

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PERRIGO COMPANY)	
AND SUBSIDIARIES,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:17-cv-00737
)	
UNITED STATES OF AMERICA,)	Hon. Robert J. Jonker
)	
Defendant.)	

OPPOSITION TO UNITED STATES’ MOTION TO CONTINUE TRIAL

On January 11, 2021, Defendant filed a Motion to Continue Trial (PageID.4872), requesting that “the Court continue the trial...to a date in late March or early April 2021.” *Id.* While Plaintiff is not unsympathetic to the Covid-19 concerns raised by Defendant, they do not warrant a continuance just two weeks before the scheduled trial.

Plaintiff believes that the Court’s current safety protocols are sufficient to enable the parties to conduct an in-person trial this month. Indeed, the parties safely attended the December pre-trial conference, at which the Court informed the parties that it has conducted “six or seven jury trials without incident.” (PageID.4861) Given the fluctuating statistics on infections, virus variations, difficulties and unpredictability in the roll-out of vaccines, and uncertainty whether vaccinated persons can still infect others, it is pure speculation that a two-month postponement would ensure a safer trial environment. While DOJ may have a special vaccine allotment, that is not true for Plaintiff’s trial team, support personnel, or witnesses. Most are unlikely to have received even one vaccine injection by early April, let alone both injections required for

protection.¹ It is highly speculative that the six witnesses scheduled for remote testimony would be able to appear in person at a continued trial.

Even the relatively short continuance sought by Defendant would be prejudicial to Plaintiff. At this late date, Plaintiff has already committed substantial time and financial resources to trial logistics and witness preparation that would have to be duplicated again in two months. The logistics include complex travel arrangements, hotel accommodation scheduling, meal planning, equipment and wardrobe shipments, and other details. Plaintiff's lead paralegal was scheduled to depart the Middle East for the US today at 6:30 PM EST and has postponed her flight until Friday in light of this motion. In addition, Plaintiff's lead counsel, John Magee, has already postponed his retirement from December 31, 2020 to February 28, 2021 to accommodate the current trial dates. Further extensions make his continued participation both problematic and doubtful for a variety of reasons.

Finally, while there are currently six witnesses that plan to appear remotely, there are 19 fact and expert witnesses scheduled to appear in person, for a total of 25 trial witnesses. Fifteen of these are Plaintiff's witnesses, but only two are scheduled for remote testimony. In contrast, Defendant has 10 witnesses, four of whom will be remote. Plaintiff believes that the accommodations for the more vulnerable witnesses properly balances health protection against the need to complete this trial.

¹ On January 4, 2021, in response to Defendant's notice that it would move for a continuance, Plaintiff proposed an alternative solution to the concerns the trial raises—a willingness to engage in a bona fide settlement process. Defendant has not responded to Plaintiff's offer.

The substantial burdens of the requested continuance significantly outweigh its speculative benefits, and Plaintiff respectfully requests the Court to deny Defendant's motion.

Dated: January 12, 2021

Respectfully submitted,

/s/ John B. Magee
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