

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:21-CV-86-FL

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MARK A. SAUNDERS,)
)
 Defendant.)

MEMORANDUM OPINION

This matter is before the court upon the parties’ February 15, 2023, filing of their successive joint report and plan pursuant to Federal Rule of Civil Procedure 26(f). In accordance with the court’s November 28, 2022, memorandum opinion, and upon notice by the parties in their report and plan of a dispute regarding need for ongoing discovery after defendant files a dispositive motion, the court held telephonic conference February 27, 2023. Plaintiff appeared through counsel, Robert J. Atras and Elisabeth M. Bruce, and defendant appeared through counsel, Erik P. Doerring and Elaine R. Jordan. The court memorializes herein certain decisions made on timing of case events.

BACKGROUND

The parties tendered their first joint report and plan for case scheduling October 18, 2022, making mention therein of the completion of the exchange of initial disclosures. The court held a scheduling conference in New Bern November 17, 2022, and it emerged that there was a delay in provision of case information maintained by the Internal Revenue Service (“IRS”). Defendant at

conference advocated the importance of underlying IRS documentation over a period of years to his defenses, and on that basis the court determined that any order establishing dates certain for the purposes of case management would be premature and subject to flux. With the consent of parties, the court ordered plaintiff to obtain and disclose all IRS records relating to defendant Mark A. Saunders on or before December 31, 2022. That decision was memorialized in an opinion entered November 28, 2022. Consistent with the November 28, 2022, memorandum opinion, the parties submitted the instant successive joint report and plan February 15, 2023.

DISCUSSION

At telephonic conference February 27, 2023, the parties confirmed that all IRS records subject of the November 28, 2022, memorandum opinion stated as maintained by plaintiff timely were produced by the government, and that confirmation is now part of the record. Gaps in that documentation, however, were commented upon.

Where plaintiff did not advance some particular prejudice, the court ruled in favor of defendant and allows defendant until **March 15, 2023**, to file amended answer and until **April 14, 2023**, to raise dispositive motion on the discrete basis of an alleged written settlement reflected in a Form 870-AD signed by the parties' representatives. Over plaintiff's objection, discovery is stayed pending decision on defendant's anticipated dispositive motion. Ancillary to a mainline defense of defendant's motion itself the government in its response obviously has opportunity to show that the court would deprive it of a just ruling if it is not allowed to engage in further discovery.¹

¹ If defendant's motion is denied, and the case continues, the court foresees issues raised by the government at conference regarding defendant's written discovery responses to date. The government represented that defendant's responses are incomplete.

SO ORDERED, this the 27th day of February, 2023.

A handwritten signature in black ink that reads "Louise W. Flanagan". The signature is written in a cursive style with a large initial "L".

LOUISE W. FLANAGAN
United States District Judge