IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, individually and on behalf of his patients, DAVID H. PICKUP, LMFT, individually and on behalf of his patients,

Plaintiffs,

v.

CITY OF TAMPA, FLORIDA,

Defendant.

CASE NO. 8:17-cv-02896-CEH-AAS

CASE MANAGEMENT REPORT

The parties have agreed on the following dates and discovery plan pursuant to Fed. R. Civ. P. 26(f) and Local Rule 3.05(c):

DEADLINE OR EVENT	AGREED DATE
Mandatory Initial Disclosures (pursuant to Fed.R.Civ.P. 26(a)(1) as amended effective December 1, 2000) [Court recommends 30 days after CMR meeting]	May 18, 2018
Certificate of Interested Persons and Corporate Disclosure Statement [Each party who has not previously filed must file immediately]	Completed
Motions to Add Parties or to Amend Pleadings [Court recommends 1 – 2 months after CMR meeting]	June 18, 2018 (Pl. proposal) May 18, 2018 (Def. proposal)
Disclosure of Expert Reports Plaintiff: Defendant: [Court recommends 1 - 2 months before discovery deadline to allow expert depositions]	Plaintiffs: April 1, 2019 Defendant: May 1, 2019

DEADLINE OR EVENT	AGREED DATE
Discovery Deadline [Court recommends 6 months before trial to allow time for dispositive motions to be filed and decided; all discovery must be commenced in time to be completed before this date]	May 31, 2019
Dispositive Motions, Daubert, and Markman Motions [Court requires 5 months or more before trial term begins]	July 1, 2019
Meeting In Person to Prepare Joint Final Pretrial Statement [14 days before Joint Final Pretrial Statement]	October 7, 2019
Joint Final Pretrial Statement (Including a Single Set of Jointly-Proposed Jury Instructions and Verdict Form (a Word or WordPerfect® version may be e-mailed to the Chambers mailbox), Voir Dire Questions, Witness Lists, Exhibit Lists with Objections on Approved Form) [Court recommends 3 weeks before Final Pretrial Conference]	October 21, 2019
All Other Motions Including Motions In Limine [Court recommends 3 weeks before Final Pre-trial Conference]	October 21, 2019
Final Pretrial Conference [Court will set a date that is approximately 3 weeks before trial]	To Be Set by Court during week of Nov. 11, 2019
Trial Briefs [Court recommends 2 weeks before Trial]	November 18, 2019
Trial Term Begins [Local Rule 3.05 (c)(2)(E) sets goal of trial within 2 years of filing complaint in all Track Two cases; trial term must not be less than 4 months after dispositive motions deadline (unless filing of such motions is waived); district judge trial terms typically begin on the 1st business day of the first full week of each month; trials before magistrate judges will be set on a date certain after consultation with the parties]	December 2, 2019
Estimated Length of Trial [trial days]	6-8 days
Jury / Non-Jury	Non-jury

DEADLINE OR EVENT	AGREED DATE
Mediation Deadline: Mediator: Address: Telephone: [Absent arbitration, mediation is mandatory; Court recommends either 2 - 3 months after CMR meeting, or just after discovery deadline]	June 14, 2019
All Parties Consent to Proceed Before Magistrate Judge	Yes____ No X Likely to Agree in Future: NO

I. Meeting of Parties in Person

Lead counsel must meet in person and not by telephone absent an order permitting otherwise. Counsel will meet in the Middle District of Florida, unless counsel agree on a different location. Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A), a meeting was held via telephone (with leave of Court) on: February 9, 2018 at 11:00 a.m. and was attended by:

Name	Counsel for (if applicable)
Horatio G. Mihet and Daniel J. Schmid	Plaintiffs
Jerry M. Gewirtz and Kimber Spitsberg (Paralegal)	Defendant

II. Pre-Discovery Initial Disclosures of Core Information

Fed.R.Civ.P. 26(a)(1)(A) - (D) Disclosures

Fed.R.Civ.P. 26, as amended effective December 1, 2000, provides that these disclosures are mandatory in Track Two and Track Three cases, except as stipulated by the parties or otherwise ordered by the Court (the amendment to Rule 26 supersedes Middle District of Florida Local Rule

3.05, to the extent that Rule 3.05 opts out of the mandatory discovery

requirements): The parties _____ have exchanged _X_ agree to

exchange (check one)

information described in Fed.R.Civ.P. 26(a)(1)(A) - (D)

by: May 18, 2018

Below is a description of information disclosed or scheduled for disclosure, including electronically stored information as further described in Section III below.

III. Electronic Discovery

The parties have discussed issues relating to disclosure or discovery of electronically stored information ("ESI"), including Pre-Discovery Initial Disclosures of Core Information in Section II above, and agree that (check one):

___ No party anticipates the disclosure or discovery of ESI in this case;

_X_ One or more of the parties anticipate the disclosure or discovery of ESI in this case.

If disclosure or discovery of ESI is sought by any party from another party, then the following issues shall be discussed:

A. The form or forms in which ESI should be produced.

Joint Position:

The parties agree that, where possible, ESI will be produced in Portable Document Format (PDF), with bates stamps sequentially numbering each party's production. Audio and video files, and files that cannot be produced in PDF, will be produced in native format. The parties will work cooperatively to ensure that documents produced in discovery can be accessed and used by the receiving party.

Plaintiffs' Further Position:

With respect to files that must be produced in native format, Plaintiffs believe that they should be assigned bates number(s) in the file names (*e.g.*, Tampa0001.mpeg) so that these files can also be easily referenced by the parties and the Court. Plaintiffs believe this is standard practice in ESI discovery and have asked Defendant to agree to this proposal. Defendant has refused, without any explanation as to why it cannot or will not follow this approach.

Defendant's Further Position:

It is the City's position that audio and video files, and files that cannot be produced in PDF will be produced in native format, and the City will provide an appropriate naming convention for such files.

B. Nature and extent of the contemplated ESI disclosure and discovery, including specification of the topics for such discovery and the time period for which discovery will be sought.

Plaintiffs' Position:

Plaintiffs anticipate that they will seek ESI discovery from Defendant relevant to Plaintiffs' claims in the Complaint and Defendant's defenses thereto, including without limitation the unconstitutionality of Ordinance 2017-47, Defendant's consideration, adoption, enactment, enforcement, interpretation and application of the Ordinance, and Defendant's failure to narrowly tailor the Ordinance or consider less restrictive alternatives.

Plaintiffs do not yet know the relevant time period for their ESI requests, because they do not yet know when Defendant first began to consider the Ordinance, or when Defendant claims a legitimate need for the Ordinance to have arisen. Plaintiffs will seek ESI discovery from those earliest points in time up to and including the present, and continuing through the trial of this matter (pursuant to the parties' duty to seasonably supplement all discovery responses).

Defendant's attempt to limit discovery to three years prior to the filing of the Complaint is arbitrary and premature at this point. Plaintiffs are amenable to a reasonable starting point for ESI and other discovery, but that starting point cannot be determined until Plaintiffs learn in discovery when Defendant first began to consider the Ordinance, or when Defendant claims a legitimate need for the Ordinance to have arisen. As for the end point for discovery, the parties appear to agree that

it should be the trial of this matter, per the supplementation requirements of Fed. R. Civ. P. 26(e).

Plaintiffs agree that the parties should jointly come up with ESI search terms that encompass the parties' legitimate discovery requests, and will work with Defendant towards this end once discovery requests are propounded. Plaintiffs are puzzled as to why Defendant insists on specifying the search terms at this juncture, before any discovery requests have actually been served. While Plaintiffs appreciate that Defendant no longer appears to ask the Court to *mandate* an exhaustive list of search terms (as Defendant did in an earlier draft), Defendant's discussion of search terms is still quite premature before discovery requests are served. Moreover, the list of search terms will evolve and change throughout discovery, as the parties' claims and defenses, and the relevant evidence, are developed. Rather than agreeing upon inflexible ESI search terms *now*, the parties should instead be expected and required to work in good faith throughout discovery to develop and search for ESI search terms that are appropriate to the legitimate and changing discovery needs of the parties.

For similar reasons, Plaintiffs believe it is premature, unnecessary and improper at this early juncture for Defendant to arbitrarily limit to ten the number of City officials and employees who are required to search for ESI. Defendant does not explain how it arrived at this arbitrary limit. The number and identity of City employees and elected officials who were materially involved in the consideration, adoption, enactment, enforcement, interpretation and application of the Ordinance, or who are otherwise likely to have evidence (including ESI) relevant to this lawsuit within their custody, possession or control, will be better ascertained as discovery progresses. Plaintiffs are prepared to work in good faith with the City to agree on appropriate limits once the identity and number of relevant individual custodian is learned in discovery. Defendant can always bring any unresolved concerns to the Court's attention if and when they arise, or if and when Defendant believes discovery becomes unduly burdensome. Imposing arbitrary limits now, at the outset, is unnecessary and improper.

Lastly, the arbitrary and unexplained limit of 160 hours of total time that Defendant wishes to impose on its discovery efforts over the next 12 months+ is also unwarranted and premature. Concerns about excessive discovery should be brought after discovery becomes excessive and disproportionate to the needs of the case, not before any discovery requests are even served nor before the parties have a full understanding of the nature and amount of evidence to be discovered.

Defendant's Position:

To the extent there is ESI discovery, the City anticipates that it will seek relevant discovery from Plaintiffs relevant to the claims in the Complaint including without limitation Plaintiffs' claim for damages. It is the City's further position that if there is any ESI discovery to be taken, it should be limited to a relevant time period, not exceeding three years preceding the filing of the Complaint, up through the time of trial. It is further the City's position that it would be helpful, reasonable and efficient for the parties to agree on appropriate search terms such as the following designated search terms: "Ordinance No. 2017-47", "conversion therapy", "reparative therapy", "sexual orientation change efforts therapy" a/k/a "SOCE therapy", or "sexual orientation change efforts counseling" a/k/a "SOCE counseling".

It is the City's further position that requests for production of ESI should be governed as follows: Absent an order of the Court upon a showing of good cause or stipulation by the parties, a party from whom ESI has been requested shall not be required to search for responsive ESI:

(1) from more than ten persons or such other number of individuals as the Court deems appropriate, at least during the initial phase of the litigation and prior to the final resolution of Plaintiffs' Motion for Preliminary Injunction,
(2) that was created more than three years before filing of the suit,
(3) from sources that are not reasonably accessible without undue burden or cost, or
(4) for more than 160 hours, inclusive of time spent identifying potentially responsive ESI, collecting that ESI, searching and reviewing that ESI for responsiveness, confidentiality, and for privilege or work product protection. The City notes that in the Court's Order dated April 11, 2018, the Court states that "To the extent the parties seek to stay proceedings while an appeal is pending, the parties may file a new motion at the appropriate time." (Doc. 61, page 8.) The City further notes that in *Café 207, Inc. v. St. Johns County*, 856 F. Supp. 641 (M.D. Fla. 1994) *aff'd per curiam* 66 F.3d 272 (11th Cir. 1995) where plaintiff "suggested that the case be abated pending the appeal from the denial of preliminary injunctive. That was done. Then, when the case returned from the Court of Appeals, the Court allowed some limited discovery before taking under submission the pending cross motions for summary judgment." *Id*. at 650 n.5.

C. Whether the production of metadata is sought for any type of ESI, and if so, what types of metadata.

Joint Position:

At this time, neither party expects that it will seek metadata for any ESI.

Plaintiffs' Further Position:

Should any concrete and particularized need for metadata arise in the future, Plaintiffs believe that the parties should work in good faith to agree on the appropriate scope for any metadata production, and failing agreement they should seek the Court's guidance. It would be premature, unnecessary and improper to categorically bar discovery of metadata as Defendant proposes.

Defendant's Further Position:

It is the City's position that metadata should not be sought for any type of ESI as it would be costly, time consuming, irrelevant, and not proportional to the needs of the case.

D. The various sources of ESI within a party's control that should be searched for ESI, and whether either party has relevant ESI that it contends is not reasonably accessible under Rule 26(b)(2)(B), and if so, the estimated burden or costs of retrieving and reviewing that information.

Joint Position:

The parties agree that multiple identical copies of the same document need not be produced, but non-identical versions, such as prior drafts or versions that have additional or different matter not included in another produced copy must be produced.

Plaintiffs' Further Position:

Plaintiffs believe that the computers, mobile devices and electronic communication accounts of Defendant's employees and elected officials who had a material involvement in the consideration, adoption, enactment, enforcement, interpretation and application of the Ordinance will need to be searched for ESI. The identity of these individuals and the computers and accounts they used to communicate about the Ordinance will be better known as discovery progresses. Plaintiffs will work in good faith with Defendant to come up with a reasonable list which balances any claimed burden with Plaintiffs' legitimate discovery needs.

Defendant's attempt to exclude from discovery the "personal" computers, mobile devices and electronic communication accounts of City officials and employees *controlled by Defendant* is improper. Defendant has control over its employees and officials. If City officials and employees used "personal" email accounts or devices to communicate about, or transact City business regarding, the Ordinance, this evidence would be highly relevant to the claims and defenses of the parties and there are no cognizable grounds to exclude it.

Lastly, Defendant insisted on repeating for a second time below, *verbatim*, its four-pronged position on ESI from pages 6-7, *supra*. Plaintiffs asked Defendant to omit this repetition, but Defendant refused. Instead of burdening the Court with a *verbatim* repetition of Plaintiffs' position, Plaintiffs merely refer the Court to their position on pages 5-6, *supra*.

Defendant's Further Position:

The City is attempting to ascertain the sources where relevant ESI is likely to be located within the City's possession, and is attempting to determine which sources of electronically stored information are not reasonably accessible because of undue burden or cost.

The City objects to Plaintiffs' position that the computers, mobile devices and electronic communication accounts of Defendants' employees and elected officials who had a material involvement in the consideration, adoption, enactment enforcement, interpretation and application of the Ordinance will need to be searched for ESI. First of all, the City does not have access to personal devices or personal electronic communication accounts of City employees that are not controlled by the City; rather, the City has access to the City computers, and City devices. Secondly, such a search is overbroad and would be unduly burdensome, costly, a strain on City resources and disproportionate to the needs of the case. As stated above, requests for production of ESI should be as follows:

Absent an order of the Court upon a showing of good cause or stipulation by the parties, a party from whom ESI has been requested shall not be required to search for responsive ESI:

(1) from more than ten persons or such other number of individuals as the Court deems appropriate, at least during the initial phase of the litigation and prior to the final resolution of Plaintiffs' Motion for Preliminary Injunction,

(2) that was created more than three years before filing of the suit,

(3) from sources that are not reasonably accessible without undue burden or cost, or

(4) for more than 160 hours, inclusive of time spent identifying potentially responsive ESI, collecting that ESI, searching that ESI and reviewing that ESI for responsiveness, confidentiality, and for privilege or work product protection. The City notes that in the Court's Order dated April 11, 2018, the Court states that "To the extent the parties seek to stay proceedings while an appeal is pending, the parties may file a new motion at the appropriate time." (Doc. 61, page 8.) The City further notes that in *Café 207, Inc. v. St. Johns County*, 856 F. Supp. 641 (M.D. Fla. 1994) *aff'd per curiam* 66 F.3d 272 (11th Cir. 1995) where plaintiff "suggested that the case be abated pending the appeal from the denial of preliminary injunctive. That was done. Then, when the case returned from the Court of Appeals, the Court allowed some limited discovery before taking under submission the pending cross motions for summary judgment." *Id*. at 650 n.5.

Finally, the City's positions are asserted in good faith and the City objects to Plaintiffs' criticism of the City.

E. The characteristics of the party's information systems that may contain relevant ESI, including, where appropriate, the identity of individuals with special knowledge of a party's computer systems.

Plaintiffs' Position:

Plaintiffs are individuals and know where to search for any relevant ESI within their custody, possession or control. There are no other individuals with special knowledge of Plaintiffs' ESI.

Defendant's Position:

The City is in the process of ascertaining the location of any relevant ESI within the City's possession.

F. Any issues relating to preservation of discoverable ESI.

Joint Position:

The parties agree that they have a duty to take reasonable steps to preserve ESI.

Plaintiffs' Further Position:

Plaintiffs believe that Defendant should have issued appropriate preservation instructions to employees and elected officials who had a material involvement in the consideration, adoption, enactment, enforcement, interpretation and application of the Ordinance, or who are otherwise likely to have evidence (including ESI) relevant to this lawsuit within their custody, possession or control.

Defendant's Further Position:

It is the City's position that the parties have a duty to take reasonable steps to preserve ESI that may be relevant to this litigation; and that the scope of a party's preservation obligation is determined on a case - by - case basis. To the extent that it is Plaintiffs' position that the parties issue preservation directives to **all or an unlimited number of** employees, personnel, agents, and those under their control regarding the preservation of all relevant ESI, the City disagrees and objects to such a position. In that regard, as it relates to the City – which has over four thousand City employees - it would be unduly burdensome, unnecessary and disproportionate to the needs of the case to send such a directive to every single City employee or an unlimited number of City employees. The City has taken and will take reasonable steps to preserve ESI that may be relevant to this litigation.

G. Assertions of privilege or of protection as trial-preparation materials, including whether the parties can facilitate discovery by agreeing on procedures and, if appropriate, an Order under the Federal Rules of Evidence Rule 502. If the parties agree that a protective order is needed, they shall attach a copy of the proposed order to the Case Management Report. The parties should attempt to agree on protocols that minimize the risk of waiver. Any protective order shall comply with Local Rule 1.09 and Section IV. F. below on Confidentiality Agreements.

Joint Position:

The parties agree that they will provide privilege logs identifying any responsive documents withheld on the basis of any claimed privilege.

Plaintiffs' Further Position:

Plaintiffs believe that any privileged documents that may be inadvertently produced will be promptly returned upon sufficient notice to the receiving party by the producing party. Plaintiffs do not know what "qualification" Defendant finds objectionable, since the only "qualification" asserted by Plaintiffs is that proper notice be provided.

Defendant's Further Position:

It is the City's position that any privileged documents that may be inadvertently produced should be promptly returned without qualification.

H. Whether the discovery of ESI should be conducted in phases, limited, or focused upon particular issues.

Plaintiffs' Position:

For now **a third time** in this Report, Defendant insisted on repeating below, *verbatim*, the exact positions it first asserted on pages 6-7, *supra*. Plaintiffs asked Defendant to omit this repetition, but Defendant refused. Instead of burdening the Court with a *verbatim* repetition of Plaintiffs' position, Plaintiffs merely refer the Court to their position on ages 5-6, *supra*.

The one new thing Defendant offers below, in a footnote, is an inappropriate and transparent attempt to argue the merits of its case. Plaintiffs believe that these kinds of merits arguments belong in merits briefs, not a Case Management Report. Should the Court desire the parties to further brief the merits issues which Defendant attempts to raise below, Plaintiffs stand ready to provide such further additional briefing as requested by the Court.

Defendant's Position:

It is the City's position that because of the time, burden and cost associated with ESI discovery, and because the City believes that this case essentially boils down to the application of the law to the legislative findings articulated in Ordinance 2017-47[1], ESI discovery should be as limited as possible particularly during the early stages of litigation.

It is the City's further position that to the extent there is any ESI discovery that it should be limited to a relevant time period, not to exceed three years before filing the lawsuit,; and that it would be helpful, reasonable, and efficient for the parties to agree on appropriate search terms such as the following: "Ordinance No. 2017-47", "conversion therapy", "reparative therapy", "sexual orientation change efforts therapy" a/k/a "SOCE therapy" and "sexual orientation change efforts counseling" a/k/a "SOCE counseling." In addition, discovery of ESI may also include information concerning the allegations in the Complaint including, but not limited to, Plaintiffs' alleged damages which are the subject matter of the Complaint.

[1] In that regard, the City would note that in *King v. Governor of the State of New Jersey*, 767 F.3d 216, 238 (3d Cir. 2014) *cert. den.* 135 S. Ct. 2048 (2015), the Third Circuit stated that: "Legislatures are entitled to rely on the empirical judgments of independent professional organizations that possess specialized knowledge and experience concerning the professional practice under review…." 767 F.3d at 238; and that "a state legislature is not constitutionally required to wait for conclusive scientific evidence before acting to protect its citizens from serious threats of harm." 767 F.3d at 239. The purpose of this footnote is not to argue the merits of the case but, rather, to explain why limited discovery is appropriate and reasonable in this case.

It is the City's further position that requests for production of ESI should be governed as follows: Absent an order of the Court upon a showing of good cause or stipulation by the parties, a party from whom ESI has been requested shall not be required to search for responsive ESI:
(1) from more than ten persons or such other number of individuals as the Court deems appropriate, at least during the initial phase of the litigation and prior to the final resolution of Plaintiffs' Motion for Preliminary Injunction,
(2) that was created more than three years before filing of the suit,
(3) from sources that are not reasonably accessible without undue burden or cost, or
(4) for more than 160 hours, inclusive of time spent identifying potentially responsive ESI, collecting that ESI, searching that ESI for responsiveness, confidentiality, and for privilege or work product protection. The City notes that in the Court's Order dated April 11, 2018, the Court states that "To the extent the parties seek to stay proceedings while an appeal is pending, the parties may file a new motion at the appropriate time." (Doc. 61, page 8.) The City further notes that in *Café 207, Inc. v. St. Johns County*, 856 F. Supp. 641 (M.D. Fla. 1994) *aff'd per curiam* 66 F.3d 272 (11th Cir. 1995) where plaintiff "suggested that the case be abated pending the appeal from the denial of preliminary injunctive. That was done. Then, when the case returned from the Court of Appeals, the Court allowed some limited discovery before taking under submission the pending cross motions for summary judgment." *Id*. at 650 n.5.

Finally, the City's positions are asserted in good faith and the City objects to Plaintiffs' criticism of City.

Please state if there are any areas of disagreement on these issues and, if so, summarize the parties' position on each:

Plaintiffs' Position:

With respect the only new issue Defendant raises below (item #2 - the 60-day period for discovery responses), Plaintiffs believe that the deadlines provided in the Federal Rules of Civil Procedure are sufficient and adequate as default rules. Plaintiffs are prepared to work in good faith with the City to agree to any reasonable extensions of time, when warranted by the facts and circumstances, as Plaintiffs would do in any other lawsuit. It makes no sense to *automatically* double the response period for *all* discovery requests and responses, no matter how minor a particular set served on a particular day might be. Accordingly, Plaintiffs do not believe a blanket adjustment of the response deadlines is necessary or warranted.

With respect to every other point raised by Defendant below, this is now **the fourth time** in this Report that Defendant insisted on repeating, *verbatim*, the exact positions it first asserted on pages 6-7, *supra*. Plaintiffs asked Defendant to omit this repetition, but Defendant refused. Plaintiffs are truly bewildered by Defendant's senseless repetition. Instead of burdening the Court with a *verbatim* repetition of Plaintiffs' position, Plaintiffs merely refer the Court to their position on pages 5-6, *supra*.

Defendant's Position:

(1) It is the City's position that given the time, burden, and cost associated with ESI discovery, and because the City believes this case essentially boils down to the application of the law to the legislative findings articulated in Ordinance No. 2017-47, ESI discovery should be as limited as possible particularly during the early stages of litigation, and particularly before the resolution of the motion for preliminary injunction.

(2) It is the City's position that the parties should be afforded 60 days, after they serve their response to a request for production of documents, in which to produce responsive documents that are not privileged. As it relates to the City, it is the City's position that given the substantial burdens imposed by ESI discovery, and the substantial time and effort associated with locating documents, reviewing documents, assembling documents, bates-stamping documents, and cataloging privileged and confidential documents which are the subject of ESI discovery, and given the constraints of time of City support staff and strain on resources, the amount of time identified above is reasonable and appropriate.

(3) It is the City's further position that requests for production of ESI should be governed as follows: Absent an order of the Court upon a showing of good cause or stipulation by the parties, a party from whom ESI has been requested shall not be required to search for responsive ESI:
(1) from more than ten persons or such other number of individuals as the Court deems appropriate, at least during the initial phase of the litigation and prior to the final resolution of Plaintiffs' Motion for Preliminary Injunction,
2) that was created more than three years before filing of the suit,
(3) from sources that are not reasonably accessible without undue burden or cost; or
(4) for more than 160 hours inclusive of time spent identifying potentially responsive ESI, collecting the ESI, searching the ESI and reviewing the ESI for responsiveness, confidentiality and for privilege or work product protection. The City notes that in the Court's Order dated April 11, 2018, the Court states that "To the extent the parties seek to stay proceedings while an appeal is pending, the parties may file a new motion at the appropriate time." (Doc. 61, page 8.) The City further notes that in *Café 207, Inc. v. St. Johns County*, 856 F. Supp. 641 (M.D. Fla. 1994) *aff'd per curiam* 66 F.3d 272 (11th Cir. 1995) where plaintiff "suggested that the case be abated pending the appeal from the denial of preliminary injunctive. That was done. Then, when the case returned from the Court of Appeals, the Court allowed some limited discovery before taking under submission the pending cross motions for summary judgment." *Id*. at 650 n.5.

The City's positions are being asserted in good faith and the City objects to Plaintiffs' criticism of City.

If there are disputed issues specified above, or elsewhere in this report, then (check one):

___X One or more of the parties requests that a preliminary pre-trial conference under Rule 16 be scheduled to discuss these issues and explore possible resolutions. Although this will be a non-evidentiary hearing, if technical ESI issues are to be addressed, the parties are encouraged to have their information technology experts with them at the hearing. If a preliminary pre-trial conference is requested, a motion shall also be filed pursuant to Rule 16(a), Fed. R. Civ. P.

___All parties agree that a hearing is not needed at this time because they expect to be able to promptly resolve these disputes without assistance of the Court.

IV. Agreed Discovery Plan for Plaintiffs and Defendants

A. Certificate of Interested Persons and Corporate Disclosure Statement.

This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek discovery from any source before filing and serving a Certificate of Interested Persons and Corporate Disclosure Statement. A motion, memorandum, response, or other paper — including emergency motion — is subject to being denied or stricken unless the filing party has previously filed and served its Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already filed and served the required certificate is required to do so immediately.

Every party that has appeared in this action to date has filed and served a Certificate of Interested Persons and Corporate Disclosure Statement, which remains current:

_X_____ Yes

_____ No Amended Certificate will be filed by _____ (party) on or before _____ (date).

B. Discovery Not Filed —

The parties shall not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests on diskette. See Local Rule 3.03 (f). The parties further agree as follows:

C. Limits on Discovery —

Absent leave of Court, the parties may take no more than ten depositions per side (not per party). Fed.R.Civ.P. 30(a)(2)(A); Fed.R.Civ.P. 31(a)(2)(A); Local Rule 3.02(b). Absent leave of Court, the parties may serve no more than twenty-five interrogatories, including sub-parts. Fed.R.Civ.P. 33(a); Local Rule 3.03(a). Absent leave of Court or stipulation of the parties each deposition is limited to one day of seven hours. Fed.R.Civ.P. 30(d)(2). The parties may agree by stipulation on other limits on discovery. The Court will consider the parties' agreed dates, deadlines, and other limits in entering the scheduling order. Fed.R.Civ.P. 29. In addition to the deadlines in the above table, the parties have agreed to further limit discovery as follows:

Joint Position:

The parties will seasonably supplement their discovery responses and document production as required by the applicable Civil and Local Rules.

Plaintiffs' Further Position:

Plaintiffs do not believe that any limits on discovery (depositions, interrogatories, document requests, requests to admit and other discovery devices) are necessary or appropriate beyond the limits imposed by the applicable Civil and Local Rules, summarized above. In light of the liberal rules of discovery which allow discovery of any nonprivileged matter that is relevant to any party's claim or defense, Plaintiffs believe it is premature and improper to limit discovery topics or subjects at this juncture in the manner suggested by Defendant below. The parties' discovery needs will come into focus as discovery progresses. Plaintiffs stand ready to work in good faith with the City to reasonably narrow and avoid unnecessary or duplicative discovery. If the City believes that Defendants seek discovery on an improper subject, and if the parties cannot reach agreement after discussing any concerns in good faith, the City can bring any unresolved issues to the Court's attention if and when they arise. Attempting to shield and preclude otherwise legitimate discovery subjects and topics at this early juncture is not proper.

Defendant's Further Position:

The City contends that:

1. Depositions should be limited to the following subject matter: (1) the allegations in the Complaint; (2) any claim for damages and attorney fees by Plaintiffs, (3) the efficacy or lack of efficacy of SOCE therapy including conversion therapy and reparative therapy, and (4) whether SOCE therapy, including conversion therapy and reparative therapy, may pose a serious threat to the health and well-being of the affected persons.

2. Interrogatories should be limited to the following subject matter: (1) the allegations in the Complaint; (2) any claim for damages and attorney fees by Plaintiffs, (3) the efficacy or lack of efficacy of SOCE therapy including conversion therapy and reparative therapy, and (4) whether SOCE therapy, including conversion therapy and reparative therapy, may pose a serious threat to the health and well-being of the affected persons.

3. Document requests should be limited to the following subject matter: (1) the allegations in the Complaint; (2) any claim for damages and attorney fees by Plaintiffs, (3) the efficacy or lack of efficacy of SOCE therapy including conversion therapy and reparative therapy, and (4) whether SOCE therapy, including conversion therapy and reparative therapy, may pose a serious threat to the health and well-being of the affected persons.

4. Requests to Admit should be limited to the following subject matter: 1) the allegations in the Complaint; (2) any claim for damages and attorney fees by Plaintiffs, (3) the efficacy or lack of efficacy of SOCE therapy including conversion therapy and reparative therapy, and (4) whether SOCE therapy, including conversion therapy and reparative therapy, may pose a serious threat to the health and well-being of the affected persons.

D. Discovery Deadline —

Each party shall timely serve discovery requests so that the rules allow for a response prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline. In addition, the parties agree as follows:

N/A.

E. Disclosure of Expert Testimony —

On or before the dates set forth in the above table for the disclosure of expert reports, the parties agree to fully comply with Fed.R.Civ.P. 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, basis, reasons, data, and other information

disclosed in the written expert report disclosed pursuant to this order. Failure to disclose such information may result in the exclusion of all or part of the testimony of the expert witness. The parties agree on the following additional matters pertaining to the disclosure of expert testimony:

N/A.

F. Confidentiality Agreements —

Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. The Court is a public forum, and disfavors motions to file under seal. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. *See Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985). A party seeking to file a document under seal must file a motion to file under seal requesting such Court action, together with a memorandum of law in support. The motion, whether granted or denied, will remain in the public record.

The parties may reach their own agreement regarding the designation of materials as "confidential." There is no need for the Court to endorse the confidentiality agreement. The Court discourages unnecessary stipulated motions for a protective order. The Court will enforce appropriate stipulated and signed confidentiality agreements. *See* Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that "no party shall file a document under seal without first having obtained an order granting leave to file under seal on a showing of particularized need."

G. Other Matters Regarding Discovery:

Plaintiffs' Position:

Plaintiffs have no other issues to address beyond what has been discussed above.

Plaintiffs asked Defendant not to repeat, again, the same positions it has already discussed above, but Defendant once again refused. In rote fashion, Defendant maintains that its repetition two, three, four and even more times of the same exact positions in the same Report is done in "good faith," but Plaintiffs fail to see any legitimate purpose to burdening Plaintiffs with responding, and the Court with reading, the exact same material over and over again. Plaintiffs regret the needless repetition and the unnecessary length of this Report. Plaintiffs respectfully refer the Court to the substantive discussion above where the matters repeated below by Defendant were first raised.

Defendant's Position:

1. It is the City's position that the parties should be afforded 60 days, after they serve their response to a request for production of documents, in which to produce responsive documents that are not privileged. As it relates to the City, it is the City's position that given the substantial burdens imposed by ESI discovery, and the substantial time and effort associated with locating documents, reviewing documents for responsiveness, assembling documents, bates-stamping documents, reviewing documents for privilege and confidentiality, and cataloging privileged documents, and given the constraints of time of City support staff and strain on City resources, the amount of time identified above is reasonable, appropriate, and necessary as it relates to the City.

2. Court direction or guidance regarding the use of search terms.

3. Allocation of costs of production.

4. The City's positions are asserted in good faith, and the City objects to Plaintiffs' criticism and any pejorative characterization of City. The City, as a matter of courtesy and civility, will refrain from responding in kind.

V. Settlement and Alternative Dispute Resolution.

A. Settlement —

The parties agree that settlement is:

_____ Likely X Unlikely (check one)

The parties request a settlement conference before a United States Magistrate Judge.
yes _____ no X _____ likely to request in future NO

B. Arbitration —

The Local Rules no longer designate cases for automatic arbitration, but the parties may elect arbitration in any case. Do the parties agree to arbitrate?

The parties do not agree to arbitrate, and are not likely to agree to arbitrate in the future.

C. Mediation —

Absent arbitration or a Court order to the contrary, the parties in every case will participate in Court-annexed mediation as detailed in Chapter Nine of the Court's Local Rules. The parties will agree on a mediator from the Court's approved list of mediators, and have agreed to the date stated in the table above as the last date for mediation. The list of mediators is available from the Clerk, and is posted on the Court's web site at http://www.flmd.uscourts.gov.

D. Other Alternative Dispute Resolution —

The parties intend to pursue the following other methods of alternative dispute resolution:

N/A.

Date: April 18, 2018

/s/ Horatio G. Mihet
Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
Daniel J. Schmid*
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Fax: (407) 875-0770
court@lc.org

Attorneys for Plaintiffs
*Admitted *pro hac vice*

/s/ Jerry M. Gewirtz
Jerry M. Gewirtz, Esquire
Florida Bar No. 0843865
Primary: Jerry.Gewirtz@tampagov.net
Secondary: Kimber.Spitsberg@tampagov.net
Robin Horton Silverman, Esquire
Florida Bar No. 0027934
Primary: Robin.Horton-Silverman@tampagov.net
Secondary: Laytecia.McKinney@tampagov.net
5th Floor, City Hall
315 E. Kennedy Blvd.
Tampa, FL 33602
Phone: (813) 274-8996
Fax: (813) 274-8777

Attorneys for Defendant, City of Tampa

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2018, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic service system.

/s/ Horatio G. Mihet
Horatio G. Mihet

Attorney for Plaintiffs