

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 Pleading Relates to: )  
 )  
ALL CASES )

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ LEADERSHIP GROUP’S  
MOTION TO SEAL DESIGNATED PHASE IIIB EXHIBITS IN JOINT APPENDIX**

**INTRODUCTION**

The Plaintiffs’ Leadership Group (“PLG”) moves the Court pursuant to the Order at D.E. 832 and Case Management Order 2 (D.E. 23) to allow the exhibits identified in PLG’s Notice of Filing and Index of Sealed Exhibits Phase IIIB to be filed under seal. The documents sought to be sealed are filed at D.E. 845. These documents, which are expert reports and deposition transcripts, contain sensitive mental health medical information and reference confidential and sensitive medical and psychology records. Sealing is thus warranted. Defendant United States of America consents to the PLG’s request for the Court to seal the identified documents.

**FACTUAL & PROCEDURAL BACKGROUND**

Dr. Roger Moore (“Dr. Moore”) is the PLG’s psychology expert for Plaintiff Frank Mousser (“Plaintiff Mousser”), and Dr. Haresh Tharwani (“Dr. Tharwani”) is the PLG’s psychology expert for Plaintiffs Jefferson Criswell (“Plaintiff Criswell”) and Terry Dyer (“Plaintiff Dyer”). Drs. Moore and Tharwani performed psychological evaluations and produced reports on the mental health conditions of Plaintiffs Mousser, Criswell, and Dyer (collectively, “Plaintiffs”). Dr. Harold Busztajn (“Dr. Bursztajn”) is the Defendant’s psychology expert who performed psychological evaluations and produced reports for the Defendant on all three of the Plaintiffs.

Due to the sensitive nature of the reports and testimony of those experts, the reports and deposition transcripts for Drs. Moore, Tharwani and Bursztajn were allowed to be filed under seal at DE 511-1, Exs. 620-637.

Deborah Navarro, Michael Shanasarian, Kelly Sakala, and Michael Fryar are experts who presented reports on damages and offsets, life care planning, and/or home renovation during Phase IIIb of the litigation. Each of these experts referred to, quoted and/or incorporated within their reports for the Plaintiffs the opinions of Drs. Moore, Tharwani, and Bursztajn with respect to the mental health conditions of the Plaintiffs. The PLG therefore requests that the expert reports of Deborah Navarro (Dyer), Michael Shanasarian (Mousser), Kelly Sakala (Mousser), and Michael Fryar (Dyer and Mousser) be sealed. In addition, Kelly Sakala and Deborah Navarro referred to, quoted and/or testified to the mental health conditions of the Plaintiffs in their depositions. The PLG therefore requests that the deposition transcripts of Deborah Navarro and Kelly Sakala be sealed as well.

The PLG previously filed two nearly identical Motions to Seal (D.E. 633; D.E. 705). First, with respect to Defendant United States of America's Memoranda of Law in Support of Motions to Exclude Dr. Moore and Dr. Tharwani; the Court granted that Motion to Seal (D.E. 649). Second, with respect to PLG's Memoranda of Law in Opposition to the United States' Motions to Exclude Dr. Roger Moore and Dr. Haresh Tharwani (D.E. 671 & 695); the Court also granted that Motion to Seal (D.E. 738). The present motion involves the same Plaintiffs and the same information as the prior motions. Further, like the prior Motions to Seal, the present motion is based upon the need to preserve the confidentiality of sensitive mental health records and diagnoses.

Because the materials sought to be sealed involve confidential mental health records and diagnoses, the documents (if sealed) would be subject to the Court's Order Amending Case

Management Order 15 (D.E. 650), which provided as follows: “Where the Court seals records designated by a party as confidential mental health records, access to those mental health records shall be restricted to Plaintiffs’ Leadership Group and counsel for the United States of America only.”

### LEGAL STANDARD

Local Civil Rule 26.1(a)(1) provides medical records “shall not be open to inspection or copying by any persons except the parties and their attorneys,” and any such filings must be accompanied by a motion to seal under Local Rule 79.2. Local Civil Rule 79.2 further requires that any request to file documents under seal be made by motion, with the docket reflecting sufficient notice to the public while the documents remain provisionally sealed pending the Court’s ruling. Together, these rules establish both the substantive and procedural framework under which parties may protect medical and psychiatric records from public disclosure.

“[P]rior to sealing judicial records, a district court must first determine the source of the public’s right to access the judicial records: the common law or the First Amendment.” *Johnson v. City of Fayetteville*, No. 5:12-CV-456-F, 2014 U.S. Dist. LEXIS 172229, at \*21 (E.D.N.C. Dec. 11, 2014) (citing *Stone v. University of Maryland Medical System Corp.*, 855 F.2d 178, 180 (4th Cir. 1988)). “If the common law right of access to judicial records applies, there is a presumption of public access to judicial records, which can only be rebutted if countervailing interests outweigh the public’s interest in access.” *Johnson*, No. 5:12-CV-456-F, 2014 U.S. Dist. LEXIS 172229, at \*21 (citing *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988)).

“Where the First Amendment guarantees access to judicial records, such access may be denied only on the basis of a compelling governmental interest or other higher value, and only if the denial is narrowly tailored to serve that interest or value.” *Johnson*, No. 5:12-CV-456-F, 2014

U.S. Dist. LEXIS 172229, at \*21. “The burden to overcome a First Amendment right of access rests on the party seeking to restrict access, and that party must present specific reasons in support of its position.” *Va. Dep’t of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004).

“Congress and the State of North Carolina have recognized the significance of an individual’s interest in keeping medical information private, *see* 42 U.S.C. § 1320d-6(a); N.C. Gen. Stat. § 58-2-105(a), and the Fourth Circuit has held that such information ‘should receive scrupulously confidential treatment’ when it concerns subject matter that faces public stigma.” *Kadel v. Folwell*, 620 F. Supp. 3d 339, 390 (M.D.N.C 2022) (quoting *Watson v. Lowcountry Red Cross*, 974 F.2d 482, 487 (4th Cir. 1992)). Accordingly, requests to seal judicial filings that contain medical or psychiatric information fall squarely within the well-established framework that balances the public’s right of access against the compelling interest in protecting individual privacy.

## **ARGUMENT**

The PLG advances the same arguments here as those previously incorporated in their Memorandum of Law in Support of Motion to Seal the Memoranda of Law in Support of United States’ Motion to Exclude Dr. Moore and Dr. Tharwani. (D.E. 633) and in their Memorandum of Law in Support of Motion to Seal the Memoranda of Law in Opposition of the United States’ Motions to Exclude Dr. Roger Moore and Dr. Haresh Tharwani. (D.E. 706). In both instances, the PLG asserts that the relevant exhibits contain confidential personal and mental health information that was derived from Plaintiffs’ records and expert evaluations, and that public disclosure would violate their privacy rights.

As previously stated, Dr. Moore, Dr. Tharwani and Dr. Bursztajn are the parties’ respective psychology experts whose evaluations of Plaintiffs’ psychological impacts involved an in-depth

review of, among other things, their personal, medical, and psychological histories. The information gathered from Plaintiffs during their psychological evaluations and their expert opinions regarding the Plaintiffs' mental health conditions are referred to, quoted, and/or incorporated into the expert reports of Phase IIIb experts Deborah Navarro, Michael Shanasarian, Kelly Sakala and Michael Fryar, and further relied upon in the depositions of Deborah Navarro and Kelly Sakala. Courts in the Fourth Circuit recognize that medical and psychology records warrant "scrupulously confidential treatment" where disclosure could implicate privacy interests or "public stigma," and that such privacy interests may outweigh the presumption of public access to judicial records. *Kadel*, 620 F. Supp. 3d at 390. These documents directly implicate Plaintiffs' privacy interests because, without being sealed, the public would have unfettered access to Plaintiffs' highly personal mental health history, testimony regarding Plaintiffs' personal and medical history, and also quotes from Plaintiffs' actual mental health records.

Additionally, Courts have held "that individuals have an interest in keeping sensitive medical information private." *Alston v. OM of Raleigh, Inc.*, No. 5:22-CV-00257-D, 2023 U.S. Dist. LEXIS 148743, at \*10 (E.D.N.C Aug. 24, 2023) (citing *Watson*, 974 F.2d at 487). Accordingly, sealing the documents will protect the privacy interest of the Plaintiffs. This request furthers Plaintiffs' "significant interest in shielding private medical information [which] outweighs the interest in public access," and therefore "overcome[s] the presumption of openness and access to judicial records under both the First Amendment and the common law . . ." *Alston*, No. 5:22-CV-00257-D, 2023 U.S. Dist. LEXIS 148743, at \*11.

### **CONCLUSION**

For the foregoing reasons, the PLG respectfully requests that this Court seal the attachments referred to in PLG's Notice of Filing and Index of Sealed Exhibits Phase IIIb.

This the 8th day of April, 2026.

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**CERTIFICATE OF SERVICE**

I, Elizabeth J. Cabraser, hereby certify that the foregoing document was electronically filed on the Court's CM/ECF system on this date, and that all counsel of record will be served with notice of the said filing via the CM/ECF system.

This the 8th day of April, 2026.

*/s/ Elizabeth J. Cabraser*

Elizabeth J. Cabraser