and pretrial matters. A total of two years from filing is plenty of time to complete this case. The proposed schedule provides over thirteen months from now to the completion of discovery. Thirteen months of discovery is reasonable, even in a complex case. *See Spectra Corp. v. Lutz*, 839 F.2d 1579, 1581 (Fed. Cir. Feb. 24, 1988) (thirteen-month discovery period reasonable in patent infringement case). And while the proposed discovery period is more than adequate, a thirteen-month time frame will ensure that discovery is conducted efficiently and without unnecessary duplication, obstruction, or delay. *See* 12 O.S. Chap. 2, Appx., R. 5(E)(3) (scheduling should "discourage wasteful pretrial activities").

Moreover, the State and its taxpayers have already shouldered substantial costs in combatting the opioid epidemic and implementing remedial actions. The longer this case takes, the more costs the State will incur. Such costly burdens should not be placed on the State any longer than is absolutely necessary to complete this litigation.

Therefore, in accordance with the Rules for District Courts of Oklahoma, and in the interests of efficiency and expediency in the face of the greatest health crisis Oklahoma has ever seen, Plaintiff respectfully requests that the Court enter the proposed scheduling order setting a trial date of May 28, 2019.

II. This Litigation Will Not Benefit from a Discovery Master

Defendants prematurely and unnecessarily ask this Court to cede its judicial authority over pretrial discovery to a special master. The decision to appoint a discovery master is within the Court's discretion. 12 O.S. § 3225.1(A)(1). If a discovery master is appointed, the appointment *must* be supported by findings that (1) the appointment is necessary due to the "nature, complexity or volume" of the materials involved; (2) the benefit of the appointment outweighs its burden or expense; and (3) the appointment will not improperly burden the rights of the parties to access the Court. *See id.* § 3225.1(A)(2). Defendants have not shown that the "nature, complexity or volume" of the materials warrants a discovery master. Thus, appointment of a discovery master is not necessary and will not be beneficial. And, perhaps most importantly, the burden of a discovery master on the State—both in terms of expense and delaying the resolution of this case—clearly outweighs any benefit a discovery master could provide—especially at this early stage in the litigation. For these reasons and as set forth below, the State requests that Defendants' motion to appoint a discovery master be denied.

The nature, complexity, and volume of the materials likely to be involved in this case do not necessitate appointment of a discovery master. A discovery master is not warranted where the "Court is familiar with the issues in the case and can adequately supervise the discovery process." *See Clark v. Weisberg*, No. 98-C-6214, 199 U.S. Dist. LEXIS 11341, at *16 (N.D. Ill. July 22, 1999) (holding appointment of special master inappropriate under analogous Fed. R. Civ. P. 53).[1] Here, the State's claims are of a nature familiar to this Court and do not implicate complex

[1] "12 O.S. §3225.1 is based upon the more generally applicable federal procedure for appointing a master under Fed. R. Civ. P. 53 . . . . Fed. R. Civ. P. 53 should therefore be instructive for interpreting comparable provisions of 12 O.S. §3225.1." 1 Harvey D. Ellis, Jr. & Clyde A. Muchmore, *Oklahoma Civil Procedure Forms and Practice* § 8.01[9] (2d ed. 2017).

materials. The State's claims exclusively involve Oklahoma common law and statutory causes of action related to Defendants' fraudulent and conspiratorial marketing. These claims do not implicate another forum's law or novel causes of action. This case is about whether Defendants misled the State, its citizens, and its healthcare providers about the safety, addictiveness, and efficacy of opioids. The volume of materials likely to be involved in this case is not exceptional when viewed in light of the nature of the claims. Further, in ruling on Defendants' motions to dismiss, the Court oversaw extensive briefing and oral argument related to the specific factual issues in this case. Given the nature of the claims at issue and the undertakings of the Court to date, the Court is especially familiar with the factual issues in this case and more than capable of adequately supervising the discovery process. Appointment of a discovery master simply is not necessary.

Likewise, Defendants do not identify any specific discovery dispute that would benefit from the appointment of a special master. None has arisen. Instead, Defendants warn that there will be "piecemeal presentation of multifarious discovery issues to the Court" in the absence of a discovery master. Mot. at 3. Defendants' threat of numerous discovery issues raised in fragmented fashion is not a basis for the appointment of a discovery master—it is a foreshadowing of the lack of cooperation and obstructionist tactics they intend to deploy to stall this case.

This case belongs in this Court before the presiding district judge. If the Defendants engage in discovery in good faith, as they are compelled to do by Oklahoma law, 12 O.S. § 3226(G), there will not be repeated discovery issues requiring Court intervention, much less the need for a discovery master. Even if they do not, a discovery master will neither insulate the Court from discovery issues nor expedite their resolution. A discovery master's order, report, or recommendation may be challenged to the Court by any party as a matter of right. *See id.* §

3225.1(F). Oklahoma law gives a party fourteen (14) days to object or move to adopt or modify a discovery master's order and the other party fifteen (15) days from the date of the objection or motion to respond. *Id.* Thereafter, the Court must review the discovery master's recommendations—***de novo***, in the case of factual findings and legal conclusions—and either affirm, modify, reject, reverse, or resubmit to the discovery master with instructions. *Id.* Accordingly, not only are discovery issues still likely to be presented to the Court, the existence of a discovery master will delay the resolution of each issue by at least a month.

In addition to the delay, a discovery master will add the expense (both financially and in terms of attorney time) of an additional round of briefing to potentially every discovery dispute. The Parties will also be required to pay a discovery master's compensation. *See* 12 O.S. §3225.1(G). This expense is not justified, especially in light of the other incidental expenses and delay likely to result from the appointment of a discovery master. Rather than avoiding burden and expense, the appointment of a discovery master will add to both.

Put simply, referring this case to a discovery master is unnecessary and would only delay the ultimate resolution of this case and bring about considerable added expenses for all involved, without providing any corresponding benefits to the Parties.

Accordingly, the Court should deny Defendants' request for a discovery master.

Dated: December 27, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 27 day of December 2017 to:

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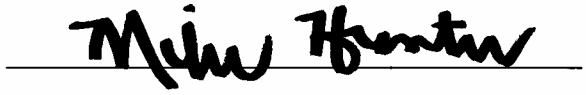

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, vs. (1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC.; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (9) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; and (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants.	§ §	Case No. CJ-2017-816 JURY TRIAL DEMANDED

<u>PLAINTIFF'S PROPOSED SCHEDULING ORDER/ORDER FOR STATUS CONFERENCE</u>

WHEREAS, the parties assert that the above-entitled cause is at issue, the Court, pursuant to Rule 5 of the Rules for the District Courts of Oklahoma, finds and Orders as follows:

A

Scheduling Order

1. The following deadlines shall apply:

EVENT	DEADLINE
Ruling on Motion for Protective Order:	Court's Earliest Available Date
Ruling on Motions to Dismiss:	Court's Earliest Available Date
Parties disclose the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses:	January 26, 2018
Motions to join additional parties:	March 30, 2018
Motions to amend pleadings:	June 29, 2018
Plaintiff disclose expert witnesses and provide information set forth in 12 O.S. §3226(B)(4)(a)(1):	November 30, 2018
Defendants disclose expert witnesses and provide information set forth in 12 O.S. §3226(B)(4)(a)(1):	December 14, 2018
Discovery completed by:	January 31, 2019
Plaintiff disclose information for expert witnesses set forth in 12 O.S. §3226(B)(4)(a)(3) by:	January 31, 2019
Defendant disclose information for expert witnesses set forth in 12 O.S. §3226(B)(4)(a)(3) by:	February 14, 2019
Expert Witness Depositions Complete by:	March 8, 2019
All dispositive motions to be filed by:	March 22, 2019
Motions in limine shall be filed by:	20 days prior to pretrial conference
Plaintiff to submit to defendant final list of witnesses in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed by:	20 days prior to pretrial conference

Defendant to submit to plaintiff final list of witnesses in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed by:	20 days prior to pretrial conference
Plaintiff to submit to defendant final exhibit list (if exhibit is nondocumentary, a photograph or brief description thereof sufficient to advise defendant of what is intended will suffice) by:	20 days prior to pretrial conference
Defendant to submit to plaintiff final exhibit list (if exhibit is nondocumentary, a photograph or brief description thereof sufficient to advise plaintiff of what is intended will suffice) by:	20 days prior to pretrial conference
Trial briefs to be filed by:	7 days prior to trial
Mediation shall be completed prior to the Status Conference	
All stipulations to be filed by:	May 13, 2019
Trial Date:	May 28, 2019

2. The above deadlines are firm once set and **shall not be changed** except by **written application**, submitted to this Court for a hearing and ruling thereon at least ten (10) days prior to Status Conference, unless good cause is otherwise shown.

3. All discovery must be COMPLETED by the above date. Serve your discovery requests so that responses may be made and any discovery disputes can be concluded prior to the discovery completion date.

4. Unless otherwise ordered, mediation shall be completed in each case. A joint application and order to waive the mediation requirement may be submitted for the Court's review.

5. Courtesy copies of all motions and responses shall be provided to the Court upon filing.

Order for Status Conference

A Status Conference shall be held on the 13th day of May, 2019, at _____ before the undersigned Judge. The following Orders regarding the Status Conference are hereby entered:

1. **Each party** shall be represented at the Status Conference by counsel who will conduct the trial, or by co-counsel, with full knowledge of the case and authority to bind such party by stipulation, or by the party in person, if without counsel;
2. **Default**. **Parties who fail to appear** pursuant to this Order shall be considered in **DEFAULT**, and subject to judgment against them, dismissal or claims or sanctions as appropriate;
3. **Reset and Continuances**: Resetting of Status Conference will **only** be approved upon submission of a **joint** motion and order OR by a ruling on an opposed Motion for Continuance;
4. **Discovery**. Discovery shall be **COMPLETED**, per paragraph 3 above, prior to the Status Conference, unless a **joint** request to extend scheduling deadlines for that purpose is approved:
5. **Dispositive Motions**. All dispositive motions shall be **filed AND heard** prior to the Status Conference. Failure to comply shall result in a denial of any dispositive motions filed in violation of this order, unless a **joint** request to extend scheduling deadlines for that purpose is also approved; and,
6. **Mediation**. Mediation shall be completed prior to Status Conference, unless a **joint** request to extend scheduling deadlines for that purpose is also approved.

Failure to comply with this Order for Status Conference shall result in an appropriate sanction as allowed by law.

IT IS ORDERED this _____ day of _____, _____.

_____
JUDGE OF THE DISTRICT COURT

APPROVED:

_____ _____
COUNSEL FOR PLAINTIFF COUNSEL FOR DEFENDANT