

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

ROYCE GARNER; and  
GLADYS GARNER,

Plaintiffs,

v.

UNITED STATES OF AMERICA; and  
MCG HEALTH, INC. n/k/a  
AU MEDICAL CENTER, INC.,

Defendants.

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CV 117-086

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**O R D E R**

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On July 25, 2017, Plaintiffs initiated this action against Defendants United States of America, the Board of Regents of the University System of Georgia ("BOR"), MCG Health, Inc. n/k/a AU Medical Center, Inc. ("AUMC"), and Eric Zevallos, M.D. (Doc. 1.) On August 24, 2017, BOR and Dr. Zevallos filed a motion to dismiss. (Doc. 10.) On October 5, 2017, Plaintiffs filed a notice of voluntary dismissal without prejudice regarding BOR and Dr. Zevallos. (Doc. 18.) On November 1, 2017, the Court found that Plaintiffs' notice of dismissal was proper and directed the Clerk to remove BOR and Dr. Zevallos from this case. (Doc. 22.)

On November 21, 2017, AUMC moved for summary judgment on the grounds that Dr. Zevallos was neither an agent nor an employee of AUMC and that it was not otherwise vicariously

liable for his actions or omissions. (Doc. 27.) That same day, AUMC moved to stay any discovery against it pending the resolution of its summary judgment order. (Doc. 28.) Plaintiffs filed their responses to Defendant AUMC's motion to stay discovery and motion for summary judgment on December 5 and 12, 2017, respectively. (Docs. 30, 31.) Therein, Plaintiffs argue that discovery against Defendant AUMC is necessary for Plaintiffs to "raise a reasonable, palpable, and meaningful defense against Defendant [AUMC]'s Motion for Summary Judgment . . . ." (Doc. 30, at 5; see also Doc. 31, at 2 ("Pursuant to O.C.G.A. § 51-2-5.1, Plaintiffs will show that Dr. Zevallos was an agent of AUMC because AUMC exercised a right of control over the time, manner, or method in which Dr. Zevallos performed services. Without discovery Plaintiffs do not have access to the information necessary to make this showing.")) On January 17, 2018, the United States Magistrate Judge granted AUMC's motion to stay discovery pending the resolution of its motion for summary judgment, but deferred to the undersigned on "the issue of whether to allow limited discovery under Rule 56(d)(3) prior to a summary judgment ruling." (Doc. 32.)

On January 22, 2018, the United States of America filed a motion to stay due to lapse of appropriations, which the Court granted that same day. (Docs. 34, 35.) On February 5, 2018, Plaintiffs and the United States of America filed a joint motion to vacate stay and to amend scheduling order. (Doc. 36.)

Therein, Plaintiffs and the United States of America request:  
(i) the stay imposed by the Court's Order dated January 22, 2018 (doc. 35) be vacated; and (ii) to amend the Scheduling Order previously entered in this matter on November 3, 2017 (doc. 24).  
(Doc. 36.)

Upon due consideration, **IT IS HEREBY ORDERED** that the motion to dismiss filed by Defendants BOR and Dr. Zevallos (doc. 10) is **DENIED AS MOOT**. **IT IS FURTHER ORDERED** that the **DISCOVERY STAY** imposed with respect to Defendant AUMC by the Magistrate Judge's Order dated January 17, 2018 (doc. 32) is **VACATED IN PART** and Plaintiffs may seek discovery from Defendant AUMC with regard to the limited issues of whether Dr. Zevallos was an employee or agent of Defendant AUMC and whether Defendant AUMC is otherwise vicariously liable for the actions or omissions of Dr. Zevallos. **IT IS FURTHER ORDERED** that Plaintiffs **SHALL** file their substantive response to Defendant AUMC's motion for summary judgment **on or before May 4, 2018**. **IT IS FURTHER ORDERED** that Plaintiffs and the United States' joint motion to vacate and amend (doc. 36) is **GRANTED** and the Court **VACATES** the **TEMPORARY STAY** imposed in this matter by the Order dated January 22, 2018 (doc. 35). **IT IS FURTHER ORDERED** that the Scheduling Order previously entered in this matter on November 3, 2017 (doc. 24) is **AMENDED** as follows:

LAST DAY TO FURNISH EXPERT WITNESS  
WITNESS REPORT BY DEFENDANTS

February 21, 2018

CLOSE OF DISCOVERY

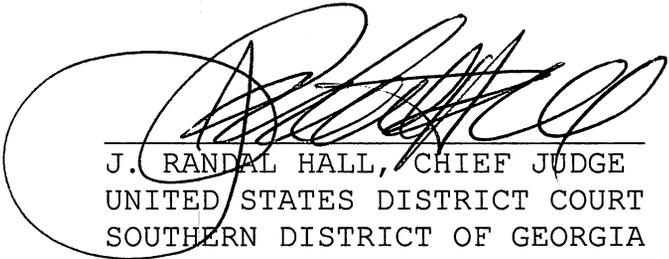
May 3, 2018

LAST DAY FOR FILING CIVIL MOTIONS  
INCLUDING *DAUBERT* MOTIONS, but  
EXCLUDING MOTIONS IN LIMINE

June 4, 2018

All other deadlines or other requirements set forth in the Scheduling Order not in conflict with the amendments set forth herein shall remain in full force and effect.

**ORDER ENTERED** at Augusta, Georgia this 7<sup>th</sup> day of February, 2018.



J. RANDAL HALL, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA