

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Case No. 7:23-cv-897

IN RE:)	
)	
CAMP LEJEUNE WATER LITIGATION)	UNITED STATES’S NOTICE OF FILING
)	OF PROPOSED ORDER IN RESPONSE
This Document Relates To:)	TO D.E. 886
ALL CASES)	

Defendant United States of America respectfully files this Notice and Proposed Order for the Court’s consideration under the Order entered on June 5, 2026 (D.E. 886) (“D.E. 886”).

1) On June 5, 2026, the Court denied without prejudice the United States’ Motion to Exclude Certain Plaintiffs’ General Causation Experts’ Testimony Utilizing the “At Least as Likely as Not” Standard (D.E. 886).¹ The Court ordered: “The parties shall file within 21 days a joint proposed order that identifies expert opinions to which this order applies.” *Id.* at 1.

2) On June 9, 2026, the United States emailed Plaintiffs’ Leadership Group (“PLG”) and requested a meet-and-confer to discuss the scope of D.E. 886. *See* **Exhibit A**.

3) On June 16, 2026, the Parties met-and-conferred pursuant to D.E. 886, but did not reach agreement concerning the scope of the Order. Specifically, PLG contended that none of its general causation experts violated D.E. 886. The United States disagreed.

4) On June 17, 2026, PLG sent the United States a proposed order and summarized its views concerning the scope of the Order. *See* **Exhibit B**. In its draft proposed order, PLG requested further briefing on the application of D.E. 886.

¹ Judge Flanagan will resolve these issues separately in her cases. *See* D.E. 886 at 1. Thus, the United States’ attached Proposed Order does not address the expert opinions offered in the Parkinson’s disease bellwethers.

5) On June 18, 2026, the United States responded, forecasting that it would inform PLG of the expert opinions that the United States would presently be seeking to exclude under D.E. 886 on Monday, June 22, 2026. *Id.* The United States disagreed that further briefing was necessary.

6) On June 22, 2026, the United States identified those experts whose opinions the United States is not seeking to exclude under D.E. 886 at this time. *See id.* The United States reserved its rights to challenge the identified experts—or certain of PLG’s specific causation experts disclosed in Phase III of expert discovery—under D.E. 886 at a later time. *See id.*

7) On June 23, 2026, the United States provided to PLG (i) its redline edits of PLG’s June 17, 2026 proposed order; and (ii) the United States’ draft Attachment A to that proposed order, which identified expert opinions that the United States believed should be excluded under D.E. 886 at the present time. *See id.* The United States requested a response by Thursday, June 25, 2026, so that a further meet-and-confer could be held as necessary. *See id.*

8) On June 24, 2026, after close of business, PLG sent the United States a second draft proposed order, which was materially different from PLG’s draft of June 17, 2026. *See id.* Further, PLG argued that the United States’s Attachment A “exceeds the scope of what the court asked for in its order,” and accused the United States of misstating PLG’s positions. *See id.*

9) On the same evening, the United States responded, noting that PLG had drafted and provided its positions in the June 17, 2026 proposed order (which the United States had not changed in its response), and stating that it could not agree to PLG’s second draft proposed order, which was materially different. *See id.* The United States again requested a meet-and-confer on Thursday, June 25, 2026. *See id.*

10) On June 25, 2026, PLG asked the United States to explain its objections to PLG's second draft proposed order, which the United States did shortly thereafter. *See id.* PLG responded later that same day, attaching a revised version of its second draft proposed order and stating that PLG would file it on the Court's deadline. However, PLG's revisions did not cure the objections noted by the United States, and proposed that the Parties would make submissions at a later time. The United States responded that evening and objected to PLG's revised second draft proposed order. *See id.* The United States reiterated its request to see any further revised proposed submission prior to filing, and re-sent its Attachment A with minor redlines. *Id.*

11) On June 26, 2026, PLG responded and stated for the first time that it intended to file a responsive submission. The Parties met-and-conferred thereafter, but the Parties were not able to reach agreement on the substance or form of the filings the Parties would submit.

12) The United States therefore files this Notice, along with the United States' Proposed Order as **Exhibit C**, for the Court's consideration and to satisfy its obligations under D.E. 886.²

13) The United States has closely analyzed D.E. 886 and asserts that certain opinions of PLG's experts are subject to exclusion at this time. The United States has only included general causation experts whose reports and admissions at deposition establish a clear basis for exclusion of all of the expert's causation opinions under D.E. 886.

14) The United States is not presently seeking to exclude expert opinions of PLG's other general causation experts: Drs. Dean Felsher, Howard Hu, Kathleen Gilbert, David Madigan,

² At the time of filing, it remains unclear to the United States whether PLG intends to submit a responsive filing and what that filing might contain. Thus, the United States reserves its right to seek leave to file a response if necessary.

Laura Plunkett, and David Savitz under Order 886.³ The United States notes that those experts are subject to other pending *Daubert* motions.⁴

15) The United States does not believe further briefing is necessary because the Parties had ample opportunities to present arguments during the Court-ordered briefing schedule and thus additional briefing would be largely duplicative and cause unnecessary delay. The United States has complied with its obligations under D.E. 886, which was the procedure requested by PLG in its Opening Brief to PLG’s “at least as likely as not” motion. *See* D.E. 568 at 16 (stating “[a]fter the Court issues such an Order, the PLG proposes that the parties meet and confer regarding the appropriate way to implement the order, including *identifying the opinions to which the Order applies.*” (emphasis added)). However, if the Court—together or individually—requests additional briefing concerning these issues, the United States will readily comply and requests an opportunity to file a reply if the Court orders the United States to submit additional briefing before PLG.

³ The United States does not concede that these experts’ opinions are admissible under the analysis of Order 886 or any other basis, and reserves the right to file motions and/or cross-examine these experts at trial on the degree to which they relied on the “at least as likely as not” legal standard to relax their usual scientific methodologies. The United States further reserves its right to seek the exclusion of the opinions of Plaintiffs’ causation experts, including opinions of Plaintiffs’ specific and general causation experts, where the opinions are based upon a relaxed methodology under the “at least as likely as not” burden of proof.

⁴ *See* D.E. 553; 555; 559; 582; 584.

Dated: June 26, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2026, I electronically filed the foregoing using the Court's Electronic Case Filing system, which will send notice to all counsel of record.

/s/ David R. Ortiz
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