

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, et al.,

Plaintiffs,

v.

No. 1:19-cv-00272-LCB-LPA

DALE FOLWELL, et al.,

Defendants.

**PLAINTIFFS' PRE-TRIAL DISCLOSURES
PURSUANT TO FED. R. CIV. P. 26(a)(3)(A)**

Pursuant to Rule 26(a)(3)(A) of the Federal Rules of Civil Procedure, Plaintiffs, by and through undersigned counsel, hereby submit the following pre-trial disclosures.

1. Pursuant to Rule 26(a)(3)(A)(i) of the Federal Rules of Civil Procedure, Plaintiffs identify the following witnesses that Plaintiffs expect to call to testify at trial:¹

- a. Maxwell Kadel
- b. Jason Fleck
- c. Connor Thonen-Fleck
- d. Julia McKeown
- e. Michael D. Bunting, Jr.

¹ The addresses and phone number of each witness has been previously disclosed to Defendants' counsel. If necessary, Plaintiffs' counsel can provide Defendants' counsel with the information for any proposed witness upon request.

- f. C.B.
- g. Sam Silvaine
- h. Dana Caraway
- i. Dr. George R. Brown
- j. Dr. Loren Schechter
- k. Dr. Dan Karasic
- l. Dr. Randi Ettner
- m. Dr. Johanna Olson-Kennedy

2. Pursuant to Rule 26(a)(3)(A)(i) of the Federal Rules of Civil Procedure, Plaintiffs identify the names of each witness that Plaintiff may call to testify at trial, if the need arises:

- a. Shelley K. Bunting
- b. Mona Moon
- c. Lotta Crabtree
- d. Janet Cowell
- e. Kim Hutton
- f. Any and all witnesses identified by Defendants
- g. Records custodians of Plaintiffs' treating providers
- h. Any witness necessary for rebuttal

3. Pursuant to Rule 26(a)(3)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiffs expect to present by deposition, a transcript of the pertinent parts of the deposition of the following witnesses:

- a. Dale Folwell
- b. Dr. Peter Robie
- c. Dee Jones
- d. NCSHP Rule 30(b)(6) Witness
- e. NC DPS Rule 30(b)(6) Witness
- f. Kim Hutton taken on December 5, 2017 in *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cty.*, 318 F. Supp. 3d 1293 (M.D. Fla. 2018).

4. Pursuant to Rule 26(a)(3)(A)(iii) of the Federal Rules of Civil Procedure, Plaintiffs identify the following documents that may be offered as exhibits at trial:²

- a. Medical records of Maxwell Kadel produced in discovery.
- b. Medical records of Connor Thonen-Fleck produced in discovery.
- c. Medical records of Julia McKeown produced in discovery.
- d. Medical records of C.B. produced in discovery.
- e. Medical records of Sam Silvaine produced in discovery.

² As this Court is aware, the parties filed cross-motions for summary judgment [ECF Nos. 132, 136 and 178] and Plaintiffs filed *Daubert* motions related to Defendants' experts, Drs. Hruz [ECF No. 204], Levine [ECF No. 212], McHugh [ECF No. 206], Lappert [ECF No. 208], and Robie [ECF No. 202]. Plaintiffs expect that the resolution of these motions will likely narrow and/or clarify the issues for trial, assuming a trial is necessary. As a result, Plaintiffs expect to submit a revised exhibit list to reflect the remaining issues to be resolved at trial.

- f. Medical records of Dana Caraway produced in discovery.
- g. Documentation produced in discovery regarding the operation of the Exclusion by Defendants, including but not limited to:
 - i. Benefits Booklets;
 - ii. Board of Trustees materials; and
 - iii. Communications regarding the Exclusion.
- h. Documentation produced in discovery regarding the operation of the Exclusion by Defendants' third-party administrators Blue Cross Blue Shield and CVS, including but not limited to:
 - i. Plan documents;
 - ii. Corporate medical policies; and
 - iii. Communications regarding denials and appeals.
- i. Documentation supporting Maxwell Kadel's claim for damages produced in discovery, including but not limited to:
 - i. Receipts for medical expenses incurred out-of-pocket;
 - ii. Bills / invoices for medical expenses incurred out-of-pocket;
 - iii. Estimates for future medical expenses;
 - iv. Communications between Plaintiffs and Defendants regarding the Exclusion and costs incurred related to the Exclusion.

- j. Documentation supporting Jason Fleck's and Connor Thonen-Fleck's claim for damages produced in discovery, including but not limited to:
 - i. Receipts for medical expenses incurred out-of-pocket;
 - ii. Bills / invoices for medical expenses incurred out-of-pocket;
 - iii. Estimates for future medical expenses;
 - iv. Communications between Plaintiffs and Defendants regarding the Exclusion and costs incurred related to the Exclusion.
- k. Documentation supporting Julia McKeown's claim for damages produced in discovery, including but not limited to:
 - i. Receipts for medical expenses incurred out-of-pocket;
 - ii. Bills / invoices for medical expenses incurred out-of-pocket;
 - iii. Estimates for future medical expenses;
 - iv. Communications between Plaintiffs and Defendants regarding the Exclusion and costs incurred related to the Exclusion.
- l. Documentation supporting Michael D. Bunting, Jr.'s and C.B.'s claim for damages produced in discovery, including but not limited to:
 - i. Receipts for medical expenses incurred out-of-pocket;
 - ii. Bills / invoices for medical expenses incurred out-of-pocket;
 - iii. Estimates for future medical expenses;

- iv. Communications between Plaintiffs and Defendants regarding the Exclusion and costs incurred related to the Exclusion.
- m. Documentation supporting Sam Silvaine's claim for damages produced in discovery, including but not limited to:
 - i. Receipts for medical expenses incurred out-of-pocket;
 - ii. Bills / invoices for medical expenses incurred out-of-pocket;
 - iii. Estimates for future medical expenses;
 - iv. Communications between Plaintiffs and Defendants regarding the Exclusion and costs incurred related to the Exclusion.
- n. Documentation supporting Dana Caraway's claim for damages produced in discovery, including but not limited to:
 - i. Receipts for medical expenses incurred out-of-pocket;
 - ii. Bills / invoices for medical expenses incurred out-of-pocket;
 - iii. Estimates for future medical expenses;
 - iv. Communications between Plaintiffs and Defendants regarding the Exclusion and costs incurred related to the Exclusion.
- o. Dr. George R. Brown's expert witness designation, report, curriculum vitae, accompanying documents, and reliance materials disclosed by Plaintiffs.

- p. Dr. Loren Schechter's expert witness designation, report, curriculum vitae, accompanying documents, and reliance materials disclosed by Plaintiffs.
- q. Dr. Dan Karasic's expert witness designation, report, curriculum vitae, accompanying documents, and reliance materials disclosed by Plaintiffs.
- r. Dr. Randi Ettner's expert witness designation, report, curriculum vitae, accompanying documents, and reliance materials disclosed by Plaintiffs.
- s. Dr. Johanna Olson-Kennedy's expert witness designation, report, curriculum vitae, accompanying documents, and reliance materials disclosed by Plaintiffs.
- t. Exhibits identified and marked at Plaintiffs' depositions.
- u. Exhibits identified and marked at the deposition of Dale Folwell.
- v. Exhibits identified and marked at the deposition of Dr. Peter Robie.
- w. Exhibits identified and marked at the deposition of NCSHP Rule 30(b)(6) witness.
- x. Exhibits identified and marked at the deposition of NC DPS Rule 30(b)(6) witness.

- y. Exhibits identified and marked at the deposition of Kim Hutton taken on December 5, 2017 in *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cty.*, 318 F. Supp. 3d 1293 (M.D. Fla. 2018).
- z. Contemporaneous notes taken by Ms. Kim Hutton related to her conversation with Dr. Paul Hruz.
- aa. Defendants' Answers to Interrogatories and Requests to Admit.
- bb. All discovery exchanged in this matter, including any documents produced by third parties.
- cc. Any exhibit listed in Defendants' Pre-Trial Disclosure.
- dd. Any document necessary for impeachment.

Dated: June 3, 2022

Respectfully submitted,

/s/ Amy Richardson

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* Appearing by special appearance pursuant to L.R. 83.1(d).

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: June 3, 2022

/s/ Amy Richardson

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