

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

EDEN ROGERS and

BRANDY WELCH,

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;

ALEX AZAR, in his official capacity as
Secretary of the UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN
SERVICES;

ADMINISTRATION FOR CHILDREN AND
FAMILIES;

LYNN JOHNSON, in her official capacity as
Assistant Secretary of the ADMINISTRATION
FOR CHILDREN AND FAMILIES;

SCOTT LEKAN, in his official capacity as
Principal Deputy Assistant Secretary of the
ADMINISTRATION FOR CHILDREN AND
FAMILIES;

HENRY MCMASTER, in his official capacity as
Governor of the STATE OF SOUTH
CAROLINA; and

MICHAEL LEACH, in his official capacity as
State Director of the SOUTH CAROLINA
DEPARTMENT OF SOCIAL SERVICES,

Defendants.

Case No. 6:19-cv-01567-JD

**JOINT MOTION FOR
EXTENSION OF CASE
SCHEDULE**

Plaintiffs Eden Rogers and Brandy Welch and Defendants Henry McMaster and Michael Leach (together the “State Defendants”) hereby jointly move, pursuant to Federal Rule of Civil Procedure 29(b) and Local Civil Rules 6.01 and 29.01, for an extension of each remaining deadline in the case schedule by 51 days as reflected in the proposed Third Amended Scheduling Order attached hereto.¹ Although the parties have been diligently pursuing discovery for many months, Plaintiffs and the State Defendants have conferred and agree that more time is required to complete discovery² and to comply with the other deadlines in the Second Amended Scheduling Order (ECF No. 116).³ Defendants United States Department of Health and Human Services, Administration for Children and Families, Alex Azar, Lynn Johnson and Scott Lekan (together, the “Federal Defendants”) consent to this motion and the requested extension on the condition that Plaintiffs not pursue additional discovery or any discovery-related dispute as to the Federal Defendants beyond the previous discovery deadline of May 10, 2021. Plaintiffs do not intend to pursue additional discovery of the Federal Defendants.

* * *

¹ Pursuant to Local Rule 7.04, Plaintiffs and the State Defendants are not filing a supporting memorandum because a full explanation of the motion is contained within the motion and a memorandum would serve no useful purpose.

² The current deadline for the completion of discovery is May 10, 2021. The proposed extension would extend the discovery deadline by 51 days until June 30, 2021.

³ The original deadlines so-ordered by the Court were extended once with the filing of the Rule 26(f) report by consent of the parties. (ECF No. 94.) Plaintiffs sought, and the Court granted on December 1, 2020 (ECF No. 115), a second extension of the deadlines in the scheduling order by 90 days. (ECF No. 116.) This would be the third extension of the case schedule.

Plaintiffs and the State Defendants have been actively engaged in discovery for many months now. The State Defendants completed their document productions in January 2021, and Plaintiffs withdrew on January 20, 2021 their Motion to Compel Discovery, which had challenged the sufficiency of the State Defendants' initial productions. (ECF Nos. 107, 124.) Plaintiffs produced documents in response to Governor McMaster's RFPs in February 2021. On March 4, 2021, Plaintiffs informed the State Defendants that Plaintiffs planned to notice Rule 30(b)(6) depositions of the South Carolina Department of Social Services ("DSS") and the Office of the Governor, and provided their proposed topics. Plaintiffs also stated their intention at that time to notice depositions of two employees each of DSS and the Governor's Office. After exchanging correspondence with Plaintiffs' counsel, Director Leach's counsel ultimately accepted service of Rule 45 subpoenas to DSS and the two individual witnesses (who are not parties to this suit), and depositions were scheduled for April 27 and 28, 2021.

Those depositions were postponed by agreement of the parties to allow State Defendants' counsel time to review the document production of third party Miracle Hill Ministries ("Miracle Hill"). Miracle Hill had produced the documents to Plaintiffs on a rolling basis over a period of months, and had confirmed to Plaintiffs on April 25, 2021 that its production was complete. Plaintiffs provided Miracle Hill's complete document production of over 13,000 pages to Defendants on April 26, 2021, the evening before the first deposition was set to commence and the day after Miracle Hill confirmed its production was complete.

Governor McMaster declined to produce a Rule 30(b)(6) representative of his Office or the two individual witnesses in response to deposition notices on the

grounds that only Governor McMaster himself, in his official capacity, is named as a Defendant in the Complaint, and that the Office of the Governor is a State department that has not been sued and, therefore its employees are not amenable to notices of deposition. In light of that position, Plaintiffs served Rule 45 subpoenas on the two individual witnesses and stated their intention to serve a subpoena on the Office of the Governor and to notice the deposition of the Governor himself. On April 24, 2021, Governor McMaster filed a motion for a protective order to prohibit Plaintiffs from taking his deposition. (ECF No. 138.) On April 29, 2021, the Office of the Governor filed a consolidated motion for a protective order and to quash the subpoenas served on the individual witnesses. (ECF No. 142.) Plaintiffs plan to oppose both motions and to file a cross-motion to compel the depositions of the Office of the Governor and the two individuals. If, in deciding those motions, the Court allows depositions of Governor McMaster, his Office, and/or the two individual witnesses to go forward, Plaintiffs and Governor McMaster may need to request additional time to complete those depositions beyond the extension of the discovery deadline sought here.

On April 27, 2021, Governor McMaster's counsel asked for Plaintiffs' availability to sit for depositions. The parties held a meet and confer on April 30, 2021 to discuss deposition scheduling and are working cooperatively to set dates for the DSS fact depositions and Plaintiffs' depositions before the June 30, 2021 discovery deadline set out in the proposed Third Amended Scheduling Order, attached hereto.

Extra time is also warranted to complete expert depositions. Pursuant to the Second Amended Scheduling Order, Plaintiffs disclosed their expert witness, Dr. David Brodzinsky, and served his report on Defendants on March 8, 2021. Governor

McMaster disclosed his expert witnesses, Mr. Steven Roach and Professor David Smolin, on April 7, 2021, and served Mr. Roach's report that same day.⁴ With Plaintiffs' consent, Governor McMaster sought, and the Court granted, an extension until April 30, 2021 of the deadline to serve Professor Smolin's report due to his ongoing family medical issues and other extenuating circumstances. (ECF Nos. 132, 136.) Plaintiffs and Governor McMaster have now settled on a date for Mr. Roach's deposition—May 7, 2021—and are in the process of exchanging dates for the depositions of Dr. Brodzinsky and Professor Smolin. Plaintiffs and the State Defendants are confident they can complete these depositions prior to June 30, 2021.

With respect to third party Miracle Hill, Plaintiffs engaged in months of negotiations with Miracle Hill's counsel concerning the scope of Plaintiffs' subpoena (which was served in June 2020), and Miracle Hill first produced a very small batch of documents in November 2020. Miracle Hill's production began in earnest in January 2021, and Miracle Hill produced its last set of documents to Plaintiffs on April 13, 2021. On April 25, 2021, Miracle Hill's counsel confirmed that its production—which totals over 13,000 pages—was complete. Plaintiffs and the State Defendants are reviewing the documents produced by Miracle Hill, and Plaintiffs plan to reach out to Miracle Hill's counsel shortly to discuss a Rule 30(b)(6) deposition of Miracle Hill and depositions of a small number of Miracle Hill employees. Plaintiffs will work cooperatively with the

⁴ Director Leach advised that he is “not designating expert witnesses at this time” but “reserve[d] the right to rely on any aspect of the opinions of experts designated by any other party”. (ECF No. 135.) The Federal Defendants also have not disclosed any expert witnesses.

other parties and Miracle Hill to complete these depositions within the extended discovery period provided for in the Third Amended Scheduling Order.

CONCLUSION

For all the foregoing reasons, Plaintiffs and the State Defendants respectfully request that the Court so-order the attached Third Amended Scheduling Order.

May 6, 2021

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IN THE UNITED STATES DISTRICT COURT
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Eden Rogers; Brandy Welch,)

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UNITED STATES DEPARTMENT OF)
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CAROLINA DEPARTMENT OF)
SOCIAL SERVICES,,)

Defendants.)

Civil Action No.: 6-19-cv-1567-JD

**THIRD AMENDED
SCHEDULING ORDER**

Pursuant to the Federal Rules of Civil Procedure and the Local Civil Rules of this District, the following schedule is amended for this case.

1. A conference of the parties pursuant to Fed. R. Civ. P. 26(f) (“Rule 26(f) conference”) shall be held no later than 20 days from the date of the original conference and scheduling order. At conference the parties shall confer concerning all matters set forth in Fed. R. Civ. P. 26(f) and whether the schedule set forth in this order is appropriate.
2. No later than **July 13, 2020** the required initial disclosures under Fed. R. Civ. P. 26(a)(1) shall be made.
3. No later than fourteen (14) days after the Rule 26(f) conference the parties shall file a Rule 26(f) Report using the form from the court’s website. With this Report, counsel for each party shall file and serve a statement certifying that counsel has (1) discussed the availability of mediation with the party; (2) discussed the advisability and timing of mediation with opposing counsel; and advise the court whether the parties agree to mediation. Parties are hereby notified that Local Civil Rule 26.03 lists additional queries to be answered in the Rule 26(f) Report. **Joint 26(f) Report filed June 29, 2020. LR 26.03s filed June 29, 2020. Plaintiffs’ ADR/Mediation Statement filed June 29, 2020. Defendants’ ADR/Mediation Statements filed June 30, 2020.**
4. Motions to join other parties and amend the pleadings (Fed. R. Civ. P. 16(b)(3)(A)) shall be filed no later than **November 9, 2020**.
5. Plaintiff(s) shall file and serve a document identifying by full name, address, and telephone number each person whom Plaintiff(s) expects to call as an expert at trial and certifying that a written report prepared and signed by the expert including all information required by Fed. R. Civ. P. 26(a)(2)(B) has been disclosed to other parties by **March 8, 2021** (Fed. R. Civ. P. 26(a)(2)).¹
6. Defendants shall file and serve a document identifying by full name, address, and telephone number each person whom Defendant(s) expects to call as an expert at trial and certifying that a written report prepared and signed by the expert including all information required by Fed. R. Civ. P. 26(a)(2)(B) has been disclosed to other parties by **April 7, 2021** (Fed. R. Civ. P. 26(a)(2)).
7. Counsel shall file and serve affidavits of records custodian witnesses proposed to be presented by affidavit at trial no later than **April 7, 2021**. Objections to such affidavits must be made within fourteen (14) days after the service of the disclosure. (See Fed. R. Evid. 803(6), 902(11), or 902(12) and Local Civil Rule 16.02(D)(3)).

¹ Concurrent with the identification of each expert and subject matter, each party shall serve (but not file): 1) a complete copy of the most current curriculum vitae of each expert or a detailed summary of his qualifications to testify on each identified subject; 2)(a) a complete statement of all opinions to be expressed by each expert and the basis and reasons therefor; (b) the data and other information considered by the expert in forming the opinions, (c) any exhibits to be used as a summary of or support for the opinions, and (d) citations of any treatise, text or other authority upon which each expert especially relied; and 3) a copy of each expert’s report if a report has been prepared.

8. Discovery shall be completed no later than **June 30, 2021**. Discovery shall be deemed completed within this time only if discovery is initiated at such time as to afford the responding party the full time provided under the applicable rule of the Federal Rules of Civil Procedure in which to respond prior to the discovery completion date noted in this paragraph.

(The parties may, with the consent of all counsel, conduct discovery up to the time of trial, provided the deadlines in this order are not affected and at their own risk.)

9. Mediation shall be completed in this case on or before **July 7, 2021**. See Judge Cain's Mediation Order filed on **May 26, 2020** for mediation requirements [ECF Doc 88].
10. All other motions, except (a) those relating to the admissibility of evidence at trial and (b) those to compel discovery, shall be filed no later than **July 14, 2021** (Fed. R. Civ. P. 16(b)(2)).
11. This case is subject to being called for jury selection and/or trial the later of sixty (60) days after dispositive motions have been resolved or on or after **September 22, 2021**. Once a specific jury selection and trial date are scheduled, a NOTICE will be issued at that time. The Notice will set forth deadlines for the Fed. R. Civ. P. 26(a)(3) pretrial disclosures and objections, Motions in Limine, Pretrial Briefs and marking of exhibits.

A request for a continuance of the trial date must be agreed to and signed by the party and his attorney requesting and/or consenting to the continuance.

The court directs the parties' attention to Local Rule 7.00 which governs motion practice. Hearings on motions are not automatic. The court may decide motions without a hearing. If a party opposes a motion which has been filed, that party must file a response to the opposed motion within fourteen (14) days of the date the motion was filed. If no such response in opposition is filed, the court will assume that the party consents to the court's granting the motion.

Any motions pending on the date of the Bar Meeting *will be heard at the Bar Meeting* and you should be prepared to argue them at that time.

NOTICE: You are expected to be available for trial of this case during the month of September 2021 unless the court notifies you of a later date. If you presently have a conflict during the month of September, notify the court in writing within seven (7) days of the date of this order. You will not be excused without leave of court.

Honorable Joseph Dawson
United States District Judge

Date:
Greenville, South Carolina