

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 9:18-CV-80771-ROSENBERG/REINHART**

ROBERT W. OTTO, PH.D., LMFT, and
JULIE H. HAMILTON, PH.D., LMFT,
Plaintiffs,

v.

CITY OF BOCA RATON, FLORIDA, and
COUNTY OF PALM BEACH, FLORIDA,
Defendants.

**DEFENDANT PALM BEACH COUNTY’S RESPONSE TO
PLAINTIFFS’ DISCOVERY MEMORANDUM, DE 27**

Defendant Palm Beach County (“County”) respectfully and sincerely disagrees with Plaintiffs’ interpretation of the Court’s orders in DE 16 and 25. To avoid the instant hearing, the County had proposed to waive its objection to the additional interrogatories only. But Plaintiffs rejected this offer. The County now maintains its original position: the discovery served on Saturday, July 21, is beyond the bounds of the agreed upon and Court ordered deadlines in DE 25, which should be adhered to and enforced so as not to work an unfair prejudice on the County. The parties require the Court to provide guidance as to the intent of DE 16 and the effect of DE 25.

On July 3, in DE 16, the Court ordered the parties to “meet and confer to discuss **what** discovery, if any, will be needed to inform a hearing on [8] Plaintiffs’ Motion” and to submit a joint discovery plan that “shall specify **all** depositions to be taken” as well as “**a schedule** for propounding and responding to any written discovery requests.” (emphasis added).

Originally, Plaintiffs advocated to proceed without discovery. However, the defense wished to depose Plaintiffs. Thus, with the directive in DE 16, both parties exchanged proposed schedules for **the** discovery that would inform the preliminary injunction hearing. Throughout that process of compromise, only a singular deadline for propounding and responding to discovery was

proposed by Plaintiffs or the County. At no time did the County contemplate or expect that Plaintiffs would be sending discovery requests before the preliminary injunction hearing other than those specifically agreed to in the joint discovery plan and then ordered by the Court.

This view is supported by communications. On July 6, Plaintiffs' counsel wrote:

I was under the impression during our last meet-and-confer that Defendants would not insist on written discovery prior to the PI hearing – at least that is what I recall the City's counsel saying. If one or both Defendants are now also going to insist of paper discovery, we could undertake **it** on the following abbreviated schedule. I know that this is different/truncated from regular discovery, but this is a PI motion. Defendants (and Plaintiffs) will have plenty of opportunity for full blown discovery on the merits **in the next year**.

See Exhibit A (emphasis added). Plaintiffs proposed a single deadline for written discovery. *Id.*

On July 10, after the County had proposed that written discovery be served on July 20, Plaintiffs' counsel advanced that deadline to July 17, writing, "If we shorten things by just a few days here and there, and if we heed the Court's recent instruction that "discovery shall begin immediately" (dkt. 19), we should still be ok." *See* Exhibit B. Plaintiffs' counsel then again proposed a single deadline for serving written discovery. *Id.* The County did not understand Plaintiffs' reference to DE 19 to suggest that Plaintiffs would conduct discovery outside of the joint discovery plan the parties had spent days negotiating. Nor did the parties discuss or agree to send multiple sets of discovery requests much less beyond the agreed upon deadline.

When proposing the joint discovery deadlines, the County did not contemplate that it would be required to investigate and respond to discovery beyond the August 10 date agreed to by the parties. For, the County anticipated having limited time to accomplish each discrete task and expected to have concluded its investigation and response to discovery by August 10. When the County ultimately agreed to a hearing date, briefing schedule, and discovery plan that was more abbreviated and truncated than it originally thought would be required, the County included an

additional statement to the Court noting the possibility that the County may, in good faith, need to seek leave of Court to comply with a deadline. *See* Exhibit C. That statement shows the County's understanding that the deadlines in the joint discovery plan were **the deadlines** governing the parties and that unilateral deviations from the joint discovery plan would require leave of the Court.

Plaintiffs' interpretation and conduct renders the deadlines the parties were ordered to jointly propose meaningless. The Court ordered the parties to discuss and jointly propose all discovery and depositions the parties intended to take before the preliminary injunction. The County did so in good faith and asks this Court to bind Plaintiffs to the agreed upon, joint discovery deadlines they submitted to the Court. *See* Exhibit D. To adopt Plaintiffs' interpretation of DE 16 and 25 would uniquely and unfairly benefit Plaintiffs (due to the order the parties agreed to structure the deadlines) and would render the Court's request in DE 16 meaningless.

Comparing the number of requests each party sent (the total number the County sent is large because nearly identical requests were sent to each Plaintiff) does not fully address the burden upon the County in responding to discovery. Considering the size of the County and examining the definitions Plaintiffs supplied in their discovery requests better explains the County's concern with the burden of responding to Plaintiffs' additional discovery during the limited time when the parties have agreed to submit briefs and prepare for and take significant depositions.

With respect to the deadline to provide 30(b)(6) topics, at no time did Plaintiffs request a date later than the one suggested by the County. Plaintiffs agreed to formally serve the County with the topics. As reflected in the joint discovery plan and order, the parties did not contemplate or agree to amendments to the set of topics served on July 17. The additions are problematic because they incorporate by reference 5 interrogatories and 15 document requests.

Plaintiffs have not shown good cause to justify excusal from the deadlines in DE 25.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 26, 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send an electronic notice to the authorized CM/ECF filers.

/s/ Rachel Fahey
Rachel Fahey, Esquire
Assistant County Attorney
Florida Bar No. 105734
Litigation Section
300 North Dixie Highway, Third Floor
West Palm Beach, Florida 33401
Tel.: (561) 355-6337 / Fax: (561) 355-4234
Primary Email: rfahey@pbcgov.org
Secondary Email: dfishel@pbcgov.org,
mjcullen@pbcgov.org

Rachel Fahey

From: Horatio Mihet <hmihet@lc.org>
Sent: Friday, July 06, 2018 3:17 PM
To: Rachel Fahey
Cc: Kim Phan; Daniel L. Abbott; Jamie Alan Cole
Subject: RE: PI Meet & Confer - Monday at 4 pm

Rachel:

Thank you for the County's thoughts. However, to Plaintiffs, the County's proposal seems more appropriate for a summary judgment proceeding rather than a preliminary injunction. The typical niceties of full-blown discovery must give way to the urgent nature of PI proceedings, particularly in First Amendment free-speech cases where irreparable harm is considered to occur each day. Under the County's proposal, a decision on the PI could not be reasonably expected until December at the earliest – six months after the suit was filed – which is not acceptable to Plaintiffs.

I was under the impression during our last meet-and-confer that Defendants would not insist on written discovery prior to the PI hearing – at least that is what I recall the City's counsel saying. If one or both Defendants are now also going to insist of paper discovery, we could undertake it on the following abbreviated schedule. I know that this is different/truncated from regular discovery, but this is a PI motion. Defendants (and Plaintiffs) will have plenty of opportunity for full blown discovery on the merits in the next year.

This is Plaintiffs' counter-proposal:

July 13 – Initial Disclosures Served. (The Proposed Scheduling Order anticipates a July 24 deadline for Initial Disclosures, but that doesn't preclude an earlier disclosure).

July 16 – Written Discovery Served.

July 26 – Plaintiffs' Depositions. We would make one plaintiff available in the morning, and one after lunch. If Defendants need an additional day to finish their examinations, we would make the unfinished plaintiff also available on July 27. Also, if Defendants request a reasonable number of duces tecum documents (I can't imagine there being a need for many), Plaintiffs would comply.

July 30 -- Written Discovery Responses/Document Production.

August 3 – Defendants' Oppositions to the PI motion due.

August 9 – Defendants' Rule 30(b)(6) depositions. One defendant would be available in the morning, and one after lunch. If Plaintiffs need an additional day to finish their examinations, the unfinished defendant would also be available on August 10.

August 17 – Plaintiffs' Reply in Support of the PI motion due.

PI Hearing to be scheduled the week of August 27.

HGM

Horatio G. Mihet, Esq.
Vice President of Legal Affairs &

As a reminder, we are scheduled to meet and confer telephonically this Monday, July 9, at 4 pm, regarding the Court's Order below.

Let's use the same dial-in digits we used last time: Dial in: 407-636-9699; Conference number: 97344.

I reiterate Plaintiffs' preference to mutually postpone depositions until after the PI hearing. But, if Defendants insist on taking party depositions first, we suggest the following schedule to ensure that the PI motion can still be heard as soon as possible. As discussed, Plaintiffs are not willing to push the PI hearing farther into the future.

July 26 – Plaintiffs' Depositions. We would make one plaintiff available in the morning, and one after lunch. If Defendants need an additional day to finish their examinations, we would make the unfinished plaintiff also available on July 27.

August 3 – Defendants' Oppositions to the PI motion due.

August 9 – Defendants' Rule 30(b)(6) depositions. One defendant would be available in the morning, and one after lunch. If Plaintiffs need an additional day to finish their examinations, the unfinished defendant would also be available on August 10.

August 17 – Plaintiffs' Reply in Support of the PI motion due.

PI Hearing to be scheduled the week of August 27.

HGM

Horatio G. Mihet, Esq.
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Chief Litigation Counsel*
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From: cmecfautosender@flsd.uscourts.gov [mailto:cmecfautosender@flsd.uscourts.gov]

Sent: Tuesday, July 3, 2018 2:10 PM

To: flsd_cmecf_notice@flsd.uscourts.gov

Subject: Activity in Case 9:18-cv-80771-RLR Otto et al v. City of Boca Raton, Florida et al Set/Reset Hearings

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U.S. District Court

Southern District of Florida

Notice of Electronic Filing

The following transaction was entered on 7/3/2018 at 2:10 PM EDT and filed on 7/3/2018

Case Name: Otto et al v. City of Boca Raton, Florida et al

Case Number: 9:18-cv-80771-RLR

Filer:

Document Number: 16(No document attached)

Docket Text:

PAPERLESS ORDER setting status conference on [8] Plaintiffs' Motion for Preliminary Injunction for Friday, July 13, 2018 at 10:00 a.m. At the status conference, the parties shall be prepared to discuss a briefing schedule on the Motion. Prior to the status conference, the parties shall meet and confer to discuss what discovery, if any, will be needed to inform a hearing on [8] Plaintiffs' Motion. Two days prior to the Status Conference, the parties shall submit a proposed joint discovery plan to the Court's e-mail address in Word format (rosenberg@flsd.uscourts.gov). The proposed joint discovery plan shall specify all depositions to be taken and include the dates and times for which those depositions have been scheduled. The plan should also reflect a schedule for propounding and responding to any written discovery requests. Counsel may appear at the Status Conference via telephone but must file a notice of telephonic appearance at least one (1) day prior. Instructions for appearing via telephone are as follows: (1) Please call five (5) minutes prior to the Status Conference or Calendar Call; (2) The toll-free number is: 1 (877) 873-8018; (3) The access code is: 9890482; (4) The security code is: 4008. Signed by Judge Robin L. Rosenberg on 7/3/2018. (ege)

9:18-cv-80771-RLR Notice has been electronically mailed to:

Daniel Lawrence Abbott dabbott@wsh-law.com, pgrotto@wsh-law.com

Horatio G. Mihet hmihet@lc.org, court@lc.org

Mathew Duane Staver mat@lc.org

Rachel Marie Fahey rFahey@pbcgov.org, dfishel@pbcgov.org, micullen@pbcgov.org, swebber@pbcgov.org

Roger K. Gannam rgannam@lc.org, court@lc.org

9:18-cv-80771-RLR Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Rachel Fahey

From: Horatio Mihet <hmihet@lc.org>
Sent: Tuesday, July 10, 2018 6:40 PM
To: Rachel Fahey
Cc: Kim Phan; Daniel L. Abbott; Jamie Alan Cole
Subject: RE: PI schedule

Thanks Rachel. With this framework in place, we just need to make some adjustments to account for the fact that my colleagues and I are out of pocket Sept. 5-18 for our California trial. If we shorten things by just a few days here and there, and if we heed the Court's recent instruction that "discovery shall begin immediately" (dkt. 19), we should still be ok. How about:

- July 13 – Initial Disclosures Served.
- July 17 – Written Discovery Served.
- August 7 – Written Discovery Responses and Document Production Served By Email for Immediate Delivery.
- August 13/14, or 14/15 or 15/16 – Plaintiffs' Depositions. (you pick – I just need to confirm with my clients their availability)
- August 24 – Defendants' Oppositions to the PI motion due (Defendants still have up to 10 days after Plaintiffs' depositions. Perhaps 11 days, if we do both plaintiffs on August 13. Also, I note that Defendants have had the PI since late June, and can research and write a lot of their oppositions prior to Plaintiffs' depositions).
- August 30-31 – Defendants' Rule 30(b)(6) depositions. (with our Sept. 5-18 trial obligations, this is the latest we could do depositions).
- September 18 – Plaintiffs' Reply in Support of the PI motion due. (we have trial obligations in CA Sept. 5-18; plus we are responding to at least two oppositions – potentially more if the Court allows intervenors; plus we won't have the benefit of knowing what we are responding to until August 24 and August 20-31).
- September 24 – Hearing (I think the Court would appreciate us being available at its convenience the entire week – I don't want us to seem too inflexible if we only suggest 3 days. However, we can certainly tell the Court we would prefer later in the week, if the Court is available.)

I appreciate Defendants' understanding and flexibility. Any chance you can respond still today?

Horatio G. Mihet, Esq.
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Chief Litigation Counsel*
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From: Rachel Fahey [mailto:RFahey@pbcgov.org]

Sent: Tuesday, July 10, 2018 5:30 PM

To: Horatio Mihet <hmihet@lc.org>

Cc: Kim Phan <KPhan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>

Subject: RE: PI schedule

Harry,

I appreciate that concern. Let me know whether the following would work:

- July 16 – Initial Disclosures Served.
- July 20 – Written Discovery Served.
- August 13 – Written Discovery Responses and Document Production Served By Email for Immediate Delivery. (allows 24 days, like the Plaintiffs' original proposal)
- August 23-24 – Plaintiffs' Depositions. We would try to depose both Plaintiffs on August 23, with August 24 as backup. (allows 10 days with written discovery (shortened from the 2 weeks in the County's first proposal)
- September 7 – Defendants' Oppositions to the PI motion due. (2 weeks after plaintiffs' depositions)
- September 13-14 – Defendants' Rule 30(b)(6) depositions. We would try to depose both Defendants on September 13, with September 14 as backup. (Gives Plaintiff 6-7 days with Defendants' opposition)
- September 19 – Plaintiffs' Reply in Support of the PI motion due. (6 days after depositions, 12 days after opposition)
- September 26, 27, or 28 – Hearing (minimum of 1 week for defendants to have reviewed plaintiffs' reply)

Rachel

Rachel Fahey
Assistant County Attorney
Palm Beach County Attorney's Office
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Tel.: (561) 355-6337
Fax.: (561) 355-4234
E-mail: rfahey@pbcgov.org
Assistant: dfishel@pbcgov.org



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From: Horatio Mihet <hmihet@lc.org>
Sent: Tuesday, July 10, 2018 4:00 PM
To: Rachel Fahey <RFahey@pbcgov.org>
Cc: Kim Phan <KPhan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>
Subject: RE: PI schedule

Sorry, I meant to say "... so that **Plaintiffs** can probe the factual claims made by Defendants."

Horatio G. Mihet, Esq.
*Vice President of Legal Affairs &
Chief Litigation Counsel*
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From: Horatio Mihet
Sent: Tuesday, July 10, 2018 3:56 PM
To: 'Rachel Fahey' <RFahey@pbcgov.org>
Cc: Kim Phan <KPhan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>
Subject: RE: PI schedule

Rachel – we should be able to find something that works for everyone in this date range. However, conceptually speaking, Plaintiffs need the benefit of Defendants' PI responses before they take Defendants' depositions, so that Defendants can probe the factual claims made by Defendants. This is not only imperative, but also fair, because Defendants have the benefit of Plaintiffs' PI motion, and Plaintiffs' verified allegations in the Complaint, and thus are able to probe same at Plaintiffs' depositions.

While we can try to be as flexible as possible with the dates in the proposed range, we can't give up an important benefit that Defendants would have. Please let me know if Defendants are amenable to this. I will then propose any additional adjustments to your schedule below.

If you could, please respond yet this afternoon. Thank you.

HGM

Horatio G. Mihet, Esq.

*Vice President of Legal Affairs &
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Liberty Counsel

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From: Rachel Fahey [<mailto:RFahey@pbcgov.org>]

Sent: Tuesday, July 10, 2018 3:40 PM

To: Horatio Mihet <hmihet@lc.org>

Cc: Kim Phan <KPhan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>

Subject: RE: PI schedule

Hi Harry,

Thanks again for putting together a proposal. While the County would prefer its original timeline, we would, in the interest of submitting agreed upon dates to the Court, propose the following:

- July 16 – Initial Disclosures Served.
- July 20 – Written Discovery Served.
- August 13 – Written Discovery Responses and Document Production Served By Email for Immediate Delivery. (allows 24 days, like the original proposal)
- August 27-28 – Plaintiffs' Depositions. We would try to depose both Plaintiffs on August 27, with August 28 as backup. (allows 2 weeks with written discovery)
- August 30-31 – Defendants' Rule 30(b)(6) depositions. We would try to depose both Defendants on August 30, with August 31 as backup. (A witness the County intends to designate is only available on August 30, not the 31st) (same week so that both parties have about the same amount of time with the written submissions).
- September 11 – Defendants' Oppositions to the PI motion due. (2 weeks after plaintiffs' depositions)
- September 18 – Plaintiffs' Reply in Support of the PI motion due. (7 days after (usual turn around))
- September 24 week – Hearing

The City of Boca is also amenable to the timeline I have proposed above. How does it look to you Harry? If you would like to discuss this, we can coordinate another call. I am available until 6pm today and am free all day tomorrow to talk.

If we propose an agreed upon timeline to the Court, I would like to include in the discovery plan that the County had sought additional time. We will also want to indicate that the parties may require or

request extensions from this timeline depending on how the discovery proceeds (anticipating possible objections).

Thank you,

Rachel

Rachel Fahey
Assistant County Attorney
Palm Beach County Attorney's Office
300 North Dixie Highway, Suite 359
West Palm Beach, Florida 33401
Tel.: (561) 355-6337
Fax.: (561) 355-4234
E-mail: rfahey@pbcgov.org
Assistant: dfishel@pbcgov.org



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From: Horatio Mihet <hmihet@lc.org>
Sent: Tuesday, July 10, 2018 11:42 AM
To: Rachel Fahey <RFahey@pbcgov.org>
Cc: Kim Phan <KPhan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>
Subject: PI schedule

How about this:

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July 16 – Written Discovery Served.

August 9 – Written Discovery Responses and Document Production Served By Email for Immediate Delivery.

August 14-15 – Plaintiffs' Depositions. We would try to depose both Plaintiffs on August 14, with August 15 as backup.

August 24 – Defendants' Oppositions to the PI motion due.

August 30-31 – Defendants' Rule 30(b)(6) depositions. We would try to depose both Plaintiffs on August 30, with August 31 as backup.

September 18 – Plaintiffs’ Reply in Support of the PI motion due.

PI Hearing to be scheduled the week of September 24.

NOTE: I have a trial in California Sept. 10-18, and I will need the week of Sept. 3 to travel and prepare for that.

As discussed yesterday, this represents a significant concession from the Plaintiffs in the hope we can submit a compromise/joint schedule to the Court. If we can’t agree, we will revert back to our late August hearing proposal.

Please give me your thoughts ASAP this afternoon. Thanks!

Horatio G. Mihet, Esq.

Vice President of Legal Affairs &

Chief Litigation Counsel

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From: Horatio Mihet

Sent: Tuesday, July 10, 2018 5:01 AM

To: Rachel Fahey <RFahey@pbcgov.org>

Cc: Kim Phan <KPhan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>

Subject: Re: PI Meet & Confer - Monday at 4 pm

I got held up on a couple of other urgent matters last night. I will get something to you by noon.

Sent from my iPhone

On Jul 6, 2018, at 3:16 PM, Horatio Mihet <hmihet@lc.org> wrote:

Rachel:

Thank you for the County’s thoughts. However, to Plaintiffs, the County’s proposal seems more appropriate for a summary judgment proceeding rather than a preliminary injunction. The typical niceties of full-blown discovery must give way to the urgent nature of PI proceedings, particularly in First Amendment free-speech cases where irreparable harm is considered to occur each day. Under the County’s proposal, a decision on the PI could not be reasonably expected until December at the earliest – six months after the suit was filed – which is not acceptable to Plaintiffs.

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July 30 -- Written Discovery Responses/Document Production.

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August 9 – Defendants' Rule 30(b)(6) depositions. One defendant would be available in the morning, and one after lunch. If Plaintiffs need an additional day to finish their examinations, the unfinished defendant would also be available on August 10.

August 17 – Plaintiffs' Reply in Support of the PI motion due.

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From: Rachel Fahey [<mailto:RFahey@pbcgov.org>]
Sent: Friday, July 6, 2018 10:51 AM
To: Horatio Mihet <hmihet@lc.org>
Cc: Kim Phan <KPhan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>
Subject: RE: PI Meet & Confer - Monday at 4 pm

Good morning, Harry,

Thanks again for setting up the conference call.

Because the County is contemplating paper discovery, our proposed time line looks different than Plaintiffs'. Please see below:

July 24 – Initial Disclosures

July 27 – Deadline to propound written discovery requests (a couple of days to review initial disclosures and decide what is missing) and deadline to set forth the topics for the 30(b)(6) witnesses

August 27 – Responses to discovery requests due (30 days)

September 10-14 – Depositions (with the benefit of initial disclosures and responses to discovery requests, allowing some time for any objections or extensions) (this date range will need to be confirmed with the witnesses)

September 28 – Defendants' responses to PI motion due (with the benefit of discovery and depo transcripts)

October 5 or 12 (let us know what you need) – Plaintiffs' reply due

October 22-26 – Hearing to be scheduled

Regards,

Rachel

From: Horatio Mihet <hmihet@lc.org>

Sent: Thursday, July 05, 2018 4:10 PM

To: Rachel Fahey <RFahey@pbcgov.org>; Kim Phan <KPhan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>

Subject: PI Meet & Confer - Monday at 4 pm

Rachel and Jaime/Daniel:

As a reminder, we are scheduled to meet and confer telephonically this Monday, July 9, at 4 pm, regarding the Court's Order below.

Let's use the same dial-in digits we used last time: Dial in: 407-636-9699; Conference number: 97344.

I reiterate Plaintiffs' preference to mutually postpone depositions until after the PI hearing. But, if Defendants insist on taking party depositions first, we suggest the following schedule to ensure that the PI motion can still be heard as soon as possible. As discussed, Plaintiffs are not willing to push the PI hearing farther into the future.

July 26 – Plaintiffs' Depositions. We would make one plaintiff available in the morning, and one after lunch. If Defendants need an additional day to finish their examinations, we would make the unfinished plaintiff also available on July 27.

August 3 – Defendants' Oppositions to the PI motion due.

August 9 – Defendants' Rule 30(b)(6) depositions. One defendant would be available in the morning, and one after lunch. If Plaintiffs need an additional day to finish their examinations, the unfinished defendant would also be available on August 10.

August 17 – Plaintiffs' Reply in Support of the PI motion due.

PI Hearing to be scheduled the week of August 27.

HGM

Horatio G. Mihet, Esq.
*Vice President of Legal Affairs &
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From: cmecfautosender@flsd.uscourts.gov [mailto:cmecfautosender@flsd.uscourts.gov]
Sent: Tuesday, July 3, 2018 2:10 PM
To: flsd_cmecf_notice@flsd.uscourts.gov
Subject: Activity in Case 9:18-cv-80771-RLR Otto et al v. City of Boca Raton, Florida et al Set/Reset Hearings

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
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U.S. District Court

Southern District of Florida

Notice of Electronic Filing

The following transaction was entered on 7/3/2018 at 2:10 PM EDT and filed on 7/3/2018

Case Name: Otto et al v. City of Boca Raton, Florida et al

Case Number: [9:18-cv-80771-RLR](#)

Filer:

Document Number: 16(No document attached)

Docket Text:

PAPERLESS ORDER setting status conference on [8] Plaintiffs' Motion for Preliminary Injunction for Friday, July 13, 2018 at 10:00 a.m. At the status conference, the parties shall be prepared to discuss a briefing schedule on the Motion. Prior to the status conference, the parties shall meet and confer to

discuss what discovery, if any, will be needed to inform a hearing on [8] Plaintiffs' Motion. Two days prior to the Status Conference, the parties shall submit a proposed joint discovery plan to the Court's e-mail address in Word format (rosenberg@flsd.uscourts.gov). The proposed joint discovery plan shall specify all depositions to be taken and include the dates and times for which those depositions have been scheduled. The plan should also reflect a schedule for propounding and responding to any written discovery requests. Counsel may appear at the Status Conference via telephone but must file a notice of telephonic appearance at least one (1) day prior. Instructions for appearing via telephone are as follows: (1) Please call five (5) minutes prior to the Status Conference or Calendar Call; (2) The toll-free number is: 1 (877) 873-8018; (3) The access code is: 9890482; (4) The security code is: 4008. Signed by Judge Robin L. Rosenberg on 7/3/2018. (ege)

9:18-cv-80771-RLR Notice has been electronically mailed to:

Daniel Lawrence Abbott dabbott@wsh-law.com, pgrotto@wsh-law.com

Horatio G. Mihet hmihet@lc.org, court@lc.org

Mathew Duane Staver mat@lc.org

Rachel Marie Fahey rFahey@pbcgov.org, dfishel@pbcgov.org, mjcullen@pbcgov.org,
swebber@pbcgov.org

Roger K. Gannam rgannam@lc.org, court@lc.org

9:18-cv-80771-RLR Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

ROBERT W. OTTO, PH.D. LMFT,)	
individually and on behalf of his patients,)	
JULIE H. HAMILTON, PH.D., LMFT,)	
individually and on behalf of her patients,)	Civil Action No.: <u>9:18-cv-80771-RLR</u>
)	
Plaintiffs,)	INJUNCTIVE RELIEF SOUGHT
v.)	
)	
CITY OF BOCA RATON, FLORIDA,)	
and COUNTY OF PALM BEACH,)	
FLORIDA,)	
)	
Defendants.)	

PROPOSED JOINT DISCOVERY PLAN FOR PRELIMINARY INJUNCTION MOTION

Pursuant to this Court’s Order (dkt. 16), the Parties have met and conferred, and hereby jointly submit this Proposed Discovery Plan for the preliminary injunction motion and hearing:

- July 13, 2018** Parties shall exchange Initial Disclosures.
- July 17, 2018** Parties shall serve written discovery requests. Plaintiffs shall formally serve Defendants with topics for Rule 30(b)(6) depositions. (Plaintiffs have already provided preliminary topics).
- August 6, 2018** Plaintiffs shall serve their responses to Defendants’ written discovery requests, along with any document production, via electronic means for same day delivery. Documents which are too voluminous to email shall be provided via Google Drive, Dropbox or other easily accessible cloud delivery system.
- August 10, 2018** Defendants shall serve their responses to Plaintiffs’ written discovery requests, along with any document production, via electronic means for same day delivery. Documents which are too voluminous to email shall be provided via Google Drive, Dropbox or other easily accessible cloud delivery system.
- August 14-15, 2018** Defendants shall take Plaintiffs’ deposition at a mutually agreeable time and place. Both Plaintiffs shall be available on the first date, and at least one of them shall be available on the second date, if necessary.

- August 24, 2018** Defendants shall file their responses to Plaintiffs' Motion for Preliminary Injunction, together with all supporting materials.
- August 30, 2018** Plaintiffs shall take the County's Rule 30(b)(6) deposition, at a mutually agreeable time and place.
- August 31, 2018** Plaintiffs shall take the City's Rule 30(b)(6) deposition, at a mutually agreeable time and place.
- September 18, 2018** If the preliminary injunction is scheduled for the week of September 24, 2018, then Plaintiffs shall file their Reply in support of the preliminary injunction motion, together with all supporting materials, by September 18, 2018.
- September 21, 2018** If the preliminary injunction is scheduled for the week of October 1, 2018, then Plaintiffs shall file their Reply in support of the preliminary injunction motion, together with all supporting materials, by September 21, 2018.
- October 1-5, 2018** The parties request that the Court schedule the preliminary injunction hearing at its convenience during the week of October 1, 2018. This is the parties' collective first preference.
- If the Court is not available during the week of October 1, 2018, the parties request that the preliminary injunction hearing be scheduled during the week of September 24, 2018, preferably as late in the week as possible.

Additional Statement from Defendant Palm Beach County:

The above dates are a compromise on the part of the County and constitute the earliest the County could agree in good faith to accomplish these tasks without the benefit of having received Plaintiffs' discovery requests or objections. Should the circumstances require, the County may in good faith seek leave of this Court to extend a deadline to accommodate the County's need to adequately prepare for the preliminary injunction hearing.

Response from Plaintiffs:

The above dates were extensively and carefully negotiated between the parties, who worked hard to agree upon a joint proposal. Consistent with their belief that preliminary injunction

matters are urgent, abbreviated and generally not decided upon a complete record, Plaintiffs would have preferred a much more abbreviated schedule, leading to a preliminary injunction hearing at the end of August. Thus, the foregoing schedule provides ample opportunity for pre-hearing discovery for preliminary injunction purposes, and Plaintiffs would oppose efforts to delay the preliminary injunction hearing beyond the week of October 1, 2018.

Respectfully submitted,

/s/ Horatio G. Mihet

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**Pro hac vice* admission pending

Attorneys for Plaintiffs

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Attorneys for Defendant City of Boca Raton

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July 2018, I caused a true and correct copy of the foregoing to be electronically mailed to the Court at rosenberg@flsd.uscourts.gov, with an electronic copy to all counsel of record.

/s/ Horatio G. Mihet

Horatio G. Mihet

Attorney for Plaintiffs

Rachel Fahey

From: Horatio Mihet <hmihet@lc.org>
Sent: Wednesday, July 11, 2018 4:39 PM
To: Rosenberg@flsd.uscourts.gov
Cc: Rachel Fahey; Kim Phan; Daniel L. Abbott; Jamie Alan Cole; areilly@wsh-law.com
Subject: Otto et al v. City of Boca Raton et al., 18-cv-80771 - Proposed Joint Discovery Plan for Preliminary Injunction
Attachments: Joint PI Discovery Plan.docx

Judge Rosenberg:

Pursuant to the Court's Order (dkt. 16) in the above referenced action, please find attached the Parties' Proposed Joint Discovery Plan for the Preliminary Injunction Motion. We look forward to discussing these matters with the Court at the July 13, 2018 status conference.

We did not understand the Court's Order to also require filing of the attached on the Court's docket. In the event the Court requests it, we will immediately comply.

Counsel for all parties are copied on this communication.

Kind Regards,

Horatio G. Mihet, Esq.*
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