

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOAQUIN CARCAÑO, et al.,

Plaintiffs,

v.

PATRICK McCRORY, in his official
capacity as Governor of North Carolina, et al.,

Defendants,

and

PHIL BERGER, in his official capacity as
President Pro Tempore of the North
Carolina Senate; and TIM MOORE, in his
official capacity as Speaker of the North
Carolina House of Representatives,

Intervenor-Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA, et al.,

Defendants,

and

PHIL BERGER, in his official capacity as
President Pro Tempore of the North
Carolina Senate; and TIM MOORE, in his
official capacity as Speaker of the North
Carolina House of Representatives,

Intervenor-Defendants.

1:16CV236

1:16CV425

ORDER

This matter came before the Court on September 16, 2016, for a Status Conference in cases 1:16CV236 and 1:16CV425, which have been coordinated for discovery and scheduling. At the Status Conference, which was conducted by telephone, Attorney Scott Wilkens spoke on behalf of the Plaintiffs in 1:16CV236 (the “ACLU Plaintiffs”), and Attorney Lori Kisch of the United States Department of Justice spoke on behalf of Plaintiff United States in 1:16CV425 (the “USDOJ Plaintiff”). For Defendants, Attorney Butch Bowers spoke on behalf of the State of North Carolina, Governor McCrory, and the North Carolina Department of Public Safety (“the State Defendants”); Attorney Kyle Duncan spoke on behalf of Intervenor-Defendants Phil Berger and Tim Moore (“the Legislative Intervenors”); and Attorney John Gore spoke on behalf of the University of North Carolina and the UNC Board of Governors and Chairman Bissette (the “UNC Defendants”). Prior to the hearing, the Parties filed a Joint Rule 26(f) Report [Doc. #144 in 1:16CV236 and Doc. #175 in 1:16CV425], as well as a Joint Motion for Entry of Stipulated Confidentiality Agreement and Protective Order [Doc. #145 in 1:16CV236 and Doc. #174 in 1:16CV425]. The Court enters this written order to memorialize the Parties’ positions and the Court’s rulings at the Status Conference.

I. Issues Related to Parties’ Joint Rule 26(f) Report

As noted in the Joint Rule 26(f) Report and as discussed at the Status Conference, cases 1:16CV236 and 1:16CV425 are coordinated for discovery and scheduling purposes, and any discovery and pre-trial matters should be captioned and filed in both cases.

As noted in the Rule 26(f) Report, the Parties did not resolve certain issues with respect to the scheduling of expert depositions. In the Rule 26(f) Report, the Parties agreed that the “First Deposition Period” would run from November 1, 2016 until December 16, 2016, during which time the Parties would make their expert witnesses on public-safety related issues available for deposition. A “Second Deposition Period” would then take place from December 6, 2016, until February 22, 2017. The ACLU and USDOJ Plaintiffs (collectively, “Plaintiffs”) expressed a preference to have all expert witnesses who were not deposed during the First Deposition Period made available for deposition by January 17, 2017. The State Defendants, Legislator Intervenors, and UNC Defendants (collectively, “Defendants”) preferred a slightly later deadline of February 22, 2017. In light of this disagreement, Plaintiffs proposed a compromise where eight medical experts discussed between the Parties (four experts on each side) would be scheduled for deposition from December 6, 2016 through January 17, 2017. Defendants proposed a compromise where all expert depositions would be concluded by February 1, 2017.

At the Status Conference, the Court proposed that all expert depositions conclude by February 1, 2017, in order to leave sufficient time to prepare Daubert Motions, and in addition, that the Parties use their best efforts to schedule the eight medical experts as early as possible in the Second Deposition Period. All of the Parties agreed to this proposal. Therefore, the schedule set out in the Joint Rule 26(f) report is modified to provide that all expert depositions must be conducted by February 1, 2017, and in addition, the Parties should use their best efforts to schedule the eight medical experts as early as possible in the Second Deposition Period.

With respect to deadlines for written discovery previously addressed in the prior Scheduling Order, the Parties have agreed that the rolling productions of any available responsive documents will continue. However, the deadlines for responses or objections to document requests and for document production, as well as the schedule for responses to interrogatories and requests for admissions, will no longer be expedited and will instead be as normally provided under the Federal Rules of Civil Procedure. The Court therefore adopts this modification with the agreement of the Parties.

With respect to limits to the total number of depositions, the Parties are in the process of discussing deposition limits as well as fact stipulations and other voluntary limitations that may reduce the number of depositions needed. In light of this process, the Parties requested additional time to confer on these issues before setting any deposition limitations. The Court will allow that request and will set this issue for further resolution at the telephone Status Conference previously set for September 30, 2016, at 10:00 a.m. The Parties are directed to file a Joint Notice by September 28, 2016, addressing the number of depositions allowed for each side and any other deposition limits. In addition, the Parties should also include any other issues that need to be discussed at the September 30, 2016 telephone Status Conference. If the Parties have reached an agreement on these issues and there are no matters to address, the Court will consider cancelling the September 30 Status Conference.

With respect to the briefing schedule proposed in the Parties' Joint 26(f) Report, to the extent the Parties are not able reach an agreement as to the application of legislative privilege in this case, Defendants will file a Motion for a Protective Order by September 23, 2016, Plaintiffs will respond by October 7, 2016, and any reply from Defendants would be due by

October 14, 2016. Similarly, if the Parties cannot agree on the extent to which Plaintiffs' or Plaintiffs' witnesses' medical information is discoverable by Defendants, Plaintiffs will file a Motion for a Protective Order by October 4, 2016, Defendants' Response would then be due by October 18, 2016, and any Reply from Plaintiffs would be due by October 25, 2016. The Court will set these cases for a Status Conference and Hearing at 10:00 a.m. on October 28, 2016, to address any issues related to either of these discovery matters.

With respect to the briefing of dispositive motions and motions in limine, the Court proposed slight modifications to the Parties' proposed briefing schedule, primarily to eliminate the extra three days under Federal Rule of Civil Procedure 6(d), so that the deadlines are clear and so that the motions are fully briefed and ready for referral to the Court as early as possible. The Parties all agreed to this proposal. Thus, all Daubert motions shall be filed by March 6, 2017, with all responses due by March 27, 2017, and replies due by April 10, 2017. All non-Daubert motions in limine shall be filed by April 10, 2017, with responses due April 24, 2017, and replies due May 1, 2017. Finally, all dispositive motions shall be filed by March 24, 2017, with all responses due April 21, 2017, and all replies due May 5, 2017.¹

To the extent not set out otherwise herein, the Court adopts the agreements of the Parties included in the Joint Rule 26(f) Report.

¹ The Court notes that any Party may choose to file a Motion before the given deadlines set out above, in which case the deadlines for responses and replies would be the earlier of (1) the dates set out above or (2) the ordinary deadlines under the Federal Rules and Local Rules, with the three days for service provided under Federal Rule of Civil Procedure 6(d).

II. Motion for Entry of Stipulated Confidentiality Agreement and Protective Order

As noted during the Status Conference, the Parties have filed a Joint Motion for Entry of Stipulated Confidentiality Agreement and Protective Order [Doc. #145 in 1:16CV236 and Doc. #174 in 1:16CV425]. The Court will adopt the proposed Order in a separate filing.

III. Motion for Leave to File Second Amended Complaint

The final issue addressed at the September 16, 2016 Status Conference was the ACLU Plaintiffs' Motion for Leave to File Second Amended Complaint in 1:16CV236 [Doc. #116 in 1:16CV236]. The ACLU Plaintiffs filed their Motion on August 15, 2016, and Defendants have withdrawn their objection [Doc. #142 in 1:16CV236]. For good cause shown, the Court will grant the Motion for Leave to File Second Amended Complaint and now directs the ACLU Plaintiffs to file their Second Amended Complaint. Within the time otherwise required to respond to the Second Amended Complaint, each of the Defendants may choose to either (1) file a short statement incorporating their prior Answer or Motion to Dismiss, as discussed during the Status Conference; or (2) in the alternative, file a new Answer or Motion to Dismiss as to the Second Amended Complaint.² In light of those options, the filing of the Second Amended Complaint will not automatically terminate the UNC Defendants' pending Motion to Dismiss [Doc. #89 in 1:16CV236].

² The Court anticipates that the Defendants who previously filed an Answer will either incorporate their prior Answer or file a new Answer, and that any new Motion to Dismiss by those Defendants would be directed only to newly-added claims or parties. The Court also notes that in the interest of efficiency, rather than filing a Motion to Dismiss as to newly-added claims or parties now, Defendants may choose to raise those issues in dispositive motions prior to trial on the schedule previously set out.

IV. Conclusion

IT IS THEREFORE ORDERED that the Court adopts the Parties' Joint Rule 26(f) Report [Doc. #144 in 1:16CV236 and Doc. #175 in 1:16CV425] as modified above.

IT IS FURTHER ORDERED that the Parties shall submit a Joint Notice of Issues by September 28, 2016, and this matter remains set for a telephone Status Conference on September 30, 2016 at 10:00 a.m., unless otherwise cancelled by the Court after the filing of the Joint Notice.

IT IS FURTHER ORDERED that this case is set for a Hearing and Status Conference on October 28, 2016, to address any pending discovery issues, including issues related to legislative privilege and Plaintiffs' or other witnesses' medical records.

FINALLY, IT IS ORDERED that the ACLU Plaintiffs' Motion to Leave to File Second Amended Complaint [Doc. #116 in 1:16CV236] is GRANTED. Plaintiffs may file the Second Amended Complaint, and within the time otherwise required to respond to the Second Amended Complaint, the Defendants shall file a responsive pleading as set out above.

This, the 20th day of September, 2016.

 /s/ Joi Elizabeth Peake
United States Magistrate Judge