UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOAQUÍN CARCAÑO, et al., *Plaintiffs*, v. PATRICK MCCRORY, et al., *Defendants*.	No. 1:16-cv-00236-TDS-JEP **E-DISCOVERY STIPULATION**
UNITED STATES OF AMERICA, *Plaintiff*, v. STATE OF NORTH CAROLINA, et al., *Defendants*.	No. 1:16-cv-00425-TDS-JEP

All Parties in the above captioned actions (collectively "the Parties" and individually, each a "Party") mutually seek to reduce the time, expense, and other burdens of discovery of documents, things, and electronically stored information ("ESI"). Therefore, the Parties are entering into this Stipulation and Order to govern discovery obligations in this action. The stipulations included herein supplant any instructions or directions in the discovery requests served by the Parties that are inconsistent with this document. The Parties stipulate as follows:

1. For the purposes of discovery in the above-captioned matters, "Document" refers to the original and all non-identical copies of any handwritten, printed, typed, recorded or other graphic material, or electronically stored information ("ESI") (as defined below) of any kind and nature, including all transcriptions thereof, however produced or reproduced, and including but not limited to accounting materials, accounts, agreements, analyses, appointment books, books of account, calendars, catalogs, checks, communications, computer data, computer disks, contracts, correspondence, date books, diaries, diskettes, drawings, electronically generated or stored information, e-mail messages, faxes, guidelines, instructions, inter-office communications, invoices, ledgers, letters, licenses, logs, manuals, memoranda, microfilm, minutes, notes, opinions, payments, plans, receipts, records, regulations, reports, sound recordings, statements, studies, surveys, telegrams, telexes, timesheets, vouchers, word processing materials (however stored or maintained) and working papers, and all other means by which information is stored for retrieval in fixed form, but shall not include drafts. The term "document" has the broadest meaning possible consistent with the terms of the applicable Federal Rules of Civil Procedure.

2. For the purposes of discovery in the above-captioned matters, "electronically stored information" or "ESI" refers to information created, manipulated, communicated, stored, or utilized in digital form. ESI includes, without limitation, data stored on or in local computer servers, web-hosted computer servers ("cloud services" or "cloud servers"), computer desktops, laptops, handheld or tablet computers, portable digital media, backup media, CD-ROMs, DVD-ROMs, floppy discs, non-volatile

memory including flash memory devices, external hard drives, personal digital assistants, Blackberry-type devices, smart phones, cell phones, electronic voicemail systems, text messages, instant messages, e-mails and attachments to e-mails, or any other device or medium capable of storing data in any format.

3. Document productions are made subject to, and shall comply with, any and all protective orders and stipulations.

4. Pursuant to Federal Rule of Civil Procedure 26(b)(2)(B), a party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery or for a protective order, the party from whom discovery is sought bears the burden to demonstrate that the information is not reasonably accessible because of undue burden or cost.

5. Pursuant to agreement between the Parties as memorialized in the Joint Rule 26(f) Report, ECF No. 104 and ECF No. 175, the Plaintiffs, collectively, will not be required to produce privilege logs for internal communications among counsel (including their staff), including communications among individual party counsel and communications between counsel for the two Plaintiff parties. The parties agree that Defendants, collectively, will not be required to produce privilege logs for internal communications among counsel (including their staff), including communications among individual party counsel and communications between counsel for the various Defendant parties.

6. No Party shall be required to log communications between counsel and their retained clients or any potential clients.

7. Except as described in this paragraph, the Parties agree that they need not preserve, and they need not continue to preserve, the following:

a. Voicemail messages;

b. Instant messages or other transitory communications that are not retained in the ordinary course of business;

c. Electronic mail, SMS messages, or "pin to pin" messages sent to or from a Personal Digital Assistant (*e.g.*, iPhone or Blackberry Handheld), provided that a copy of electronic messages is saved in another reasonably accessible location;

d. Other electronic data stored on a Personal Digital Assistant, such as calendar or contact data or notes, provided that a copy of such information is saved in another reasonably accessible location;

e. Logs of calls made to or from cellular phones;

f. Temporary or cache files (*e.g.*, internet history, web cache, and cookie files);

g. Server, system, or network logs;

h. Data from photocopiers or fax machines;

i. Automatically saved copies of electronic documents;

j. Delivery or read receipts of electronic mail;

k. Documents a party has identified as not reasonably accessible pursuant to Federal Rule of Civil Procedure 26(b)(2)(B) and about which no party has sought a motion to compel.

l. Documents exempted from privilege logs as identified in Paragraphs 5 and 6.

8. The Parties are not required to modify or suspend the procedures used by them in the ordinary course of business to backup data and systems for disaster recovery and similar purposes related to continuity of operations. The Parties are not required to take any such backup media out of the ordinary rotation.

9. The Parties agree not to seek discovery of Documents described in Paragraphs 6 and 7 unless such discovery becomes necessary as a curative remedy to restore or replace information that should have been, but was not, retained.

10. Documents produced should be clearly identified so as to reflect the office or custodian from which they were produced.

11. If a Party learns that responsive ESI that once existed was lost, destroyed, or is no longer retrievable as a result of acts or circumstances not occurring in the ordinary course of business or not occurring in accordance with the Party's document retention policies, the Party shall explain where and when the ESI was last retrievable in its original format, and disclose the circumstances surrounding the change in status of that ESI, and whether any backup or copy of such original ESI exists, together with the location and the custodian thereof.

12. If any responsive Document is claimed to be protected from disclosure by any privilege or other protection, and the Document or any portion thereof is not provided on the basis of such assertion, and the Document is not exempted from logging as described in Paragraphs 4 and 5, the Party asserting the privilege should provide a privilege log with the following information with respect to such Document to the extent such information can be ascertained:

a. the type of document or tangible thing, *e.g.*, letter or memorandum;

b. the general subject matter of the document;

c. the date of the document;

d. the author, addressees, and other recipients of the document; and

e. the basis for the asserted privilege; if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked must be identified.

13. The parties reserve the right to aggregate Documents of similar subject matter into categories for inclusion on the privilege log in lieu of Document-by-document logging.

14. If a portion of any responsive Document is claimed to be protected from disclosure by any privilege or other protection, and the Document is not exempt from logging as described in Paragraphs 4 and 5, any such document should be produced with appropriate redactions and the redactions should be identified on the privilege log referenced in Paragraph 11, except to the extent that the information referenced in

Paragraph 11 is available from the face of the document as redacted and a metadata field has been supplied that indicates that the document has been redacted for privilege.

15. The provisions of this Stipulation relating to the content and/or production of privilege logs shall not apply to any documents withheld from production on the basis of a claim of legislative privilege. The Parties agree that privilege log obligations associated with documents withheld from production on legislative privilege grounds shall be set forth in a separate agreement between and among the Parties. If the Parties are unable to reach agreement regarding the privilege log obligations associated with legislatively privileged materials, those obligations will be set forth in an appropriate order of the Court pursuant to the briefing schedule the Court has established for legislative privilege matters.

16. The provisions of this Stipulation relating to the content and/or production of privilege logs shall not apply to any documents withheld from production on the basis of claims of patient-physician, patient-therapist, or similar privileges (collectively, "Medical Privilege"). The Parties agree that privilege log obligations associated with documents withheld from production on Medical Privilege grounds shall be set forth in a separate agreement between and among the Parties. If the Parties are unable to reach agreement regarding the privilege log obligations associated with Medical Privilege materials, those obligations will be set forth in an appropriate order of the Court pursuant to the briefing schedule the Court has established for Medical Privilege matters.

17. All Documents produced should conform to the following requirements:

a. All Documents should be identified using Bates Numbers in the format "XX########" where "XX" represents the short character abbreviation for the producing Party and ######## represents the eight-digit sequential number of the page being produced. The Parties will produce separately and sequentially Bates Number each document in a document family and will provide an attachment range for all parent and child Documents as a way of identifying the document family. For native files, the Parties agree not to place Bates Numbers on each page, but to name each native file [Bates Number].ext.

b. Documents should be produced as single-page 300-dpi-resolution Group IV TIF format ("TIFF"), except spreadsheets (*e.g.*, Excel), databases (*e.g.*, Microsoft Access and Microsoft Project), presentations (*e.g.*, Microsoft PowerPoint), audio/visual files, and any other file types that are not readily useful when imaged or printed. Those Documents should be produced in native format with a cross-link DAT file to a Bates- stamped placeholder sheet. Unitization of hard copy Documents should match that kept in the normal course of business for identifying Documents.

c. All Documents whether produced as TIFF images or natively shall also be accompanied by extracted text or, for those files that do not have extracted text representing the full document upon being processed (such as hard copy Documents), optical character recognition ("OCR") text data; such extracted text or OCR text data shall be provided in document level form

and named after the first page of the document. Documents that contain redactions shall be OCR'd after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level.

d. If Documents produced in Native Format must be read using unique or proprietary software not in possession of the receiving Party, the Parties shall confer and make best efforts to provide readable versions of the Documents.

e. Parent-Child Relationships: Parent-child relationships (the association between an attachment and its parent record) should be preserved and produced.

f. Load Files: Database load files should consist of: (1) a delimited values (".DAT") file containing the fields identified in the following paragraph; and (2) an Opticon (".OPT") file to facilitate the loading of TIFF images. All load files should be named to match the production volume name. Bates numbers and production volume names must not be duplicated and should run consecutively throughout the entirety of the production(s).

g. Load Files Format: The first line of the DAT file should contain metadata field headers, and below the first line there should be only one line for each record. Each subsequent line must contain the same number of fields as the field header line. A consistent database structure should be maintained across all document productions. Database load files should be produced in Concordance default format.

h. Data Structure: Images, Native files and Text files should be separated and provided within root-level folders named “Images” ,”Text”, or “Natives containing reasonably structured subfolders (preferably not to exceed 2,000 files per subfolder). Load files should be provided in a root-level folder named “Data.”

i. Metadata: Parties shall provide the following metadata fields, when applicable to the document:

   i. Beginning Bates Number;

   ii. Ending Bates Number;

   iii. Beginning Attachment Bates Number;

   iv. Ending Attachment Bates Number;

   v. Custodian Name;

   vi. Confidentiality Designation (if any);

   vii. To;

   viii. From;

   ix. Author;

   x. CC;

   xi. BCC;

   xii. Subject;

   xiii. Filename;

   xiv. Sent Date;

   xv. Sent Time;

xvi. Parent ID;

xvii. Attachment ID;

xviii. Page Count;

xix. File Extension

xx. Nativelink (populated where applicable);

xxi. Link to Text File;

xxii. All Custodians; and

xxiii. An indication of whether the document contains redactions for privilege or otherwise.

j. For Hard-copy Documents, the following Fields do not need to be provided: to, from, cc, bcc, sent date, sent time, subject, file extension, nativelink, author, and filename.

k. The Parties will use production media most appropriate to the size of the production (*e.g.*, CD/DVD, hard drive, secure file transfer protocol ("FTP"), etc). In no event shall the Parties transmit via email Documents containing unredacted personally identifiable information (*e.g.*, social security numbers, home addresses of individuals, etc.). A Party may request that Documents produced by FTP also be produced by physical media (*e.g.*, CD/DVD, hard drive), to be sent via overnight delivery within one business day of the FTP production. Parties agree to label each piece of production media with: (1) case number, (2) producing Party's name; (3) production date); (4) production volume (*e.g.*, 001 for volume 1, etc.). In addition,

the Parties will include on the production media label or in an accompanying letter the type of materials, (*e.g.*, Documents, OCR, text, etc.) and the Bates Number range(s) of the materials on the production media.

18. The Parties agree to make best efforts to use deduplication to remove exact duplicate Documents globally across custodians. The Parties agree to use MD-5 hash values for deduplication and calculate those values for all ESI at the time of collection or processing. The "All Custodians" field will be populated to reflect each custodian that, at the time of processing, had a copy of the document in his or her custody.

19. Each Party shall bear the costs of producing its own documents, things, and ESI.

20. The Parties agree that production of a Document or any part thereof shall not constitute a waiver of any privilege or protection as to any as to any portion of that Document, or as to any undisclosed privileged or protected communications or information concerning the same subject matter, in this or in any other proceeding. This Stipulation shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). This applies to attorney-client privilege, work-product protections, as well as all other protection afforded by Fed. R. Civ. P. 26(b) and governmental privileges. This agreement does not constitute an admission that any document disclosed in this litigation is subject to any of the foregoing privileges or protections, or that any Party is entitled to raise or assert such privileges, nor does it

prohibit Parties from withholding from production any document covered by any applicable privilege or other protection.

a. If a Party discovers a document, or part thereof, produced by another Party that may be privileged or otherwise protected, the receiving Party shall promptly notify the producing Party. Nothing in this Order is intended to shift the burden to identify privileged and protected Documents from the producing Party to the receiving Party.

b. If the producing Party determines that a document produced, or part thereof, is subject to a privilege or privileges, the producing Party shall promptly give the receiving Party notice of the claim of privilege ("privilege notice").

c. The privilege notice must contain information sufficient to identify the document including, if applicable, a Bates number as well as identification of the privilege asserted and its basis.

d. Upon receiving the privilege notice, if the receiving Party agrees with the privilege assertion made, the receiving Party must promptly return the specified document(s) and any copies or take reasonable steps to destroy the document(s) and copies and certify to the producing Party that whether the document(s) and copies have been destroyed and describe the steps taken to ensure that destruction. The receiving Party must sequester and destroy any notes taken about the document. If a receiving Party disclosed the document or information specified in the notice before

receiving the notice, it must take reasonable steps to retrieve it, and so notify the producing Party of the disclosure and its efforts to retrieve the document or information.

e. Upon receiving the privilege notice, if the receiving Party wishes to dispute a producing Party's privilege notice, the receiving Party shall promptly meet and confer with the producing Party. The document(s) shall be sequestered and not be accessed, further reviewed, or used by the receiving Party in the litigation (e.g. filed as an exhibit to a pleading; used in deposition) while the dispute is pending. The Parties shall attempt to resolve any disputes within 10 days of service of the privilege notice by the producing Party. If the Parties are unable to come to an agreement about the privilege assertions made in the privilege notice within time, the receiving Party must make a sealed motion for a judicial determination of the privilege claim within 14 days thereafter. If the receiving Party fails to make a motion within that time, the producing Party may make a sealed motion for a judicial determination of the privilege claim within 14 days thereafter.

f. Pending resolution of the judicial determination, the Parties shall both preserve and refrain from using the challenged information for any purpose and shall not disclose it to any person other than those required by law to be served with a copy of the sealed motion. The receiving Party may not review the information claimed to be privileged in preparing a motion

challenging the assertion and, to the extent the receiving party already had knowledge of the information claimed to be privileged, any motion challenging the assertion must not publicly disclose the information claimed to be privileged. Any further briefing by any Party shall also not use or publicly disclose the information claimed to be privileged if the privilege claim remains unresolved or is resolved in the producing Party's favor. Upon agreement or a determination by the court that a privileged document has been inadvertently disclosed, then best efforts should be made to destroy that document along with copies and notes about the document, that exist on temporary media, back-up tapes, systems, or similar storage need not be immediately deleted or destroyed, and, instead, such materials shall be overwritten and destroyed in the normal course of business. Until they are overwritten in the normal course of business, the receiving Party will take reasonable steps to limit access, if any, to the persons necessary to conduct routine IT and cybersecurity functions.

21. Before filing any motion regarding the terms of this Stipulation and Order, compliance with this Stipulation or Order, or other discovery dispute, the Parties will confer in a good faith attempt to resolve such disputes.

22. This Stipulation and Order may be executed in counterparts and/or signed electronically with /s/ followed by the signatory's name.

23. The Effective Date of this Stipulation and Order is the date on which it is executed by all Parties.

24. This Stipulation and Order may not be enlarged, modified, or altered except by the Court or per a writing signed by each Party.

25. Nothing in this Stipulation and Order shall be construed to extend the time within which a Party must respond to a discovery request.

Respectfully submitted, this 20th day of September, 2016.

RIPLEY RAND
United States Attorney
Middle District of North Carolina
United States Department of Justice
101 South Edgeworth Street, 4th Floor
Greensboro, NC 27401
Telephone: (336) 333-5351
E-mail: ripley.rand@usdoj.gov

VANITA GUPTA
Principal Deputy Assistant Attorney General, Civil Rights Division

SHAHEENA SIMONS
Chief, Educational Opportunities Section

DELORA L. KENNEBREW
Chief, Employment Litigation Section

CHRISTINE STONEMAN
Chief, Federal Coordination and Compliance Section

COREY L. STOUGHTON
Senior Counsel

LORI B. KISCH
WHITNEY PELLEGRINO
Special Litigation Counsel

CHRISTOPHER J. CARNEY
Senior Trial Counsel

TOREY B. CUMMINGS
SEAN R. KEVENEY
ALYSSA C. LAREAU
CAMILLE MONAHAN
JONATHAN D. NEWTON
CANDYCE PHOENIX
ARIA S. VAUGHAN
TARYN WILGUS NULL
Trial Attorneys
United States Department of Justice
Civil Rights Division

/s/ Lori B. Kisch
Lori B. Kisch
DC Bar Number: 491282
Special Litigation Counsel
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 305-4422
Lori.Kisch@usdoj.gov

Counsel for the Plaintiff United States

/s/Christopher A. Brook
N.C. State Bar No. 33838
AMERICAN CIVIL LIBERTIES UNION FOR NORTH CAROLINA LEGAL FOUNDATION
Post Office Box 28004
Raleigh, North Carolina 27611
Telephone: 919-834-3466
Facsimile: 866-511-1344
cbrook@acluofnc.org

James D. Esseks*
Elizabeth O. Gill*
Chase B. Strangio*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St., 18th Fl.

Jon W. Davidson*
Tara L. Borelli*
Peter C. Renn*
Kyle A. Palazzolo*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
730 Peachtree Street NE, Suite 1070
Atlanta, GA 30308-1210
Telephone: 404-897-1880
Facsimile: 404-897-1884
jdavidson@lambdalegal.org
tborelli@lambdalegal.org
prenn@lambdalegal.org
kpalazzolo@lambdalegal.org

Paul M. Smith*
Scott B. Wilkens*

New York, NY 10004
Telephone: 212-549-2627
Facsimile: 212-549-2650
jesseks@aclunc.org
egill@aclunc.org
cstrangio@aclu.org

Luke C. Platzer*
JENNER & BLOCK LLP
1099 New York Avenue, NW Suite 900
Washington, D.C. 20001-4412
Telephone: 202-639-6000
Facsimile: 202-639-6066
swilkens@jenner.com
psmith@jenner.com
lplatzer@jenner.com

Counsel for Carcaño Plaintiffs

/s/ Carolyn C. Pratt

Carolyn C. Pratt
NC Bar No. 38438
The University of North Carolina
P.O. Box 2688
Chapel Hill, NC 27515
Tel: (919) 962-3406
Fax: (919) 962-0477
Email: ccpratt@northcarolina.edu

/s/ Noel J. Francisco

Noel J. Francisco
Glen D. Nager
James M. Burnham
JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001
Tel: (202) 879-3939
Fax: (202) 626-1700
Email: njfrancisco@jonesday.com

z

Counsel for the University of North Carolina, the Board of Governors of the University of North Carolina, and W. Louis Bissette, Jr., in his Official Capacity as Chairman of the Board of Governors of the University of North Carolina

/s/ Carolyn C. Pratt
Carolyn C. Pratt
NC Bar No. 38438
The University of North Carolina
P.O. Box 2688
Chapel Hill, NC 27515
Tel: (919) 962-3406
Fax: (919) 962-0477
Email: ccpratt@northcarolina.edu

/s/ Noel J. Francisco
Noel J. Francisco
Glen D. Nager
James M. Burnham
JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001
Tel: (202) 879-3939
Fax: (202) 626-1700
Email: njfrancisco@jonesday.com

Counsel for the University of North Carolina and the Board of Governors of the University of North Carolina

By: /s/ Karl S. Bowers, Jr.

Karl S. Bowers, Jr.*
Federal Bar #7716
BOWERS LAW OFFICE LLC
P.O. Box 50549
Columbia, SC 29250
Telephone: (803) 260-4124
E-mail: butch@butchbowers.com

By: /s/ Robert N. Driscoll
Robert N. Driscoll*
MCGLINCHEY STAFFORD
1275 Pennsylvania Avenue NW
Suite 420
Washington, DC 20004
Telephone: (202) 802-9950
E-mail: rdriscoll@mcglinchey.com

By: /s/ Robert C. Stephens
Robert C. Stephens (State Bar #4150)
General Counsel
Office of the Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699
Telephone: (919) 814-2027
E-mail: bob.stephens@nc.gov

By: /s/ William W. Stewart, Jr.
William W. Stewart, Jr. (State Bar #21059)
Frank J. Gordon (State Bar #15871)
B. Tyler Brooks (State Bar #37604)
MILLBERG GORDON STEWART PLLC
1101 Haynes Street, Suite 104
Raleigh, NC 27604
Telephone: (919) 836-0090
Email: bstewart@mgsattorneys.com
fgordon@mgsattorneys.com
tbrooks@mgsattorneys.com

Counsel for Governor Patrick L. McCrory/Counsel for the State of North Carolina, Governor Patrick L. McCrory, and the North Carolina Department of Public Safety

/s/ S. Kyle Duncan
S. Kyle Duncan* (DC Bar #1010452)
Lead Counsel
Gene C. Schaerr* (DC Bar #416638)
SCHAERR | DUNCAN LLP
1717 K Street NW, Suite 900
Washington, DC 20006
202-714-9492
571-730-4429 (fax)
kduncan@schaerr-duncan.com
gschaerr@schaerr-duncan.com

/s/ Robert D. Potter, Jr.
Robert D. Potter, Jr. (NC Bar #17553)
Attorney at Law
2820 Selwyn Avenue, #840
Charlotte, NC 28209
704-552-7742
rdpotter@rdpotterlaw.com

/s/ D. Christopher Osborn
D. Christopher Osborn (NC Bar #22237)
Osborn Conflict Resolution
409 East Blvd.
Charlotte, NC 28203
704-996-6208
chris@osbornconflictresolution.com

Counsel for Intervenor-Defendants Phil Berger and Tim Moore

*Appearing by special appearance pursuant to Local Civil Rule 83.1(d).

CERTIFICATE OF SERVICE

I certify that on September 20, 2016, I electronically filed the E-Discovery Stipulation with the Clerk of the Court using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties who have appeared with an email address of record and mailed to the following non-CM/ECF participant:

Elizabeth Ording
219 S. Limestone
Lexington, KY 40508

/s/ Lori B. Kisch
Lori B. Kisch