

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

No. 7:24-CV-00976-M-RN

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

**PLAINTIFF’S MOTION FOR LEAVE
TO FILE MOTION FOR HEARING
REGARDING ELECTIVE OPTION
DETERMINATIONS PURSUANT TO
CASE MANAGEMENT ORDER NO. 2**

Pursuant to Local Civil Rule 7.1, Part VII of Case Management Order No. 2 [D.E. 23], and the Court’s Order of September 24, 2026 [D.E. 923], Plaintiff respectfully moves for leave of Court, for good cause shown, to file in this individual action the Motion for Hearing Regarding the Department of Justice’s Administration of Elective Option Determinations, attached as Exhibit A, and the Memorandum in Support, attached as Exhibit B, the Reply In Support, attached as Exhibit C, and, to the extent necessary, for limited relief from the stay imposed by CMO 2 for that purpose.¹ In support, Plaintiff states as follows:

1. CMO 2 provides that no individual Plaintiff may file a motion “except with permission from Plaintiffs’ Leadership or leave of Court for good cause shown,” and that, once leave is obtained, “non-repetitive positions that uniquely affect an individual Plaintiff shall not be filed in the Master Docket but shall instead be filed in the Plaintiff’s individual CLJA action.”

CMO 2 at 6.

¹ The Motion and Memorandum were filed on this docket on September 15, 2026 [D.E. 6, 7], before the Court entered its September 24 Order. Plaintiff attaches them as Exhibits A and B so that this motion conforms to the practice the Order identified, [D.E. 923] at 3, and asks that leave be granted nunc pro tunc to September 15, 2026, or, in the alternative, that the attached Motion be deemed filed as of the date of the Court’s order on this motion. Plaintiff further requests leave to file their Reply in Support of the Motion concurrently, which is attached as Exhibit C, and deem the Reply filed as of the date of the Court’s order on this Motion.

2. The original Motion for Hearing Regarding the Department of Justice's Administration of Elective Option Determinations [D.E. 913] was filed on the Master Docket following the PLG's review, revisions, and with the PLG's knowledge. Counsel circulated the Motion and exhibits to Lead, Co-Lead, and Liaison Counsel prior to filing; received Co-Lead Counsel's revisions and comments and incorporated all of them; was told by Co-Lead Counsel prior to filing that she had no further changes; informed the PLG of the undersigned's intent to file on the Master Docket; held the filing at the PLG's request pending its final review; and filed on September 10 after no objection was received. Plaintiff understood that sequence as permission.

3. On September 21 the PLG told the Court at a status conference that it "did not oppose" the Motion. On September 24, 2026, the Court denied without prejudice the Motion as filed on the Master Docket, holding that leave had been improperly requested in a footnote rather than by separate motion with the proposed filing attached, and that the Plaintiffs' Leadership Group's "non-opposition" is not "permission." [D.E. 923] at 3. This motion is filed in the form the Order identified. *Compare* [D.E. 428], [D.E. 816]. Based on the Court's prior ruling that suggested the PLG did not grant permission, Plaintiff no longer relies on the PLG for permission and instead moves independently for leave as permitted by CMO 2.

4. The attached Motion presents a non-repetitive position that uniquely affects this Plaintiff, among others. It concerns the exposure and eligibility determination the United States made in this case and the records on which that determination rests. It is the kind of filing Part VII of CMO 2 directs to the individual docket, and Plaintiff has no other avenue: only the Plaintiffs' Leadership Group and the United States may file on the Master Docket, and the PLG has not filed on Plaintiff's behalf.

5. The Motion does not ask the Court to force a settlement. The September 24 Order cited the principle that “a court cannot force a party to settle.” [D.E. 923] at 3 (quoting *In re A.T. Reynolds & Sons, Inc.*, 452 B.R. 374, 382 (S.D.N.Y. 2011)). Plaintiff agrees and seeks nothing of the kind. In four of the six related cases the United States extended an offer that it described as made “consistent with the CLJA Elective Option,” with the guidance that defines that phrase enclosed; in the other two it found the Plaintiff ineligible without identifying a missing record. The Motion asks the Court to hear how the litigating party arrived at those determinations, or to refer that question to the Settlement Masters, and to require the United States to state in writing the exposure dates and records it used. That is an inquiry into the conduct of a party before the Court in a case pending before it, not an order to settle.

6. Federal courts have the inherent power to impose sanctions where a party has acted “in bad faith, vexatiously, wantonly, or for oppressive reasons,” including conduct that “delay[s] or disrupt[s] the litigation,” and the power “extends to a full range of litigation abuses.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991); *see, e.g., Beach Mart, Inc. v. L & L Wings, Inc.*, 302 F.R.D. 396, 415 (E.D.N.C. 2014) (recognizing “a need to deter both willful nondisclosure and gamesmanship” and holding that “sanctions must be sufficient not only to remedy the harm caused, but to provide a sufficient deterrent such that present and future parties will be forewarned from acting similarly”). Movants are merely requesting a hearing to help the Court determine whether the United States and its counsel acted in bad faith while administering the EO program to Movants. After the hearing, Movants will ultimately defer to the Court’s inherent authority and discretion as to whether sanctions are appropriate after the United States responds to Movants’ allegations on the actual merits regarding Movant’s time on base—which it has *still* not happened. A hearing would force the issue.

7. The Court’s inherent authority is not limited to enforcing settlement agreements but also permits it to inquire into a party’s and its counsel’s conduct—including during settlement negotiations. *See e.g., Schwartzman, Inc. v. ACF Indus., Inc.*, 167 F.R.D. 694, 697-699 (D.N.M. 1996) (finding in an FTA contamination case that the DOJ’s contention that the court “lacks the authority to compel participation in a settlement effort” its “most distasteful argument,” holding that “[t]he United States is no less subject to these penalties than any private party,” and ordering the DOJ to participate in good faith and pay the other parties’ expenses); *see also In re Stone*, 986 F.2d 898, 903 (5th Cir. 1993) (inherent power over settlement conferences “applies to the government as well as private litigations”). The reason is not only the Court’s inherent authority but the government’s own obligations. Its lawyers represent “a sovereignty whose obligation . . . is not that it shall win a case, but that justice shall be done,” a principle that applies “with equal force to the government’s civil lawyers.” *Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 47 (D.C. Cir. 1992) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

8. Movants ask for less than *Schwartzman* ordered: a hearing at which the litigating party states the exposure dates and records behind determinations it made in cases pending before this Court, or a referral to the Settlement Masters to obtain the same. And since the Motion was filed, other claimants and their counsel have reported the same experience, which is one reason referral to the Settlement Masters would serve more than these six cases.

9. Consistent with this Court’s authority, the Court entered an order on June 30, 2026, stating in relevant part that “the court expects the PLG and DOJ to use their best efforts to achieve a global settlement by October 30, 2026,” including “streamlining by the PLG and DOJ of their approaches to settlement, as necessary, to maximize the possibility of a global settlement,” and requires that “the Parties be fully and timely responsive to the Settlement Masters.” [D.E. 893] at

2. That Order further reserves to the Court, after October 30, 2026, consideration of “other action relating to either the PLG or the Department of Justice.” *Id.* Certainly this Court has authority to take action if it finds either party did not act in good faith during settlement efforts, which is no different than what Movants are asking here—which is, an inquiry into whether the government, and its counsel, acted in good faith by making properly-calculated EO settlement offers to Movants, consistent with its own records; or, alternatively, whether the government undervalued Movant’s EO offers and, when confronted with its own records, refused to follow their own published, reconsideration procedures by correcting the undisputed errors.

10. Good cause is shown by the United States’ own submissions. Its opposition does not deny that the records in its possession place the four offer recipients in a higher exposure band than the one on which their offers were priced; it attributes any “shortfall” to a July 10 substantiation deadline for records the United States already held; and it states that the United States reviewed those records without saying what they show. The Plaintiff Affirmations the United States drafted for the offer recipients to sign recite exposure windows that its own dataset and the certified service records contradict. Those matters are set out in the concurrently filed Reply and are incorporated here.

11. The United States has fully briefed the Motion. It filed a sixteen-page opposition to the Motion on September 25. [D.E. 14]. Plaintiff’s Reply is to be filed concurrently, if leave is granted. Leave therefore imposes no burden on the United States and no delay on the Court; the matter is ready for decision.

12. The stay under CMO 2 excuses the United States from filing “responsive pleadings” in individual actions. CMO 2 at 4. It has not prevented the United States from opposing Plaintiff’s motions on this docket, and Plaintiff asks only for relief from the stay to the limited

extent necessary for the Court to hear and decide the attached Motion. Three of the related Plaintiffs have accepted the United States' offers at the amounts the published grid provides for their documented exposure, as "consistent with the EO," and the United States has not stated whether it will honor those acceptances; two received no offer at all. Prompt resolution of the Motion would settle, for all six, whether the determinations conformed to the guidance and the records in the government's possession.

13. The attached Memorandum complies with Local Civil Rule 7.2(f), which limits a memorandum in support of a motion to thirty pages; it is fourteen pages. Plaintiff's Reply complies with the ten-page limit for reply memoranda. Loc. Civ. R. 7.2(f)(2).

14. A proposed order is being filed contemporaneously herewith.

WHEREFORE, Plaintiff respectfully requests that the Court grant this motion; grant leave under Part VII of CMO 2 to file Exhibit A and Exhibit B in this action and deem them filed as of September 15, 2026; grant leave under Part VII of CMO 2 to file Exhibit C in this action; grant limited relief from the stay for that purpose to the extent required; and grant such further relief as the Court deems just.

Respectfully submitted, this the 27th day of August, 2026.

/s/ James Z. Foster

James Z. Foster

NC Bar No. 60197

FOSTER LAW LLC

1201 West Peachtree Street, NW, Suite 2300

Atlanta, GA 30309

Telephone: (404) 800-0050

Facsimile: (404) 493-2322

James@Foster-Law.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this the 27th day of August, 2026, I electronically filed the foregoing Motion with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record, including Lead Counsel, Co-Lead Counsel, and Liaison Counsel for the Plaintiffs' Leadership Group and counsel for the United States.

/s/ James Z. Foster

James Z. Foster

NC Bar No. 60197

Counsel for Plaintiff