

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)	JOINT NOTICE OF FILING OF
)	PROPOSED DISCOVERY PROFILE
This Document Relates To:)	POOL FORM AND PROPOSED
ALL CASES)	DISCOVERY PROFILE POOL FORM
)	ORDERS
)	

Plaintiffs’ Lead Counsel and Co-Lead Counsel (collectively “Plaintiffs’ Leadership”) and counsel for Defendant United States of America (“Defendant,” collectively with Plaintiffs’ Leadership the “Parties”) respectfully submit to this Honorable Court a Proposed Discovery Pool Profile Form (the “DPPF”) (Attachment 1) and competing proposed Stipulated Order Regarding Discovery Pool Profile Forms (the “DPPF Order”) (Attachments 2 and 3) pursuant to Case Management Order No. 2 § XI.A.iv.b. (DE 23).

The Parties have met numerous times to discuss the proposed DPPF and the proposed DPPF Order and have collaboratively reached agreement on many salient issues, including the substantive questions underlying the DPPF. Notwithstanding the Parties’ reaching significant consensus, one key area of divergence remains: whether the DPPF Order should permit the Defendant to move to dismiss, without prejudice, a plaintiff’s case for failure to substantially complete the DPPF.

Plaintiffs’ Leadership asserts that the DPPF should be governed by the Federal Rules of Civil Procedure governing interrogatories and discovery and therefore, the DPPF Order should afford plaintiffs the protections and processes of said rules, which include requiring the Defendant to file a motion to compel compliance with applicable Court orders regarding the DPPF. Plaintiffs’ Leadership contends that such processes would not unduly delay the Parties

in their efforts to advance the litigation, especially in light of the regular status conferences the Court has established Defendant agrees that the DPPF should be governed by the Federal Rules of Civil Procedure, but contends that Rule 37(b)(2)(A)(v) is applicable, which permits the dismissal of an action for failure to obey an order to provide discovery. The Court has already ordered, at the request of Plaintiffs' Leadership, that each Track 1 Discovery Plaintiff complete the DPPF within 45 days. *See* D.E. 17-1 at 10 (Plaintiffs' Leadership proposal); D.E. 23 at 10 (CMO2). The Defendant contends that a clearer process for addressing failure to comply with CMO 2 will avoid unnecessary delays and facilitate resolution in all cases consistent with CMO 2. The Defendant contends that, as in other mass tort litigation, the process should include a warning letter and fourteen days to comply with said letter, after which the Defendant may seek dismissal of the case without prejudice.

Accordingly, the Parties hereby submit for the Court's consideration the following:

- 1) Discovery Pool Profile Form (Attachment 3).
- 2) Plaintiffs' Leadership's Proposed Stipulated Order Regarding the Discovery Pool Profile Form (Attachment 2).
- 3) Defendant's Proposed Stipulated Order Regarding the Discovery Pool Profile Form (Attachment 3).

WHEREFORE, the Parties respectfully submit this Joint Status Report.

DATED this 6th day of November 2023.

/s/ J. Edward Bell, III
J. Edward Bell, III (admitted *pro hac vice*)
Bell Legal Group, LLC
219 Ridge St.
Georgetown, SC 29440
Telephone: (843) 546-2408
jeb@belllegalgroup.com
Lead Counsel for Plaintiffs

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

J. PATRICK GLYNN
Director, Torts Branch
Environmental Torts Litigation Section

/s/ Zina Bash

Zina Bash (admitted *pro hac vice*)
Keller Postman LLC
111 Congress Avenue, Ste. 500
Austin, TX 78701
Telephone: 956-345-9462
zina.bash@kellerpostman.com
*Co-Lead Counsel for
Plaintiffs and Government Liaison*

/s/ Robin Greenwald

Robin L. Greenwald (admitted *pro hac vice*)
Weitz & Luxenberg, P.C.
700 Broadway
New York, NY 10003
Telephone: 212-558-5802
rgreenwald@weitzlux.com
Co-Lead Counsel for Plaintiffs

/s/ Elizabeth Cabraser

Elizabeth Cabraser (admitted *pro hac vice*)
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, Suite 2900
San Francisco, CA 94111
Phone (415) 956-1000
ecabraser@lchb.com
Co-Lead Counsel for Plaintiffs

/s/ W. Michael Dowling

W. Michael Dowling (NC Bar No. 42790)
The Dowling Firm PLLC
Post Office Box 27843
Raleigh, North Carolina 27611
Telephone: (919) 529-3351
mike@dowlingfirm.com
Co-Lead Counsel for Plaintiffs

/s/ James A. Roberts, III

James A. Roberts, III (N.C. Bar No.: 10495)
Lewis & Roberts, PLLC
3700 Glenwood Avenue, Suite 410
P. O. Box 17529
Raleigh, NC 27619-7529

BRIDGET BAILEY LIPSCOMB
Assistant Director, Torts Branch
Environmental Torts Litigation Section

/s/ Adam Bain

ADAM BAIN
Senior Trial Counsel, Torts Branch
Environmental Torts Litigation Section
U.S. Department of Justice
P.O. Box 340, Ben Franklin Station
Washington, D.C. 20044
E-mail: adam.bain@usdoj.gov
Telephone: (202) 616-4209

LACRESHA A. JOHNSON

HAROON ANWAR

DANIEL C. EAGLES

NATHAN J. BU

Trial Attorneys, Torts Branch
Environmental Torts Litigation Section
*Counsel for Defendant United States of
America*

Telephone: (919) 981-0191
Fax: (919) 981-0199
jar@lewis-roberts.com
Co-Lead Counsel for Plaintiffs

/s/ Mona Lisa Wallace
Mona Lisa Wallace (N.C. Bar No.: 009021)
Wallace & Graham, P.A.
525 North Main Street
Salisbury, North Carolina 28144
Tel: 704-633-5244
Co-Lead Counsel for Plaintiffs

/s/ Hugh R. Overholt
Hugh R. Overholt (NC Bar No. 016301)
Ward and Smith P.A.
Post Office Box 867
New Bern, NC 28563-0867
Telephone: (252) 672-5400
hro@wardandsmith.com
Liaison Counsel for Plaintiffs

/s/ A. Charles Ellis
A. Charles Ellis (N.C. Bar No.: 010865)
Ward and Smith P.A.
Post Office Box 8088
Greenville, NC 27835-8088
Telephone: (252) 215-4000
ace@wardandsmith.com
Liaison Counsel for Plaintiffs