

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION**

SKYLER MUSGROVE,

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Plaintiff,

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\*

CIVIL ACTION FILE NO.

v.

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3:18-CV-00080-CDL

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THE BOARD OF REGENTS OF  
THE UNIVERSITY SYSTEM OF  
GEORGIA, *et al.*,

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Defendants.

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**SCHEDULING AND DISCOVERY ORDER**

The parties held a Rule 26(f) conference on March 5, 2019. In accordance with the Court’s Rules 16 and 26 Order dated October 15, 2018, the parties to this action conferred and jointly developed this Proposed Scheduling and Discovery Order containing deadlines and limitations as follows:

**I. Nature of the Case:**

The Plaintiff, Skyler Musgrove, alleges that Defendants have denied and continue to deny him insurance coverage for medically necessary healthcare because of exclusions within his employer-provided health insurance policy for transgender related medical services. He asserts claims for sex and disability discrimination under the Equal Protection Clause of the Fourteenth Amendment (asserted through 42 U.S.C. § 1983), Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, the American with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 (“Rehab Act”).

## II. Counsel of Record:

### Lead Counsel for Plaintiff:

Noah E. Lewis  
New York Bar No. 5035936  
Transcend Legal  
3553 82<sup>nd</sup> Street, #6d  
Jackson Heights, New York 11372  
Tel: (347) 612-4312  
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### Lead Counsel for Defendants:

Shelley S. Seinberg  
Georgia Bar No. 617056  
Georgia Department of Law  
40 Capitol Square S.W.  
Atlanta, Georgia 30334-1300  
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## III. Complaint and Answer filing dates:

Complaint filed: June 28, 2018

Answer filed: October 12, 2018

## IV. Discovery Deadlines:

### A. Time for Discovery

The time for discovery in this case shall expire **December 9, 2019**, that being no more than nine months after the submission of the Proposed Scheduling and Discovery Order to the Court. After conferring, the parties agree that a nine-month discovery period is necessary due to the particular complexity of this case, anticipated electronic discovery, and the need for medical experts and multiple depositions, which will require

travel on the part of counsel. All other deadlines within this Proposed Scheduling and Discovery Order have been adjusted accordingly. If a party believes that more time for discovery is needed, an appropriate motion, accompanied by a proposed order for the Court, may be filed setting forth good cause for an extension.

B. Scope of Discovery

The Parties intend to seek discovery related to the factual basis for Plaintiff's claims, Defendants' alleged liability, Defendants' defenses, Plaintiff's alleged damages, and all other discoverable information bearing on the claims in this case. The parties do not anticipate a need to conduct discovery in phases or limit discovery beyond the limitations set forth in the Federal Rules of Civil Procedure

C. Electronically Stored Information

The parties have agreed to inquire promptly regarding the extent and types of information which may be stored electronically and to cooperate on the manner in which any such information will be produced. The parties will discuss reasonable ESI search terms, date limitations, and key witnesses for ESI searches as discovery progresses, as well as the manner in which any such information will be produced so as to avoid unduly burdensome and irrelevant requests of any party. In the event any limitations are requested for which the parties cannot reach an agreement, the parties shall request a conference with the Court.

D. Privilege Claims

The parties agree that any responsive documents withheld or redacted on the basis of privilege or work-product protection will be listed on a privilege log including the following information: identification of the sending and receiving parties; date; subject matter; and the basis of the privilege. However, the parties agree to a categorical exclusion of communications between the parties and their counsel of record after the filing date of the Complaint on the basis of attorney-client privilege and/or attorney work-product, thereby releasing the parties of an obligation to enter those communications in a traditional privilege

log. The parties further agree to continue discussions of a more expansive categorical privilege log in the event a traditional privilege log would significantly delay production. The parties do not anticipate any additional issues related to claims of privilege or of protection of trial preparation parties other than those that may be addressed in a proposed protective order, clawback agreement or an Order pursuant to Federal Rule of Evidence 502 (d) pertaining to inadvertent disclosure of privileged or trial-preparation materials. Should a dispute arise, the parties agree that they will confer in good faith before filing any motions related to claims of privilege.

E. Witnesses to be Deposed

The parties cannot practically identify deponents or schedule depositions until they have engaged in written discovery and reviewed responsive documents. The parties agree and acknowledge that witnesses, both lay and expert, will be identified as the process of discovery continues. The parties anticipate working together to arrange mutually agreeable times and locations for depositions prior to the close of discovery.

F. Expert Witnesses

1. Designation of Experts

The Plaintiff must disclose the identity of any expert witness on or before **September 9, 2019**, that being no more than six months after submission of the Proposed Scheduling and Discovery Order to the Court.

The Defendants must disclose the identity of any expert witness on or before **October 9, 2019**, that being no more than seven months after the submission of the Proposed Scheduling and Discovery Order to the Court.

Any rebuttal must be submitted within 30 days after the other party's disclosure. See Fed. R. Civ. P. 26(a)(2)(D)(ii).

## 2. Expert Reports

Expert reports shall comply with Federal Rule of Civil Procedure 26(a)(2)(B). Any supplemental expert reports must be served on or before **November 12, 2019**. No additional supplemental reports may be disclosed or provided after this date without leave of Court.

### G. Discovery Limitations or Need for Protective Order

Should medical records be requested during discovery, such discovery may raise various confidentiality issues. In such instances, the Parties intend to request the entry of a reasonable and narrowly-tailored Protective Order agreed upon by the parties.

### H. Discovery Disputes

The parties agree that before moving for an order relating to discovery, including motions to compel or contested motions for protective orders, they will confer in good faith in an attempt to resolve any dispute. If the parties are unable to resolve the dispute after a good faith conferral, the movant, with prior notice to the non-movants, must contact Geoffery Gunn, Courtroom Deputy (Geoffery\_Gunn@gamd.uscourts.gov) to request a telephone conference with the Court prior to filing any motion.

## V. Time for Filing Motions:

### A. Motions to Amend the Pleadings or to Join Parties

All Motions seeking to amend the pleadings or to join parties must be filed no later than **May 6, 2019**, that being no more than 60 days after the entry of this Scheduling and Discovery Order.

### B. Dispositive Motions

All Dispositive Motions must be filed no later than **January 23, 2020**, that being no more than 45 days after the expiration of discovery in this case.

C. Daubert Motions

Any *Daubert* motions relating to a dispositive motion must be filed no later than **January 23, 2020**, that being no more than 45 days after the expiration of discovery in this case. Any such motion shall be filed separately and contemporaneously with the dispositive motion to ensure a separation of fact finding or evidence weighing by the Court that is not generally commensurate with the consideration of dispositive motions.

**VI. Certification of the Parties and Counsel:**

The Parties, by the signature of counsel, certify that they have conferred and discussed the nature and basis of their claims and defenses and the possibilities for prompt settlement or resolution of the case, pursuant to Local Rule 26(a).

This 7<sup>th</sup> day of March, 2019.

/s/ Noah E. Lewis.

Noah E. Lewis  
Counsel for Plaintiff  
New York Bar No. 5035936

/s/ Shelley S. Seinberg

Shelley S. Seinberg  
Counsel for Defendants  
Georgia Bar No. 617056

The Court, having reviewed the information contained in the Proposed Scheduling and Discovery Order completed and filed jointly by the parties to this action, hereby ADOPTS the parties' plan and MAKES IT THE ORDER OF THE COURT.

SO ORDERED this 8th day of March, 2019.

**S/Clay D. Land**  
CLAY D. LAND, Chief Judge  
United States District Court