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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

22 UPL NA INC.,
 23 Plaintiff,

24 v.

25 TIDE INTERNATIONAL (USA), INC.,
 26 ZHEJIANG TIDE CROPSCIENCE
 CO., LTD., and NINGBO TIDE IMP. &
 EXP. CO., LTD.,

27 Defendants.

Case No. 8:19-CV-1201-RSWL-KS

JOINT STATUS REPORT

1 Pursuant to the March 6, 2020 Order (ECF No. 77), Plaintiff UPL NA Inc.
2 (“UPL NA”) and Defendants Tide International (USA), Inc., Zhejiang Tide
3 CropScience Co., Ltd., and Ningbo Tide Imp. & Exp. Co., Ltd. (collectively,
4 “Tide”) jointly submit this status report.

5 As noted in the parties’ joint request for stay (ECF No. 76), the parties’
6 discovery efforts had been significantly impacted by the outbreak of coronavirus.
7 The Court previously granted the parties’ joint request, finding good cause to vacate
8 all case deadlines (other than the *Markman* hearing). (ECF No. 77.)

9 The parties currently disagree as to whether a stay continues to be necessary.

10 **UPL NA’s Position**

11 UPL NA proposes a short, thirty (30) day extension of the present stay to
12 allow the parties to discuss and submit a proposal for appropriate case deadlines
13 when the stay is lifted.

14 As noted in the parties’ joint request for stay (ECF No. 76), the parties’
15 discovery efforts have been significantly impacted by the outbreak of coronavirus.
16 Indeed, it was Tide’s counsel who approached UPL NA in March to suggest that a
17 stay of discovery might be prudent. Tide’s counsel explained that certain materials
18 requested by UPL NA were located in China and could not be obtained or provided
19 as a result of local restrictions related to the coronavirus outbreak. Tide’s counsel
20 also noted that the noticed depositions would be impractical, if not impossible,
21 given travel restrictions and quarantine rules. For those reasons, UPL NA agreed to
22 jointly approach the Court and seek a stay of the proceedings. The Court granted the
23 parties’ joint request, finding good cause to vacate all case deadlines (other than the
24 *Markman* hearing). (ECF No. 77.) The circumstances underlying the parties’
25 original request for stay have not changed, and indeed restrictions in the United
26 States have since significantly increased.

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1 Last Thursday, Tide's counsel reiterated that: "depositions, even by video, of
2 mainland China residents, Ms. Dong and Mr. Kui, cannot [] be conducted at present
3 given restrictions in China, and travel restrictions in and out of China. Ms. Dong is
4 expected to be both a designated witness on several 30(b)(6) topics, as well as a
5 witness at any trial that may occur in this case." Counsel for the parties conferred
6 on Friday morning and agreed to jointly request a forty-five (45) day extension of
7 the present stay. UPL NA prepared a draft joint statement in accordance with that
8 agreement and shared it with Tide's counsel on April 17, 2020.

9 In a significant shift, this morning, Tide's counsel changed course on its own
10 recommendation, and indicated that Tide is no longer interested in seeking a joint
11 stay. Instead, Tide presented a proposal for the limited discovery that it would be
12 willing to provide. Tide's proposed course of action will significantly prejudice
13 UPL NA. To make matters worse, Tide waited until moments before midnight
14 Eastern time tonight (UPL NA's lead trial counsel resides on the east coast), to
15 provide a proposed case schedule extending the previous deadlines by sixty days.
16 That tactic eliminated any opportunity to consult with UPL NA or for the parties to
17 meet and confer before Tide's provision of that schedule to the Court in the parties'
18 Joint Status Report.

19 Tide's proposal will seemingly have UPL NA wait until the close of fact
20 discovery (or even after the close of fact discovery) to take the depositions and
21 discovery that it needs before taking corporate depositions of each Defendant. For
22 example, UPL NA is seeking Rule 30(b)(1) depositions of Defendants'
23 manufacturing and financial/sales personnel, including Amber Dong and Yang Kui.
24 These witnesses were excluded from Tide's discovery proposal and these
25 depositions appear impossible to conduct now or in the foreseeable future based on
26 representations from Tide's own counsel. These witnesses are needed at least in part
27 because Tide's document production to date has been limited in ways material to
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1 the resolution of key issues in this dispute, and these witnesses have been identified
2 as most knowledgeable concerning related subject matter. Understandably, UPL
3 NA wants these personal depositions and any additional discovery that follows
4 therefrom before taking the corporate depositions of Defendants Tide International
5 (USA), Inc., Zhejiang Tide CropScience Co., Ltd., and Ningbo Tide Imp. & Exp.
6 Co., Ltd. Tide's proposal appears to contemplate cancelling these critical personal
7 depositions altogether if the travel restrictions continue, while Tide simultaneously
8 expressly reserves the right to rely on these witnesses at trial. When the case
9 resumes, it must be on a schedule that allows for the personal depositions of these
10 individuals to occur, and their Rule 30(b)(1) depositions should be held well before
11 the close of fact discovery as they will likely lead to follow-on discovery.

12 UPL NA has also sought important physical samples and other materials
13 related to the accused products. While Tide now represents that some of those
14 materials may be provided when the stay is lifted, UPL NA still awaits other
15 physical samples. For example, Tide has only provided one of several requested
16 samples of the accused products and it provides no guidance as to when the
17 remaining samples will be provided. Analysis of all samples to be produced by Tide
18 is an important aspect of UPL NA proving infringement in this case. That analysis
19 should occur during fact discovery and before fact depositions. Given Tide's
20 surprising, last-minute change of position, the parties have not had any discussions
21 regarding the case schedule going forward or reasonable timelines for the
22 completion of fact discovery in view of the above issues and limitations.

23 UPL NA respectfully submits that rather than immediately lift the stay on
24 discovery, the stay should be extended for a short period of time, during which the
25 parties can discuss an appropriate schedule in view of the present, highly unusual
26 circumstances caused by the coronavirus. UPL NA suggests that a thirty (30) day
27 extension—which is even shorter than what Tide's counsel suggested last Friday—
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1 would allow the parties time to assess the circumstances and discuss an appropriate
2 case schedule. UPL NA suggests that the parties submit a joint status report by May
3 20, 2020.

4 **Tide's Position**

5 Tide proposes that the temporary stay be lifted at the end of the 60-day period
6 enacted by the Court's stay order. ECF Nos. 76, 77. Tide's proposal is to apply the
7 schedule that the Court had originally set, prior to the stay, and extend it by
8 approximately 60 days to account for the stay. Under Tide's proposal, the trial
9 would start on December 8, 2020.

10 Responding to UPL's suggestion above that the original stay was mainly
11 Tide's doing, while it is true that Tide first broached the subject of a stay with UPL,
12 UPL quickly agreed to Tide's proposal and additionally sought to stay the *Markman*
13 hearing. Tide's original proposal did not seek to stay that hearing.

14 Since the stay commenced, the circumstances underlying the parties' original
15 stay request have changed, and Tide's request to lift the stay is based on these
16 changed circumstances. Tide believes the parties can resume discovery by using
17 remote technology, where applicable, and reaching compromises on discovery
18 issues that may arise. Tide is now able to obtain and produce the requested product
19 sample to UPL that it was previously unable to produce. Tide also believes the
20 local rules and procedures governing this case are the proper vehicle for addressing
21 any discovery disputes that may arise. For example, UPL's alleged disputes with
22 the sufficiency of Tide's production of samples or document production is not one
23 that should be resolved by granting another stay. Rather, any such dispute can be
24 addressed in a discovery motion. Moreover, most of the work the parties will need
25 to do for fact discovery, expert discovery, and pretrial will be handled electronically
26 with little impact from COVID-19. And as discussed below, Tide offers a solution
27 for depositions that would avoid the need for personal interaction and travel. Of
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