

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 18 CVS 014001

COMMON CAUSE; <i>et al.</i>)
)
<i>Plaintiffs,</i>)
)
v.)
)
DAVID R. LEWIS, <i>et al.</i>)
)
<i>Defendants.</i>)
)
)
)

**LEGISLATIVE DEFENDANTS’ SUPPLEMENTAL OBJECTIONS AND
RESPONSES TO PLAINTIFFS’ FOURTH SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION**

Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy K. Moore, and President Pro Tempore of the North Carolina Senate, Philip E. Berger (“Defendants” or “Legislative Defendants”), by and through undersigned counsel, serve their supplemental objections and responses to Plaintiffs’ fourth set of Interrogatories and Requests for Production of Documents as follows:

GENERAL OBJECTIONS

Defendants make the following supplemental answers, responses, and objections to Plaintiffs’ Fourth set of Requests for Production of Documents (“Document Requests”) and Fourth set of Interrogatories. Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from: (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and; (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Document Requests. These responses are subject to amendment and supplementation as Defendants acquire additional information and completes their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Document Requests were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Document Request should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Document Request or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Document Request is not intended to be, and shall not be, construed as a waiver by Defendants of any part of any objection to any Document Request.

Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 34 of the North Carolina Rules of Civil Procedure and will not provide responses or

documents to the extent such responses or production would exceed the requirements of those Rules.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

REQUESTS

1. Identify each and every expert witness that You intend to call to testify at trial. For each such individual identified, please state the name, present address, telephone number, employer and job title of the expert witness and set forth a brief summary of said individual's involvement, relevant knowledge and topic(s) upon which the expert witness will testify at trial.

Original Response: Legislative Defendants object that this request is premature. Legislative Defendants will identify their expert witnesses and related materials in accordance with the Case Management and Scheduling Order and the parties' agreement.

Supplemental Response: Legislative Defendants direct Plaintiffs to Legislative Defendants' expert reports and materials produced on April 30, 2019 with these responses.

2. Identify all opinions for any expert witness You intend to present, including the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Original Response: Legislative Defendants object that this request is premature. Legislative Defendants will identify their expert witnesses and related materials in accordance with the Case Management and Scheduling Order and the parties' agreement.

Supplemental Response: Legislative Defendants direct Plaintiffs to Legislative Defendants' expert reports and materials produced on April 30, 2019 with these responses.

3. Identify all documents relied upon by any expert witness You intend to present.

Original Response: Legislative Defendants object that this request is premature. Legislative Defendants will identify their expert witnesses and related materials in accordance with the Case Management and Scheduling Order and the parties' agreement.

Supplemental Response: Legislative Defendants direct Plaintiffs to Legislative Defendants' expert reports and materials produced on April 30, 2019 with these responses.

4. Identify all prior testimony from any expert witness You intend to present.

Original Response: Legislative Defendants object that this request is premature. Legislative Defendants will identify their expert witnesses and related materials in accordance with the Case Management and Scheduling Order and the parties' agreement.

Supplemental Response: Legislative Defendants direct Plaintiffs to Legislative Defendants' expert reports and materials produced on April 30, 2019 with these responses.

5. Identify all qualifications for any expert witness You intend to present.

Original Response: Legislative Defendants object that this request is premature. Legislative Defendants will identify their expert witnesses and related materials in accordance with the Case Management and Scheduling Order and the parties' agreement.

Supplemental Response: Legislative Defendants direct Plaintiffs to Legislative Defendants' expert reports and materials produced on April 30, 2019 with these responses.

REQUESTS FOR PRODUCTION

1. For each expert witness You intend to present, provide: (1) all communications between You and the expert witness; (2) all communications between Your attorney and the expert witness that relate to compensation for the expert's study or testimony, that identify facts or data that Your attorney provided and that the expert considered in forming the opinions to be expressed, and that identify assumptions that Your attorney provided and that the expert relied on in forming the opinions to be expressed; (3) documents sufficient to demonstrate the expert's prior testimony; (4) any expert report drafted by the expert; (5) documents sufficient to demonstrate the expert's qualifications, such as a resume or *curriculum vitae*; and (6) all documents provided to the expert.

Original Response: Legislative Defendants object on the grounds that this request seeks information covered by the attorney-client and work product privileges. Defendants further object that this request is premature. Legislative Defendants will identify their expert witnesses and related materials in accordance with the Case Management and Scheduling Order and the parties' agreement.

Supplemental Response: Legislative Defendants continue to object to the extent our agreement regarding such communications moots this request. Subject to and without waiving these objections, Legislative Defendants direct Plaintiffs to Legislative Defendants' expert reports and materials produced on April 30, 2019 with these responses.

2. Produce in electronic format (that permits printing and editing capabilities) all documents, data files, map files, computer programming code and output from those programs that were relied upon for any expert report. This information should be produced in its native format. In addition, if there are command lines used to compile, link, and/or execute the code and/or to enter parameters/criteria relied upon by the programming code, this information should also be provided. Alternatively, if there were files prepared that include these command lines, then these files should be produced. The production should be complete, such that another expert could replicate the experts' work from the information produced (e.g., files, data, computer programming code, etc.) and be able to reproduce the experts' results.

Original Response: Legislative Defendants object on the grounds that this request seeks information covered by the attorney-client and work product privileges. Defendants further object that this request is premature. Legislative Defendants will identify their expert witnesses and related materials in accordance with the Case Management and Scheduling Order and the parties' agreement.

Supplemental Response: Legislative Defendants continue to object to the extent our agreement regarding such communications moots this request. Subject to and without waiving these objections, Legislative Defendants direct Plaintiffs to Legislative Defendants' expert reports and materials produced on April 30, 2019 with these responses.

3. All Documents that You used, relied upon, reviewed, referenced, consulted, considered, referred to, or otherwise used in answering or responding to any interrogatory.

Original Response: Legislative Defendants object on the grounds that this request seeks information covered by the attorney-client and work product privileges. Defendants further object that this request is premature. Legislative Defendants will

identify their expert witnesses and related materials in accordance with the Case Management and Scheduling Order and the parties' agreement.

Supplemental Response: Legislative Defendants continue to object to the extent our agreement regarding such communications moots this request. Subject to and without waiving these objections, Legislative Defendants direct Plaintiffs to Legislative Defendants' expert reports and materials produced on April 30, 2019 with these responses.

Respectfully submitted this 30th day of April, 2019.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/ Phillip J. Strach
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Counsel for Legislative Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing document to be served on all counsel of record by electronic mail in accordance with the agreement of the parties to serve documents in this matter electronically.

This the 30th day of April, 2019.

By: /s/ Phillip J. Strach
Phillip J. Strach

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