

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGÉ A. COLE,

Plaintiff,

Case No. 16-cv-10511

Hon. Matthew F. Leitman

v.

ERIC WILKERSON, *et al.*,

Defendants.

ORDER RESOLVING VARIOUS DISCOVERY MOTIONS

At a hearing on December 13, 2017, this Court heard arguments on the following motions:

- Defendants' Emergency Motion for Protective Order With Regard to Determination of Expert Fees and Scheduling of Expert Depositions (ECF #54) (the "Emergency Motion for Protective Order")
- Plaintiff's Motion to Strike Defendants' Affirmative Defenses Regarding Sudden Emergency and Comparative Fault of Georég Cole or Any Other Individual or Entity Pursuant to F.R.C.P 12(f) (ECF #38) (the "Motion to Strike Affirmative Defenses")
- Defendants' Continuation of Their Motion for an Order Requiring Eugene Cole to Appear and Show Cause Why He Should Not Be Held in Contempt (Doc #35) With Specific Reference to Plaintiff's Unsupported Claim that Defendants' Use of Medical Records from Eugene Cole's PIP Claim File is Somehow Barred by HIPAA (ECF #42) (the "Continued Motion to Show Cause")
- Defendants' Renewed Motion to Compel Plaintiff to Provide Rule 26(a)(2)(B) Reports With Regard to Her Treating/Expert Physicians or to Preclude Them From Testifying at Trial (ECF #49) (the "Renewed Motion to Compel")

- Defendants’ Motion to Set Reasonable Expert Fees (ECF #56) (the “Motion to Set Fees”)¹

For the reasons stated on the record at the hearing on December 13, 2017:

- 1) The Court **DENIES** the Emergency Motion for Protective Order (ECF #54) to the extent it seeks to require Plaintiff to provide expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2)(B). The Court **DISMISSES AS MOOT** the Emergency Motion for Protective Order (ECF #54) to the extent it seeks any other relief.
- 2) The Court **GRANTS** the Continued Motion to Show Cause (ECF #42) to the extent it seeks to require Eugene Cole to appear at a continued deposition and to answer questions regarding his medical records. The Court **DENIES** the Continued Motion to Show Cause (ECF #42) to the extent it seeks any other relief.
- 3) The Court **GRANTS** the Motion to Strike Affirmative Defenses (ECF #38) as to Defendants’ fourth and sixth affirmative defenses. The Court **DENIES** the Motion to Strike Affirmative Defenses (ECF #38) to the extent it seeks any other relief.
- 4) The Court **GRANTS IN PART** and **DENIES IN PART** the Renewed Motion to Compel (ECF #49) as follows:

¹ The Motion to Set Fees was dismissed as moot by stipulated order on December 7, 2017. (See ECF #62.)

- a. Plaintiff is not required, but may elect, to serve expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2)(B) for Dr. Martin B. Kornblum, Dr. Michael S. Meeron, Dr. Eduardo Icaza, Dr. Jack Belen, and Dr. Stephen D. Mendelson.
- b. If Plaintiff declines to serve disclosures under Fed. R. Civ. P. 26(a)(2)(B) for the doctors identified immediately above, they shall: (1) serve a supplemental summary disclosure pursuant to Fed. R. Civ. Pr. 26(a)(2)(C) for Dr. Martin B. Kornblum on or by December 18, 2017 and (2) serve a supplemental summary disclosure pursuant to Fed. R. Civ. Pr. 26(a)(2)(C) for each of the following treating physicians on or by December 27, 2017: Dr. Michael S. Meeron, Dr. Eduardo Icaza, and Dr. Jack Belen. The supplemental disclosures required by this paragraph shall address the concerns raised by the Court during the December 13, 2017 hearing regarding the sufficiency of the previously-served Rule 26(a)(2)(C) disclosures for these doctors.
- c. By not later than December 18, 2017, counsel for Plaintiff shall provide Defendants with a list of all civil actions brought by Plaintiff's counsel in which Dr. Martin B. Kornblum has provided any deposition testimony in the past four years. By not later than January 12, 2018, counsel for Plaintiff shall provide

Defendants with a list of all civil actions brought by Plaintiff's counsel in which the following doctors have provided deposition testimony in the past four years: Dr. Michael S. Meeron, Dr. Eduardo Icaza, Dr. Jack Belen, and Dr. Stephen D. Mendelson.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: December 14, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 14, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764