

In the United States Court of Federal Claims

No. 15-1549C

(E-Filed: November 9, 2021)

_____)
UNIVERSITY OF SOUTH FLORIDA,)
BOARD OF TRUSTEES)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

TRIAL MANAGEMENT ORDER

On November 8, 2021, the court held a pretrial conference in this matter. Joining the conference were Steven B. Kelber, on behalf of plaintiff; and Walter W. Brown, on behalf of defendant, with whom were Joshua Miller and Carrie Rosato, with the Department of Justice. Also joining by videoconference for the beginning of the conference, pursuant to the court's November 5, 2021 order, see ECF No. 234, was Timothy Shannon, on behalf of non-party The Jackson Laboratory (Jackson).

During the pretrial conference, the court's final scheduled opportunity to meet with the parties, the court discussed the outstanding questions and concerns about trial logistics and other pretrial matters in this case, set for trial to begin on December 6, 2021. By this order, the court memorializes the discussion and understanding reached regarding the pertinent issues. The court encourages the parties to carefully read this order in its entirety, as it contains a significant amount of information governing trial procedure.

I. Covid-19 Protocols

The court first addressed the Covid-19 protocols for the United States Court of Federal Claims and the undersigned, which are:

- A. The court will require counsel of record for each party to orally certify at the beginning of each day of the proceeding that any in-person participants (their colleagues, staff, and clients) are asymptomatic for Covid-19.

- B. No more than ten people may be in the courtroom at any time. The court will require three people in the room; therefore, the parties may have—between them—a total of seven people in the courtroom at one time.
- C. For contact tracing purposes, counsel will be required to submit a list of in-person participants each day, including their names, titles, and contact information.
- D. Masks are required in the courthouse and the courtroom at all times.
- E. The court maintains a limit of four people at a time on the elevator.

II. Procedural Issues

The court then turned to procedural issues for the trial, first addressing an issue of confidential information of non-party Jackson, recently raised by Jackson. See ECF No. 234 (order).

A. Jackson's Confidential Information

At the court's invitation, counsel for Jackson expounded on the matters of concern. Counsel stated that both parties have requested certain documents and testimony from Mr. Brian Bannerman, an employee of Jackson, involving Jackson's confidential financial information. Counsel for Jackson expects that this information would potentially come forth during Mr. Bannerman's trial testimony, and during the testimony of Jeffrey Klenk, defendant's damages expert, who relied on information provided by Mr. Bannerman in preparing his report. Counsel reported that four types of information are of particular concern to Jackson: (1) customer information; (2) the volume of mice sold to each customer; (3) the total sales of the mice at issue; and (4) the average price per mouse. Counsel indicated that its customers are engaged in cutting-edge research that requires strict confidentiality and that all of the information of concern, with the exception of the average price per mouse, should be sealed. Counsel suggested that Mr. Bannerman would be in the best position to alert the court and the parties when information arises in his testimony that is confidential, but requested permission to observe Mr. Bannerman's testimony to report back to Jackson about the trial.

Neither party had any objection to the court issuing a limited protective order in this matter covering the contents of those categories of information identified by Jackson's counsel during Mr. Bannerman's testimony, Mr. Klenk's testimony, and any discussion of the same by counsel. Counsel for Jackson would also be provided, by the terms of the protective order, an opportunity to review the trial transcript prior to its unsealing for the redaction of any confidential information. The court therefore directed the parties and Jackson's counsel to **confer** and **file a motion for protective order** and an attached agreed upon protective order, on or before **November 12, 2021**. The court

will also grant Mr. Shannon's request to observe Mr. Bannerman's testimony. Mr. Shannon should, therefore, indicate in the motion for protective order whether he intends to observe in person or via videoconference.

The court then excused Jackson's counsel for the remainder of the conference.

B. Trial Schedule

As to the trial schedule, the court informed the parties as follows:

- (1) The court will permit the parties to make opening arguments before the presentation of evidence at trial. The court will impose no specific time limit, but encourages the parties to make crisp presentations. The court reminded the parties that it will focus on factual development during trial, and there will be adequate time in post-trial briefing to make legal arguments. Closing arguments, if necessary, will be scheduled after the parties have completed post-trial briefing.
- (2) The court will neither require nor permit the parties to read the deposition testimony they have designated into the trial record. Instead, for the court to formally admit the transcribed deposition testimony into the trial record, the parties must move for its admission as an exhibit during the trial.
- (3) Both parties may move for the admission of relevant portions of deposition testimony. In response to such a motion, the court will permit opposing counsel to move for the admission of counter-designated portions of the deposition testimony they would like admitted for proper context.
- (4) The court intends to conduct this trial as efficiently as possible, and anticipates adhering to the following schedule for most days of trial:

8:00 a.m.	Zoom meeting, courtroom, and storage rooms will be opened.
9:00 a.m.	Trial Day begins with a conference among counsel and the court regarding any administrative matters.
11:00 a.m.	Morning Break (15 minutes)

12:30 p.m.	Lunch Break (1 hour)
3:45 p.m.	Afternoon Break (15 minutes)
5:00 p.m.	End of Trial Day

- (5) The court will also break for humanitarian needs as necessary, and will allow additional time beyond 5:00 p.m., if required and as possible, given the Covid-19 restrictions in place, for the continuity of witness testimony or another compelling reason.

The parties have asked the court to **hold** five days for trial—from **Monday, December 6, 2021, through Friday, December 10, 2021**. The parties represented that they anticipate that their presentations of live testimony will be shorter than originally expected. The court, however, will continue to hold the full five days to accommodate any potential delays.

C. Courthouse and Courtroom Access

Both parties indicated that they expect to be in the courtroom during trial. Both parties also requested that they be permitted to access the courtroom ahead of trial. The court has reserved the trial courtroom for **Friday, December 3, 2021**, for this purpose. To arrange access, **on or before November 29, 2021**, the parties are directed to **email** chambers at Campbell-Smith_Chambers@cfc.uscourts.gov with the names and contact information (email address and phone number) for each person who will be in the courtroom on December 3.

In addition to the courtroom, the parties will have access to two small ante rooms, one for each party to use. The rooms will be locked each night. The parties are welcome to leave exhibits or other trial materials in their ante room during trial.

The court intends to permit all witnesses to testify by videoconference. The parties indicated very few witnesses are likely to testify in the courtroom.

The parties are reminded that any witnesses that are testifying in the courtroom will not be permitted to remain in the courtroom or in the courthouse while awaiting their turn to testify. The parties must coordinate with their witnesses to identify a location outside the courthouse in which the witnesses may remain sequestered. The parties must also communicate with the witnesses in as timely a manner as possible to ensure that witnesses arrive in the courtroom to testify when the parties are prepared to present their testimony.

No public Wi-Fi is available to the parties in the courthouse. If Wi-Fi is required for any reason, the parties will need to provide their own access by hotspot.

D. Video Etiquette

In the event that circumstances change, all parties should be prepared for an exclusively virtual presentation. Therefore, the court next turned to video etiquette issues should an entirely virtual trial become necessary. The court will provide the parties with a Zoom for Government meeting invitation for trial by email prior to the start of trial. The link included in the invitation will be the link used for the entirety of trial. Should the parties wish to test the Zoom technology with their witnesses, they should inform the court of that desire at least **twenty-four hours** in advance of the time they would like to conduct the test. The parties may contact Brandon Kolpak with the court's IT Systems office to schedule a test. His contact information will be provided by separate email. The court encourages the parties to schedule any testing as soon as possible given the court's schedule. The court will also **open the Zoom meeting** each day at **8:00 a.m.** and will, upon request, make the hour of **8:00 to 9:00 a.m. available to the parties for testing.**

Virtual participants will be automatically muted when first joining the Zoom proceeding. Participants, however, will be responsible for subsequently unmuting and muting themselves as needed. Participants are encouraged to use headphones to limit audio feedback. The court, as the host of the meeting, will assign presentation control to the participant that is presenting at any given time during trial. Participants will be able to control their own display of proceedings. All participants by video, except witnesses actively participating in the proceeding at any given time, shall turn off their video and mute their audio.

For those who are participating in the courtroom—the use of electronic devices is acceptable exclusively for the purpose of making trial presentations. This use extends to the use of laptops that may be used to access documents to assist the attorneys during trial. For example, if an attorney would like to use a document that has not previously been marked as a trial exhibit to impeach a witness, a member of the attorney's team or an expert witness is permitted to use a laptop to locate that document. The court, however, will not permit laptops to be used to conduct legal research during trial. The purpose of trial is to develop the factual record. Should legal arguments be necessary, for example to address an objection to evidence presented, the court will follow the procedure for proffers addressed below.

The parties and witnesses may bring cell phones into the courtroom, but they must be turned off during trial proceedings and may only be used in an emergency. The court recommends that the parties familiarize themselves with the section of the court's website that addresses courtroom decorum for additional guidance on the use of technology in the courtroom, which can be found at https://www.uscfc.uscourts.gov/courtroom_decorum.

In the event any participant experiences a technical issue, that participant shall notify the court as soon as possible at the number that the court will provide by email in due course. The parties are welcome to have litigation support personnel assist with their presentations and should contact Brandon Kolpak to learn what equipment is available, or to clarify the technological capabilities, in the courtroom.

E. Recording

The court has arranged for a court reporter. The court instructs that no observer or participant in this trial, other than the court reporter, shall record or transmit the proceedings in any form, including but not limited to audio recordings, video recordings, screenshots, or other live-stream transmission of any sort. No participant shall forward, or otherwise share, absent prior written approval from the court, the Zoom link for this matter with any other individual.

III. Trial Participation

A. Identification of Participants

The universe of permissible participants is a generous one—counsel, pre-identified agency counsel, party representatives, witnesses, and IT facilitators are all permissible participants. Any participating party representative that is also testifying must adhere to the sequestration protocol. The court also intends to zealously protect these proceedings from interruption by unannounced participants.

Counsel is directed to **email** chambers by **9:00 p.m. one business day before each trial day** a list of those individuals who will participate in the trial the following day. The list shall include the names, affiliations, and contact information (email address and phone number) for each individual, and whether they will participate in person or by video. The court will only entertain motions challenging appearance by videoconference under extraordinary circumstances.

B. Declarations

The court attaches to this order declarations for counsel and other participants in the proceedings. Each participant in this trial, including counsel, witnesses, support personnel, and observers, shall review and sign the furnished declaration. On or before **Friday, December 3, 2021**, the parties shall **file** a **notice of compliance** attaching all of the **declarations** on the docket in this matter. Violation of the terms and conditions of this order will be subject to sanctions.

When providing the declaration for signature to non-attorney participants, counsel shall also provide a copy of this order. Counsel shall review with each non-attorney participant in this trial the terms and conditions contained herein, and the obligation of

each participant to disclose any inadvertent or intentional violations of the terms and conditions of which the participant learns.

IV. Presentation of Evidence

First, the court emphasized that parties must, both at trial and in any post-trial submissions, explicitly identify, and explain the significance of, any part of the record on which they seek to rely. In other words, the parties cannot expect the court to review the entire record and independently construct an argument to support either party's case.

A. Exhibits

The court next turned to the particulars for handling exhibits during trial. The parties indicated that they do not intend to introduce exhibits that are not documents. The court instructed the parties as follows:

- (1) The parties shall pre-number their exhibits as "Plaintiffs' Exhibit 1" or "Defendant's Exhibit 1," and so on. For demonstratives, the parties shall pre-mark them in the same format using letters rather than numbers—"Plaintiffs' Demonstrative A" or "Defendant's Demonstrative A," and so on. If needed, the parties may use double and triple letters. Joint exhibits shall be designated as "Joint Exhibit 1," and so on.
- (2) The parties shall also prepare a checklist of their pre-numbered exhibits with a column for checking off the exhibit when it is admitted at trial. The checklist shall include columns labeled, "admitted," "not admitted," "conditionally admitted," and "not introduced," for each pre-numbered exhibit. On or before **Friday, December 3, 2021**, each party shall **email** an electronic copy of the checklist to chambers at Campbell-Smith_Chambers@cfc.uscourts.gov. The parties shall use the same checklist to keep track of admitted exhibits in a uniform manner.
- (3) Consistent with the court's instruction regarding evidentiary objections below, if either party makes an objection to an exhibit or testimony on which the court does not immediately rule, the exhibit will be conditionally admitted, and the party may proffer the testimony. Any conditionally admitted exhibits or proffered testimony are not admitted into evidence until they are ruled admissible by the court either during trial or in post-trial briefing. The party proffering testimony is responsible for making clear for the transcript when the proffered testimony begins and when it ends

by stating for the record, “this is the beginning of the proffered testimony,” and “this is the end of the proffered testimony.”

- (4) At the end of each day of trial, the parties should expect to have a conference that includes counsel for the parties, the judge’s law clerk, and the court reporter to ensure that everyone has marked the same set of exhibits as admitted for that day. The court generally intends for that conference to begin at 5:00 p.m., after the submission of evidence for the day.
- (5) The Zoom technology will permit the sharing and annotation of documents in the platform as needed for exhibits. Any testifying witness can annotate and mark up documents. This can happen in real time, or may be prearranged with IT support by contacting the court’s IT facilitator. The court noted that any markup will not be captured by the technology, however, and the parties agreed that the court’s use of a screen capture of the annotated document to record any markings would be sufficient. The parties agreed that the screen capture can then be designated a demonstrative as necessary and shared among counsel and with the court.

B. Witness Lists

To facilitate the presentation of evidence in the hybrid remote and in-person environment, the court will require the parties to exchange a series of witness lists. The parties shall **exchange** an anticipated order of witnesses in advance of trial. Plaintiffs shall **serve** a tentative order of witnesses on defendant on **Monday, November 29, 2021**, and, as appropriate, an updated order of witnesses by **Wednesday, December 1, 2021**. Defendant shall **serve** its order of witnesses on plaintiffs on **Friday, December 3, 2021**.

The parties shall **exchange** an anticipated schedule of witnesses including the names of witnesses, the order in which they will testify, whether they will testify by videoconference or in-person, and any demonstratives expected to be used in connection with the witnesses’ testimony, **twenty-four hours** in advance of the expected testimony. The parties shall also **email** to chambers the anticipated schedule with the court on the same date that it is furnished to opposing counsel.

Plaintiff noted for the court that one witness will be testifying by videoconference from the United Kingdom and will be testifying for both parties’ cases in chief. Plaintiff stated that it is possible that the witness will need to testify beyond 5:00 p.m., possibly as late as 7:00 p.m. with the court’s permission. The court requested that the parties **notify** the court as soon as they are aware of any such need, preferably **at least twenty-four hours in advance**. The court also noted that for purposes of judicial efficiency, the witness may testify for both cases in chief at the same time—once plaintiff has finished

its direct examination, and cross-examination and re-direct are complete, the court will pause and will make clear on the record that the witness is now appearing on direct examination for defendant before continuing the examination.

The court recognizes that circumstances may change after these required exchanges and will allow flexibility for adjustments as needed. Any changes or adjustments to the schedule should be addressed during the morning conference with the court each day.

C. Expert Direct Testimony

The parties addressed their desired method of presenting expert testimony to the court during the conference. See also ECF No. 233 (joint notice regarding expert testimony at trial). The parties advised the court that they wish to have their experts' direct testimony be replaced by the experts' written reports. Thus, examination would begin with cross-examination and proceed to re-direct. Plaintiff represented that this would both be in the interest of judicial efficiency and would avoid confusion about the contents of the experts' direct testimony.

The court found this proposal acceptable and noted that the parties would simply need to move for the admission of each expert report at the beginning of the expert's testimony, any objections would be noted at that time, and testimony would proceed to cross-examination. Defendant inquired of the proper time to move for admission of the exhibits to the expert reports, and the court noted that the parties may move for admission of the exhibits to the reports when they move to admit the reports themselves.

D. Electronic Witness Notebooks

For each witness, the parties will provide to each other and to the court an electronic witness notebook in advance of testimony that includes each exhibit in sequential order that is expected to be introduced by or discussed with a witness. The court asks the parties to electronically provide this material to all in the event we find ourselves unable to be in court physically and must proceed with trial only virtually on any given day.

The parties are directed to **provide** the witness notebooks **forty-eight hours** ahead of the witnesses' anticipated testimony. For witnesses testifying on Monday, the parties should provide their notebooks the preceding Friday. The parties stated that they are preparing PDF copies of witness notebooks and will exchange them via email. The parties are directed to **email** a copy of each notebook to the chambers email address on the date that they are furnished to opposing counsel. The court will, of course, be flexible, as needed, if circumstances change and the parties need to supplement or otherwise amend their notebooks.

The court will require the parties to provide three physical copies of each exhibit to the court as it is introduced.

The court is satisfied that, once the attached declarations, see supra Part III.B., have been signed and filed attached to a notice of compliance, access to the electronic notebooks can be given and an honor system will be adopted to ensure that proper notebook etiquette is observed by all. In short, neither the parties nor their witnesses shall review the notebooks prior to the presentation of the pertinent witness' testimony. In the case of an inadvertent review of the notebook contents, the parties will follow the guidance for disclosure of such review contained in the attached declaration concerning the court's virtual trial guidelines.

E. Objections

The parties have identified certain anticipated evidentiary objections. The parties should expect to make and respond to objections as needed during trial, some of which the court will rule upon during trial, and some of which it will not, if further legal argument is needed. The court will allow the parties to proffer evidence when an objection is made but not immediately ruled upon. Following trial, the parties will have the opportunity to argue about these reserved objections in briefing before the trial record is officially closed, and before post-trial briefing begins. This process is intended to ensure that trial remains efficient and does not stagnate during protracted argument over an objection.

The court will address a schedule for post-trial briefing after trial concludes, to include a schedule for addressing any evidentiary issues that require further legal discussion.

The parties represented that in the course of preparing for trial they have resolved a number of the objections and documents at issue. The court will direct the parties to **confer** and **file updated exhibit lists** reflecting the issues that have been resolved by **November 12, 2021**.

F. Sequestration

During trial, any fact witnesses must be sequestered until after they testify. The court will utilize Zoom waiting rooms as needed for those witnesses that are appearing by videoconference to accomplish sequestration.

For those witnesses appearing in person, it will be the responsibility of the parties to ensure that any such witnesses are sequestered, as the court will not be able to identify the witnesses on sight. As previously explained, counsel will be responsible for making arrangements for witnesses prior to their testimony as they will not be permitted to remain outside of the courtroom within the courthouse.

If a witness is testifying by videoconference, no counsel may be physically present with any witness.¹ During the course of each witness' on-the-record testimony (including direct examination, cross-examination, and re-direct), no counsel or other associated person may communicate off-the-record with the witness (e.g., via text message, email, or direct message). To that end, any trial witnesses that are testifying by video conference will need to identify—prior to beginning their testimony—where they are physically located and verify that they are alone in the video conferencing space except for the presence of a non-lawyer technical assistant, which may include, but is not limited to, a paralegal or a witness' family member, to help the witness with any difficulties with the video equipment while testifying if necessary. If a witness is participating from an attorney's office, the witness should be placed in a separate room.

To ensure sequestration is maintained, if a witness is expected to testify for both plaintiff and defendant the court would prefer that all preparation with that witness is complete prior to the witness' first appearance to testify. However, the court understands that this may not be possible. In the event that witness preparation cannot take place before the witness' first appearance before the court, counsel is advised to remind the witness of his or her responsibility to abide by the terms and conditions set forth in this order, and counsel should reinforce to the witness that he or she remains sequestered and may not review any testimony prior to any additional appearance at trial.

V. Miscellaneous Issues

Finally, the court encourages the parties to continue conferring about trial logistics and to bring any issues that arise to the court's attention as promptly as possible. The court is amenable to holding additional conferences as needed to ensure that all preliminary matters are addressed prior to trial.

VI. Conclusion

Accordingly, as set forth above:

- (1) **Trial** will be **HELD** in this matter, with the parties presenting both virtually by Zoom for Government and in-person as set forth in this order, for five days, beginning on **Monday, December 6, 2021 through Friday,**

¹ To the extent a witness has retained individual counsel, the witness should so advise the court.

December 10, 2021, and the **courtroom and zoom meeting** shall open each day at **8:00 a.m.**,²

- (2) The parties are directed to **PREPARE** their exhibits pursuant to Section IV.A.1 of this order;
- (3) On or before **November 12, 2021**, the parties are directed to **CONFER** and **FILE a motion for protective order** and an attached agreed upon protective order, as discussed supra in Section II.A. Counsel for The Jackson Laboratory, Timothy Shannon's, oral request to observe Mr. Bannerman's testimony during trial is **GRANTED**, and Mr. Shannon shall indicate in the motion for protective order whether he intends to observe in the courtroom or via videoconference;
- (4) On or before **November 12, 2021**, the parties are directed to **CONFER** and **FILE updated exhibit lists** reflecting the issues that have been resolved by the parties;
- (5) On or before **Monday, November 29, 2021**, the parties are directed to each **EMAIL**³ chambers their **list of individuals who wish to visit the courtroom on Friday, December 3, 2021**, for preparation prior to trial, including their names, titles, and contact information (email address and phone number);
- (6) On or before **Monday, November 29, 2021**, plaintiffs are directed to **SERVE a tentative order of witnesses** on defendant;
- (7) On or before **Wednesday, December 1, 2021**, plaintiffs are directed to **SERVE a revised order of witnesses**, as necessary, on defendant;
- (8) On or before **Friday, December 3, 2021**, each party is directed to **EMAIL** an electronic copy of their **evidence checklist** as described in Section IV.A.2. to chambers;
- (9) On or before **12:00 p.m. on Friday, December 3, 2021**, the parties shall **EMAIL** to chambers a **joint list of witnesses** for trial. The parties' list shall include the names and affiliations of the witnesses expected to be

² An email from chambers shall issue in due course setting forth the trial Zoom meeting link, and contact information for chambers and the court's IT facilitator. Chambers' email is: Campbell-Smith_Chambers@cfc.uscourts.gov.

³ Any email correspondence to the court shall contain a courtesy copy to all parties and the subject line shall include the name of the bolded item forwarded, as assigned in this ordering language.

called that week and the individuals, including counsel, that will participate or observe on the Zoom meeting;

- (10) On or before **Friday, December 3, 2021**, the parties shall **OBTAIN** signed copies of the attached declarations for each trial participant, including counsel, witnesses, support personnel, and observers, and the parties shall **FILE** a **notice of compliance** attaching all of the **declarations** on the docket in this matter. For any participants that are unanticipated prior to trial, a signed declaration shall be filed **twenty-four hours** ahead of any appearance at trial;
- (11) On or before **Friday, December 3, 2021**, defendant is directed to **SERVE** its **order of witnesses** on plaintiffs;
- (12) **Forty-eight hours** in advance of the expected testimony, the parties shall **EMAIL** to each other and to the court an **electronic witness notebook for each witness** that includes each exhibit in sequential order that is expected to be introduced by or discussed with a witness. The parties must **PROVIDE three physical copies of each exhibit** to the court as it is introduced;
- (13) **Twenty-four hours** in advance of the expected testimony, the parties are directed to **EXCHANGE** an **anticipated schedule of witnesses** including the names of witnesses, the order in which they will testify, whether they will testify by videoconference or in-person, and any demonstratives expected to be used in connection with the witnesses' testimony. The parties are directed to also **EMAIL** the **anticipated schedule of witnesses** to chambers at the same time that it is furnished to opposing counsel; and
- (14) Should the parties wish to test the Zoom technology with their witnesses, they shall **NOTIFY** the court by email or at the morning administrative meeting at least **twenty-four hours** in advance of the time they would like to conduct the test; and
- (15) The parties are directed to **EMAIL** chambers by **9:00 p.m. one business day before each trial day** a **list** of those individuals who will participate in the trial the following day. The list shall include the names, affiliations, and contact information (email address and phone number) for each individual, and whether they will participate in person or by video.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
PATRICIA E. CAMPBELL-SMITH
Judge

Attachments.

In the United States Court of Federal Claims

No. 15-1549C

_____)
UNIVERSITY OF SOUTH)
FLORIDA, BOARD OF TRUSTEES,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

ATTORNEY DECLARATION

I, [INSERT NAME], have read the trial management order in this case, ECF No. 236, and I understand and agree to abide by the procedures, terms, and conditions as set forth therein.

Should I learn of any inadvertent or intentional violations of the procedures, terms, or conditions set forth in the court’s pretrial order, I agree to disclose such violation by email to opposing counsel within twenty-four hours, copying chambers at Campbell-Smith_Chambers@cfc.uscourts.gov.

I understand that intentional violations of the procedures, terms, or conditions set forth in the court’s pretrial order are subject to sanctions.

I have provided a copy of the pretrial order to, and reviewed it with, all non-attorney participants in this case under my direction and have given each participant an opportunity to ask any questions that arose.

I, [INSERT NAME], certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [INSERT DATE].

s/NAME
NAME
AFFILIATION

In the United States Court of Federal Claims

No. 15-1549C

_____)
UNIVERSITY OF SOUTH)
FLORIDA, BOARD OF TRUSTEES,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

PARTICIPANT DECLARATION

I, [INSERT NAME], have received a copy of the trial management order in this case, ECF No. 236, and I understand and agree to abide by the procedures, terms, and conditions that apply in this case as set forth therein, including the following:

- (1) Masks are required at all times in the courthouse, and the court maintains a limit of four people at a time on the elevator;
- (2) Witnesses that are testifying in the courtroom will not be permitted to await their time to testify in the courtroom or in the courthouse. Each party will coordinate with their witnesses a location outside the courthouse for witnesses to remain sequestered prior to their testimony;
- (3) All trial participants that are joining by video, except the witnesses and attorneys actively participating in the proceeding at any given time, will be required to turn off their video feeds and mute their audio feeds;
- (4) No observer or participant, other than the court reporter, in the remote trial or any pretrial conference shall record or transmit the proceedings in any form, including but not limited to audio recordings, video recordings, screenshots, or other live-stream transmission of any sort;
- (5) No participant may forward, or otherwise share, absent prior written approval from the court, the Zoom link for this matter with any other individual;

- (6) Should the parties provide a witness with an electronic witness notebook in advance of testimony that includes each exhibit expected to be introduced, about which the witness will be questioned, or to which the witness will refer, the witness shall not review the notebooks prior to the presentation of the associated testimony;
- (7) If a witness is testifying by videoconference, neither parties' counsel or associated person for either party may be physically present with that witness, except, as necessary, a non-lawyer technical assistant, which may be a paralegal or a family member, to help the witness with any difficulties with the video equipment while testifying;
- (8) During the course of each witness' on-the-record testimony (including both direct examination and cross-examination), no counsel or other associated person may communicate off-the-record with the witness (e.g., via text message, email, or direct message);
- (9) Any trial witnesses that are testifying by video conference will be asked at the beginning of their testimony to identify where they are physically located and verify that they are alone in the videoconferencing space except for the presence of a non-lawyer technical assistant, which may be a paralegal or a family member, to help the witness with any difficulties with the video equipment while testifying if necessary;
- (10) Should I learn of any inadvertent or intentional violation of the procedures, terms, and conditions set forth in the court's pretrial order or herein, I agree to immediately disclose such violation by email to the lead counsel for the party that has called me as a witness. All such disclosures must occur within twenty-four hours of such violation; and
- (11) Intentional violations of the procedures, terms, or conditions set forth in the court's pretrial order or herein are subject to sanctions.

I, [INSERT NAME], certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [INSERT DATE].

s/NAME
NAME
AFFILIATION