IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:23-CV-897

IN RE:

CAMP LEJEUNE WATER LITIGATION

This Document Relates To:

Charles Metcalfe, No. 7:24-cv-00976
Larry Abrams, No. 7:24-cv-00982
Tony Griffin, No. 7:24-cv-00973
Estate of Mark Kopp, No. 7:24-cv-00969
Estate of Timothy Coon, No. 7:24-cv-00978
Steven Janovitch, No. 7:24-cv-00919

UNITED STATES' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO EXPEDITE CONSIDERATION OF MOTION FOR HEARING AND FOR INTERIM RELIEF

INTRODUCTION

Plaintiffs in the above-captioned cases move to expedite the Court's consideration of their Motion for Hearing Regarding the Department of Justice's Administration of Elective Option Determinations, filed in the Master Docket, D.E. 913, and in their individual Camp Lejeune Justice Act cases, which are stayed pursuant to Case Management Order ("CMO") No. 2, D.E. 23. Plaintiffs have not moved for relief from the stay, and the United States is not required to file "responsive pleadings in stayed individual CLJA actions, subject to further Order of the Court." *Id.* at 4. Plaintiffs have also failed to demonstrate why expedited review is warranted; they provide no legal basis for their challenge of the United States' discretionary decisions in making settlement offers, including determining when those offers expire. Nonetheless, the United States responds to Plaintiffs' motion and respectfully requests that it be denied.

The United States is preparing a response to Plaintiffs' Motion, which challenges the United States' discretionary settlement decisions made in their cases, but as discussed below, requiring the United States to respond to that Motion on an expedited basis would be futile. The

United States' settlement decisions were made under the Elective Option ("EO"), a voluntary settlement framework that is beyond this Court's authority to enforce. Moreover, Plaintiffs misconstrue and ignore the terms of the EO Public Guidance and Frequently Asked Questions ("FAQs") documents, which plainly justify the United States' settlement decisions in their cases.

ARGUMENT

The Motion for which Plaintiffs seek expedited briefing and ruling is a challenge to various discretionary settlement decisions the United States made under its voluntary Elective Option framework [hereinafter, EO Motion].[1] Plaintiffs provide no legal grounds for expedited review. Since the EO's inception, the public has been on notice that the EO is a "voluntary framework that has been adopted by the Department of the Navy and the Department of Justice to evaluate and potentially settle claims brought under the Camp Lejeune Justice Act ('CLJA')." Public Guidance on Elective Option for Camp Lejeune Justice Act Claims at 1, Case No. 7:23-cv-897, D.E. 914-1, at 2 [hereinafter, Public Guidance Document]. The Public Guidance Document on which Plaintiffs rely plainly states that it "does not have the force and effect of law," and nothing in that document "can be used against the United States, in any way, in the CLJA court litigation." *Id.* It further provides: "Neither this Guidance Document nor the mere existence of the EO confers any rights or constitutes an offer of settlement. Both this Guidance Document and the EO may be amended or revoked in the future." *Id.*

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[1] Case Management Order No. 14 defines "Confidential Settlement Information" as "the contents of any written settlement statements or other settlement-related communications, and any occurrences, positions taken, or views expressed in connection with any settlement conference or discussion." D.E. 251 at 3.

CMO 14 further provides that, "[t]o the extent *any other persons* participate in settlement-related communications and conferences," such persons shall not disclose Confidential Settlement Information "to anyone not involved in the settlement discussions," including "the Court," and shall not use such information "for any purpose . . . in any pending or future proceedings." *Id.* (emphasis added).

This Court has consistently declined to involve itself in the EO settlement process. *See, e.g.,* Aug. 8, 2024 Order, D.E. 271, at 1 (ordering that Confidential Settlement Information is "no longer to be included in the parties' Status Reports or discussed at status conferences"); Mar. 5, 2026 Hr'g Tr., D.E. 824, at 15:23-17:12 (declining to "even discuss too much of [settlement] matters" because the Court is "focused on the litigation"). Nonetheless, Plaintiffs appear to argue that this Court has the authority to force the United States to settle their cases on their preferred terms, merely because the United States and Plaintiffs' Leadership Group ("PLG") have been directed by the Court to "attend weekly meetings with the Settlement Masters" and to "use their best efforts to achieve a global settlement by October 30, 2026." *See* Pls.' Br. at 2-3.

It is well within the Court's authority to order the United States and PLG to attend settlement conferences or engage in other alternative dispute resolution efforts, as it has ordered in the global CLJA litigation.[2] However, "a court cannot force a party to settle," *In re A.T. Reynolds & Sons, Inc.*, 452 B.R. 374, 382 (S.D.N.Y. 2011), nor may it "coerce a party into making an offer to settle," *id.* (citing *Dawson v. United States*, 68 F.3d 886, 887 (5th Cir. 1995)). As this Court has made clear, although the Court's Local Civil Rules regarding Alternative Dispute Resolution encourage the parties to "engag[e] in settlement procedures voluntarily at any time," they "are not intended to force settlement upon any party." Loc. Civ. R. 101(a).

Here, the United States voluntarily made (or declined to make) settlement offers based on the documentation available in each of the Plaintiffs' cases by the deadline set by the Department

[2] *See* Fed. R. Civ. P. 16(a)(5) (authorizing the court to order pretrial settlement conferences) and 16(c)(1) (authorizing the court to order a party's presence or availability at pretrial conference "to consider possible settlement"); Loc. Civ. R. 102(a) ("The court, upon its own initiative or at the request of any party, may order a settlement conference, conducted by a district judge, magistrate judge, bankruptcy judge, or other federal judicial officer, at a time and place to be fixed by the court.").

of Justice. The Public Guidance Document makes clear that the EO is a "voluntary framework," which does not "confer[] any rights or constitute[] an offer of settlement." Public Guidance Document, D.E. 914-1, at 1. Moreover, as Plaintiffs acknowledge, for claims considered while in the *Navy's* administrative process,[3] "the Navy *may* request substantiation from the claimant," "*may* ask the claimant to provide additional supporting documentation," "*may* . . . provide the claimant with the documents the Department of the Navy reviewed," and "*may* repeat its internal investigations . . . and substantiation requests . . . as appropriate." *Id.* at 6 (emphasis added). The published FAQs to the Public Guidance Document further clarify that, under the Navy's administration of the EO, when a request for reconsideration is made by the claimant, a "new offer . . . may be the same, more, or less than the original offer." FAQs on Elective Option for Camp Lejeune Justice Act Claims at 5, Case No. 7:23-cv-897, D.E. 914-2, at 6.

The Department of Justice is not required to explain or justify its internal decision-making process, including with respect to the *Hughes* case mentioned in Plaintiffs' motion,[4] nor is it required to reconsider its decisions, even if the Navy may have done so in the past, and even if the Department of Justice has done so in other cases. Pls.' Br. at 3. Given the voluntary and discretionary nature of the program, Plaintiffs' request for expedited review based on the settlement offers' expiration date is not warranted. Accordingly, this motion, and the motion for review it seeks to expedite, are unfounded.[5]

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[3] Plaintiffs' cases were considered by the Department of Justice—not the Navy—as their cases are now in litigation and therefore no longer in the Navy's administrative claim process.

[4] It is not clear whether Plaintiffs' counsel is suggesting that the United States withdraw its offer in the *Hughes* matter. In any event, the United States declines to withdraw any confidential settlement offer made in that case.

[5] For the same reasons, the Court should deny Plaintiffs' request for an Order that their EO offers remain open until the Court issues a ruling on their EO Motion. *See* Pls.' Br. at 1.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Expedite Consideration of Motion for Hearing and for Interim Relief should be denied.

Dated: September 17, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2026, I electronically filed the foregoing using the Court's Electronic Case Filing system, which will send notice to all counsel of record.

/s/ Jennifer E. Adams
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