

Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BENJAMIN SOMERLOTT,

Plaintiff,

v.

McNEILUS TRUCK AND MANUFACTURING,  
INC.,

Defendant.

NO. 2:16-cv-00789-MJP

PRETRIAL ORDER

Pursuant to LCR 16(i), Defendant McNeilus Truck and Manufacturing, Inc. (“MTM” or “Defendant”) and Plaintiff Benjamin Somerlott (“Somerlott” or “Plaintiff”) jointly offer the following Proposed Pre-Trial Order.

**I. JURISDICTION**

Jurisdiction is vested in this court by virtue of: This Court has original jurisdiction under the provision of 28 U.S.C § 1332.

Complete diversity of citizenship exists between the parties: (a) Plaintiff Benjamin Somerlott is a citizen of the State of Washington, U.S.A., (b) Defendant McNeilus Trucking and Manufacturing, Inc. is a corporation incorporated under the laws of Minnesota, with its

1 principal place of business in Dodge Center, Minnesota; Defendant is thus a citizen of a foreign  
2 state. The amount in controversy exceeds \$75,000.00.

3 This Court has personal jurisdiction over the Defendant because it conducted business  
4 in the State of Washington, both generally and with regard to the events in question, to create a  
5 sufficient nexus between the Defendant's forum contacts and Plaintiff's cause of action to  
6 create jurisdiction.  
7

8 Venue is proper in the United States District Court, Western District of Washington,  
9 pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving  
10 rise to the claim occurred in this District.

11 The incident made the basis of this suit occurred in King County, WA. As such,  
12 Intradistrict venue is proper in Seattle as the claim arose in King County. WAWD Civ. R.  
13 3(d).

## 14 **II. CLAIMS AND DEFENSES**

15 Plaintiff will pursue at trial the following claims:

16 Strict liability based upon defective design and defective marketing and warnings.

17 MTM intends to pursue the following affirmative defenses at trial:

### 18 **FIRST AFFIRMATIVE DEFENSE**

19 Plaintiff's claims fail to state facts sufficient to constitute a cause of action against  
20 MTM.

### 21 **SECOND AFFIRMATIVE DEFENSE**

22 Plaintiff's injuries and damages were caused or contributed to by the negligence or  
23 other wrongful conduct of persons, firms, partnerships, corporations, municipalities, or entities  
24 other than MTM and that said negligence or other wrongful conduct comparatively reduces the  
25 percentage of negligence or other liability, if any, of MTM.



1 **EIGHTH AFFIRMATIVE DEFENSE**

2 The subject McNeilus Side Loader Model 2644 commercial refuse vehicle was not in  
3 the original condition at the time of Plaintiff's subject incident as when it left the custody and  
4 control of MTM.

5 **NINTH AFFIRMATIVE DEFENSE**

6 MTM is informed and believes and on that basis alleges that adequate warnings and  
7 instructions concerning the Truck were provided to persons in the chain of distribution, and,  
8 therefore, any duty to warn was discharged.

9 **TENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred because the subject McNeilus Side Loader Model 2644, as  
11 designed, manufactured, and sold complied with all applicable statutes, rules, and regulations.

12 **III. ADMITTED FACTS**

13 The following facts are admitted by the parties:

- 14 1. The subject McNeilus Side Loader Model 2644 commercial refuse vehicle  
15 involved was manufactured by the Defendant.
- 16 2. The subject McNeilus Side Loader Model 2644 commercial refuse vehicle was  
17 manufactured in 2008 on a 2009 Autocar chassis.
- 18 3. Defendant was aware of the risk of injury from the ejection of objects from the  
19 hopper of the truck involved at the time that the McNeilus Side Loader Model  
20 2644 commercial refuse vehicle was designed.
- 21 4. The Plaintiff knew that objects were ejected from the hopper before the injury.
- 22 5. The Plaintiff never read the operator's manual for the McNeilus Side Loader  
23 Model 2644 commercial refuse vehicle.
- 24 6. Plaintiff was injured on October 29, 2014 during the course of his employment  
25 as a residential recycling driver for Waste Management Resources, Inc. while

1 operating a McNeilus Side Loader Model 2644 commercial refuse vehicle.

2 7. Plaintiff had experienced refuse exiting the hopper of the McNeilus Side Loader  
3 Model 2644 commercial refuse vehicle prior to October 29, 2014.

4 8. Plaintiff was struck by pickle juice which had exited the hopper of the McNeilus  
5 Side Loader Model 2644 commercial refuse vehicle prior to October 29, 2014.

6 9. Plaintiff's flexor carpi ulnaris and ring finger flexor digitorum sublimis tendons  
7 were injured on October 29, 2014.

8 10. Plaintiff's flexor carpi ulnaris and ring finger flexor digitorum sublimis tendons  
9 were surgically repaired on October 30, 2014.

10 11. Plaintiff returned to full-duty, full-time, as a residential recycling driver for  
11 Waste Management Resources, Inc. the week of January 17, 2016.

12 12. Plaintiff worked as a residential recycling driver for Waste Management  
13 Resources, Inc. on full-duty, full-time, until the week ending June 10, 2016.

14 13. Plaintiff voluntarily left his position as a residential recycling driver for Waste  
15 Management Resources, Inc. and begin a new position as an assistant driller  
16 with National EWP Inc. the week ending June 18, 2016.

17 14. Plaintiff injured his right shoulder on August 8, 2016 while working as a  
18 Driller's Assistant for National EWP Inc.

19 15. Plaintiff had surgery to his right shoulder on May 30, 2017.

20 16. Plaintiff is currently not working for National EWP INC. due to his August 8,  
21 2016 right shoulder injury.

#### 22 **IV. ISSUES OF LAW**

23 Plaintiff asserts the following issues of law to be determined by the Court:

24 **Plaintiff's Issue of Law 1:** Whether any evidence of the L&I claim regarding the  
25 Plaintiff's wrist injury is admissible?

1           **Plaintiff's Issue of Law 2:** Whether any evidence of L&I IMES regarding the  
2 Plaintiff's wrist injury are admissible?

3           **Plaintiff's Issue of Law 3:** Whether Dr. Sun's opinions based on his IME are  
4 admissible?

5           **Plaintiff's Issue of Law 4:** Whether any mention or any other information regarding  
6 any L&I claim regarding the Plaintiff's shoulder injury will be allowed?

7           **Plaintiff's Issue of Law 5:** Whether evidence regarding the Defendant's affirmative  
8 defenses of negligence of third parties, intervening superseding acts of third parties,  
9 comparative negligence and assumption of the risk, improper use and maintenance and altered  
10 condition and failure to mitigate are admissible?

11           **Plaintiff's Issue of Law 6:** Whether evidence of Defendant's affirmative defense of  
12 negligence of third parties is admissible?

13           **Plaintiff's Issue of Law 7:** Whether evidence of Defendant's affirmative defense of  
14 assumption of the risk is admissible?

15           **Plaintiff's Issue of Law 8:** Whether evidence of Defendant's affirmative defense of  
16 spoliation is admissible?

17           **Plaintiff's Issue of Law 9:** Whether evidence of Defendant's affirmative defense is  
18 admissible?

19           **Plaintiff's Issue of Law 10:** Whether evidence that the Defendant has no record of  
20 similar injuries is admissible?

21           MTM asserts the following issues of law to be determined by the Court:

22           **MTM's Issue of Law 1:** Whether the jury should evaluate Plaintiff's claim that the  
23 McNeilus Side Loader Model 2644 commercial refuse vehicle was not reasonably safe as  
24 designed using the risk-utility test only, and not the consumer expectation test.

1 **MTM's Issue of Law 2:** Whether the jury should evaluate Plaintiff's claim that the  
2 McNeilus Side Loader Model 2644 commercial refuse vehicle was not reasonably safe as a  
3 result of inadequate warnings using the risk-utility test only, and not the consumer expectation  
4 test.

5 **MTM's Issue of Law 3:** Whether Plaintiff can prevail on his failure-to-warn claim  
6 based on the theory that the severity of possible injury from objects ejected from the McNeilus  
7 Side Loader Model 2644 commercial refuse vehicle's hopper opening was not open and  
8 obvious even though the risk of such ejection occurring was open and obvious.

9 **MTM's Issue of Law 4:** Does a manufacturer's liability for failure to warn extend  
10 beyond warning of the risk to include failing to warn for all possible outcomes of a risk.

11 **V. EXPERT WITNESSES**

12 The names of the expert witnesses to be used by each party at the time of trial and the  
13 issues upon which each will testify are:

14 On behalf of Plaintiff:

15 <b>Witness Name</b>	16 <b>Description of Anticipated Testimony</b>	17 <b>Testifying?</b>
18 Steve Tipton The University of Tulsa Stephenson Hall 2060 Tulsa, OK 74104	19 On liability per his report and deposition	20 Will Testify
21 Ted Becker 11627 Airport Road Suite H Everett, WA 98204	22 On his FCE testing, per his deposition and report	23 Will Testify
24 John Cary 601 SW 152nd St Burien, WA 98166	25 On loss of earning capacity per his deposition and report	Will Testify
Elizabeth Joneschild Seattle Hand Surgery Group 600 Broadway, # 440 Seattle, WA 98122	To causation and damages per her records and deposition	Will Testify (may testify by deposition)

On behalf of Defendant:

<b>Witness Name</b>	<b>Description of Anticipated Testimony</b>	<b>Testifying?</b>
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<p>1 Steven D. Sun, M.D.  2 Advanced Medical  3 Group – 700 NW  4 Gilman Blvd., #147,  5 Issaquah, WA 98027</p>	<ul style="list-style-type: none"> <li>• The nature and extent, history, and prognosis of Plaintiff's October 29, 2014 injury to his right wrist.</li> <li>• His findings and opinions regarding Plaintiff's medical status and prognosis; Plaintiff's 9/26/17 Independent Medical Exam, including overall restrictions and limitations.</li> </ul>	<p>Will Testify</p>
<p>6 Stephen P. Andrew,  7 P.E.  8 Exponent, Inc. – 149  9 Commonwealth  10 Drive, Menlo Park,  11 CA 94025</p>	<ul style="list-style-type: none"> <li>• The standards of the commercial refuse vehicle industry.</li> <li>• The reasonableness and adequacy of the subject commercial refuse vehicle's design, including the hopper and compaction system and the design intention for this and other refuse vehicles.</li> <li>• Risk analysis regarding the design of the subject commercial refuse vehicle, including industry data and injury reporting and related risk analysis of alternate designs.</li> <li>• Compliance with industry standards and application of industry standards relative to employees for PPE.</li> <li>• The reasonableness and adequacy of suggested alternative designs.</li> <li>• The open and obvious nature of the claimed risk of refuse ejection, the lack of need for a warning regarding known risks or instructions especially when viewed in the risk hierarchy and against injury and incident data.</li> <li>• Rebuttal testimony to the opinions offered by Plaintiff's retained expert Steven M. Tipton.</li> </ul>	<p>Will Testify</p>
<p>21 William Partin  22 Washington Federal  23 Center  24 400 108<sup>th</sup> Avenue  25 N.E., Suite 615  26 Bellevue, WA 98004</p>	<ul style="list-style-type: none"> <li>• Plaintiff's economic damages at the time of incident and into the future, or lack thereof.</li> <li>• Rebuttal to the economic opinions offered by Plaintiff's retained expert John R. Cary.</li> </ul>	<p>Will Testify</p>
<p>Aleksandar Curcin, M.D. MES Solutions</p>	<ul style="list-style-type: none"> <li>• His findings and opinions arising from the 12/5/15 and 8/10/16 independent medical</li> </ul>	<p>Possible Witness</p>

1 2 3	505 S. 336 <sup>th</sup> Street, Suite 150 Federal Way, WA 98003	exams of Plaintiff requested by Gallagher Bassett in connection with Plaintiff's worker's compensation claim related to his October 29, 2014 injury underlying this action.	Only (may testify by deposition.)
4 5 6 7	Roman L. Kutsy, M.D. MES Solutions 505 S. 336 <sup>th</sup> Street, Suite 150 Federal Way, WA 98003	<ul style="list-style-type: none"> <li>• His findings and opinions arising from the 12/5/15 independent medical exam of Plaintiff requested by Gallagher Bassett in connection with Plaintiff's worker's compensation claim related to his October 29, 2014 injury underlying this action.</li> </ul>	Possible Witness Only
8 9 10 11 12 13 14	Stephen Forgas c/o counsel for Defendant	<ul style="list-style-type: none"> <li>• The reasonableness of the design and manufacture of the subject truck including compliance with applicable standards, warnings and instructions for the subject truck, the field performance and claims and injury history for the truck relative to the claimed risks, the risk analysis and hierarchy of risk related to the design of and warnings for the truck, the industry understanding regarding refuse ejection and risk and other related topics.</li> </ul>	Will Testify
15 16 17 18 19 20	William Skilling 4311 – 55 <sup>th</sup> Ave. NE Seattle, WA 98105	<ul style="list-style-type: none"> <li>• Rebuttal to the vocational assessment offered by Plaintiff's retained experts John R. Cary and Theodore Becker.</li> <li>• Opinions and conclusions reached regarding the vocational rehabilitation needs of Plaintiff, his ability to work, and the effect of injuries on vocational options.</li> </ul>	Will Testify
21 22 23	St. Elmo Newton, III, M.D. 3005 112 <sup>th</sup> Avenue NE, Suite 200, Bellevue, WA 98004	<ul style="list-style-type: none"> <li>• Plaintiff's claimed injuries, medical treatment, and assessment of limitations and restrictions.</li> </ul>	Possible Witness Only
24 25	Zachary Hall, PT, DPT South Sound	<ul style="list-style-type: none"> <li>• Plaintiff's right shoulder injury, its corresponding medical treatment, and assessment of limitations and restrictions resulting therefrom.</li> </ul>	Possible Witness Only

1 2 3 4 5 6 7	Physical & Hand Therapy 5210 Corporate Ctr. Ct. SE, Ste. D Lacey, WA 98503	<ul style="list-style-type: none"> <li>Plaintiff's report of injury.</li> </ul>	
	Elizabeth Joneschild, M.D. Seattle Hand 600 Broadway #440 Seattle, WA 98122	<ul style="list-style-type: none"> <li>Plaintiff's claimed injuries, medical treatment, and assessment of limitations and restrictions.</li> </ul>	Possible Witness Only

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**VI. OTHER WITNESSES**

The following lay witnesses expected to be used by each party at the time of trial and the general nature of the testimony of each are:

On behalf of Plaintiff:

Witness Name	Description of Anticipated Testimony	Testifying?	
12 13 14	Benjamin Sommerlott, Plaintiff	<ul style="list-style-type: none"> <li>Knowledge of the incident, his guard and use of his guard, and damages, will testify per his deposition and discovery responses</li> </ul>	Will Testify
15 16 17	Jennifer Sommerlott, wife of Plaintiff	<ul style="list-style-type: none"> <li>Knowledge of damages; will testify per her deposition</li> </ul>	Will Testify
18 19 20	Justin Austin 253.691.9465 25519 86th Ave East Graham, WA 98338	<ul style="list-style-type: none"> <li>Knowledge of damages, Plaintiff's reputation for hard work and honesty; customary loading of manual side loaders by Waste Management drivers in Seattle, that the risk is open and obvious</li> </ul>	Will Testify
21 22 23	Drew Beeching 509.928.0758 4505 N. Evergreen Rd. Spokane, WA 99216	<ul style="list-style-type: none"> <li>Knowledge of damages and Plaintiff's reputation for hard work and honesty</li> </ul>	Possible Witness Only
24 25	Loren Denison, 406.579.8722 411W. Commercial Ave. Anaconda MT 59711	<ul style="list-style-type: none"> <li>Knowledge of damages and Plaintiff's reputation for hard work and honesty</li> </ul>	Will Testify
	Zac McGovern,	<ul style="list-style-type: none"> <li>Knowledge of damages and Plaintiff's</li> </ul>	Possible

1	509.435.1433, 19221 E. Buckeye Ave,#11 Spokane Valley, WA 99027	reputation for hard work and honesty	Witness Only
2			
3	Ricky Pen 206.915.0543 295 Aladdin Rd Colville WA 99124,	• Knowledge of damages and Plaintiff's reputation for hard work and honesty	Possible Witness Only
4			
5	Travis Ries, 509.251.3912, 2922 N. Meyers Rd. Otis Orchards, WA 99027	• Knowledge of damages and Plaintiff's reputation for hard work and honesty	Possible Witness Only
6			
7	Colin Maxson, 360.393.0125, 820 E. 9th Ave. Spokane, WA 99202	• Knowledge of damages and Plaintiff's reputation for hard work and honesty	Will Testify
8			
9	Toby Crane, 503.936.8618, 1500 SW Pleasant View Dr. Apt. #R- 140 Gresham, OR 97080	• Knowledge of damages and Plaintiff's reputation for hard work and honesty	Possible Witness Only
10			
11	Steve Forgas, c/o Counsel for Defendant.	• Knowledge of design, manufacture and marketing of the garbage truck per his deposition	Will Testify
12			
13	Kimberly Adair and other unknown employees of Gallagher Bassett Services Inc. 4000 Kruse Way Place Lake Oswego, OR 97035	• Knowledge of the L&I claim related to the injury made the basis of this suit and subrogation	Possible Witness Only
14			
15	Alex Lemeshev 720 4th Avenue, Suite 400 Kirkland, WA 98033	• Regarding his knowledge of the injury, training, proper operation of the truck, how the truck was used, that the risk at issue is not open and obvious, knowledge of the risk of ejection of objects form McNeilus manual side loaders and the customary method of loading manual side loaders by Waste Management employees in Seattle and other matters per his deposition	Will Testify
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25	Casey Desmond 720 4th Avenue,	• Per his deposition, that the risk was not open	Will

1 2 3 4	Suite 400 Kirkland, WA 98033	and obvious, knowledge of the risk of ejection of objects form McNeilus manual side loaders and the customary method of loading manual side loaders by Waste Management employees in Seattle and other matters per his deposition	Testify
5 6 7 8	Gary Ginter 720 4th Avenue, Suite 400 Kirkland, WA 98033	<ul style="list-style-type: none"> <li>Regarding training, proper operation of the truck, how the truck was used, that the risk at issue is not open and obvious, knowledge of the risk of ejection of objects form McNeilus manual side loaders and the customary method of loading manual side loaders by Waste Management employees in Seattle and other matters per his deposition</li> </ul>	Will Testify
9 10	Troy Baxter 720 4th Avenue, Suite 400 Kirkland, WA 98033	<ul style="list-style-type: none"> <li>Possible Witness Only</li> </ul>	Possible Witness Only
11 12	Travis Helms 720 4th Avenue, Suite 400 Kirkland, WA 98033	<ul style="list-style-type: none"> <li>Possible Witness Only</li> </ul>	Possible Witness Only
13 14	Erik Navarro 720 4th Avenue, Suite 400 Kirkland, WA 98033	<ul style="list-style-type: none"> <li>Possible Witness Only</li> </ul>	Possible Witness Only
15 16	Brent Bliven 720 4th Avenue, Suite 400 Kirkland, WA 98033	<ul style="list-style-type: none"> <li>Possible Witness Only</li> </ul>	Possible Witness Only
17 18	Shawn Harris 720 4th Avenue, Suite 400 Kirkland, WA 98033	<ul style="list-style-type: none"> <li>Possible Witness Only</li> </ul>	Possible Witness Only
19 20 21	Chuck Davis 720 4th Avenue, Suite 400 Kirkland, WA 98033 425-698-8917	<ul style="list-style-type: none"> <li>Possible Witness Only</li> </ul>	Possible Witness Only

On behalf of Defendant:

Witness Name	Description of Anticipated Testimony	Testifying?
Plaintiff Benjamin Somerlott	<ul style="list-style-type: none"> <li>Details concerning the subject incident and alleged injuries and damages claimed as a result of the incident.</li> </ul>	Will Testify

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<p>Jerry Ginter c/o counsel for Waste Management –Eric Gillett 901 5<sup>th</sup> Ave., Ste 3400 Seattle, WA 98164</p>	<ul style="list-style-type: none"> <li>• Prior incidents and injuries related to commercial refuse side-loader vehicles.</li> <li>• Waste Management’s knowledge of the possibility of refuse ejection from the side loaders during compaction.</li> <li>• Training provided by Waste Management to refuse workers, including Plaintiff, generally and in regard to open and obvious hazards including refuse ejection.</li> <li>• Whether Plaintiff was given training and what measures he and others similarly situated were told to undertake in order to address hazards.</li> <li>• Waste Management’s position regarding training and providing manufacturer operator’s manuals to refuse workers.</li> <li>• Waste Management’s position regarding Proper Protective Equipment provided to its employees.</li> </ul>	<p>Will Testify (may testify by deposition)</p>
<p>Casey Desmond 1520 Sturgis Avenue South, Unit B, Seattle, WA 98144</p>	<ul style="list-style-type: none"> <li>• Plaintiff’s overall performance, safety record, and responsiveness to safety issues.</li> <li>• Training Plaintiff received and discussions regarding precautions, if any, taken with respect to the open and obvious hazard of refuse exiting the hopper during compaction.</li> </ul>	<p>Possible Witness Only (may testify by deposition)</p>
<p>Alex Lemeshev 4674 Court Q Tacoma, WA 98404-4532</p>	<ul style="list-style-type: none"> <li>• Knowledge of incident and Plaintiff’s damages.</li> <li>• Knowledge and utilization of McNeilus manual side loaders.</li> <li>• Knowledge of hazard of refuse ejection, positioning of operators and lack of retraining in response to incident.</li> </ul>	<p>Possible Witness Only (may testify by deposition)</p>

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John Kellander c/o counsel for Defendant	<ul style="list-style-type: none"> <li>• Design and manufacture of 2008 McNeilus Model MSL 2644 truck, including risk assessments, scientific analysis, and field performance reviews.</li> <li>• Warnings, instructions, training, reported incident history regarding side loader vehicles.</li> <li>• Industry standards applicable to side loaders.</li> <li>• Industry hazard recognition regarding refuse ejection.</li> <li>• Design and risk/hazard analysis considerations regarding alternative designs.</li> </ul>	Possible Witness Only

**VII. EXHIBITS**

**A. PLAINTIFF'S EXHIBIT LIST**

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
<b>1.</b>	Wrist photos	<b>X</b>		
<b>2.</b>	Photo of model truck 1			<b>X</b>
<b>3.</b>	Photo of model truck 2			<b>X</b>
<b>4.</b>	Photo of model truck 3			<b>X</b>
<b>5.</b>	Photo of model truck 4			<b>X</b>

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
6.	Photo of model truck 5			<b>X</b>
7.	Photo of model truck 6			<b>X</b>
8.	Photo of model truck 7			<b>X</b>
9.	Photo of model truck 8			<b>X</b>
10.	Photo of model truck 9			<b>X</b>
11.	Green Plaintiff's guard photo	<b>X</b>		
12.	Report of injury	<b>X</b>		
13.	National EWP paystubs	<b>X</b>		
14.	Green Plaintiff's guard photo	<b>X</b>		
15.	Orange Plaintiff's guard photo	<b>X</b>		

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
<b>16.</b>	Orange Plaintiff's guard removed photo	<b>X</b>		
<b>17.</b>	Orange Plaintiff's guard multiple photo	<b>X</b>		
<b>18.</b>	Orange Plaintiff's guard photo	<b>X</b>		
<b>19.</b>	Plaintiff's guard patent drawings		<b>X</b>	
<b>20.</b>	Photo of Subject truck front	<b>X</b>		
<b>21.</b>	Photo of Subject truck closed hopper door	<b>X</b>		
<b>22.</b>	Photo of Subject truck cab controls closed door	<b>X</b>		
<b>23.</b>	Photo of Subject truck hopper controls cab closed door	<b>X</b>		
<b>24.</b>	Photo of Subject truck hopper controls open door	<b>X</b>		
<b>25.</b>	Video of packer and tipper insp EHM		<b>X</b>	

Ex. No.	Document	Admissibility Stipulated.	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed
26.	Photo of Subject truck hopper trash closeup	X		
27.	Photo of Subject truck hopper controls	X		
28.	Photo of Subject truck hopper warning pinch points	X		
29.	Photo of Subject truck hopper warning punch points left	X		
30.	Various Photos of model trucks and guards Plaintiff		X	
31.	Photo of Subject truck shelf	X		
32.	Photo of Subject controls	X		
33.	Waste Management paystubs	X		
34.	Life tables			X
35.	Kouri patent		X	

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
36.	Occupational health records			<b>X</b>
37.	Plaintiff's out of pocket expense documents		<b>X</b>	
38.	MTM 1-18 att to initial disclosures sales	<b>X</b>		
39.	MTM 00019-170 2011 MMA Operator's Manual	<b>X</b>		
40.	MTM 00173 199x AMSL Side Loader Manual-Automated brochure	<b>X</b>		
41.	MTM 00177 1996 MSL Side Loader Manual brochure	<b>X</b>		
42.	MTM 00179 2000 MSL 2 brochure	<b>X</b>		
43.	MTM 00185 2012 McNeilus Refuse brochure	<b>X</b>		
44.	MTM 00209 ANSI Z245.1-1999	<b>X</b>		
45.	MTM 001667 2007 Street Force M MA Operator's Manual	<b>X</b>		

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
46.	MTM 002045 Warranty and Pre-sale service file		X	
47.	MTM 002071 Service Pre-Invoice file		X	
48.	MTM 002085 WM Seattle, WA quote and sales documents	X		
49.	MTM 002137 Final Inspection documents	X		
50.	MTM 002215 Manufacturing Special Order Detail	X		
51.	MTM 002221 Ontario Standard		X	
52.	MTM 002347 Operator's Manual Side Loader Model 1		X	
53.	MTM 002540 – 2556 – NWRA Waste Collection Safety Guide		X	
54.	MTM 2557 – 2560 SSP Cart Tipper Brochure	X		
55.	MTM 2561-2628 127 Cart tipper parts service manual	X		

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
56.	MTM 2629 Cart tipper schematic	X		
57.	MTM 2630 Cart tipper schematic	X		
58.	MTM 2632-2635 131 – CDC – NIOSH Solid Waste Industry Fact Sheet	X		
59.	MTM 2647-2713 ANSI B11.19-2003 R2009	X		
60.	MTM 2714-2774 17-ANSI Z245.1	X		
61.	Photo of Subject truck sill SA mt	X		
62.	Photo of Subject truck controls SA mt	X		
63.	Photo of Subject truck sill SA mt	X		
64.	Photo of Subject truck sill guard SA mt	X		
65.	Photo of Subject truck hopper SA	X		

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
66.	Photo of Subject truck hopper 2 SA	X		
67.	Photo of Subject truck controls SA mt	X		
68.	Photo of Subject truck controls 2 SA mt	X		
69.	Photo of Subject truck driver side SA	X		
70.	Photo of Subject truck driver side cover SA	X		
71.	Photo of Subject truck driver side view SA	X		
72.	Photo of Subject truck driver side cover SA mt	X		
73.	Photo of Subject truck driver side sill SA mt	X		
74.	Photo of Subject truck driver side cover 2 SA	X		
75.	Photo of Subject truck driver side cab hopper SA	X		

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
76.	MTM 2949-2953 Andrew Inspection notes measurements	X		
77.	MTM 2993 WHITE TRUCK HOPPER IMG_7534		X	
78.	MTM002998 – CN 10084 Refuse ma wm Canada 2006 op and estop required		X	
79.	Andrew insp video IMG_3158	X		
80.	New Brunswick Safe-Waste Collection Workers Guide s1		X	
81.	Video of 20 Gallon Carts with A McNeilus AMSL			X
82.	Video of 1989 WhiteGmc Amrep MSL – ‘The Rolls Royce’			X
83.	Video of Able Body Sales MSL & Old Style Amrep MSL			X
84.	Video of Amrep MSL’s of Portland Oregon			X
85.	Video of CCC Amrep MSL with Recycle Bucket – YouTube			X

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
<b>86.</b>	Video of Classic WhiteGMC Amrep Side Loader, CR&R			<b>X</b>
<b>87.</b>	Video of Old Carts on an MSL Part 1 – Copy			<b>X</b>
<b>88.</b>	Video of Republic MSL Action			<b>X</b>
<b>89.</b>	Video of Republic Services Labrie Freightliner Mini MSL's			<b>X</b>
<b>90.</b>	Video of Side-Loading Garbage Truck McNeilus			<b>X</b>
<b>91.</b>	Video of WXLL CNG McNeilus MSL			<b>X</b>
<b>92.</b>	Photo of Shred-tec shredder truck			<b>X</b>
<b>93.</b>	Photo of whitegmc amrep side loader			<b>X</b>
<b>94.</b>	Photo of amrep msl q			<b>X</b>
<b>95.</b>	Becker Benjamin Somerlott Pictures	<b>X</b>		

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
<b>96.</b>	Becker Benjamin Somerlott Graphs	<b>X</b>		
<b>97.</b>	Cary wastewater documents			<b>X</b>
<b>98.</b>	Photo of exemplar glove	<b>X</b>		
<b>99.</b>	Photo of Plaintiff wearing exemplar glove	<b>X</b>		
<b>100.</b>	2011 Tax Return R		<b>X</b>	
<b>101.</b>	2012 Tax Return R		<b>X</b>	
<b>102.</b>	2013 Tax Return R		<b>X</b>	
<b>103.</b>	2014 Tax Return R		<b>X</b>	
<b>104.</b>	2015 Tax Return R		<b>X</b>	
<b>105.</b>	2016 Tax Return R		<b>X</b>	

<b>Ex. No.</b>	<b>Document</b>	<b>Admissibility Stipulated.</b>	<b>Authenticity Stipulated; Admissibility Disputed</b>	<b>Authenticity and Admissibility Disputed</b>
106.	Meridian Physical Therapy	X		
107.	Peoples Injury Network	X		
108.	Providence Records from D	X		
109.	Seattle Hand Surgery	X		
110.	South Sound Physical Therapy	X		
111.	US Healthworks	X		
112.	McNeilus Cost and Price info	X		
113.	WM policy re carts	X		
114.	WM job description	X		
115.	Cary education costs documents			X

Ex. No.	Document	Admissibility Stipulated.	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed
116.	Cary household and yard replacement documents			X
117.	Seattle hand Occu from WM excerpts		X	
118.	PINN from WM excerpts	X		
119.	Summary of Effort in meds			X
120.	Summary of Grip Strength in meds			X
121.	Summary of Pain in meds			X
122.	McNeilus Full-Line Brochure	X		
123.	MTM Answers to Pl First Admissions	X (to the extent it was an admission)		
124.	MTM's Resps to P RFPS, Set One		X	
125.	Tipton Report		X	

Ex. No.	Document	Admissibility Stipulated.	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed
126.	Tipton CV	X		
127.	Cary Report		X	
128.	Cary CV	X		
129.	Cary addendum report		X	
130.	Def answers to 1 <sup>st</sup> Rogs		X	
131.	Def Supplemental answers to 1 <sup>st</sup> Rogs		X	
132.	Def Consolidated answers to Rogs		X	
133.	Def Further sup answers to 1 <sup>st</sup> and 2 <sup>nd</sup> Rogs		X	
134.	Def answers to 2 <sup>nd</sup> Rogs		X	
135.	McNeilus side loader video		X	

Ex. No.	Document	Admissibility Stipulated.	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed
136.	Seattle Hand from WM excerpts	X		

**B. Defendant's Proffered Exhibits**

Ex. No.	Bates No.	Document	Admissibility Stipulated	Auth. stip., admiss. disp.	Auth. & admiss. disp.
200.		MTM's Requests for Production of Documents ("RFPS") and Interrogatories ("ROGS"), Set One, and Plaintiff's Responses Thereto		X	
201.		Plaintiff's Second Amended Responses to MTM's RFPS & ROGS, Set 1		X	
202.		Plaintiff's paystubs, attached as Exhibit 1 to his Supplemental Responses to MTM's RFPS, Set 1		X	
203.		MTM's RFPS, Set 2 and Plaintiff's Responses thereto		X	
204.		Plaintiff's Amended Responses to MTM's RFPS, Set 2		X	
205.		MTM's RFPS, Set 3 and Plaintiff's Responses thereto		X	
206.		Plaintiff's Amended Responses to MTM's RFPS, Set 3		X	
207.		Plaintiff's Amended Responses to MTM's RFPS, Set 4		X	

1	<b>208.</b>		Plaintiff's Third Amended Responses to MTM's ROGS, Set 1		<b>X</b>	
2	<b>209.</b>		MTM's Requests for Admissions ("RFAS"), Set 1 and Plaintiff's Responses thereto	<b>X</b>		
3	<b>210.</b>	MTM 000175 - 000176	1994 Manual Side Loader Specifications	<b>X</b>		
4	<b>211.</b>	MTM 000181 - 000182	2001 Streetforce Manual/Automated Side Loader Brochure	<b>X</b>		
5	<b>212.</b>	MTM 000421 - 000720	2006 Street Force MA Service Manual	<b>X</b>		
6	<b>213.</b>	MTM 001816	Design Drawing 1106683 Assembly-Final 31 YD		<b>X</b>	
7	<b>214.</b>	MTM 001817 - 001820	Design Drawing 1559982 Body, Sub WLDT 29/21YD M/MA	<b>X</b>		
8	<b>215.</b>	MTM 002167	FMVSS Certification Plate		<b>X</b>	
9	<b>216.</b>	MTM 002168 - 002169	Pre-Delivery quality checklist			<b>X</b>
10	<b>217.</b>	MTM 002170 - 002214	Manufacturing Work Order File		<b>X</b>	
11	<b>218.</b>		Records from Seattle Radiology  ///	<b>X</b>		
12	<b>219.</b>	BL 226-345, 348, 356-61, 489-490, & 523-524	Records from Boart Longyear  ///			<b>X</b>
13	<b>220.</b>	GB 1, 55-	Records from Gallagher			<b>X</b>

1		66, 68-71, 74-78, 80- 83, 89-98, 100-105, 107-116, 118-122, 124-134	Bassett			
2						
3						
4						
5	<b>221.</b>	WMRFP 269-298, 321-325, 375, 386- 388, 493, 498, 525- 526, 534- 536	Records from Waste Management	<b>X</b>		
6						
7						
8						
9						
10	<b>222.</b>	MTM 002631	5 to Stay Alive: Safety Tips for Collection Employees, Solid Waste Association of North America		<b>X</b>	
11						
12	<b>223.</b>	MTM 002636 - 002639	Slow Down to Get Around, National Waste & Recycling Association		<b>X</b>	
13						
14	<b>224.</b>	MTM 002640 - 002646	Garbage Truck Safety, Begin with the Bin Program, National Waste & Recycling Association		<b>X</b>	
15						
16	<b>225.</b>	MTM 002775 - 002807	Safety First – Reducing Accidents & Injuries, Washington Refuse & Recycling Association Presentation			<b>X</b>
17						
18						
19	<b>226.</b>	MTM 002808 - 002948	Inspection photographs of the subject vehicle	<b>X</b>		
20						
21	<b>227.</b>	MTM 002949 - 002953	Inspection measurements of the subject vehicle	<b>X</b>		
22						
23	<b>228.</b>		Inspection videotape of the subject vehicle;	<b>X</b>		
24	<b>229.</b>	MTM 002961	Refuse Products Brochure	<b>X</b>		
25						
	<b>230.</b>	MTM	Design Drawing 1424306	<b>X</b>		

1		002983 - 002984	35D-Instr, Split Door, HPR			
2	<b>231.</b>		Dr. Steven D. Sun's Curriculum Vitae	<b>X</b>		
3	<b>232.</b>		Dr. Steven D. Sun's Expert Report dated 7/20/17		<b>X</b>	
4	<b>233.</b>		Dr. Steven Sun's independent medical examination report dated 10/11/17		<b>X</b>	
5						
6	<b>234.</b>		Professional Resume for Stephen P. Andrew, P.E.	<b>X</b>		
7						
8	<b>235.</b>		Stephen P. Andrew's expert report dated 7/17		<b>X</b>	
9	<b>236.</b>		Stephen P. Andrew's expert rebuttal report dated 8/21/17		<b>X</b>	
10						
11	<b>237.</b>		William E. Partin's Curriculum Vitae	<b>X</b>		
12	<b>238.</b>		William E. Partin' expert report dated 7/20/17		<b>X</b>	
13	<b>239.</b>		William E. Partin's expert rebuttal report dated 8/18/17		<b>X</b>	
14						
15	<b>240.</b>		William B. Skilling's Curriculum Vitae	<b>X</b>		
16	<b>241.</b>		William B. Skilling's expert rebuttal report dated 8/21/17		<b>X</b>	
17						
18	<b>242.</b>		Deposition of Jerry Ginter – Rule 30(b)(6) Witness for Waste Management and all exhibits thereto		<b>X</b>	
19						
20	<b>243.</b>		Deposition of Stephen Forgas – Rule 30(b)(6) Witness for MTM and all exhibits thereto		<b>X</b>	
21						
22	<b>244.</b>		Deposition of Theodore Becker and all exhibits thereto		<b>X</b>	
23						
24	<b>245.</b>		Deposition of John R. Cary and all exhibits thereto		<b>X</b>	
25	<b>246.</b>		Deposition of Steven Tipton and all exhibits		<b>X</b>	

		thereto			
1	<b>247.</b>	Deposition of Aleksandar Curcin, M.D. and all exhibits thereto		<b>X</b>	
2					
3	<b>248.</b>	Deposition of Casey Desmond and all exhibits thereto		<b>X</b>	
4					
5	<b>249.</b>	Deposition of Elizabeth Joneschild, M.D. and all exhibits thereto		<b>X</b>	
6					
7	<b>250.</b>	Deposition of Aleksandr Lemeshev		<b>X</b>	
8					
9	<b>251.</b>	Deposition of Benjamin Somerlott and all exhibits thereto		<b>X</b>	
10					
11	<b>252.</b>	Deposition of Jennifer Somerlott		<b>X</b>	
12					
13	<b>253.</b>	“Disposing Household Hazardous Waste, Begin with the Bin Program” from the NWRA		<b>X</b>	
14					
15	<b>254.</b>	Rocky Mountain Medical Clinic Record (Single Page)	<b>X</b>		
16					
17	<b>255.</b>	Medical Records concerning Plaintiff from RET Physical Therapy Group	<b>X</b>		
18					
19	<b>256.</b>	Medical Evaluation of Mr. Somerlott performed by Dr. St. Elmo Newton III, M.D. and Dr. James Haynes, M.D., dated April 30, 2015		<b>X</b>	
20					
21	<b>257.</b>	Medical Evaluation of Mr. Somerlott performed by Dr. Aleksandar Curcin, M.D. and Dr. Roman L. Kutsy, M.D., dated 12/5/15 and Addendum dated 12/23/15		<b>X</b>	
22					
23		///			
24	<b>258.</b>	Medical Evaluation of Mr. Somerlott performed by Dr. Ali Samii, M.D. and Dr.		<b>X</b>	
25					

1		Aleksandar Curcin, M.D., dated 8/10/16			
2	<b>259.</b>	Addendum report prepared by Dr. Ali Samii, M.D., dated 10/26/16		<b>X</b>	
3	<b>260.</b>	MTM 001815 Design Drawing 1107492 Mounting Body		<b>X</b>	
4	<b>261.</b>	MTM 001817- 1820 Design Drawing 1559982 – Body, Sub WLDT 2921YD MMA	<b>X</b>		
5	<b>262.</b>	MTM 002276 Design Drawing 1105810 – Scraper	<b>X</b>		
6	<b>263.</b>	MTM 002277 Design Drawing 1105850 – Packer Assist	<b>X</b>		
7	<b>264.</b>	MTM 002279 Design Drawing 1106606 – Gussett	<b>X</b>		
8	<b>265.</b>	MTM 002280 Design Drawing 1106614 – Guard Hopper	<b>X</b>		
9	<b>266.</b>	MTM 002289 Design Drawing – 1130027 – Wall Body	<b>X</b>		
10	<b>267.</b>	MTM 002290 Design Drawing 1130028 – Wall Body	<b>X</b>		
11	<b>268.</b>	MTM 002291 Design Drawing 1130029 – Roof	<b>X</b>		
12	<b>269.</b>	MTM 002296 Design Drawing 1149387 – Hopper Door	<b>X</b>		
13	<b>270.</b>	MTM 002303 Design Drawing 1182837 – Hopper Door	<b>X</b>		
14	<b>271.</b>	MTM 002320 - 2321 Design Drawing 1456333 - Floor	<b>X</b>		
15	<b>272.</b>	MTM 002983- 2984 Design Drawing 1424306 – Doors	<b>X</b>		
16	<b>273.</b>	PINN 000001 – 109 Medical Records concerning Plaintiff from People’s Injury Network  ///	<b>X</b>		
17	<b>274.</b>	MERIDIAN 000001 - 101 Medical Records concerning Plaintiff from Meridian Physical Therapy	<b>X</b>		
18	<b>275.</b>	SS 000001 Medical Records	<b>X</b>		

1		- 74	concerning Plaintiff from South Sound Physical Therapy			
2	<b>276.</b>		Exhibit 5 to the Deposition of Jerry Ginter – Rule 30(b)(6) Witness for Waste Management Entitled “MODULE 7A: Residential: Rear End, Automated Side Load, Manual Side Load, and Dual Drive Systems, Hopper Loading”	<b>X</b>		
3						
4						
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6						
7						
8	<b>277.</b>		Exhibit 6 to the Deposition of Jerry Ginter – Rule 30(b)(6) Witness for Waste Management, which is a page from “Chapter 15.0 Manual Side Loaders” from the “WM Operations and Safety Rules Book”	<b>X</b>		
9						
10						
11						
12						
13	<b>278.</b>		Exhibit 8 to the Deposition of Jerry Ginter – Rule 30(b)(6) Witness for Waste Management entitled “Job Description” for the “Driver Residential Recycling” job title.	<b>X</b>		
14						
15						
16						
17	<b>279.</b>		Footnote 19 to Stephen Andrew Expert Report dated July 20, 2017 – OSHA Accident Search Results Screenshots		<b>X</b>	
18						
19						
20	<b>280.</b>		Footnote 20 – Detail reports concerning OSHA Accident Nos. 202252078, 200371649, 202340485, and 648535		<b>X</b>	
21						
22						
23	<b>281.</b>		Attachment 1 to William Partin’s Expert Report dated July 20, 2017 – Summary of Plaintiff’s Economic Loss		<b>X</b>	
24						
25						

1	<b>282.</b>	Attachment 2 to William Partin's Expert Report dated July 20, 2017 – Plaintiff's Projected Earnings Loss		<b>X</b>	
2					
3					
4	<b>283.</b>	Attachment 3 to William Partin's Expert Report dated July 20, 2017 – Plaintiff's Payroll Summary (Based on WM Payroll Records from 3/22/14 through 6/11/16)		<b>X</b>	
5					
6					
7					
8	<b>284.</b>	Attachment 4 to William Partin's Expert Report dated July 20, 2017 – Plaintiff's Payroll Summary (Based on National EWP, Inc. Payroll Records from 6/18/16 through 10/8/16)		<b>X</b>	
9					
10					
11					
12	<b>285.</b>	Attachment 5 to William Partin's Expert Report dated July 20, 2017 – Plaintiff's Historical Income Summary		<b>X</b>	
13					
14					
15	<b>286.</b>	Attachment 6 to William Partin's Expert Report dated July 20, 2017 – Plaintiff's Work life Expectancy		<b>X</b>	
16					
17					
18	<b>287.</b>	Attachment 1 to William Partin's Rebuttal Expert Report dated August 18, 2017 – United States Historical Unemployment Rate for Males Over Age 25 with Some College, No Degree (2007-2016)			<b>X</b>
19					
20					
21					
22					
23	<b>288.</b>	Attachment 2 to William Partin's Rebuttal Expert Report dated August 18, 2017 – Hourly Rates/Job Description – Maids and Housekeeping Cleaners,			<b>X</b>
24					
25					

1		Cleaners of Vehicles, and Food Preparation Workers			
2	<b>289.</b>	Attachment 3 to William Partin's Rebuttal Expert Report dated August 18, 2017 – Expectancy Data, <i>The Dollar Value of a Day, 2015</i> – Table 229: National to Area Wage Adjustment Percentages, May 2015			<b>X</b>
3					
4					
5					
6	<b>290.</b>	Attachment 4 to William Partin's Rebuttal Expert Report dated August 18, 2017 – Hourly Rates/Job Description – Landscaping and Grounds keeping Workers			<b>X</b>
7					
8					
9					
10	<b>291.</b>	Attachment 5 to William Partin's Rebuttal Expert Report dated August 18, 2017 – Washington State Civil Pattern Jury Instruction 34.02: Future Economic Damages – Present Cash Value		<b>X</b>	
11					
12					
13					
14					
15	<b>292.</b>	Attachment 6 to William Partin's Rebuttal Expert Report dated August 18, 2017 – Washington State Civil Pattern Jury Instruction 34.04 – Mortality Table – Limitation on Use		<b>X</b>	
16					
17					
18					
19					
20	<b>293.</b>	Attachment 7: Life Expectancy Tables from the Washington State Office of the Insurance Commissioner Website			<b>X</b>
21					
22					

**VIII. DEPOSITIONS**

Except for deposition testimony offered solely for impeachment, Plaintiff plans to offer portions of deposition testimony of the following witnesses if they are not available to testify:

1 1) Elizabeth Joneschild, M.D.;

2 Except for deposition testimony offered solely for impeachment, MTM plans to offer  
3 portions of deposition testimony of the following witnesses if they are not available to testify:

4 1) Aleksandar Curcin, M.D.

5 2) Casey Desmond

6 3) Aleksandr Lemeshev, M.D.; and

7 4) Jerry Ginter – Waste Management’s 30(b) (6).

8 Deposition transcripts with designations highlighted and objections noted in the  
9 margins are concurrently filed herewith pursuant to LR 32(e).

10 This order has been approved by the parties as evidenced by the signatures of their  
11 counsel. This order shall control the subsequent course of the action unless modified by a  
12 subsequent order. This order shall not be amended except by order of the court pursuant to  
13 agreement of the parties or to prevent manifest injustice.

14 Dated this 9th day of January, 2018

15  
16   
17 \_\_\_\_\_  
18 Marsha J. Pechman  
United States District Judge

19 FORM APPROVED

20  
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18 **Attorneys for Defendant**