



3. While Mr. Nucera has been hoping for a more rapid recovery, as a consequence of those injuries (which include a rotator cuff tear with retraction, rotator cuff tendinitis and biceps tendinitis with subluxation of the biceps tendon), Mr. Nucera has been in significant pain. Indeed our communication has been extremely limited over the past several weeks, and Mr. Nucera has advised such is the reason. Mr. Nucera has advised that his constant and substantial pain has resulted in difficulty sleeping, focusing his mind and on his ability to, among other things, actively engage with me to prepare his defense. For example, the severe pain he has been experiencing and associated loss of rest and mental clarity have caused him to be unable to timely respond to requests I have made of him in connection with preparing his defense, which require his participation in decisions regarding his upcoming trial. Mr. Nucera advised that his lack of sleep during the night causes problems with his mental acuity in focusing on important issues, and that combined with his pain causes him to doze in short intervals when not physically moving (which would be occurring at trial of course).

4. Insurance policies for treatment of his injuries first require attempts to treat Mr. Nucera with non-surgical therapies, *i.e.*, physical therapy and medications. Mr. Nucera has advised that the physical therapy treatments leave Mr. Nucera exhausted and the medications impact his mental abilities. Both, therefore, significantly reduce Mr. Nucera's ability to aid me in preparing his defense and will impact his ability to pay attention to the proceedings and both proactively consult with me as well as to respond to my requests of him.
5. Mr. Nucera finds it difficult to sit for extended periods of time so attending the trial in his current condition will exacerbate the pain he is experiencing. Dr. Pressman has advised that the non-surgical therapies should take approximately ten weeks to complete and, if successful, Mr. Nucera would be able to effectively assist me in preparing his defense before, and participate with me in his defense at, the time of trial.
6. In the event the non-surgical therapies do not resolve Mr. Nucera's injuries, Dr. Pressman anticipates an additional three months would be required before Mr. Nucera would be able to effectively assist me in

preparing his defense and participating in his defense at trial.

7. Although it goes without needing to be said, I will note that during the prior trial Mr. Nucera's input regarding witness questioning during and after direct examination, to assist with cross-examination preparation, was very important and he was very involved. Our discussions were detailed and focused, and very integral to the defense. As the Court knows, trials are dynamic and no two are the same, even if they are retrials, and his input during the second trial will be no less important to the presentation of a defense.

WHEREFORE, it is respectfully requested that pursuant to Federal Rule of Criminal Procedure 45(b) this Court continue the trial date at least ten weeks from the current trial date to permit Mr. Nucera to sufficiently recover from his injuries so that he may actively aid defense counsel in the preparation of his defense and to actively participate in that defense at trial.

BY: /s/ Rocco C. Cipparone, Jr.  
Rocco C. Cipparone, Jr., Esq.  
Attorney for Frank Nucera Jr.

Dated: March 5, 2020