

**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 REPLY IN SUPPORT
OF MOTION FOR LEAVE TO FILE
MOTION FOR HEARING
REGARDING ELECTIVE OPTION
DETERMINATIONS PURSUANT TO
CASE MANAGEMENT ORDER NO. 2**

The United States has now filed thirty-five pages of briefing, signed by three different trial attorneys, to avoid a hearing that would take a few minutes. In none of those pages does it state the exposure dates or records it used to price these Marines’ claims. Its latest brief is six pages long. It does not cite Part VII of CMO 2 or address a single element of good cause the Motion identified. It “stands on” its earlier briefs for the merits. Opp. at 4. What remains is a procedural story—Movants as serial filers, their motion mooted by offers the United States refused to hold open—and a one-sentence assurance that the government “has acted in good faith throughout.” *Id.* Neither the story nor the assurance survives the record.

Two points frame this Reply. First, the Plaintiffs’ Leadership Group did far more than “not oppose” the Motion for Hearing: it reviewed the motion, revised it, asked counsel to hold it, cleared it, and then told the Court it did not oppose it. Foster Decl. ¶¶ 9–14.¹ Leave should not have been necessary. Second, counsel for the United States has ignored every attempt to resolve this dispute

¹ The Declaration of James Z. Foster (“Foster Decl.”) is filed with this Reply. The correspondence it describes with the Plaintiffs’ Leadership Group is internal to plaintiffs’ counsel and is not attached; Movants will submit it for the Court’s review on request.

without the Court. *Id.* ¶¶ 3–8. The government has found time for thirty-five pages. It has not found time for one paragraph of arithmetic or one returned telephone call.

I. The PLG Permitted the Filing.

The Court held that the PLG’s statement that it “did not oppose” the Motion was not “permission” under Part VII, and that leave may not be sought in a footnote. [D.E. 923] at 3. Movants accept that ruling and have filed this Motion because of it. But the United States builds its opposition on the premise that Movants have filed without authority from the beginning, *Opp.* at 1–2, and the Court’s September 25 Order noted that “[t]he record does not suggest the PLG gave Plaintiff permission.” [D.E. 12] at 2. The record now does.

Counsel sent the draft motion to Lead, Co-Lead, and Liaison Counsel on September 2 and asked for the PLG’s guidance and permission. *Foster Decl.* ¶ 9. Over the following week, Lead Counsel and Co-Lead Counsel returned substantive revisions and comments, and the undersigned counsel incorporated every one. *Id.* ¶ 10. On September 8, counsel told the PLG in writing that he intended to file on the Master Docket and asked to be told if the PLG objected. No one objected. *Id.* ¶ 11. On September 9, Co-Lead Counsel confirmed she had no further edits; a second PLG attorney asked counsel to hold the filing for a final review, and counsel held. *Id.* ¶ 12. On September 10, counsel circulated the final motion, memorandum, and exhibits to Lead, Co-Lead, and Liaison Counsel and said he would file that afternoon unless anyone had further edits. No one did, and he filed. *Id.* ¶¶ 13–14. No member of the PLG has ever told counsel the filing was unauthorized. Eleven days later, asked by the Court whether the PLG had given permission, Co-Lead Counsel answered, “I don’t think we opposed it,” adding that he personally “was not involved in those discussions with Mr. Foster.” *Sept. 21, 2026 Tr.* 17:13–18. The lawyers who were involved had already edited the motion and cleared it.

CMO 2 requires “permission from Plaintiffs’ Leadership.” It does not prescribe a form, and the PLG has shown that when it withholds permission it says so expressly. Movants respectfully submit that a motion the PLG revised, held, and released is a motion the PLG permitted, and that a plaintiff in that position should not need leave. Movants nonetheless seek it in an abundance of caution because of the Court’s prior ruling.

II. Good Cause Is Shown and Unrebutted.

Part VII asks whether there is good cause for an individual plaintiff to file a non-repetitive position that uniquely affects him. The Motion showed that there is: the Motion for Hearing concerns determinations made in these six cases and no others; the United States objected to the Master Docket, *In re Camp Lejeune Water Litig.* [D.E. 916] at 15 n.1, and the PLG has not filed on Movants’ behalf, so no other forum exists; and the matter is fully briefed and ready for decision. [D.E. 15] ¶¶ 3–6, 10–12. The opposition does not dispute any of this. It does not say the position is repetitive, that another forum exists, or that the United States would be burdened by a ruling on briefs it has already written. And the Court has already said what comes next: it “shall consider the procedural and substantive arguments of the EO Motion after the United States provides its response.” [D.E. 12] at 2–3. The response is filed. [D.E. 14]. This Motion is the procedural predicate D.E. 923 identified for that consideration.

The opposition’s answer is a count: “four substantive, duplicative motions.” Opp. at 2. Movants filed one motion. When the United States objected that counsel could not file it on the Master Docket, Movants re-filed it on the individual dockets. When the United States invoked the stay on those dockets, Movants asked the Court to preserve the status quo until the motion could be heard. When the Court identified a motion for leave as the proper vehicle, Movants filed one. Each filing answered the objection the United States raised to the last. The two interim motions sought one thing—that the offers not lapse while the Court considered the Motion for Hearing—

and were necessary only because the United States refused to hold the offers open itself. Foster Decl. ¶ 6. A party that declines a one-line courtesy and then counts the motions its refusal required is not describing abuse; it is describing its own strategy.

III. The Motion Is Not Moot.

The United States says the Motion is moot because Movants “chose not to accept” the August 28 offers and “these offers have now expired.” Opp. at 3. The Motion for Hearing does not ask the Court to accept, extend, or enforce an offer. It asks the Court to hear how the United States arrived at its exposure and eligibility determinations in six pending cases, or to refer that question to the Settlement Masters, and to require the United States to state in writing the dates and records it used. [D.E. 15-1] at 4–5; [D.E. 15-3] at 10. None of that turns on the status of an offer. Two Movants never received one. Three accepted on September 24, “consistent with the CLJA Elective Option,” at the grid amounts for their documented exposure, reserving all rights. [D.E. 15-3] Ex. J at 3 & n.5.² A date the United States set, and declined to move, does not limit the relief the Court can grant.

Nor may a party moot a motion by running out a clock it controls. Counsel asked on September 21 whether the United States would keep the four offers open until the Court ruled. The answer the next morning was “No.” Foster Decl. ¶ 6. The United States then opposed Movants’ request that the Court hold the deadline in abeyance, [D.E. 922], and now argues that the deadline’s passage ends the matter. The Court’s June 30 Order expects the parties to “use their best efforts to achieve a global settlement by October 30, 2026,” and reserves “other action relating to either the PLG or the Department of Justice.” [D.E. 893] at 2. Whether the United States administers its

² The United States now calls the September 24 acceptances rejections and counteroffers. Opp. at 3. Movants disagree; the offer letters describe the offers as made “consistent with the CLJA Elective Option,” and that is what Movants accepted. The dispute is reserved and is not before the Court on this Motion.

settlement program to litigants before this Court according to its own published guidance and its own records is a live question under that Order, irrespective of became of four offers.

IV. “Good Faith Throughout” Is an Assertion, Not an Answer.

The opposition’s only engagement with the merits is that the United States “disagrees with Plaintiffs’ characterization” and “asserts that it has acted in good faith throughout the litigation.” Opp. at 4. This is the fifth filing in which the United States has declined to say what exposure window it used for any Movant or why its own dataset and the certified Records of Service show more than a year on base for men it priced at less than a year. The affirmations it drafted for Movants to sign recite 31, 217, and 318 days for Marines whose government records show 737, 510, and 1,156. [D.E. 15-3] at 3–4. A party acting in good faith answers a factual dispute of that kind. It does not spend thirty-five pages explaining why no one may ask.

The record outside the courtroom is the same. Before filing, counsel called Ms. Gaddy and Mr. Bain, could not reach either, received no call back, and wrote to both asking the United States to reconsider; it declined on September 2 and again on September 3. Foster Decl. ¶ 4. On September 21, counsel called again, reached neither, and wrote to ask whether the United States had “any interest in trying to work this out prior to a ruling by the Court.” No one responded. *Id.* ¶ 5. On September 25, counsel asked for the government’s “math explaining how the amounts were calculated”; the reply restated the offer amounts and closed, “We hope this clarifies any confusion.” *Id.* ¶ 7. On September 29, counsel asked to meet confidentially “to see if we can resolve it without the Court’s further involvement.” No one responded. Mr. Bain has never responded to anything. *Id.* ¶ 8. Movants do not ask the Court to find bad faith on this Motion. They ask for the hearing at which the question can be answered, and they note that the party asserting good faith is the one that will not return a call.

CONCLUSION

Plaintiff respectfully requests that the Court grant leave under Part VII of CMO 2 to file Exhibits A through C in this action; deem the Motion for Hearing and Memorandum in Support filed as of September 15, 2026, and the Reply as of the date of the Court's order; grant limited relief from the stay for that purpose to the extent required; and set the Motion for Hearing for hearing or refer it to the Settlement Masters.

Respectfully submitted, this the 29th day of September, 2026.

/s/ James Z. Foster

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CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of September, 2026, I electronically filed the foregoing Reply with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ James Z. Foster

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Counsel for Plaintiff