

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

KANAUTICA ZAYRE-BROWN,

Plaintiff,

v.

THE NORTH CAROLINA  
DEPARTMENT OF ADULT  
CORRECTION, *et al.*,

Defendants.

No. 3:22-cv-00191-MOC-DCK

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION  
FOR AN EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S MOTIONS  
TO EXCLUDE EXPERT TESTIMONY**

Plaintiff in this case seeks treatment for a serious, ongoing medical condition. She filed motions to exclude Defendants' three expert reports one week after Defendants filed those reports. (Docs. 70, 73, 75.) Defendants now seek a thirty-day extension to respond. (Doc. 77.) For the following reasons, Plaintiff objects to Defendants' motion.

In most cases, Plaintiff's counsel readily consent to opposing counsel's reasonable requests for extensions of time. But in this instance, trial is scheduled for January 22, 2024. (Doc. 55.) If Defendants obtain their extension, briefing on the motions to strike—which may affect the outcome of summary judgment—will not be complete until December 18, 2023. Plaintiff is concerned that this schedule will not

provide the Court sufficient time to resolve those motions and pending cross-motions for summary judgment (Docs. 59, 62) before trial. This could either necessitate trial without the benefit of a summary judgment order narrowing the triable issues, or postponing trial on what Plaintiff has always maintained is urgent injunctive relief. (See Doc. 13 (motion for preliminary injunction).)

Defendants assert incorrectly that “[m]any of the issues raised by Plaintiff in these motions appear to be evidentiary matters (e.g., relevance, credibility, and weight issues) which would more appropriately be addressed after a hearing and ruling on the parties’ summary judgment motions.” (Doc. 77 ¶37.) Plaintiff’s motions to exclude concern the *admissibility* of Defendants’ experts under Rule of Evidence 702, not credibility or weight.<sup>1</sup> The Court could not adjudicate Plaintiff’s claims at summary judgment or trial before resolving those issues. See Fed. R. Civ. P. 56(c)(2) (“A party may object that the material cited to support or dispute a fact [at summary judgment] cannot be presented in a form that would be admissible in evidence.”); *Kadel v. Folwell*, 620 F. Supp. 3d 339, 355 (M.D.N.C. 2022) (resolving *Daubert* motions in conjunction with cross-motions for summary judgment).

Defendants further assert that this time crunch is Plaintiff’s fault because she could have filed her motions to strike earlier. (Doc. 77 ¶36.) But Defendants did not file their reports until October 19 with their opposition to Plaintiff’s motion for partial summary judgment. (Doc. 65.) Plaintiff moved to strike just a week later. She could

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<sup>1</sup> Plaintiff does make relevance arguments in her motions to exclude because “if an opinion is not relevant to a fact at issue, *Daubert* requires that it be excluded.” *Sardis v. Overhead Door Corp.*, 10 F.4th 268, 281 (4th Cir. 2021).

not have done so weeks or months earlier, as Defendants suggest, because there was nothing in the record to strike. *See Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharm. Co. Ltd.*, No. 2:17-CV-07223-JWH-AS, 2023 WL 4190553, at \*5 (C.D. Cal. May 22, 2023) (“Because Takeda is moving to exclude testimony that has not even been submitted, the Motion is premature.”).

Moreover, Defendants did not submit these reports in support of their motion for summary judgment filed on October 5. (Doc. 63.) So, it was unclear before October 19 if Defendants intended to use their reports at all. It would have been improper for Plaintiff to move to strike them beforehand. *See In re Real Estate Assocs. Ltd. P’ship Litig.*, No. 98-7035, 2002 WL 31027451, at \*1-2 (C.D. Cal. Aug. 29, 2002) (motion to strike expert testimony was premature because plaintiff had not relied on it in summary judgment briefing).

Defendants argue that the extension is justified because of their counsel’s professional obligations. (Doc. 77 ¶¶ 29-33.) However, a heavy caseload does not automatically establish good cause for an extension, especially when it creates potential prejudice to the other side. *See, e.g., Agile Sky All. Fund LP v. RBS Citizens, N.A.*, No. 09-CV-02786-MSK-BNB, 2011 WL 378842, at \*2 (D. Colo. Feb. 2, 2011) (“Delay due to the press of other business does not give rise to good cause to extend deadlines.”). Plaintiff’s counsel also have busy schedules and sympathize with their colleagues on the other side. But Plaintiff’s counsel’s primary obligation is to obtain timely relief for their client and, if possible, to do so without the enormous time and expense of trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (describing

summary judgment as “an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” (quoting Fed. R. Civ. P. 1)).

Defendants also assert that an extension is justified because one of their attorneys is dealing with a medical issue and will soon undergo surgery. Plaintiff’s counsel wish Ms. Brennan good health and a speedy recovery. If she is not able to participate in this critical phase of the case, the proper course of action is to add or substitute in other counsel from among the hundreds of attorneys employed by the Department of Justice.

Accordingly, Plaintiff respectfully asks that the Court deny Defendants’ motion so as to ensure adequate time for the resolution of the parties’ other pending motions before the current trial date of January 22, 2024.

Respectfully submitted this the 30th day of October.

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2023, I electronically filed the foregoing document using the ECF system which will send notification of such filing to all counsel of record.

/s/ Jaclyn A. Maffetore

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