

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN A. PATTERSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 5:17-CV-00467
)	
DEFENSE POW/MIA ACCOUNTING)	
AGENCY, et al.,)	
)	
Defendants.)	

JOINT MOTION TO EXTEND SCHEDULE

Pursuant to Rule 6(b) and Rule 16(b)(4) of the Federal Rules of Civil Procedure, the Parties jointly request that the Court amend the scheduling order for this case.

Grants of extensions of time under Rule 6(b) “fall[] to the district court’s discretion.” *Uxomba v. Bexar County*, No. 14-372, 2014 WL 3919573, at *1 (W.D. Tex. Aug. 8, 2014) (quoting *McCarty v. Thaler*, 376 F. App’x 442, 443 (5th Cir. 2010)). There is good cause to grant the Parties’ joint request here. It would serve judicial economy and the interests of the Parties for the Court to decide the pending motions before the Parties proceed to *Daubert* motions and summary judgment, which are currently set for November 2 and December 7, 2018, respectively.

During the pendency of Defendants’ Defendants’ Motion for Judgment on the Pleadings and Plaintiffs’ Motion to Compel Production of Remains or, in the Alternative, for Physical Examination, the Parties have completed written discovery (aside from any supplementation with

new documents)¹ and have designated expert witnesses and exchanged expert reports as necessary. The Parties propose that the Court's resolution of the pending motions will illuminate key aspects of this case and is likely to significantly affect the Parties' use of expert witnesses and the issues that remain for summary judgment or trial. Accordingly, the Parties propose to extend the discovery deadline for depositions until February 15, 2019, and similarly extend the deadlines for *Daubert* motions under Federal Rule of Evidence 702 and for summary judgment motions. The Parties propose to stagger summary judgment briefing to combine cross-motion filings with responsive filings. And the Parties propose to similarly extend the remaining schedule, with a trial to be scheduled on or after October 25, 2018. Each of these adjustments to the schedule will serve judicial economy and the interests of the parties.

A proposed Order is attached for the Court's review and entry.

¹ On August 31, 2018, Defendants served a subpoena on Jonathan Davoren, one of Plaintiffs' designated experts, seeking certain documents related to specific cases referenced in his expert report and his declaration filed in support of Plaintiffs' Motion to Compel. Mr. Davoren's firm objected to the subpoena and negotiations are ongoing. If the Parties and Mr. Davoren's firm are unable to come to resolution, the dispute may be brought to the Court for resolution.

Dated: October 1, 2018

/s/ John T. Smithee, Jr.
JOHN T. SMITHEE, JR. (admitted pro hac vice)
TX State Bar No. 24098449
TN State Bar No. 36211
LAW OFFICE OF JOHN TRUE SMITHEE, JR.
1600 McGavock St.
Suite 214
Nashville, TN 37203
(806) 206-6364
jts@smitheelaw.com

GENDRY & SPRAGUE, PC
/s/ Ron A. Sprague
RON A. SPRAGUE
TX State Bar No. 18962100
Gendry & Sprague, PC
900 Isom Road, Suite 300
San Antonio, TX 78216
Rsprague@gendrysprague.com
(210) 349-0511

Counsel for Plaintiffs

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

JOHN F. BASH
United States Attorney

ANTHONY J. COPPOLINO
Deputy Director
Civil Division, Federal Programs Branch

/s/ Galen N. Thorp
GALEN N. THORP (VA Bar # 75517)
Senior Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
950 Pennsylvania Avenue NW
Washington, D.C. 20530
Tel: (202) 514-4781 / Fax: (405) 553-8885
galen.thorp@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

John T. Smithee, Jr.
Law Office of John True Smithee, Jr.
1600 McGavock St.
Suite 214
Nashville, TN 37203

Ron A. Sprague
Gendry & Sprague PC
900 Isom Road, Suite 300
San Antonio, TX 78216

/s/ Galen N. Thorp
GALEN N. THORP
Senior Counsel