

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

JOAQUÍN CARCAÑO, *et al.*,

Plaintiffs,

v.

ROY A. COOPER, III, *et al.*,

Defendants,

and

PHIL BERGER, *et al.*,

Intervenor-Defendants.

No. 1:16-cv-00236-TDS-JEP

**JOINT MOTION FOR EXTENSION OF TIME TO CONDUCT
SUPPLEMENTAL RULE 26(F) CONFERENCE**

NOW COME Plaintiffs Joaquín Carcaño, Payton Grey McGarry, Hunter Schafer, Quinton Harper, Angela Gilmore, Madeline Goss, and American Civil Liberties Union of North Carolina; Defendants Roy A. Cooper III, Joshua Stein, Machel Sanders, Mandy K. Cohen, and James H. Trogon III (“Executive Branch Defendants”); Defendants Margaret Spellings and the University of North Carolina (“UNC Defendants”); and Intervenor-Defendants Senator Phil Berger and Speaker Tim Moore (“Intervenor-Defendants”), by and through their attorneys, and move the Court pursuant to Local Rules 6.1(a) and 16.1 and Federal Rules of Civil Procedure 16 and 26(f) for an extension of time to conduct a supplemental Rule 26(f) conference and to file supplemental Rule

26(f) reports. Good cause exists for granting the requested relief. In support thereof the Parties state as follows:

1. On September 6, 2017, the Court granted Plaintiffs' Consent Motion for Leave to File Fourth Amended Complaint. As part of that order, the Court granted Defendants and Intervenor-Defendants an extension of time until 45 days from the date Plaintiffs' Fourth Amended Complaint is electronically filed to answer, move against, or otherwise respond to the Fourth Amended Complaint. (D.E. 209).

2. On September 7, 2017, Plaintiffs filed their Fourth Amended Complaint, seeking declaratory and injunctive relief and nominal damages. (D.E. 210).

3. On September 8, 2017, "[i]n light of the previous stays in this case, the developments since that time, and the filing of the Fourth Amended Complaint," Magistrate Judge Peake issued an order administratively terminating all prior pending pretrial and discovery motions and staying all outstanding discovery obligations. That order also directed the Parties to conduct a supplemental Rule 26(f) conference within 21 days after the deadline for the Defendants and Intervenor-Defendants to answer or otherwise respond, and to jointly or individually file supplemental Rule 26(f) Reports within 14 days after the supplemental Rule 26(f) conference "addressing the present status of the case and the status of any outstanding discovery obligations, the scope of any further discovery, proposals for addressing any remaining discovery disputes, and suggestions for the schedule and course of these proceedings." (D.E. 212).

4. Plaintiffs and Executive Branch Defendants filed a Joint Motion for Entry of a Consent Decree on October 18, 2017. (D.E. 216). If granted, the Consent Decree

would resolve all of Plaintiffs' claims against Executive Branch Defendants. In light of the pending motion, Executive Branch Defendants sought an extension of time in which to serve an answer or otherwise respond to Plaintiffs' Fourth Amended Complaint. (D.E. 219).

5. On October 23, 2017, Intervenor-Defendants and UNC Defendants separately filed Motions to Dismiss the Fourth Amended Complaint under Federal Rule of Civil Procedure 12(b). (D.E. 221, 222).

6. On October 24, 2017, the Court granted Executive Branch Defendants' motion and provided Executive Branch Defendants thirty (30) days following the Court's resolution of the Motion for Entry of a Consent Decree in which to serve an answer or other responsive pleading to Plaintiffs' Fourth Amended Complaint. The Court also indicated that it will defer consideration of the proposed Consent Decree until UNC Defendants' and Intervenor-Defendants' pending challenges to the Court's jurisdiction are resolved. (D.E. 226). Accordingly, to date Executive Branch Defendants have not filed an answer or other responsive pleading.

7. The parties submit that the procedural posture of this case renders a supplemental Rule 26(f) conference premature at this time. The Court's resolution of UNC Defendants' and Intervenor-Defendants' motions to dismiss and Plaintiffs' and Executive Branch Defendants' Motion for Entry of a Consent Decree could clarify or narrow the scope of this action or the parties that remain in the action. Requiring the Parties to confer regarding discovery obligations, the management track of this case, and the other matters required by Local Rule 16.1(b) and Magistrate Judge Peake's

September 8, 2017 Order would be premature in light of these uncertainties. Likewise, conducting a pretrial conference and entering a Rule 16(b) Scheduling Order at this time would be an inefficient use of the Court's resources.

8. In light of the pending motions, the Parties seek an extension of time to conduct a supplemental Rule 26(f) conference and file supplemental Rule 26(f) reports. The Parties seek an extension of time until 21 days after the Court's disposition of the pending Motion for Entry of a Consent Decree to conduct a supplemental Rule 26(f) conference, and an extension of time until 14 days after the Rule 26(f) conference to file supplemental Rule 26(f) reports.

9. In the alternative, the Parties seek clarification that Magistrate Judge Peake's September 8, 2017 Order does not require the Parties to conduct a supplemental Rule 26(f) conference or file supplemental Rule 26(f) reports until the expiration of time for all Defendants—including Executive Branch Defendants—to answer or otherwise respond to Plaintiffs' Fourth Amended Complaint.

10. No separate brief is required for this request pursuant to Local Rule 7.3(j)(2).

WHEREFORE, for the foregoing reasons, the Parties respectfully move that the Court enter an order extending the time for the Parties to conduct a supplemental Rule 26(f) conference and file supplemental Rule 26(f) reports.

* * *

Dated: November 6, 2017

Respectfully submitted,

/s/ Christopher A. Brook

Christopher A. Brook (NC Bar No. 33838)

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CERTIFICATE OF SERVICE

I, Christopher A. Brook, hereby certify that on November 6, 2017, I electronically filed the foregoing JOINT MOTION FOR EXTENSION OF TIME TO CONDUCT SUPPLEMENTAL RULE 26(F) CONFERENCE, 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.

/s/ Christopher A. Brook

Counsel for Plaintiffs

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[PROPOSED] ORDER

Having reviewed the Parties' Joint Motion for Extension of Time to Conduct Supplemental Rule 26(f) Conference, and for good cause shown,

It is hereby ORDERED that the joint motion is GRANTED;

It is further ORDERED that within twenty-one (21) days after the Court's disposition of the Plaintiffs' and Executive Branch Defendants' Joint Motion for Entry of a Consent Decree (D.E. 216), the Parties must conduct a supplemental Rule 26(f) conference. Within 14 days after the supplemental Rule 26(f) conference, the parties must file supplemental Rule 26(f) Reports, jointly or individually as provided in the Local Rules, addressing the present status of the case and the status of any outstanding discovery

obligations, the scope of any further discovery, proposals for addressing any remaining discovery disputes, and suggestions for the schedule and course of these proceedings.

IT IS SO ORDERED:

Dated: _____

The Honorable Thomas D. Schroeder
United States District Judge