

ENDORSEMENT ORDER ON PENDING MOTIONS IN WALLACE V. BERRYHILL, 17 CV 672 (JGM)

3/8/2018 – On February 13, 2018, defendant filed the pending Motion to Strike Plaintiff's Brief and Statement of Facts (Dkt. #23) on grounds that plaintiff's filings on January 8, 2018 (see Dkt. #21) exceed the page limits set forth in this Court's Standing Scheduling Order (Dkt. #5). Ten days later, plaintiff filed his brief in opposition (Dkt. #24), and on February 27, 2018, defendant filed a reply brief. (Dkt. #25). On March 5, 2018, the parties filed a Consent Motion to Stay briefing on the substantive motions pending resolution of the Motion to Strike. (Dkt. #26).

The Court's Standing Scheduling Order, filed on April 24, 2017 (Dkt. #5), states:

except by permission of the Court, briefs or memoranda of law shall not exceed forty (40) pages. . . . Additionally, to expedite the Court's consideration of these motions, the parties must make a good faith attempt to **stipulate to the facts**. This stipulation should be filed along with Plaintiff's motion. In the event that a stipulation of facts cannot be reached, Plaintiff's memorandum shall contain, in narrative form, a **medical chronology with record citations** . . . .

(Dkt. #5, ¶¶ III(a), (e))(emphasis in original). In this case, rather than filing a Joint Stipulation of Facts along with his motion, plaintiff filed a separate thirty-six page "Proposed Statement of Facts[.]" (Dkt. #21-1). Plaintiff contends that "a disagreement as to the facts of the Record is quite unlikely." (Dkt. #24, at 2). Therefore, plaintiff argues, "[i]ndeed, the time to determine whether the facts are stipulated is when the Commissioner files her Motion." (*Id.*). However, that is not what this Court ordered in the Standing Scheduling Order.

Pursuant to the Standing Scheduling Order the "parties must make a good faith attempt to stipulate to the facts." (Dkt. #5, ¶ III.(e) (additional emphasis added)). Only "[i]n the event that a stipulation of facts cannot be reached[]" is it appropriate for a "Plaintiff's memorandum [to] contain, in narrative form, a medical chronology[.]" (*Id.*). Plaintiff's decision to choose the route of filing a separate medical chronology with the expectation that defendant will agree to the content in its Motion to Affirm renders meaningless the requirement for the parties to make a good faith attempt to stipulate to the facts prior to the filing of plaintiff's motion. (*Id.*).

Accordingly, the defendant's Motion to Strike (Dkt. #24) is granted to the extent that the parties shall file a Joint Stipulation of Facts **on or before March 23, 2018**, or, in the event that a stipulation cannot be reached, plaintiff shall include in his memorandum, subject to the forty-page limitation, a relevant medical chronology with record citations. In light of the foregoing, the parties' Consent Motion to Stay (Dkt. #26) is granted to the extent that defendant's dispositive motion, which was due on March 6, 2018, shall be filed on or before April 6, 2018.