

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

NICHOLAS HARRISON and
OUTSERVE-SLDN, INC.

Plaintiffs,

v.

JAMES N. MATTIS, in his official capacity as
Secretary of Defense; MARK ESPER, in his
official capacity as the Secretary of the Army;
and the UNITED STATES DEPARTMENT OF
DEFENSE,

Defendants.

NO. 1:18-CV-00641-LMB-IDD

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION TO
MODIFY RULE 16(B) SCHEDULING ORDER**

Plaintiffs move the Court to modify the Rule 16(B) Scheduling Order (“Scheduling Order”) entered on October 22, 2018. *See* Dkt. No. 68. Defendants have indicated that they do not oppose this motion.

There is good cause for certain modifications to the Scheduling Order. Specifically, the parties have met and conferred and reached a limited agreement to extend expert discovery deadlines based on, *inter alia*, the Magistrate Judge’s ruling on Plaintiffs’ Motion to Compel the Production of Documents (Dkt. No. 72), requiring that the Defendants produce certain documents by close of business on December 28, 2018.¹ *See* Order, Dkt. No. 81. The proposed modifications will not delay trial and will not impact the Court’s administration of this matter or otherwise increase the burden placed upon the Court.

Accordingly, Plaintiffs’ respectfully request that the Court modify certain deadlines in the Scheduling Order, as follows:

Event	Court-Ordered Date²	Proposed New Date
Plaintiffs’ Expert Disclosure Deadline	December 24, 2018	December 28, 2018
Defendants’ Expert Disclosure Deadline	January 23, 2019	January 25, 2019
Plaintiffs’ Rebuttal Disclosure Deadline	January 31, 2019	February 1, 2019

¹ Plaintiffs expect that they will move for a further slight extension of the expert discovery deadlines given the current state of Defendants’ discovery responses. Thus far, Plaintiffs have proposed, and the Defendants have refused to agree, to extend the deadline to January 9th for opening expert reports, moving Plaintiffs’ expert disclosure deadline from December 24, 2018, to January 9, 2019 (a 16-day extension), Defendants’ disclosure deadline from January 23, 2019, to January 30, 2019 (a 7-day extension), and Plaintiffs’ rebuttal deadlines from January 31, 2019, to February 6, 2019 (a 6-day extension). Defendants countered with the dates agreed to in this motion, but have refused to agree to extend the dates further even though Defendants will not complete their Court-ordered document production until the deadline they have proposed for service of Plaintiffs’ opening expert reports. Accordingly, Plaintiffs will seek an additional extension of their expert disclosure deadline in an opposed motion filed this week to allow Plaintiffs sufficient time to review the documents that must be produced by Defendants by December 28, 2018 per Judge Davis’s order. Plaintiffs submit that such an extension is appropriate to minimize the need to supplement reports throughout the course of fact discovery.

² The Court previously granted Plaintiffs’ Unopposed Motion to Modify the Rule 16(b) Scheduling Order. *See* Order Modifying Rule 16(B) Scheduling Order. Dkt. No. 77.

A Proposed Order providing for these modifications to the Scheduling Order is attached hereto as Exhibit A.

WHEREFORE, Plaintiffs respectfully request that the Court enter the Proposed Order attached as Exhibit A.

Dated: December 18, 2018

Respectfully submitted,

/s/ Andrew R. Sommer

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December 2018, I caused the foregoing to be filed electronically using the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: December 18, 2018

Respectfully submitted,

/s/ Andrew R. Sommer
Andrew R. Sommer

Exhibit A

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[PROPOSED] ORDER MODIFYING RULE 16(B) SCHEDULING ORDER

This matter is before the Court on the Plaintiffs' Unopposed Motion to Modify the Rule 16(B) Scheduling Order dated December 18, 2018. It appearing to the Court that all parties consent to the motion, and for good cause shown, the motion is hereby GRANTED and it is ORDERED the Scheduling Order is MODIFIED as follows:

Event	Court-Ordered Date	Proposed New Date
Plaintiffs' Expert Disclosure Deadline	December 24, 2018	December 28, 2018
Defendants' Expert Disclosure Deadline	January 23, 2019	January 25, 2019
Plaintiffs' Rebuttal Disclosure Deadline	January 31, 2019	February 1, 2019

It is SO ORDERED.

United States Magistrate Judge