

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

CODY FLACK, *et al.*,

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF
HEALTH SERVICES, *et al.*,

Defendants.

Case No. 3:18-cv-00309-wmc
Judge William Conley

**UNOPPOSED MOTION TO EXTEND DEADLINES FOR PLAINTIFFS' REBUTTAL
EXPERT DISCLOSURES AND DISPOSITIVE MOTIONS**

Plaintiffs Cody Flack, *et al.*, respectfully move the Court to amend the Preliminary Pretrial Conference Order [Dkt. No. 114], as modified by this Court's text only order entered on December 6, 2018 [Dkt. No. 126], by (1) extending the deadline for Plaintiffs to disclose rebuttal experts on issues related to liability by seven days from March 15, 2019 to March 22, 2019, and (2) extending the dispositive motion deadline by 21 days from April 15, 2019 to May 6, 2019. In support of this motion, Plaintiffs state the following:

1. Plaintiffs anticipate disclosing one rebuttal expert witness on issues related to liability. Based on that witness's availability in the coming weeks, Plaintiffs have determined that an additional seven days is needed for the expert to prepare the rebuttal report.

2. The Parties are actively engaging in discovery, but, for the reasons stated below, Plaintiffs believe that the requested 21-day extension is necessary to enable them to obtain sufficient discovery prior to the dispositive motion deadline.

3. On January 29, 2019, Plaintiffs propounded requests for production, interrogatories, and requests for admission on Defendants. The Parties have agreed that

Defendants will respond to the requests for admission by March 4, 2019, and, at Defendants' request, to a 15-day extension of time for the responses to the requests for production and interrogatories from February 28, 2019 to March 15, 2019. Plaintiffs also noticed a Rule 30(b)(6) deposition of Defendant Wisconsin Department of Health Services seeking testimony on a number of topics. Based on the availability of Plaintiffs' counsel and the designated DHS deponents, Plaintiffs anticipate that the Rule 30(b)(6) deposition will be scheduled for no earlier than the week of March 29, 2019. Plaintiffs also anticipate deposing one or both of Defendants' designated expert witnesses prior to filing any dispositive motion.

4. The Parties are currently attempting to narrow the scope of disputed factual issues through stipulations in an effort to streamline discovery and the topics that need to be addressed through the noticed Rule 30(b)(6) deposition of DHS.

5. In addition, on February 6, 2019, Plaintiffs issued nonparty subpoenas seeking information from the 16 private health maintenance organizations ("HMOs") that offer Wisconsin Medicaid plans, seeking information and documents relevant to Defendants' liability by March 1, 2019. Those subpoenas were served on the respective HMOs on February 7 and February 8, 2019. At the request of several of the subpoenaed HMOs, Plaintiffs have agreed to extend the deadline for certain responses to March 15 or March 22, 2019. One HMO, MercyCare Insurance Company, filed an objection to its subpoena with the Court [Dkt. No. 134]. By text order [Dkt. Nos. 136, 138], the Court set a briefing schedule on MercyCare's objection, which is set to conclude on March 15, 2019.

6. Based on the foregoing, Plaintiffs will not be able to complete necessary discovery prior to the current dispositive motion deadline of April 15, 2019, but believe a 21-day extension of that deadline will permit them to do so.

7. If the requested extensions are granted, Plaintiffs do not currently anticipate a need for other modifications to the pretrial schedule or trial date. However, should other deadlines need to be addressed, Plaintiffs request a status conference with the Court to discuss an appropriate modified schedule.

8. Defendants, through counsel, have informed Plaintiffs' counsel that they do not object to the extensions requested in this motion.

Based on the foregoing, Plaintiffs respectfully request that the Court grant this motion and enter an order extending their deadline to file a rebuttal expert witness report to March 22, 2019 and the deadline to file dispositive motions to May 6, 2019.

Dated: February 28, 2019

Respectfully submitted,

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