IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. BANK NATIONAL ASSOCIATION, Litigation Trustee of the Idearc Inc., *et al.* Litigation Trust, *Plaintiff*, v. VERIZON COMMUNICATIONS INC., VERIZON FINANCIAL SERVICES LLC, GTE CORPORATION, and JOHN W. DIERCKSEN, *Defendants*.	CIVIL ACTION NO. 3:10-CV-1842-G ECF

DEFENDANTS' JOINT POST-TRIAL BRIEF

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INTRODUCTION AND SUMMARY

Defendants have separately filed Proposed Findings of Fact and Conclusions of Law ("Proposed Findings and Conclusions"), which demonstrate that the fair market value of Idearc at the time of the Spin-Off was at least $12.8 billion and that Plaintiff failed to carry its burden of proof that the fair market value was less than either the $9.1 billion debt that Idearc incurred in the Spin-Off or the $9.6 billion in cash and notes that Verizon received from Idearc in exchange for Verizon's directories business.[1] Defendants do not repeat those points here, but separately submit this Joint Post-Trial Brief to elaborate on one issue addressed in their Proposed Conclusions of Law and to suggest appropriate steps following this Court's Phase I decision.

First, to assist the Fifth Circuit in its review of Plaintiff's expected challenge to the Court's ruling striking Plaintiff's jury demand, the Court can — and should — find that it would have granted a motion by Defendants for judgment as a matter of law had the Phase I valuation issue been presented to a jury.

Second, Defendants respectfully request that, at such time as the Court enters its decision on Phase I of this case, it provide the parties with guidance as to the steps remaining to resolve this case. As Defendants have previously argued, absent a finding that Idearc's assets — that is, its print and Internet directories business — were worth less than $9.6 billion on the date of the Spin-Off, Plaintiff cannot prevail on any of its remaining claims. Therefore, Defendants submit that, if the Court finds in favor of Defendants on the valuation issue in Phase I, the Court should issue an order to show cause requiring Plaintiff to explain why judgment should not be entered in Defendants' favor on all remaining counts.

[1] Because finding that Plaintiff has not carried its burden of proving that Idearc's fair market value was less than $9.6 billion necessarily means that Plaintiff also has not carried its burden of proving that Idearc's fair market value was less than $9.1 billion, Defendants refer to $9.6 billion throughout this brief.

ARGUMENT

I. THE COURT SHOULD FIND THAT PLAINTIFF'S EVIDENCE WAS INSUFFICIENT TO SURVIVE A MOTION FOR JUDGMENT AS A MATTER OF LAW ON THE ISSUE OF VALUATION

Based on the facts and law set forth in Defendants' separately filed Proposed Findings and Conclusions, the Court should enter judgment for Defendants on the Phase I issue of Idearc's fair market value at the time of the Spin-Off. In addition, although the Court did not conduct a jury trial, the Court should make findings that, if Phase I had been presented to a jury, it would have granted a motion by Defendants for judgment as a matter of law under Federal Rule of Civil Procedure 50(a) on the issue of valuation. No reasonable finder of fact could have concluded that Idearc's total enterprise value on November 17, 2006, was less than $12.8 billion.

Defendants initially moved for judgment under Rule 52(c) at the close of Plaintiff's case. In explaining its decision to defer ruling on that motion until after the close of Defendants' case, the Court explained that it would "be beneficial . . . to have a full record" given the likelihood "that the losing party will take an appeal to the 5th Circuit." Tr. Vol. 5B at 64:17-21. Following the Court's ruling on that motion, Defendants presented testimony from 21 witnesses, including 17 fact witnesses who were involved in the Spin-Off and four expert witnesses. Those witnesses uniformly rejected Plaintiff's contentions as to Idearc's fair market value on the date of the Spin-Off and corroborated the $12.8 billion valuation of Idearc calculated using the price at which Idearc's stock traded on the New York Stock Exchange ("NYSE"). Now that the evidentiary portion of the Phase I trial has concluded, this Court should assist the Fifth Circuit by finding that Plaintiff failed to present sufficient evidence from which a reasonable jury could have found in its favor on valuation. Accordingly, the Court should adopt ¶¶ 75-84 of Defendants' Proposed Conclusions of Law.

A. A finding by this Court that it would have granted Defendants' Rule 50(a) motion if the valuation issue had been tried to a jury will make the resolution of any appeal simpler and potentially save judicial resources. Such a finding could moot what Plaintiff has indicated is likely to be its principal argument on appeal if this Court enters judgment for Defendants: that this Court should not have stricken Plaintiff's demand for a jury trial.[2] While the Fifth Circuit could affirm that judgment by holding that this Court properly granted Defendants' motion to strike Plaintiff's jury demand, the appellate court also could affirm on the alternative ground that any error in granting the jury strike motion was harmless, because "the evidence could not have withstood a motion for a directed verdict at trial." *McDonald v. Steward*, 132 F.3d 225, 230 (5th Cir. 1998) (internal quotation marks omitted); *see Bowles v. United States Army Corps of Eng'rs*, 841 F.2d 112, 117 (5th Cir. 1988) ("In a case in which the plaintiff's case would not have survived a motion for a directed verdict, the denial of a jury trial is harmless error.") (internal quotation marks omitted); *see also* Fed. R. Civ. P. 61 (setting forth harmless-error standard). Resolving the appeal in this manner, without reaching the Seventh Amendment issue, would be consistent with the doctrine of constitutional avoidance. *See, e.g.*, *ACORN v. Edwards*, 81 F.3d 1387, 1390-91 (5th Cir. 1996).

This Court will thus promote judicial economy and facilitate appellate review by making a finding that Plaintiff's evidence on valuation "was insufficient to survive a directed verdict motion." *Bowles*, 841 F.2d at 117; *cf. Mays v. Bowen*, 837 F.2d 1362, 1364 (5th Cir. 1988) (per curiam) ("The major policy underlying the harmless error rule is to preserve judgments and

[2] After striking Plaintiff's jury demand, this Court denied Plaintiff's motions for reconsideration and clarification of that decision. *See* Mem. Op. & Order, ECF No. 288 (Mar. 21, 2012); Mem. Op. & Order, ECF No. 459 (July 25, 2012); Order, ECF No. 521 (Sept. 10, 2012). On September 17, 2012, Plaintiff petitioned the Fifth Circuit for a writ of mandamus seeking review of this Court's decision; the Fifth Circuit denied that petition on September 27, 2012.

avoid waste of time."). If the Fifth Circuit were to reach the issue of whether Plaintiff was entitled to a jury trial, a finding by this Court that, on the evidence presented, the Court would not have permitted the case to go to the jury will assist the appellate court in determining whether any such error was harmless,[3] and avoid a remand for a determination of this issue. For example, in a case in which the Fifth Circuit found that the district court "should have recognized [the defendant's] right to a jury trial," the appeals court went on to hold that the district court "should also have directed a verdict in favor of the [plaintiff]" and, on that ground, "affirm[ed]" the district court's "judgment, since no issue remained for jury determination." *United States v. Williams*, 441 F.2d 637, 644 (5th Cir. 1971); *accord Bowles*, 841 F.2d at 117 ("Although technically the refusal to accede to Bowles' jury demand was erroneous, it was not reversible since there was no evidentiary basis for the constitutional claims.").

In similar circumstances, district court findings have been helpful to courts of appeals in deciding whether the denial of a jury trial, if error at all, was harmless. In *Bushman v. Seiler*, 755 F.2d 653 (8th Cir. 1985), the district court found that the defendants were entitled to official immunity and entered judgment in their favor. On appeal, the plaintiffs argued that they were entitled to a jury trial on their claims, but the Eighth Circuit found any error harmless because the district court had treated the defendants' motion for entry of judgment as "equivalent to a motion for a directed verdict," and thus "the case would not have been considered by the jury had one been impaneled." *Id.* at 656-57. Similarly, in *Segrets, Inc. v. Gillman Knitwear Co.*, 207 F.3d 56 (1st Cir. 2000), the First Circuit rejected the defendant-appellant's argument that it was entitled to a jury trial on one component of a copyright defense that turned on whether an

[3] *See, e.g.*, *Roscello v. Southwest Airlines Co.*, 726 F.2d 217, 221-24 (5th Cir. 1984) (undertaking an extensive examination of the record to determine whether denial of jury trial was harmless).

ordinary observer would find substantial similarity between two designs. *See id.* at 65. The First Circuit found that the denial of a jury trial on this claim would be harmless error, and that a remand was unnecessary, "if the evidence meets the standard for a directed verdict." *Id.* at 64. In affirming the lower court's decision, the First Circuit relied on the magistrate judge's finding that "the ordinary observer viewing the [product] would *inevitably* conclude that [the defendant] unlawfully appropriated" the design. *Id.* (internal quotation marks omitted). Based on this indication of how the magistrate judge viewed the evidence, the First Circuit found harmless error and refused to remand that claim for a jury determination. *See id.* at 66.

Finding that Plaintiff's case would not have survived a motion for judgment as a matter of law is appropriate here because not only has Plaintiff failed to meet its burden of proof that the value of Idearc's assets was less than $9.6 billion on November 17, 2006, but also no reasonable fact finder could find for Plaintiff on that issue. The "facts and inferences [from the evidence] point so strongly and overwhelmingly in favor" of Defendants — and overwhelm what is, at most, the "mere scintilla of evidence" that Plaintiff has proffered — that "reasonable [people] could not arrive at a contrary verdict." *McDonald*, 132 F.3d at 230 (internal quotation marks omitted). Given the trial evidence, there is no "legally sufficient evidentiary basis" that would allow a reasonable jury to find that the total enterprise value of Idearc, on the date of the Spin-Off, was less than $9.6 billion. *Kilchrist v. Sika Corp.*, Civil Action No. 3:10-CV-2567-B, 2012 WL 3599383, at *4 (N.D. Tex. Aug. 22, 2012) (internal quotation marks omitted).

Indeed, based on the evidence introduced in the Phase I trial, no reasonable jury could find that the total enterprise value was less than $12.8 billion, the value implied by the closing price of Idearc's common stock on the NYSE on the date of the Spin-Off. Plaintiff did not introduce any evidence from which a reasonable trier of fact could have found that the market

value of Idearc on the date of the Spin-Off was inflated by any amount, much less an amount that would have resulted in a fair market value of Idearc below $9.6 billion. The Court, therefore, not only should enter judgment in Defendants' favor on the Phase I issue under the preponderance-of-the-evidence standard, but also should make a finding that Defendants would have prevailed on a motion for judgment as a matter of law under Rule 50(a). *See McDonald,* 132 F.3d at 230; *see also United States v. McMullin*, 948 F.2d 1188, 1191-92 (10th Cir. 1991) (affirming district court decision granting government's motion "for a 'directed verdict'" at the close of defendants' case in a civil action to enforce a federal tax lien).

B. Plaintiff has given no plausible reason for the Court to decline to provide this assistance to the Fifth Circuit, which will benefit that court in its subsequent review of this case.

Plaintiff has observed that Federal Rule of Civil Procedure 50(a) — which sets forth the procedure for seeking judgment as a matter of law, previously known as a directed verdict — applies in jury trials, not bench trials, and provides a different standard from the one set forth in Rule 52.[4] Although correct, that observation is beside the point. To prevail under Rule 52, which governs here, Plaintiff must carry its burden of persuasion under the preponderance-of-the-evidence standard. As explained in more detail in Defendants' Proposed Findings and Conclusions, Plaintiff has not met that burden, and the Court should therefore rule for Defendants under Rule 52. Plaintiff will suffer no legitimate prejudice if this Court, in the interest of judicial economy, provides the additional finding that no reasonable finder of fact could have ruled in Plaintiff's favor on the issue of valuation.

[4] Pl.'s Resp. to Defs.' Joint Notice of Intent To Renew Mot. for J. Under Rule 52(c) at 1-2, ECF No. 610 (Oct. 29, 2012).

Plaintiff erroneously argues that it would be "improper[ ]" for this Court to make a supplemental finding that — on the record presented — Plaintiff's evidence was insufficient as a matter of law under the Rule 50 standard to prevent entry of judgment in Defendants' favor on the issue of valuation.[5] As shown above, it is well-settled that the denial of a jury trial is harmless if the plaintiff's evidence was insufficient to survive a motion for judgment as a matter of law or for a directed verdict. Plaintiff has cited no authority suggesting, much less holding, that it would be improper for this Court to assist the Fifth Circuit's review by providing an assessment of the deficiency of Plaintiff's evidence. *Cf. Williams*, 441 F.2d at 644 ("There is no constitutional right to have twelve [people] sit idle and functionless in a jury-box.") (internal quotation marks omitted). Furthermore, having heard the testimony of all the witnesses, this Court is well-positioned to make a supplemental finding as to the sufficiency of Plaintiff's evidence under the Rule 50(a) standard. Far from "gam[ing] the system,"[6] making this finding based on the weakness of that evidence would assist the Fifth Circuit in determining whether Plaintiff's evidence in Phase I of this case was sufficient to create any genuine issue of fact.

II. IF THE COURT FINDS FOR DEFENDANTS ON THE PHASE I ISSUE OF VALUATION, THE COURT SHOULD ORDER PLAINTIFF TO SHOW CAUSE WHY JUDGMENT SHOULD NOT BE ENTERED IN FAVOR OF DEFENDANTS ON THE REMAINING CLAIMS IN THIS CASE

The Court bifurcated the trial in order to resolve a question central to all of Plaintiff's claims: "What was Idearc's value at the time it was spun off from Verizon in November of 2006?" Order at 2, ECF No. 504 (Aug. 22, 2012). Although the Court defined the scope of Phase I precisely, the Court properly left the scope of any Phase II undefined, so it could be tailored in light of its ruling on Phase I. As shown at trial, and as set forth in Defendants'

[5] *Id.* at 2 & n.2.

[6] *Id.* at 2 n.2.

Proposed Findings and Conclusions, the value of Idearc was at least $12.8 billion at the time of the Spin-Off, and Plaintiff has failed to carry its burden of showing that the value was less than $9.6 billion. Entry of judgment on Phase I in Defendants' favor based on such a ruling — in combination with other rulings the Court has made previously — should dispose of Plaintiff's remaining claims, as Defendants explained in their Pre-Trial Brief and briefly recount below.

Counts 1 and 2. The Court has already found that Plaintiff's fraudulent transfer claims in Counts 1 and 2 of the Amended Complaint were barred as to the $2.4 billion cash transfer from Idearc to VFS,[7] as well as to the transfers of Idearc shares and debt to Verizon.[8] The only remaining component of Plaintiff's fraudulent transfer claims under Counts 1 and 2 pertains to Idearc's assumption of contractual obligations in connection with the Spin-Off. As Defendants have explained, Plaintiff's claim relating to these contractual obligations fails for the same reason that the Court dismissed the portions of Counts 1 and 2 relating to debt obligations — that is, these contracts constitute obligations for which a plaintiff cannot recover under § 550 of the Bankruptcy Code. *See* July Op. at 9-10.[9] In any event, a constructive fraudulent transfer claim requires proof both that Idearc was insolvent at the time of the Spin-Off and that it did not receive reasonably equivalent value in the restructuring that preceded the Spin-Off.[10] A finding that Idearc's fair market value on the date of the Spin-Off was $12.8 billion — significantly more than the $9.1 billion in debt that it incurred in order to transfer $9.6 billion in cash and

[7] Mem. Op. & Order at 18-24, ECF No. 523 (Sept. 14, 2012) ("SJ Op.").

[8] Mem. Op. & Order at 7-19, 22-25, ECF No. 469 (July 31, 2012) ("July Op.").

[9] Verizon Defs.' Trial Br. at 17-20, ECF No. 539 (Sept. 21, 2012) ("Verizon Trial Br.").

[10] *See* Tex. Bus. & Com. Code § 24.006(a). Plaintiff's claims that Verizon acted with actual fraudulent intent also fail if the Court finds that Idearc was solvent and received reasonably equivalent value in the Spin-Off, because "the Trust is seeking to utilize [Idearc's] putative insolvency as an accumulative factor from which to infer intentional fraud." *See In re Old CarCo LLC*, 435 B.R. 169, 193-94 (Bankr. S.D.N.Y. 2010) (rejecting intentional fraudulent transfer claims as to solvent company).

notes to Verizon in exchange for the directories business — means that Idearc was solvent on the date of the Spin-Off. It also means that Idearc received reasonably equivalent value for the $9.6 billion in cash and notes that Verizon obtained from Idearc in exchange for the directories business. All of these reasons require entry of judgment in Defendants' favor on this remaining aspect of Counts 1 and 2.

Count 3. The Court has already limited Count 3, in which Plaintiff alleges that Mr. Diercksen breached a fiduciary duty to Idearc, to the amount of any applicable insurance coverage. *See* SJ Op. at 28-29. The Court has also held that Idearc was a wholly owned subsidiary of Verizon, *see id.* at 26-27, and that, if Idearc was solvent on the date of the Spin-Off, there could be no breach of fiduciary duty because the directors of a solvent, wholly owned subsidiary are obligated only to manage the affairs of the subsidiary in the interests of its parent corporation, *see id.* at 25; *Anadarko Petroleum Corp. v. Panhandle Eastern Corp.*, 545 A.2d 1171, 1174 (Del. 1988); *Trenwick Am. Litig. Trust v. Ernst & Young, LLP*, 906 A.2d 168, 191, 200 (Del. Ch. 2006), *aff'd sub nom. Trenwick Am. Litig. Trust v. Billet*, 931 A.2d 438 (Del. 2007) (table). A finding that Idearc's fair market value on the date of the Spin-Off was $12.8 billion would demonstrate conclusively that Idearc was solvent on that date, and thus *Anadarko* would require entry of judgment in Defendants' favor on Count 3.

Count 4. Defendants should prevail on Plaintiff's claim that Verizon aided and abetted Mr. Diercksen's breach of fiduciary duties for the same reasons that Defendants should prevail on Count 3. Verizon could not have aided or abetted a breach of a non-existent duty. *See VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 634-36 (3d Cir. 2007) (affirming judgment in favor of defendants on litigation trustee's claim that parent company aided and abetted a breach of fiduciary duty by solvent wholly owned subsidiary's "pre-spin" directors; there could be no

breach for the parent company to aid and abet because the subsidiary's directors did not owe a duty to subsidiary's creditors); *Vichi v. Koninklijke Philips Elecs. N.V.*, Civil Action No. 2578-VCP, 2009 WL 4345724, at *21 (Del. Ch. Dec. 1, 2009) ("One cannot aid and abet a breach of fiduciary duty . . . where no duty has been breached in the first place.").

Counts 5 and 6. Counts 5 and 6 contend that discrete steps in the Spin-Off[11] were, themselves, fraudulent transfers. If the Court finds that these challenges are subsumed within Plaintiff's fraudulent transfer claims as to the entire Spin-Off (Counts 1 and 2), judgment should be entered for Defendants on Counts 5 and 6 for the same reasons as Counts 1 and 2. If the Court considers these as stand-alone claims, a finding that Idearc's fair market value was $12.8 billion likewise requires entry of judgment in Defendants' favor on these counts. The Court denied summary judgment with respect to Count 5 because there was "a dispute of material fact on the value of the directories business" and "the value of the demand note depends, in part, on Idearc's solvency," and it denied summary judgment on Count 6 "[f]or the same reasons set forth in the discussion of Count 5." SJ Op. at 30, 32. A finding in Defendants' favor on the Phase I issue of valuation would resolve these disputed issues of fact and would require entry of judgment for Defendants on both counts.[12]

Count 7. The Court granted summary judgment to Defendants as to Plaintiff's Count 7. *See* SJ Op. at 32-35.

[11] Count 5 claims that the $475 million transfer of cash from Idearc Media Corp. to Idearc, which became part of the $2.4 billion that Idearc transferred to Verizon, was a fraudulent transfer. Count 6 claims that the transfer of certain international directories assets, which Verizon had initially moved along with domestic directories assets as part of the corporate restructuring preceding the Spin-Off, from Idearc Information Services, LLC to GTE was a fraudulent transfer.

[12] Absent a finding of insolvency on the date of the Spin-Off, Plaintiff likewise cannot succeed on its actual fraudulent transfer claims under Count 5 or Count 6. *See supra* note 10.

Count 8. The Court has already found that § 546(e) of the Bankruptcy Code preempts Plaintiff's unlawful dividend claim insofar as it seeks to recover the cash transferred to Verizon in exchange for the directories business. *See* SJ Op. at 40-45. With respect to the notes transferred to Verizon as part of the same exchange, the Court has held that Plaintiff's claim fails unless it can prove that Idearc lacked sufficient surplus to pay a lawful dividend under Delaware Code tit. 8, § 170. *See* SJ Op. at 48 ("[I]f the defendants can establish at trial that Idearc had sufficient surplus at the time of the spin-off to declare the dividend, then the alleged dividend from Idearc to Verizon will have complied with the Delaware statutory scheme, and the plaintiff's unlawful dividend claim will fail."); *see also id.* at 38-39 ("Because the par value of Idearc's issued stock ($1.46 million) is essentially negligible, the question of whether Idearc had a surplus is dependent upon whether its total assets exceeded its total liabilities."). A finding that Idearc's fair market value on the date of the Spin-Off was $12.8 billion would demonstrate conclusively that Idearc had sufficient surplus to issue a lawful dividend on that date (assuming the transfer of the notes is properly characterized as a dividend).[13]

Count 9. The Court has dismissed Count 9 insofar as it alleged that Verizon and Mr. Diercksen aided and abetted breaches of fiduciary duties allegedly committed by attorneys who worked on the Spin-Off. *See* SJ Op. at 48-51. Therefore, only Plaintiff's promoter liability claim remains within this count. But promoter liability exists only when there is a fiduciary relationship between the alleged promoter and the company being promoted, *see Gladstone v. Bennett*, 153 A.2d 577, 582 (Del. 1959), and no such fiduciary relationship exists — as a promoter or otherwise — between a parent and its subsidiary (or between an officer of the parent

[13] In addition, Plaintiff's unlawful dividend claim as to the notes is preempted by § 550 of the Bankruptcy Code, because it would conflict with the Code to allow Plaintiff to pursue recovery under state law of a claim that § 550 does not permit. *See* Verizon Trial Br. at 21.

that is also director of the subsidiary, and the subsidiary) if the subsidiary is solvent. *See Westlake Vinyls, Inc. v. Goodrich Corp.*, 518 F. Supp. 2d 918, 939 (W.D. Ky. 2007) (following *Anadarko* in granting summary judgment to defendant parent corporation on promoter liability claim as to its spin off of a wholly owned subsidiary).[14] A finding that Idearc's fair market value on the date of the Spin-Off was $12.8 billion would establish that Idearc was solvent on that date and, therefore, would require entry of judgment in Defendants' favor on the promoter liability claim in Count 9.

Count 10. In an earlier ruling, the Court dismissed Plaintiff's Count 10. *See* July Op. at 31-34.

Count 11. In an earlier ruling, the Court dismissed Plaintiff's "alter ego" claim under Count 11, except as a theory of recovery if Plaintiff prevails on any other claim. *See* July Op. at 36. Accordingly, if this Court determines that Plaintiff cannot prevail on any other claim, the only remaining aspect of Count 11 will necessarily fall away.

Therefore, the Court's prior rulings, together with holdings that Idearc's fair market value on the date of the Spin-Off was $12.8 billion and that Plaintiff failed to prove that Idearc's value was below $9.6 billion on that date, would allow the Court to resolve this case fully without need for further proceedings. Defendants suggest that the appropriate next steps, following the Court's Phase I decision, is for the Court to issue an order to Plaintiff to show cause as to why judgment for Defendants should not be entered on all remaining counts. Plaintiff will then have the burden to show that (1) it has a legally viable theory under one or more of its remaining

[14] The cases cited in the Court's prior orders are not to the contrary. The bankruptcy court's suggestion in *In re Tronox Inc.*, 450 B.R. 432 (Bankr. S.D.N.Y. 2011), that a parent corporation might owe duties as a promoter to a wholly owned subsidiary in certain circumstances was *dicta*, because the subsidiary in that case had minority shareholders and thus was not wholly owned. *See id.* at 439. Similarly, the *Tronox* court's reference to *Bailes v. Colonial Press, Inc.*, 444 F.2d 1241, 1245 (5th Cir. 1971), was misplaced, because that case involved duties imposed by the federal securities laws, which are not at issue here.

claims, and (2) there is a disputed issue of fact as to that theory. Defendants would have the opportunity to respond to Plaintiff's filing, and Plaintiff would have the opportunity to reply. If Plaintiff cannot meet its burden in responding to the order to show cause, the Court will be able to resolve the remainder of this case on the papers, without a need for a Phase II trial.

CONCLUSION

The Court should adopt Defendants' Proposed Findings and Conclusions in full, and should require Plaintiff to show cause why judgment should not be entered in Defendants' favor on all remaining claims in this case.

Dated: November 16, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system pursuant to the Court's Local Rules this 16th day of November 2012.

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