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**COMMONWEALTH OF KENTUCKY
SCOTT CIRCUIT COURT
DIVISION II
CIVIL ACTION NO: 16-CI-00028**

MEDIA5022

ELECTRONICALLY FILED**SONITA FRYMAN****PLAINTIFF****VS:****ERIN W. JOHNSON, M.D.,
BLUEGRASS PEDIATRICS & INTERNAL MEDICINE, LLC,
AND RICHARD E. SCALF, M.D.****DEFENDANTS**

**TRIAL MEMORANDUM ON BEHALF OF
DEFENDANT RICHARD E. SCALF, M.D.**

Comes Defendant Richard E. Scalf, M.D.. by Counsel, and pursuant to the “Agreed Pretrial Order” of 1/6/23, hereby submits his trial memorandum.

Description of the Case

This is a medical malpractice action against a primary care provider (Dr. Johnson) and a radiologist (Dr. Scalf) alleging there was an inappropriate delay in the diagnosis of Plaintiff’s breast cancer. Further, Plaintiff contends this delay limited her treatment options and caused her emotional distress.

Concise Statement of Each Issue of Law

The primary legal issues herein have been preserved by the Defendants’ motions for partial summary judgment as to damages, on which the Court has made rulings. The parties have also filed motions in limine and objections to deposition testimony.

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Concise Statement of Each Issue of Fact

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Broadly, the jury in this case will be asked to decide if each Defendant breached the applicable standards of care and if so, what damages were caused thereby. More specifically, it appears Plaintiff will contend both physician Defendants should have done more to rule out the potential she had cancer in October of 2014, as they only recommended she follow-up in six months (April of 2015), rather than suggesting immediate further testing. Dr. Scalf will put on proof that his interpretation of the October 2014 mammogram was accurate and his recommendations thereafter were reasonable

Plaintiff did seek further care in July of 2015, when her cancer was diagnosed. Thus, in addition to proof that the nine-month delay in diagnosis was not causative of any harm, Dr. Scalf intends to seek a comparative fault instruction as Plaintiff is wholly responsible for one-third of any delay (for three months, or from April to July 2015) as she failed to heed her doctors' follow-up recommendations.

Respectfully submitted,

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BY: /s/ Benny C. Epling II, _____
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CERTIFICATE OF SERVICE

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I hereby certify that on June 1, 2023, a true and accurate copy of the foregoing was filed electronically through the KCOJ e-filing system, and served upon the following as indicated below:

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