

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ACLU OF TENNESSEE, Inc.)	
)	
Intervening Plaintiff,)	
v.)	No. 2:17-cv-02120-jpm-DKV
)	
THE CITY OF MEMPHIS,)	
)	
Defendant.)	

**DEFENDANT’S UNOPPOSED MOTION TO EXTEND EXPERT INFORMATION
DISCLOSURE DEADLINES AND FACT WITNESS DEPOSITION DEADLINE AND
INCORPORATED MEMORANDUM OF LAW**

The Defendant, the City of Memphis (“the City”), by and through counsel, respectfully submits the following Unopposed Motion to Extend Expert Information Disclosure Deadlines and Fact Witness Deposition Deadline and Incorporated Memorandum of Law.

In further support, the City states as follows:

1. On January 3, 2020, the Court entered an Order Following Conference and Modification Scheduling Order (“Modification Scheduling Order”) (ECF No. 273). In relevant part, the Modification Scheduling Order set the deadline for written discovery for January 31, 2020; depositions completion deadline for February 28, 2020; the City’s Rule 26(a)(2) Expert Information Disclosure deadline for March 6, 2020; the ACLU-TN’s Rule 26(a)(2) Expert Information Disclosure deadline for April 13, 2020; the City’s Rule 26(a)(2) Rebuttal Expert Information Disclosure deadline for May 8, 2020; and the ACLU-TN’s Rule 26(a)(2) Rebuttal Expert Information Disclosure deadline for May 27, 2020. (ECF No. 273, PageID 8686.)

2. The parties have completed written discovery.

3. The Modification Scheduling Order also directed the ACLU-TN to notify the City of the depositions it intends to take no later than January 13, 2020. In response, the ACLU-TN submitted a list of six witnesses it intends to depose.

4. The parties have tentatively agreed that the most convenient schedule for those depositions is March 4-6, 2020, which is just outside the deposition completion deadline of February 28, 2020.

5. Accordingly, the City seeks an extension of the deposition completion deadline from February 28, 2020 to March 6, 2020, to allow enough time to complete all the depositions the ACLU-TN's seeks to take.

6. Additionally, since the entry of the Modification Scheduling Order, the City has worked diligently to secure the expert witnesses it intends to use for the case. To that end, the City began working with an expert witness finding firm to help it quickly locate the most experienced and appropriate expert witnesses.

7. The City's expert witness information disclosure deadline, however, has become a determinative factor for several of the City's preferred potential expert witnesses. The expert witness finder firm informed the City on February 12, 2020, that the disclosure deadline was a problem for many of the experts to whom they reached out.

8. The City has not relied upon a third-party expert locator exclusively but has also been conducting its own independent research for experts. Several of those potential experts have expressed that they would be unable to comply with the March 6, 2020 expert witness disclosure deadline.

9. One specific concern with the March 6th deadline is that any potential expert for the City desires to review the transcripts of the depositions of the City's witnesses to prepare a report. Because no depositions have taken place, and likely will not place until March 4-6, it is very unlikely that any depositions in this matter will necessarily occur in time for an expert to review the transcripts and prepare a report by March 6, 2020. Moreover, even if all six depositions were to occur next week, there is no certainty that the transcripts of those depositions would be available for an expert to review in time for the expert to complete his or her report prior to March 6.

10. Accordingly, the City respectfully seeks a thirty-day extension to its expert information disclosure deadline, or April 6, 2020. The ACLU-TN is agreeable to this modification.

11. The City, in consultation with the ACLU-TN, further proposes extending the ACLU-TN's deadline for disclosure of its Rule 26(a)(2) Expert Information to May 4, 2020; and extending the City's Rule 26(a)(2) Rebuttal Expert Information Disclosure deadline to May 27, 2020. The ACLU-TN's Rule 26(a)(2) Rebuttal Expert Information Disclosure deadline would remain on May 27, 2020.

12. A scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Courts consider five factors when deciding whether additional time to complete discovery is warranted: "(1) when the moving party learned of the issue that is the subject of discovery; (2) how the discovery would affect the ruling below; (3) the length of the discovery period; (4) whether the moving party was dilatory; and (5) whether the adverse party was responsive to prior discovery requests." *Dowling v. Cleveland Clinic Found.*, 593 F.3d 472,

478 (6th Cir. 2010) (citation omitted). “The overarching inquiry ... is whether the moving party was diligent in pursuing discovery.” *Id.*

13. Here, the parties have been diligent in pursuing discovery. The parties have completed written discovery and have worked amicably to schedule the depositions required, albeit slightly outside the deadline for completion of depositions.

14. Regarding the expert witness disclosure deadlines, and applying the factors from above, the City first became cognizant of the problem that the March 6th expert witness disclosure deadline posed on or around February 12, 2020, when the expert finding firm notified counsel for the City that the March 6th deadline was a determinative factor for many of the potential experts it contacted. Second, the opinions and evidence the City’s experts will present could have a material impact on the ultimate determination of the issue in this case. The City seeks modification of the Decree based, in large part, on the change of circumstances with modern day law enforcement agencies’ use of technology and information-sharing. It is respectfully submitted that the Court should hear from the City’s experts, *inter alia*, as to the best practices for a modern law enforcement agency and the importance of the use of particular technologies for law enforcement agencies. Third, the discovery period for this litigation has necessarily been compressed due to the June 17, 2020 trial date, and a slight extension with regard to two aspects of the Modification Scheduling Order will not delay the trial of the case in any way or prejudice the ACLU-TN. Fourth, the City has not been dilatory, and it has been actively conducting its search for expert witnesses for several weeks. The City’s preferred expert witness candidates, however, are unable to accept the engagement under the current disclosure deadline.

For these reasons, the City respectfully requests that the Court amend the Modification Scheduling Order by extending the deadlines for the parties to file expert witness information and extending the deposition completion deadline as outlined above. A proposed order is submitted.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/ Mark Glover

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CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.2(a)(B), on February 18, 2020, counsel for the City, Jennie Silk, exchanged emails with Mandy Floyd and Tom Castelli, counsel for Intervening Plaintiff, regarding the relief sought in this motion. Intervening Plaintiff does not oppose the relief sought in this Motion.

s/ Mark Glover

Mark Glover

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February 2020, a copy of the attached pleading was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system to all counsel of record.

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s/ Mark Glover _____