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January 10, 2019

**VIA ECF**

Honorable Madeline Cox Arleo, U.S.D.J.  
United States District Court  
Martin Luther King Building & U.S.  
Courthouse  
50 Walnut Street  
Newark, NJ 07101

Re: *Kenworthy v. Lyndhurst Police Department, et al.*  
Civil Action No. 2:18-cv-12822 (MCA)(JAD)

Dear Judge Arleo:

This firm represents Defendant Adapt Pharma, Inc. in connection with its motion to dismiss Plaintiff's Complaint due to a lack of subject matter jurisdiction and for failure to state a claim. (ECF No. 15). We write in opposition to Plaintiff's motion for a continuance, filed on January 7, 2019. (ECF No. 22.)

Plaintiff seeks a continuance of thirty (30) to sixty (60) days to allow his attorney, who has yet to appear in this litigation, to "properly handle" Plaintiff's case. While we understand a *pro se* plaintiff is entitled to some leniency, Plaintiff could have retained counsel at any time before he filed his Complaint through the filing of the five (5) pending motions to dismiss. Rather than seek a continuance immediately after defendants filed their motions, Plaintiff filed his request a day before his opposition to Adapt's motion was due. Plaintiff's request at this late date serves only to delay the proceedings.

We respectfully request that the Court decide Adapt's motion to dismiss as unopposed. An appearance by counsel on Plaintiff's behalf would have no bearing on the pending motion. Though Plaintiff argues an attorney would be able to provide a basis for federal jurisdiction, the

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Complaint states no such basis and a party cannot amend a pleading by the brief in opposition to a motion to dismiss. *Com. of Pa. ex rel. Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988).

If the Court is inclined to grant Plaintiff's motion for a continuance, we respectfully request that the continuance be far shorter than the thirty (30) to sixty (60) days Plaintiff seeks. Rather, we ask the Court to consider a continuance through no later than January 18, 2019.

Respectfully submitted,

*s/ Beth S. Rose*

BETH S. ROSE

cc: All counsel of record (via ECF)