

Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RYAN KARNOSKI et al.,
Plaintiffs,
v.
DONALD J. TRUMP et al.,
Defendants.

STATE OF WASHINGTON,
Plaintiff-Intervenor,
v.
DONALD TRUMP et al.,
Defendants.

Case No: 2:17-cv-1297-MJP

LCR 37 EXPEDITED JOINT
DISCOVERY MOTION TO
EXTEND DISCOVERY MOTIONS

NOTE ON MOTION CALENDAR:
April 30, 2020

I. PLAINTIFFS’ MOTION TO EXTEND MOTIONS DEADLINE

A. Plaintiffs’ Statement

Plaintiffs and Plaintiff-Intervenor Washington State (collectively, Plaintiffs) move the Court for an extension of the filing deadline for motions related to discovery, until May 29, 2020. Plaintiffs believe an order extending the deadline for filing motions related to discovery is necessary. Plaintiffs have met and conferred with counsel for Defendants in an effort to resolve this dispute without Court action. Stallings-Ala’ilima Decl. ¶ 1. Since those efforts have been

1 | unsuccessful, Plaintiffs motion the Court to extend the filing deadline for motions related to
2 | discovery to be extended until May 29, 2020.

3 | The Court may modify this deadline for good cause. LCR 16(b)(5); Fed. R. Civ. P. 16(b)(4).
4 | “In part, the good cause standard requires the parties to demonstrate that noncompliance with a Rule
5 | 16 deadline occurred or will occur, notwithstanding the parties’ diligent efforts to comply, because
6 | of the development of matters which could not have been reasonably foreseen or anticipated at the
7 | time of the Rule 16 scheduling conference.” *Velicer v. Falconhead Capital LLC*, No. 2:19-cv-
8 | 01501-JLR, 2020 WL 1847773, at *1 (W.D. Wash. Apr. 13, 2020) citing *Jackson v. Laureate, Inc.*,
9 | 186 F.R.D. 605, 607 (E.D. Cal. 1999). Since February 13, 2020, when the parties proposed the
10 | current case schedule to the Court, witness unavailability, ongoing discussions regarding scope
11 | of depositions, discovery disputes that parties have resolved with and without Court action,
12 | currently pending discovery productions, and strains on resources and availability due to the
13 | COVID-19 pandemic, have significantly impaired the parties’ ability to complete discovery as
14 | planned. Stallings-Ala’ilima Decl. ¶ 2.

15 | The parties have communicated several times a week since the April 2, 2020 Status
16 | Conference wherein the Court urged the parties to move forward with their depositions by using
17 | teleconferencing resources. Stallings-Ala’ilima Decl. ¶ 2; April 2, 2020 Hr’g Tr. at 30:6-13. The
18 | parties have consulted with their witnesses and the parties in the related cases. Stallings-
19 | Ala’ilima Decl. ¶ 3. However, even by planning to use teleconferencing resources, the parties
20 | have identified dates in June as the earliest possible for depositions of important witnesses such
21 | as Dr. Brown, Lt. Col. Cron, Mr. Hebert, Secretary James, Mr. Kurta, Secretary Mabus, Col.
22 | Meyering, and Col. Pflanz. *Id.* ¶ 3.

23 | During the parties’ meet and confer, Defendants identified no legal reason that the Court
24 | should not extend the discovery motions deadline. Stallings-Ala’ilima Decl. ¶ 4. Under Local Rule
25 | 16, discovery motions must “be filed and served on or before the discovery deadline or as directed
26 | by court order.” LCR 16(b)(3). The deadline for filing discovery motions in this case is currently

1 April 30, 2020. ECF No. 418. However, Defendants have pending deadlines to produce discovery
 2 after that date. *See* ECF Nos. 477 at 2 (responses to remaining Requests due May 6), 485
 3 (documents responsive to RFP No. 44 due May 1), 486 (production or stipulation due May 8).
 4 Depositions are also scheduled to take place after that date. *See supra*. Although Plaintiffs have
 5 been diligent in bringing disputes to the Court, *see, e.g.*, ECF Nos. 482, 480, 449, 445, 438, Plaintiffs
 6 anticipate additional disputes to arise based on these pending discovery matters. Therefore,
 7 Plaintiffs respectfully request an extension of the discovery motions deadline. Plaintiffs propose
 8 that the Court extend the deadline as set forth above and then re-evaluate the status of discovery at
 9 that time.

10 **B. Defendants' Response¹**

11 As a preliminary matter, Defendants respectfully preserve their objection that this case
 12 should be reviewed on the administrative record and that no discovery is necessary to resolve
 13 this case. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2409 (2018) (finding a the 12-page
 14 Proclamation sufficient to allow for judicial review).

15 Although Defendants agree to an extension of time to file motions related to depositions,
 16 no additional time for discovery-related motions is warranted. Since Plaintiffs filed their
 17 complaint in August 2017, Plaintiffs and Washington have served over 100 requests for
 18 production and dozens of interrogatories. Defendants have produced tens of thousands of
 19 documents and timely served detailed interrogatory objections and responses.²

20
 21 ¹ The expedited procedures of Local Rule 37(a)(2) for resolving discovery disputes are only available upon
 22 "agreement" of the parties. Defendants have not given their consent to the expedited procedures and reiterate their
 23 objection to Plaintiffs' and Washington's use of Local Rule 37(a)(2) without their consent. Defendants further
 24 object to the Local Rule procedure in this instance, as Washington's counsel informed defense counsel the day
 25 Defendants' response was due that Plaintiffs and Washington intended to change the relief they sought in their
 26 motion but declined to re-serve the motion and allow Defendants a full opportunity to respond to their new position.
 Specifically, Plaintiffs' and Washington's original motion sought to extend the deadline to complete discovery, as
 well as the deadline to complete discovery motions. Washington's counsel informed defense counsel that Plaintiffs
 and Washington intended to seek relief from the Court concerning the discovery deadline through a joint status
 report, rather than through a motion.

² In addition, because of the cross-use agreement, Defendants have produced to Plaintiffs and Washington
 documents responsive to the numerous discovery requests that have been served by plaintiffs in the related cases,
 as well as documents responsive to court orders issued in other cases. *See* ECF No. 183. Most notably, in

1 Plaintiffs and Washington provide no compelling reason why the motions deadline
 2 unrelated to depositions should be extended and identify no particular motion they intend to file.
 3 Plaintiffs and Washington assert that the discovery motions deadline should be extended because
 4 the Court has ordered Defendants to produce certain documents and information after the discovery
 5 deadline. But if Plaintiffs and Washington seek to file motions related to Defendants' forthcoming
 6 Court-ordered productions, then any extension of the motions deadline should be limited to motions
 7 related to those Court-ordered productions.³ Court-ordered productions of certain set of discovery
 8 responses and documents should not serve as a basis to extend the discovery motions deadline as to
 9 *all* discovery.

10 Notably, when Plaintiffs moved for summary judgment in February 2018, and
 11 Defendants requested an opportunity to take discovery pursuant to Rule 56(d), ECF No. 178,
 12 Plaintiffs opposed Defendants' request, arguing that Defendants "have failed to exercise
 13 reasonable diligence to pursue any of the discovery they suddenly claim they need." ECF No.
 14 185 at 1. The Court agreed and denied Defendants' request to take discovery, noting that "[t]his
 15 case has been pending for nearly six months," and finding that Defendants "have failed to show
 16 that they were diligent in seeking the discovery they now claim to need." ECF No. 189 at 4.
 17 Two and half years after the Court found the Defendants "failed to show that they were diligent,"
 18 Plaintiffs are now moving for more time, and the very position they opposed initially.
 19 Accordingly, the Court should likewise find that Plaintiffs and Washington "have failed to show
 20 they were diligent in seeking the discovery they now claim to need." *Id.*

21
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 23 _____
 24 response to an order issued by the court in the related *Doe v. Esper* case, Defendants produced to all of the
 25 plaintiffs in the related cases a complete, unredacted Administrative Record of the documents, testimony, and data
 26 relied on or considered by the Panel of Experts charged with developing the challenged policy, along with the
 Panel's deliberations on those materials, as well as communications to or from members of the Panel relating to
 their development of the policy. *See* Decl. of Robert Easton ¶¶ 4–6 (Jan. 24, 2020), ECF No. 405-2.

³ On April 27, 2020, Defendants sought an extension of time to comply with the Court's Order directing a
 response to Plaintiffs' RFP No. 44. Defendants would not oppose an extension of time for Plaintiffs to file a
 motion related to Defendants' response to that Court Order.

1 Although Plaintiffs and Washington cite to various motions to argue that they have been
 2 diligent in bringing disputes to the Court, they brought all of those motions *this year*—more than
 3 two years after the case was filed. *See* ECF Nos. 482, 480, 449, 445, 438. Before Plaintiffs’ and
 4 Washington’s recent flurry of discovery motions, Washington filed zero discovery motions, and
 5 Plaintiffs chose to file motions to compel documents protected by the deliberative process
 6 privilege.⁴ During the year that the parties litigated the original deliberative process privilege
 7 dispute in this Court and in the Ninth Circuit, Plaintiffs and Washington did not litigate *any* other
 8 discovery motions in this Court, even though the case was not stayed while the matter was with the
 9 Ninth Circuit and their motions are unrelated to the deliberative process privilege dispute. There is
 10 simply no reason that Plaintiffs and Washington could not have filed their recent discovery
 11 motions—and any of the unspecified motions that they would bring if the discovery motions
 12 deadline is extended—earlier in the case.

13 This case has been pending for more than two and a half years. It is time for discovery
 14 to close and for the parties to move to the merits of the case. Plaintiffs’ motion should be denied.

15 C. Plaintiffs’ Reply

16 Defendants offer no legal basis for the Court to keep the April 30 deadline over Plaintiffs’
 17 request of the *de facto* deadline under LCR 16(b)(3)—May 29, 2020. Indeed, on April 28, six
 18 days after being served this motion, Defendants moved unilaterally for a contested 75 day
 19 extension of their RFP 44 deadline. *See* ECF No 488. The next day, Defendants served a separate
 20 LCR 37 joint discovery motion (that they plan to file after April 30). Stallings-Ala’ ilima
 21 Decl. ¶ 6, Ex. A. Defendants’ own discovery motion practices justify the relief Plaintiffs seek
 22 here. Plaintiffs, using LCR 37(2)(B) as directed, therefore bring this motion within the deadlines
 23 of the current case schedule, and also alert the Court that they contemplate that a further
 24

25 ⁴ Early in the case, before the Department of Defense announced its policy, Plaintiffs filed a motion to compel
 26 initial disclosures. ECF No. 190. Plaintiffs also filed a motion to compel discovery responses to their first,
 second, and third sets of requests for production and interrogatories in August 2019, ECF No. 358, but chose to
 withdraw that motion after Defendants filed their response, ECF No. 382.

1 extension of the discovery period will be necessary because of witness unavailability, document
2 production issues for which the Court has appointed a Special Master, and the other obstacles
3 described above. Plaintiffs anticipate the need for the Court's involvement after April 30 and
4 intend to raise discovery deadlines for discussion at the upcoming Status Conference.
5 See Apr. 2, 2020 Hr'g Tr. at 33:4-7. In order to move timely within the current case schedule,
6 while permitting the parties and the Court to discuss scheduling more fully at the May 7
7 conference, Plaintiffs respectfully limit their relief request here to the discovery motions
8 deadline.

9
10 DATED this 30th day of April 2020.

11 Respectfully submitted,

12
13 ROBERT W. FERGUSON
14 Attorney General

15 s/
16 CHALIA I. STALLINGS-ALA'ILIMA,
17 WSBA #40694
18 Assistant Attorney General
19 COLLEEN MELODY, WSBA #42275
20 Civil Rights Division Chief
21 Wing Luke Civil Rights Division
22 Office of the Attorney General
23 800 Fifth Avenue, Suite 2000
24 Seattle, WA 98104
25 (206) 464-7744
26 Chalia.SA@atg.wa.gov
Colleen.Melody@atg.wa.gov

*Counsel for Plaintiff- Intervenor State of
Washington*

NEWMAN DU WORS LLP

s/
Derek A. Newman, WSBA No. 26967

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

ALEXANDER K. HAAS
Branch Director

ANTHONY J. COPPOLINO
Deputy Director

s/
ANDREW E. CARMICHAEL, VA Bar #
76578
andrew.e.carmichael@usdoj.gov
MATTHEW SKURNIK, NY Bar # 5553896
Matthew.Skurnik@usdoj.gov
JAMES R. POWERS, TX Bar #24092989
james.r.powers@usdoj.gov
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW, Suite 12108
Washington, DC 20530

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dn@newmanlaw.com
Jason B. Sykes, WSBA No. 44369
jason@newmanlaw.com
Rachel Horvitz, WSBA No. 52987
rachel@newmanlaw.com
2101 Fourth Ave., Ste. 1500
Seattle, WA 98121
(206) 274-2800

(202) 514-3346
Counsel for Defendants

**LAMDBA LEGAL DEFENSE AND
EDUCATION FUND, INC.**

Tara Borelli, WSBA No. 36759
tborelli@lambdalegal.org
Camilla B. Taylor (admitted pro hac vice)
Peter C. Renn (admitted pro hac vice)
Sasha Buchert (admitted pro hac vice)
Kara Ingelhart (admitted pro hac vice)
Carl Charles (admitted pro hac vice)
Paul D. Castillo (admitted pro hac vice)

**OUTSERVE-SLDN, INC. N/K/A
MODERN MILITARY ASSOCIATION
OF AMERICA**

Peter Perkowski (admitted pro hac vice)

KIRKLAND & ELLIS LLP

James F. Hurst, P.C. (admitted pro hac vice)
Steve Patton (admitted pro hac vice)
Jordan M. Heinz (admitted pro hac vice)
Vanessa Barsanti (admitted pro hac vice)
Daniel I. Siegfried (admitted pro hac vice)

Counsel for Plaintiffs

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CERTIFICATION

I certify that the full response by the responding party has been included in this submission, and that prior to making this submission the parties conferred to attempt to resolve this discovery dispute in accordance with LCR 37(a).

Dated this 30th day of April 2020.

s/Chalia Stallings-Ala'ilima
CHALIA STALLINGS-ALA'ILIMA, WSBA #40694

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 30th day of April 2020 in Seattle, Washington.

s/Anna Alfonso
Anna Alfonso
Legal Assistant

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The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RYAN KARNOSKI et al.,

Plaintiffs,

v.

DONALD TRUMP et al.,

Defendants.

Case No: 2:17-cv-1297-MJP

**[PROPOSED] ORDER
GRANTING MOTION TO
EXTEND DISCOVERY
MOTIONS**

STATE OF WASHINGTON,

Plaintiff-Intervenor,

v.

DONALD TRUMP et al.,

Defendants.

This matter came before the Court on the LCR 37 Expedited Joint Discovery Motion to Extend Discovery Motions.

The Court has considered all legal authority, briefing, and argument submitted to the Court on this matter. Having considered the foregoing:

IT IS HEREBY ORDERED that the Motion to Extend Discovery Motions is GRANTED; and

1 IT IS FURTHER ORDERED that the deadline to file motions related to discovery shall
2 be May 29, 2020 unless further extended by this Court by later order.

3
4 DATED this _____ day of _____ 2020.

5
6 The Honorable Marsha J. Pechman
7 United States District Court Judge

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15 Presented by:

16 ROBERT W. FERGUSON
17 Attorney General

18 s/Chalia Stallings-Ala'ilima
19 CHALIA I. STALLINGS-ALA'ILIMA, WSBA #40694
20 Assistant Attorney General
21 COLLEEN MELODY, WSBA #42275
22 Civil Rights Division Chief
23 Wing Luke Civil Rights Division
24 Office of the Attorney General
25 800 Fifth Avenue, Suite 2000
26 Seattle, WA 98104
(206) 464-7744
Chalia.SA@atg.wa.gov
Colleen.Melody@atg.wa.gov