

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN DOE MC-1,

Plaintiff,

v.

Case No. 2:20-cv-10568

THE UNIVERSITY OF MICHIGAN,
THE REGENTS OF THE
UNIVERSITY OF MICHIGAN (official
capacity only),

Hon. Victoria A. Roberts
Mag. Elizabeth A. Stafford

Defendants.

**NON-PARTY THOMAS EASTHOPE’S MOTION FOR PROTECTIVE
ORDER AND MODIFICATION OF SUBPOENAS**

Non-party Thomas Easthope (“Mr. Easthope”), by and through his attorneys, Foley & Lardner LLP, respectfully moves this Court, pursuant to Fed. R. Civ. P. 26(b)(2)(C), 26(c) and/or 45, for a protective order limiting depositions sought by Plaintiffs’ subpoenas.

Pursuant to Fed. R. Civ. P. 26(c)(1) and E.D. Mich LR 7.1, on June 19, 2020, Mr. Easthope’s counsel in good faith conferred with Plaintiffs’ counsel in an effort to resolve the dispute without court action, but concurrence in the relief requested was not obtained.

Respectfully submitted,

FOLEY & LARDNER LLP

By: /s/ Jennifer Z. Belveal

Jennifer Z. Belveal (P54740)

Maxwell A. Czerniawski (P78541)

500 Woodward Avenue, Suite 2700

Detroit, Michigan 48226

(313) 234-2700

jbelveal@foley.com

mczerniawski@foley.com

Attorneys for Thomas Easthope

Dated: June 24, 2020

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN DOE MC-1,

Plaintiff,

v.

Case No. 2:20-cv-10568

THE UNIVERSITY OF MICHIGAN,
THE REGENTS OF THE
UNIVERSITY OF MICHIGAN (official
capacity only),

Hon. Victoria A. Roberts
Mag. Elizabeth A. Stafford

Defendants.

**BRIEF IN SUPPORT OF NON-PARTY THOMAS EASTHOPE'S MOTION
FOR PROTECTIVE ORDER AND MODIFICATION OF SUBPOENAS**

TABLE OF CONTENTS

Statement of the Issue Presented..... ii

Statement of Controlling or Most Appropriate Authorities..... iii

Table of Authorities iv

I. Introduction..... 1

II. Statement of Relevant Facts3

 A. The Emergency Motion for the Early Depositions of Mr. Easthope3

 B. The Subpoenas4

 C. Mr. Easthope’s Reasonable Offer to Accommodate the Depositions5

III. Legal Standard7

 A. Federal Rule of Civil Procedure 26.....7

 B. Federal Rule of Civil Procedure 457

IV. Argument8

 A. Mr. Easthope’s Age Alone Is Not Grounds For An Emergency Early Deposition.....8

 B. Good Cause Exists To Enter A Protective Order Because In-Person Depositions Would Impose An Undue Burden On Mr. Easthope.10

 C. Good Cause Exists To Enter A Protective Order Rescheduling Mr. Easthope’s Depositions Until Critical Discovery Is Produced.....16

V. Conclusion19

STATEMENT OF THE ISSUE PRESENTED

- I. Whether good cause exists for this Court to enter a protective order and modify deposition subpoenas to impose health and safety precautions on, and reschedule the dates of, the depositions of non-party Thomas Easthope where Plaintiffs seek to conduct early, in-person depositions during the Coronavirus pandemic.

Easthope answers “yes.”

Plaintiffs answer “no.”

**STATEMENT OF CONTROLLING OR MOST APPROPRIATE
AUTHORITIES**

- *Gen. Ret. Sys. of the City of Detroit v. Onyx Capital Advisors, LLC*, 2010 WL 2231885 (E.D. Mich. June 4, 2010)
- *Compere v. Nusret Miami, LLC*, 2020 WL 2844888 (S.D. Fla. May 7, 2020)
- *Damron v. Liberty Mut. Ins. Co.*, 2020 WL 3071850 (E.D. Mich. June 10, 2020)
- Fed. R. Civ. P. 26(c)(1)
- Fed. R. Civ. P. 45(d)(3)(A)(iv)

TABLE OF AUTHORITIES

Cases

American Electric Power Co. Inc. v. United States, 191 FRD 132, 136 (S.D. Ohio 1999).....8

Baker v. Royce, No. 1:14-cv-14035, 2015 WL 13584586, at *2 (E.D. Mich. June 26, 2015).....8

Cashland Inc. v. Cashland Inc., No. CIV-15-800-W, 2016 WL 6916776, at *1 n.4 (W.D. Okla. Jan. 14, 2016)9

Chemical & Indus. Corp. v. Druffel, 301 F.2d 126, 129 (6th Cir. 1962)7

Compere v. Nusret Miami, LLC, No. 19-cv-20277-SINGHAL/McAliley, 2020 WL 2844888, at *2 (S.D. Fla. May 7, 2020)..... 13, 14

Damron v. Liberty Mut. Ins. Co., No. 19-11497, 2020 WL 3071850, at *1-*2 (E.D. Mich. June 10, 2020)13

De Lench v. Archie, No. 18-12549-LTS, 2020 WL 1644226, at *2 (D. Mass. Apr. 2, 2020).....14

Djurdjevich v. Flat Rate Movers, Ltd., No. 17-CV-261 (AJN) (BCM). 2020 WL 2319119, at *2 (S.D.N.Y. May 8, 2020)14

Doe I v. Miles, No. 1:18CV00121-JNP-BCW, 2019 WL 201567, at *1 (D. Utah Jan. 15, 2019)9

Echostar Communications Corp. v. The News Corp. Ltd., 180 FRD 391, 394 (D. Col. 1998)8

Elsherif v. Clinic, No. 18-cv-2998-DWF-KMM, 2020 WL 1441959, at *1 (D. Minn. Mar. 24, 2020).....15

Forest Tire & Auto, LLC v. Catlin Specialty Ins. Co., No. 3:20-CV-72-DPJ-FKB, 2020 WL 1890543, at *3 n. 2 (S.D. Miss. Apr. 16, 2020).....14

Gen. Ret. Sys. of the City of Detroit v. Onyx Capital Advisors, LLC, No. 10-CV-11941, 2010 WL 2231885, at *3 (E.D. Mich. June 4, 2010).....9

Grano v. Sodexo Management, Inc., No. 18cv1818-GPC(BLM), 2020 WL 1975057, at *3 n. 4 (S.D. Cal. Apr. 4, 2020).....14

Hecht v. Pro-Football, Inc., 46 F.R.D. 605, 606 (D.C.D.C. 1969)8

Kleiman v. Wright, No. 18-cv-80176-BLOOM/Reinhart, 2020 WL 1472087, at *2 (S.D. Fla. Mar. 26, 2020).....14

Laethem Equip. Co. v. Deere and Co., No. 05-CV-10113-BC, 2007 WL 2873981, at *4 (E.D. Mich. Sep. 24, 2007).....7

Manley v. Bellendir, No. 18cv-1220-EFM-TJJ, 2020 WL 2766508, at *3 (D. Kan. May 28, 2020).....14

McCluskey v. Belford High School, No. 2:09-14345, 2010 WL 2696599, at *1 (E.D. Mich. June 24, 2010)8

Michael v. Estate of Kovarbasich by & Through Marano, No. 1:14-cv-212, 2015 WL 13757325, at *2 (N.D.W. Va. Apr. 10, 2015).....9

Planned Parenthood of Great Northwest and the Hawaiian Islands v. Wasden, No. 1:18-CV-00555-BLW, 2020 WL 1976641, at *4 (D. Idaho Apr. 24, 2020)14

Plumbers Local 98 Defined Benefit Pension Fund v. Oakland Contracting Co., No. 19-12610, 2019 WL 5068471, at *1 (E.D. Mich. Oct. 9, 2019)16

SAPS, LLC v. EZCare Clinic, Inc., No. 19-11229, 2020 WL 1923146, at *1-*2 (E.D. La. Apr. 21, 2020).....14

Sky Angel U.S., LLC v. Nat’l Cable Satellite Corp., 296 F.R.D. 1, 2 (D.C.D.C. 2013)8

United States v. Hames, No. 5:18-cv-01055-CLS, ___ F. Supp. 3d ___, *6 (N.D. Ala. Apr. 3, 2020)..... 13, 14

Waters, Cafesjian Family Found., Inc. v. Waters, No. 12-648 (RHK/LIB), 2012 WL 12925068, at *2 (D. Minn. June 27, 2012).....10

Wilson v. Williams, No. 20-3447, ___ F.3d ___, 2020 WL 3056217, at *1 (6th Cir. June 9, 2020).....12

Rules

Fed. R. Civ. P. 26(c)(1)..... 7, 8, 16

Fed. R. Civ. P. 45(d)(3)(A)(iv)8

I. INTRODUCTION

Plaintiffs in multiple actions before this Court allege, *inter alia*, that Dr. Robert Anderson (“Anderson”) sexually assaulted them during his employment as a physician with the University of Michigan (“the University”). Thomas Easthope (“Mr. Easthope”) is not a party to the litigation. Mr. Easthope served in the University’s Office of the Vice President of Student Services from 1970 to 1988 and is now 87 years old. Based on his prior employment, Mr. Easthope is the target of two subpoenas, pursuant to which Plaintiffs¹ seek to depose him, in person, twice within one week, in mid-July. Mr. Easthope respectfully requests that this Court enter a protective order and modify the subpoena *duces tecum* and the subpoena *de bene esse* (together, the “Subpoenas”) based on the undue burden that they pose on Mr. Easthope in light of the global Coronavirus pandemic and the procedural posture of the litigation. Mr. Easthope is more than willing to cooperate as a third-party witness in the litigation, but there is no reason to rush his depositions at unreasonable risk and inconvenience to him.

¹ Counsel for Plaintiff initially issued the Subpoenas under a single case number, 2:20-cv-10568, and has issued no subpoenas for any of the myriad other plaintiffs counsel represents. The Miller Law Firm, P.C. served additional subpoenas by Plaintiff John Doe in Case No. 2:20-cv-10629 on June 23, 2020. Although the case caption reflects the case number of the initial Subpoenas, counsel for Mr. Easthope proceeds, in light of the terms of this Court’s June 10, 2020 Stipulation and Order, on the basis the Subpoenas extend to more than John Doe MC-1. As counsel will expand upon *infra*, these proceedings would benefit from clarification of the scope of the Court’s June 10, 2020 Stipulation and Order, including whether it binds additional parties that filed actions after its issuance.

The Subpoenas command Mr. Easthope to attend two depositions in person. As Plaintiffs repeatedly stressed in their emergency motion to depose Mr. Easthope – which Plaintiffs propounded without notice to Mr. Easthope – Mr. Easthope is 87 years old. (Case No. 2:20-cv-10568, ECF No. 16, PageID 172.) By all accounts, Michigan is in the throes of the Coronavirus pandemic, which has disproportionately harmed older persons. Due to his age, Mr. Easthope is especially at risk of potentially fatal complications arising from exposure to the Coronavirus, although he is otherwise in good health. Requiring Mr. Easthope to attend two eight-hour depositions in conference rooms full of more than a dozen attorneys poses an undue burden in the form of a serious risk to Mr. Easthope’s life.

Moreover, this litigation is in its infancy. Discovery has not yet begun. With critical discovery impending in the near future, taking Mr. Easthope’s depositions at this point would only ensure that he will be deposed yet again – for both discovery and trial preservation – in just a few short months. Once substantial discovery has been produced (such as the University’s forthcoming production of documents and the release of the report of the independent investigation), Plaintiffs’ counsel will be clamoring to take Mr. Easthope’s deposition for the third and fourth times – presumably again in-person, again endangering Mr. Easthope’s wellbeing. Indeed, it is not even clear whether counsel representing all of the

Plaintiffs are aware of, and participating in, the current effort to depose Mr. Easthope so soon, which increases the risk that Mr. Easthope will be unnecessarily burdened if the depositions are not postponed for a short while.

On June 19, 2020, counsel for Mr. Easthope sent a letter to Plaintiffs' counsel outlining the health risks and burdens posed by the unilaterally scheduled depositions. The letter explained that Mr. Easthope is in good health and has no known memory problems. Rather than stonewall the attempt to depose Mr. Easthope, the letter invited a dialogue with Plaintiff's counsel proposing that the depositions be scheduled in a manner to alleviate the health and safety concerns, as well as the undue burden, posed by the Subpoenas. Plaintiffs' counsel has refused to address Mr. Easthope's valid concerns or consider reasonable accommodations, and instead contentiously suggested moving for contempt sanctions.

Mr. Easthope thus respectfully requests that this Court enter a protective order requiring that any deposition of Mr. Easthope be conducted remotely via video, and be rescheduled to a later date, to avoid needless duplication of effort and risk to Mr. Easthope's health.

II. STATEMENT OF RELEVANT FACTS

A. The Emergency Motion for the Early Depositions of Mr. Easthope

Unbeknownst to Mr. Easthope, on April 17, 2020, Plaintiffs filed an *Emergency Motion for Leave to Take the Deposition and Preserve the Testimony*

of Tom Easthope Prior to the Parties' Fed. R. Civ. P. 26(f) Conference (the "Emergency Motion"). (2:20-cv-10568, ECF No. 16, PageID 165.) The emergency motion was based entirely on Mr. Easthope's advanced age, without regard to his actual health status or the Coronavirus pandemic.

On June 10, 2020, this Court entered a Stipulation and Order – again, without the knowledge or participation of Mr. Easthope – permitting Plaintiffs to conduct discovery and trial preservation depositions of Mr. Easthope in July 2020 (the "Stipulation and Order"). (Case No. 2:20-cv-10568, ECF No. 48, PageID 1104.) The parties agreed that "no further deposition of Mr. Easthope will be allowed in any lawsuits related to the Dr. Anderson litigation, absent a showing of good cause based only upon information (1) obtained or obtainable after completion of the last deposition and (2) that plaintiffs could not have known about at the time of the last deposition." (*Id.*, PageID 1106.) The Court cautioned that the parties must "recognize that Mr. Easthope is a non-party with independent legal rights who is not represented by any party or party's attorney." (*Id.*)

B. The Subpoenas

On June 10, 2020, Plaintiffs served a subpoena *duces tecum* for a discovery deposition and a subpoena *de bene esse* for a trial preservation deposition, both dated June 8, 2020, on Mr. Easthope. Copies of the discovery and trial preservation subpoenas are attached hereto as **Exhibit A** and **Exhibit B**,

respectively. The Subpoenas seek the production of documents from Mr. Easthope and command his discovery deposition on July 17, 2020, and his trial preservation deposition on July 24, 2020.

The Subpoenas were served by attorney Mike Cox and bear the same caption as this Motion. Nevertheless, a review of the Court docket indicates that there are approximately 70 cases pending as of this Motion, with at least nine different law firms representing Plaintiffs. While counsel for Mr. Easthope has copied all counsel on correspondence who were listed as a “cc” on the cover letter to the Subpoenas, it is not clear whether all known Plaintiffs’ counsel are aligned with the current efforts to depose Mr. Easthope so early and without proper safety precautions. In fact, on June 23, 2020, another Plaintiff’s counsel sent nearly identical subpoenas to Easthope’s counsel for the same deposition dates asking that counsel accept service, which would constitute service of subpoenas a third time for the same dates. (It is unclear whether the most recent subpoenas were intended to harass Mr. Easthope, or are a byproduct of the disorganization of Plaintiffs.)

C. Mr. Easthope’s Reasonable Offer to Accommodate the Depositions

On June 19, 2020, counsel for Mr. Easthope transmitted a letter (attached hereto as **Exhibit C**) via email to all counsel copied on the Subpoenas’ cover letter. Counsel for Mr. Easthope assured Plaintiffs’ counsel that extending the dates of the depositions likely would not jeopardize Mr. Easthope’s availability as a witness or

his ability to meaningfully participate in the depositions. Counsel for Mr. Easthope offered accommodations to address concerns over the Coronavirus pandemic, to which Mr. Easthope is especially susceptible as an 87-year-old man, by offering his remote participation by video. Counsel further suggested the depositions be conducted in four-hour sessions to ensure Mr. Easthope's comfort and facilitate likely questioning by multiple attorneys. Finally, in light of the University's forthcoming production of documents and the release of the independent investigative report, counsel suggested postponing Mr. Easthope's depositions to ensure they are as productive and comprehensive as possible. In the event Plaintiffs' counsel would not extend the deposition dates, counsel for Mr. Easthope offered to have Mr. Easthope deposed with Coronavirus safety precautions at the soonest possible time after the University's initial production of documents, if Plaintiffs would agree that additional discovery, including the release of the investigative report, would not constitute good cause for further depositions.

Plaintiffs' counsel quickly responded via email (attached hereto as **Exhibit D**). Plaintiffs' counsel did not address the reasonable safety and scheduling compromises proposed by counsel for Mr. Easthope, and appeared to be under the impression that Mr. Easthope was refusing to submit to any depositions whatsoever. Plaintiffs' counsel stated that if Mr. Easthope did not abide by the

Subpoenas or the Stipulation and Order, he would move for contempt sanctions. See **Exhibit D** (“I guess Foley Lardner is above such pesky things as federal subpoenas and court orders. My view is if he does not abide by either, we would move for contempt sanctions.”).

III. LEGAL STANDARD

A. Federal Rule of Civil Procedure 26

This Court possesses broad discretion with regard to granting protective orders. *Chemical & Indus. Corp. v. Druffel*, 301 F.2d 126, 129 (6th Cir. 1962). Rule 26(c) authorizes the Court, for good cause, to “issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). This includes orders “specifying terms, including time and place . . . , for the disclosure of discovery” and “prescribing a discovery method other than the one selected by the party seeking discovery.” Fed. R. Civ. P. 26(c)(1)(B)-(C).

B. Federal Rule of Civil Procedure 45

Subpoenas issued pursuant to Fed. R. Civ. P. 45 are “subject to the general relevancy standard applicable to discovery under Fed. R. Civ. P. 26(b)(1).” *Laethem Equip. Co. v. Deere and Co.*, No. 05-CV-10113-BC, 2007 WL 2873981, at *4 (E.D. Mich. Sep. 24, 2007) (quotations omitted). This Court has the “inherent power to protect anyone from oppressive use of process, even if no oppression is

actually intended.”² *Hecht v. Pro-Football, Inc.*, 46 F.R.D. 605, 606 (D.C.D.C. 1969). Rule 45(d)(3) provides that the issuing court must quash or modify a subpoena that “subjects one to an undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(iv). A party seeking to compel discovery bears the burden of showing good cause. *Baker v. Royce*, No. 1:14-cv-14035, 2015 WL 13584586, at *2 (E.D. Mich. June 26, 2015).

IV. ARGUMENT

A. **Mr. Easthope’s Age Alone Is Not Grounds For An Emergency Early Deposition**

Courts permit discovery prior to a scheduling conference pursuant to Fed. R. Civ. P. 26(d) only upon a showing of good cause. *McCluskey v. Belford High School*, No. 2:09-14345, 2010 WL 2696599, at *1 (E.D. Mich. June 24, 2010). However, “courts tend to find good cause at this early stage only in narrow circumstances, such as where a party seeks information related to the issues of identity, jurisdiction, or venue.” *Sky Angel U.S., LLC v. Nat’l Cable Satellite Corp.*, 296 F.R.D. 1, 2 (D. D.C. 2013).

² Nonparties are entitled to special protection from unduly burdensome discovery requests. *See American Elec. Power Co. Inc. v. United States*, 191 FRD 132, 136 (S.D. Ohio 1999); *see also Echostar Commc’ns Corp. v. News Corp. Ltd.*, 180 FRD 391, 394 (D. Col. 1998) (when a party requests discovery from a non-party, the party “must meet a burden of proof heavier than the ordinary burden imposed under [the Rules]”).

Mr. Easthope's age provides no basis for Plaintiffs to depose him twice within a week before the start of discovery in this matter. Regardless of his age, Mr. Easthope is at no special risk of being unavailable for his depositions. He is in good physical and mental health and has no apparent memory issues. As stated in the Letter from his counsel, Mr. Easthope "reports that he intends to be physically fit for his depositions in a few months." (**Exhibit C**, p. 2.) Plaintiffs have offered no evidence to the contrary, nor any reason other than Mr. Easthope's age, to conduct depositions at this very early stage of litigation.

Courts have consistently denied "deviation from the normal timing of discovery" based on the deponent's age alone. *See, e.g., Gen. Ret. Sys. of the City of Detroit v. Onyx Capital Advisors, LLC*, No. 10-CV-11941, 2010 WL 2231885, at *3 (E.D. Mich. June 4, 2010); *Doe 1 v. Miles*, No. 1:18CV00121-JNP-BCW, 2019 WL 201567, at *1 (D. Utah Jan. 15, 2019) (denying request for expedited discovery where "Plaintiffs' only basis for requesting [it] ... is the allegation that [the witnesses] 'are of advanced age'"); *Michael v. Estate of Kovarbasich by & Through Marano*, No. 1:14-cv-212, 2015 WL 13757325, at *2 (N.D.W. Va. Apr. 10, 2015) ("Plaintiffs' assertion that Mr. Layne's advanced age necessitates an expedited deposition is insufficient, as Plaintiffs presented no indication that Mr. Layne is either physically or mentally infirm."); *Cashland Inc. v. Cashland Inc.*, No. CIV-15-800-W, 2016 WL 6916776, at *1 n.4 (W.D. Okla. Jan. 14, 2016) (refusing early

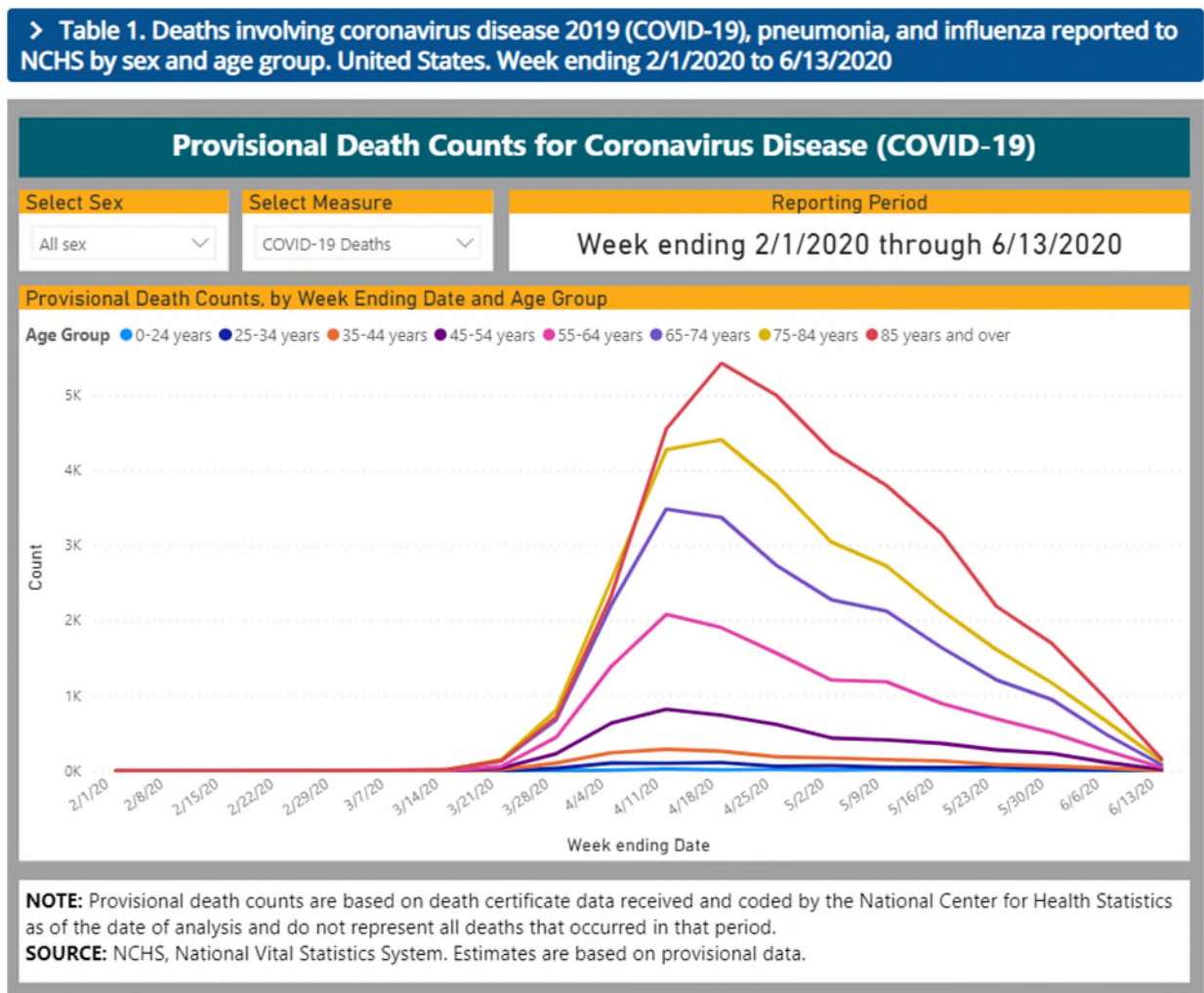
deposition of 71-year-old diagnosed with prostate cancer); *Waters, Cafesjian Family Found., Inc. v. Waters*, No. 12-648 (RHK/LIB), 2012 WL 12925068, at *2 (D. Minn. June 27, 2012) (“Simply relying on the mere fact of Mr. Cafesjian’s age alone to support a request for expedited discovery does not demonstrate good cause.”).

Plaintiffs have offered no reason for this Court to deviate from the normal process of discovery. Mr. Easthope is in good health, has no known memory concerns, and has every intention of being physically and mentally fit for his depositions after discovery is underway. There is no evidence that extending the dates of Mr. Easthope’s depositions for a short period will jeopardize his availability as a witness or his ability to meaningfully participate in the depositions. It therefore will not prejudice Plaintiffs, and this Court should follow the lead of numerous others in rejecting this considerable deviation from normal discovery based solely on Mr. Easthope’s age.

B. Good Cause Exists To Enter A Protective Order Because In-Person Depositions Would Impose An Undue Burden On Mr. Easthope

Although Mr. Easthope’s age alone is no reason to allow an early deposition before any discovery has transpired, it *is* a compelling reason to grant a protective order or modify the subpoenas. The Centers for Disease Control and Prevention (“CDC”) find that “Older adults . . . seem to be at higher risk for developing more

serious complications from COVID-19 illness.”³ CDC data show that people in the 85-plus age group – which includes Mr. Easthope – face the highest incidence of death from COVID-19.⁴



³ *COVID-19 Guidance for Older Adults*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited June 20, 2020).

⁴ *Provisional Death Counts for Coronavirus Disease 2019 (COVID-19)*, Centers for Disease Control and Prevention, https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm (last visited June 20, 2020).

See also Wilson v. Williams, No. 20-3447, ___ F.3d ___, 2020 WL 3056217, at *1 (6th Cir. June 9, 2020) (“COVID-19 fatality rates increase with age Because there is no current vaccine, the [CDC] recommends preventative measures to decrease transmission such as physical distancing”).

For those at especially high risk, such as Mr. Easthope, the CDC’s principal recommendation for limiting exposure to Coronavirus is to minimize the extent, length, and proximity of indoor interactions with others:

In general, the more closely you interact with others and the longer that interaction, the higher the risk of COVID-19 spread

Interacting with *more* people raises your risk

Keeping distance from other people is especially important for people who are at higher risk for severe illness, such as older adults and those with underlying medical conditions

Indoor spaces are more risky than outdoor spaces where it might be harder to keep people apart and there’s less ventilation

Spending *more time* with people who may be infected increases your risk of becoming infected

Choose places where there is limiting sharing of items and where any items that are shared are thoroughly cleaned and disinfected between uses⁵

⁵ *Deciding to Go Out*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html> (last visited June 20, 2020) (emphasis in original).

Spending eight hours with a gaggle of attorneys passing around deposition exhibits in a conference room with stale circulating air – *twice in the span of a week* – is the antithesis of precaution in the midst of a deadly pandemic to which Mr. Easthope is especially vulnerable. As one court recently put it, “insist[ing] only on in-person depositions . . . is divorced from common sense and the unfortunate reality of the times.” *Compere v. Nusret Miami, LLC*, No. 19-cv-20277-SINGHAL/McAliley, 2020 WL 2844888, at *2 (S.D. Fla. May 7, 2020). Instead, courts must “balance the interests of all [parties] . . . in proceeding with discovery as expeditiously as may be possible in these unusual days, in which proceedings in both state and federal courts have been delayed by the need to protect against the pandemic spread of the Coronavirus Disease (COVID-19).” *United States v. Hames*, No. 5:18-cv-01055-CLS, ___ F. Supp. 3d ___, *6 (N.D. Ala. Apr. 3, 2020) (extending deposition deadlines).

In countless cases, this Court and other courts across the country have ruled that the unprecedented nature of the Coronavirus pandemic alone is enough to extend the dates of depositions or require that they be taken by video. *See, e.g., Damron v. Liberty Mut. Ins. Co.*, No. 19-11497, 2020 WL 3071850, at *1-*2 (E.D. Mich. June 10, 2020) (denying emergency motion for deposition “in person with all appropriate Covid-19 precautions in place,” and ordering video deposition); *Manley v. Bellendir*, No. 18cv-1220-EFM-TJJ, 2020 WL 2766508, at *3 (D. Kan.

May 28, 2020) (requiring defendant participate in deposition by phone or video to alleviate undue burden posed by COVID-19 risks); *Djurdjevich v. Flat Rate Movers, Ltd.*, No. 17-CV-261 (AJN) (BCM), 2020 WL 2319119, at *2 (S.D.N.Y. May 8, 2020) (ordering all depositions be taken by remote means due to COVID-19 emergency); *Planned Parenthood of Great Northwest and the Hawaiian Islands v. Wasden*, No. 1:18-CV-00555-BLW, 2020 WL 1976641, at *4 (D. Idaho Apr. 24, 2020) (requiring depositions by video upon request of deponents); *Compere*, No. 19-cv-20277-SINGHAL/McAliley, 2020 WL 2844888, at *2; *SAPS, LLC v. EZCare Clinic, Inc.*, No. 19-11229, 2020 WL 1923146, at *1-*2 (E.D. La. Apr. 21, 2020); *Forest Tire & Auto, LLC v. Catlin Specialty Ins. Co.*, No. 3:20-CV-72-DPJ-FKB, 2020 WL 1890543, at *3 n. 2 (S.D. Miss. Apr. 16, 2020) (requiring deposition of defendant via video due to Coronavirus pandemic); *Grano v. Sodexo Mgmt., Inc.*, No. 18cv1818-GPC(BLM), 2020 WL 1975057, at *3 n. 4 (S.D. Cal. Apr. 4, 2020) (noting that remote depositions eliminate the risk of COVID-19 exposure in high-risk populations); *Hames*, ___ F. Supp. 3d at *6; *De Lench v. Archie*, No. 18-12549-LTS, 2020 WL 1644226, at *2 (D. Mass. Apr. 2, 2020) (encouraging parties to use video technology for depositions in light of Coronavirus pandemic); *Kleiman v. Wright*, No. 18-cv-80176-BLOOM/Reinhart, 2020 WL 1472087, at *2 (S.D. Fla. Mar. 26, 2020) (extending deposition dates in light of COVID-19); *Elsherif v. Clinic*, No. 18-cv-2998-DWF-KMM, 2020 WL

1441959, at *1 (D. Minn. Mar. 24, 2020) (“it is hard to imagine a more appropriate showing of good cause to extend the [deposition] deadlines” where deponent was in a high-risk group for COVID-19).

As in *Elsherif*, it is “hard to imagine a more appropriate showing of good cause” than Mr. Easthope’s circumstances. *Id.* at *1. Plaintiffs cannot feign worry for Mr. Easthope’s health in an attempt to demand his early depositions and then eschew concern for the *actual* danger to Mr. Easthope’s health that such in-person depositions would engender. This is the real threat to Mr. Easthope’s health, and this Court should alleviate the undue burden in-person depositions would impose by requiring Plaintiffs to take Mr. Easthope’s depositions remotely by video. Anything less would be “divorced from common sense and the unfortunate reality of the times.” *Compere*, No. 19-cv-20277-SINGHAL/McAliley, 2020 WL 2844888, at *2.

At the same time, Mr. Easthope has suggested the reasonable accommodation that each of his depositions take place over two four-hour days (for a total of four, four-hour sessions), rather than marathon eight-hour deposition sessions. Such an accommodation would ensure Mr. Easthope’s comfort and facilitate questioning by multiple attorneys.

C. Good Cause Exists To Enter A Protective Order Rescheduling Mr. Easthope's Depositions Until Critical Discovery Is Produced

The ordinary rule is that discovery takes place only after parties make a discovery plan and coordinate that plan with the Court. *See* Fed. R. Civ. P. 26(d). In fact, “[t]he Federal Rules of Civil procedure generally require a discovery conference under Rule 26(f) prior to the commencement of discovery.” *Plumbers Local 98 Defined Benefit Pension Fund v. Oakland Contracting Co.*, No. 19-12610, 2019 WL 5068471, at *1 (E.D. Mich. Oct. 9, 2019). This serves to avoid duplicating efforts, protect confidentiality, and conduct discovery in an orderly fashion. These concerns are especially salient in this litigation, where the Stipulation and Order purports to define the terms of Mr. Easthope’s depositions for all parties even as additional plaintiffs and plaintiffs’ counsel continue to join the fray.

Recognizing that Mr. Easthope, as a non-party, faces special burdens arising from discovery, the Stipulation and Order seeks to limit his subjection to repeated depositions. It therefore provides that no further depositions of Mr. Easthope will be permitted after his Discovery and Trial Preparation depositions. (Case No. 2:20-cv-10568, ECF No. 48, PageID 1106.) However, it also contains an exception for good cause that Plaintiffs can easily exploit upon the University’s production of documents and the issuance of the independent investigative report. The current plan to depose Mr. Easthope on July 17 and July 24 unnecessarily

creates the same pitfalls identified in the University's Response to Plaintiffs' Emergency Motion: "[W]ithout some basic coordination, Mr. Easthope could be subject to deposition after deposition concerning the same essential facts[.]" (Case No. 2:20-cv-10568, ECF No. 22, PageID 819.)

The University plans to produce all documents related to the allegations against Anderson on or about June 30, 2020. Counsel for Mr. Easthope must review these documents, as they may relate to Mr. Easthope and arise during his depositions. Due to the Coronavirus pandemic, counsel are working remotely, which demands extra time, effort, and coordination on the part of counsel and Mr. Easthope. Holding Mr. Easthope's depositions on July 17 and July 24 will not allow counsel sufficient time to review the University's production prior to the depositions.

Moreover, the report of the independent investigation into the University's handling of the allegations against Anderson is expected to be released in early Fall. This comprehensive report will almost certainly contain information that Plaintiffs will seek to use in connection with Mr. Easthope's depositions.

Once the University's production and the investigative report are released, Plaintiffs will all but certainly claim they constitute good cause to depose Mr. Easthope a third and fourth time. These documents will likely contain information that will aid Plaintiffs in their depositions of Mr. Easthope, which is all the more

reason to extend the dates of his deposition until they are available. Indeed, Mr. Easthope's counsel offered to make him available for deposition prior to the production of the investigative report and additional discovery *if* Plaintiffs agreed that the forthcoming discovery would not constitute "good cause" to depose him again under the Order. (**Exhibit C**, p. 2.) Plaintiffs refused the stipulation, making Mr. Easthope's third and fourth depositions (if not more), in a matter of a few months, all but certain.

Permitting Plaintiffs to depose Mr. Easthope on July 17 and July 24 – before meaningful discovery and before the release of the report at the center of the investigation – renders the two-deposition limitation in the Stipulation and Order meaningless. Plaintiffs will again try to subject Mr. Easthope to the imposition of in-person depositions that threaten his wellbeing during a global pandemic to which he is acutely susceptible. Extending the deposition dates will also allow additional time for all of Plaintiffs' counsel to participate in the depositions and to avoid subjecting Mr. Easthope to additional depositions. In short, in the spirit of the Stipulation and Order's efforts to alleviate the burdens of discovery on Mr. Easthope as a non-party, this Court should extend the dates of his depositions until after the issuance of the independent investigative report.

V. CONCLUSION

For all of the reasons set forth above, non-party Mr. Easthope respectfully requests that this Court:

- a. Enter a protective order and modify the Subpoenas to require that Mr. Easthope's depositions be conducted remotely by video after the University's production of documents and issuance of the independent investigative report;
- b. Enter a protective order and modify the Subpoenas so that each deposition take place over two four-hour days (for a total of four, four-hour sessions); and
- c. Grant Mr. Easthope such further relief as the Court deems just and appropriate.

Respectfully submitted,

FOLEY & LARDNER LLP
By: /s/ Jennifer Z. Belveal
Jennifer Z. Belveal (P54740)
Maxwell A. Czerniawski (P78541)
500 Woodward Avenue, Suite 2700
Detroit, Michigan 48226
(313) 234-2700
jbelveal@foley.com
mczerniawski@foley.com
Attorneys for Thomas Easthope

Dated: June 24, 2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MICHIGAN
EASTERN DISTRICT OF MICHIGAN DIVISION

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2020, I electronically filed the foregoing **Non-Party Thomas Easthope's Motion for Protective Order** using the ECF System, which will send notification of such filing to all attorneys of record.

/s/ Jennifer Z. Belveal
Jennifer Z. Belveal (P54740)
Maxwell A. Czerniawski (P78541)
500 Woodward Avenue, Suite 2700
Detroit, Michigan 48226
(313) 234-2700
jbelveal@foley.com
mzczerniawski@foley.com
Attorneys for Thomas Easthope

Dated: June 24, 2020

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Date</u>
A	Discovery Deposition Subpoena	June 8, 2020
B	Trial Preservation Deposition Subpoena	June 8, 2020
C	Jennifer Z. Belveal Letter to Michael A. Cox	June 19, 2020
D	David Shea Email	June 19, 2020

EXHIBIT A

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

John Doe MC-1
Plaintiff
v.
The University of Michigan, et al.
Defendant
Civil Action No. 2:20-cv-10568

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Thomas Easthope, 3980 Ridgmaar Sq., Ann Arbor, MI 48104

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
Discovery deposition.

Table with 2 columns: Place (The Mike Cox Law Firm PLLC, 17430 Laurel Park Drive North, Suite 120E, Livonia, MI 48152) and Date and Time (07/17/2020 9:00 am)

The deposition will be recorded by this method: an officer authorized to administer oaths.

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:
See attached Exhibit A for documents to be produced within 14 days of service of this subpoena.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/08/2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of Jackie Cook, Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) John Doe MC-1, et al., who issues or requests this subpoena, are:

Michael A. Cox (P43039) and Jackie Cook (P68781), The Mike Cox Law Firm PLLC, 17430 Laurel Park Dr. N., #120E, Livonia, MI 48152 mc@mikecoxlaw.com, jcook@mikecoxlaw.com (734) 591-4002

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOE MC-1,

Case No. 2:20-CV-10568

Plaintiff,

Hon. Victoria A. Roberts

Hon. Elizabeth A. Stafford

v.

THE UNIVERSITY OF MICHIGAN,
AND THE REGENTS OF THE
UNIVERSITY OF MICHIGAN
(official capacity only),

Defendants.

_____/

PLAINTIFF'S NOTICE OF DISCOVERY DEPOSITION DUCES TECUM
OF THOMAS EASTHOPE

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that in accordance with Fed. R. Civ. P. 26, 30, 34, and 45, and all applicable court and evidentiary rules and law, counsel for Plaintiff John Doe MC-1, and The Mike Cox Law Firm, PLLC and the Shea Law Firm PLLC, will take the DISCOVERY DEPOSITION of THOMAS EASTHOPE at the offices of The Mike Cox Law Firm PLLC, 17430 Laurel Park Drive North, Suite 120E, Livonia, Michigan 48152 or another location in Davisburg, on July 17, 2020 at 9:00 a.m.

The deposition will be recorded by audio, audiovisual, and stenographic means by a certified court reporter and shall continue from day to day until concluded. This deposition will be conducted in accordance with the noted Federal Rules of Civil Procedure and Federal Rules of Evidence, and may be used for all purposes allowed under the rules and law. The deposition will be subject to a protective order to be entered in this lawsuit.

PLEASE TAKE FURTHER NOTICE that the Deponent, Thomas Easthope, is directed to produce within 14 days of service of the subpoena any and all documents requested in the attached **EXHIBIT A**. Deponent may supplement his production, by bringing with him any additional responsive documents to his deposition. Responsive documents will be subject to a protective order to be entered in this lawsuit.

Respectfully submitted,

The Mike Cox Law Firm, PLLC

By /s/ Michael A. Cox

Michael A. Cox (P43039)

Jackie J. Cook (P68781)

Attorney for Plaintiff

17430 Laurel Park Drive North, Suite 120E

Livonia, MI 48152

Telephone: (734) 591-4002

Dated: June 8, 2020

Respectfully submitted,

Shea Law Firm PLLC

By /s/ David J. Shea

David J. Shea (P41399)

Attorneys for Plaintiff

26100 American Dr., Ste. 200

Southfield, MI 48034

Telephone: (248) 354-0224

david.shea@sadplaw.com

Dated: June 8, 2020

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2020, I served the foregoing papers to all counsel of record by email.

THE MIKE COX LAW FIRM, PLLC

/s/ Terry J. Mathews

Legal Assistant

17430 Laurel Park Drive North, Suite 120 E

Livonia, MI 48152

(734) 591-4002

**EXHIBIT A TO JUNE 8, 2020 SUBPOENA TO TESTIFY AT DEPOSITION AND
PRODUCTION OF DOCUMENTS TO**

THOMAS EASTHOPE

DOCUMENT PRODUCTION REQUESTS

Mr. Easthope, by the Court's subpoena, you are directed to produce copies of the documents described below within 14 days of being served with this subpoena by mailing to:

The Mike Cox Law Firm, PLLC
Attn: Mihaela Iosif
17430 Laurel Park Drive North, Suite 120E
Livonia, MI 48152

Also, when you appear for both depositions, please bring copies of any documents that respond to the requests below that you did not previously produce by mailing.

Please produce a complete copy of:

1. Your working files, documents, papers, notes, letters, journals, and communications, related to your discussions with, supervision of, and investigation of Dr. Anderson.
2. Your calendars related to your time as Vice President of Student Life at UM.
3. All communications such as letters or memoranda, between you and Dr. Anderson.
4. All communications with anyone, such as letters or emails related to Dr. Anderson, *sent or received up until the day your responses to this document production request are due and your depositions*, between you and:
 - a. family members, including with your daughter, Mary Jo (Easthope) Desprez, friends, and students;
 - b. your former UM colleagues, superiors, or subordinates;
 - c. persons at UM's Human Resources, Athletic Department, any UM's athletic team coaches and/or staff, UHS, or anyone or any department at UM;
 - d. anyone who reported to you that Dr. Anderson assaulted, sexually abused, and/or "fooled around with" students, including but not limited to, any UM Student Life employee and/or local UM activist;
 - e. any attorneys or representatives from the UM's General Counsel office, and/or any attorneys or representatives from law firms currently or formerly

representing UM, including but not limited to the law firms, Bush Seyferth PLLC, Jones Day, WilmerHale, and/or Steptoe & Johnson; and/or

- f. any other person, including attorneys or representatives of the Michigan Attorney General's Office, members of law enforcement, such as Detective West and/or his colleagues, and/or members of the press.

5. All documentation related to the published acknowledgement of Dr. Anderson's employment at UHS in the preface of Volume III of the annual President's Report of The University of Michigan for 1979-1980.

INSTRUCTIONS AND DEFINITIONS

1. The documents are due within 14 days of being served with this subpoena. You must supplement your production, by bringing with you any additional responsive documents to your depositions, not previously produced.
2. If any document was, but no longer is, in your possession or subject to your control, state its disposition, current location to the best of your knowledge, and current custodian.
3. The documents requested for production shall be produced as they are kept in the normal course of business or they shall be organized and labeled so as to correspond to the categories of the request.
4. Responsive documents and your depositions will be subject to a protective order to be entered in this lawsuit.
5. Privilege. In the event that any document is withheld on the basis of any legal objection or privilege, you shall indicate the following information for each such withheld document:
 - a. the date of the document;
 - b. the general character or type of document (i.e., letter, memorandum, notes of meetings, etc.);
 - c. the identity of the person in possession of the document;
 - d. the identity of the author of the document;
 - e. the identity of the original recipient or holder of the document; and,
 - f. the legal basis including, but not limited to, any legal objection or privilege for withholding the document.

For purposes of this subpoena and deposition notice the following definitions apply:

1. "Communication" or "communications" means any and all forms of written

communication, including but not limited to: letters, notes, emails, text messages, instant messages, social media, messenger services, telegraph, facsimile (“fax”), and for oral communications any and all notes of such communications and/or recordings.

2. “Defendant” or “Defendants” mean The University of Michigan and/or The Regents of the University of Michigan.
3. “Document(s)” means and includes any and all writings, drawings, drafts, graphs, charts, photographs, phono records, video and audio tapes and recordings, e-mails, text messages, computer disks or files, any and all data compilations, notes, and memorandums.
4. “Dr. Anderson” means former UM physician Dr. Robert Anderson.
5. “Regents” means The Regents of the University of Michigan.
6. “UHS” means The University of Michigan’s University Health Services.
7. “UM” means The University of Michigan.
8. “Plaintiff” or “Plaintiffs” mean the John Doe, John Doe MC plaintiffs, and John Doe TF plaintiffs who have filed this lawsuit against UM and the Regents and who may file a related lawsuit against UM and the Regents.
9. “You”, “your,” “yourself” means Thomas Easthope as well as individuals, present and former agents, attorneys, employees, and all other persons acting or purporting to act on behalf of Thomas Easthope.

EXHIBIT B

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

John Doe MC-1
Plaintiff
v.
The University of Michigan, et al.
Defendant
Civil Action No. 2:20-cv-10568

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Thomas Easthope, 3980 Ridgmaar Sq., Ann Arbor, MI 48104

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: Trial preservation video deposition.

Table with 2 columns: Place (The Mike Cox Law Firm PLLC, 17430 Laurel Park Drive North, Suite 120E, Livonia, MI 48152) and Date and Time (07/24/2020 9:00 am)

The deposition will be recorded by this method: an officer authorized to administer oaths.

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See attached Exhibit A for documents to be produced within 14 days of service of this subpoena.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/08/2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk OR Jackie Cook Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) John Doe MC-1, et al., who issues or requests this subpoena, are:

Michael A. Cox (P43039) and Jackie Cook (P68781), The Mike Cox Law Firm PLLC, 17430 Laurel Park Dr. N., #120E, mc@mikecoxlaw.com, jcook@mikecoxlaw.com (734) 591-4002

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:20-cv-10568

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOE MC-1,

Case No. 2:20-CV-10568

Plaintiff,

Hon. Victoria A. Roberts

Hon. Elizabeth A. Stafford

v.

THE UNIVERSITY OF MICHIGAN,
AND THE REGENTS OF THE
UNIVERSITY OF MICHIGAN
(official capacity only),

Defendants.

**PLAINTIFF'S NOTICE OF TRIAL PRESERVATION DEPOSITION
(DE BENNE ESSE & DUCES TECUM)
OF THOMAS EASTHOPE**

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that in accordance with Fed. R. Civ. P. 26, 30, 34, and 45, and all applicable court and evidentiary rules and law, counsel for Plaintiff John Doe MC-1, and The Mike Cox Law Firm, PLLC and the Shea Law Firm PLLC, will take the TRIAL PRESERVATION DEPOSITION of THOMAS EASTHOPE at the offices of The Mike Cox Law Firm PLLC, 17430 Laurel Park Drive North, Suite 120E, Livonia, Michigan 48152 or another location in Davisburg, July 24, 2020 at 9:00 a.m.

The TRIAL PRESERVATION DEPOSITION will be recorded by audio, audiovisual, and stenographic means by a certified court reporter and shall continue from day to day until concluded. This deposition will be conducted in accordance with the noted Federal Rules of Civil Procedure and Federal Rules of Evidence, and may be used for all purposes allowed under the rules and law. The deposition will be subject to a protective order to be entered in this lawsuit.

PLEASE TAKE FURTHER NOTICE that the Deponent, Thomas Easthope, is directed to produce within 14 days of service of the subpoena any and all documents requested in the attached **EXHIBIT A**. Deponent may supplement his production, by bringing with him any additional responsive documents to his deposition. Responsive documents will be subject to a protective order to be entered in this lawsuit.

Respectfully submitted,

The Mike Cox Law Firm, PLLC

By /s/ Michael A. Cox

Michael A. Cox (P43039)

Jackie J. Cook (P68781)

Attorney for Plaintiff

17430 Laurel Park Drive North, Suite 120E

Livonia, MI 48152

Telephone: (734) 591-4002

Dated: June 8, 2020

Respectfully submitted,

Shea Law Firm PLLC

By /s/ David J. Shea
David J. Shea (P41399)
Attorneys for Plaintiff
26100 American Dr., Ste. 200
Southfield, MI 48034
Telephone: (248) 354-0224
david.shea@sadplaw.com

Dated: June 8, 2020

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2020, I served the foregoing papers to all counsel of record by email.

THE MIKE COX LAW FIRM, PLLC

/s/ Terry J. Mathews
Legal Assistant
17430 Laurel Park Drive North, Suite 120 E
Livonia, MI 48152
(734) 591-4002

**EXHIBIT A TO JUNE 8, 2020 SUBPOENA TO TESTIFY AT DEPOSITION AND
PRODUCTION OF DOCUMENTS TO**

THOMAS EASTHOPE

DOCUMENT PRODUCTION REQUESTS

Mr. Easthope, by the Court's subpoena, you are directed to produce copies of the documents described below within 14 days of being served with this subpoena by mailing to:

The Mike Cox Law Firm, PLLC
Attn: Mihaela Iosif
17430 Laurel Park Drive North, Suite 120E
Livonia, MI 48152

Also, when you appear for both depositions, please bring copies of any documents that respond to the requests below that you did not previously produce by mailing.

Please produce a complete copy of:

1. Your working files, documents, papers, notes, letters, journals, and communications, related to your discussions with, supervision of, and investigation of Dr. Anderson.
2. Your calendars related to your time as Vice President of Student Life at UM.
3. All communications such as letters or memoranda, between you and Dr. Anderson.
4. All communications with anyone, such as letters or emails related to Dr. Anderson, *sent or received up until the day your responses to this document production request are due and your depositions*, between you and:
 - a. family members, including with your daughter, Mary Jo (Easthope) Desprez, friends, and students;
 - b. your former UM colleagues, superiors, or subordinates;
 - c. persons at UM's Human Resources, Athletic Department, any UM's athletic team coaches and/or staff, UHS, or anyone or any department at UM;
 - d. anyone who reported to you that Dr. Anderson assaulted, sexually abused, and/or "fooled around with" students, including but not limited to, any UM Student Life employee and/or local UM activist;
 - e. any attorneys or representatives from the UM's General Counsel office, and/or any attorneys or representatives from law firms currently or formerly

representing UM, including but not limited to the law firms, Bush Seyferth PLLC, Jones Day, WilmerHale, and/or Steptoe & Johnson; and/or

- f. any other person, including attorneys or representatives of the Michigan Attorney General's Office, members of law enforcement, such as Detective West and/or his colleagues, and/or members of the press.

5. All documentation related to the published acknowledgement of Dr. Anderson's employment at UHS in the preface of Volume III of the annual President's Report of The University of Michigan for 1979-1980.

INSTRUCTIONS AND DEFINITIONS

1. The documents are due within 14 days of being served with this subpoena. You must supplement your production, by bringing with you any additional responsive documents to your depositions, not previously produced.
2. If any document was, but no longer is, in your possession or subject to your control, state its disposition, current location to the best of your knowledge, and current custodian.
3. The documents requested for production shall be produced as they are kept in the normal course of business or they shall be organized and labeled so as to correspond to the categories of the request.
4. Responsive documents and your depositions will be subject to a protective order to be entered in this lawsuit.
5. Privilege. In the event that any document is withheld on the basis of any legal objection or privilege, you shall indicate the following information for each such withheld document:
 - a. the date of the document;
 - b. the general character or type of document (i.e., letter, memorandum, notes of meetings, etc.);
 - c. the identity of the person in possession of the document;
 - d. the identity of the author of the document;
 - e. the identity of the original recipient or holder of the document; and,
 - f. the legal basis including, but not limited to, any legal objection or privilege for withholding the document.

For purposes of this subpoena and deposition notice the following definitions apply:

1. "Communication" or "communications" means any and all forms of written

communication, including but not limited to: letters, notes, emails, text messages, instant messages, social media, messenger services, telegraph, facsimile (“fax”), and for oral communications any and all notes of such communications and/or recordings.

2. “Defendant” or “Defendants” mean The University of Michigan and/or The Regents of the University of Michigan.
3. “Document(s)” means and includes any and all writings, drawings, drafts, graphs, charts, photographs, phono records, video and audio tapes and recordings, e-mails, text messages, computer disks or files, any and all data compilations, notes, and memorandums.
4. “Dr. Anderson” means former UM physician Dr. Robert Anderson.
5. “Regents” means The Regents of the University of Michigan.
6. “UHS” means The University of Michigan’s University Health Services.
7. “UM” means The University of Michigan.
8. “Plaintiff” or “Plaintiffs” mean the John Doe, John Doe MC plaintiffs, and John Doe TF plaintiffs who have filed this lawsuit against UM and the Regents and who may file a related lawsuit against UM and the Regents.
9. “You”, “your,” “yourself” means Thomas Easthope as well as individuals, present and former agents, attorneys, employees, and all other persons acting or purporting to act on behalf of Thomas Easthope.

EXHIBIT C



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

500 WOODWARD AVENUE, SUITE 2700
DETROIT, MI 48226-3489
313.234.7100 TEL
313.234.2800 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
313.234.7176
jbelveal@foley.com

CLIENT/MATTER NUMBER
125996-0101

June 19, 2020

VIA E-MAIL

Michael A. Cox
The Mike Cox Law Firm PLLC
17430 Laurel Park Drive North, Suite 120E
Livonia, MI 48152
mc@mikecoxlaw.com

Re: *Subpoena Duces Tecum and Subpoena De Benne Esse to Thomas Easthope, dated June 8, 2020, E.D.M.I. Case No. 2:20-cv-10568*

Dear Mr. Cox,

As you know, we represent Thomas Easthope in connection with the above-referenced subpoenas ("Subpoenas"). I write to follow up on my initial letter to you regarding the Subpoenas.

First, Exhibit A to the Subpoenas seeks the production of documents by Mr. Easthope. At this time, and to the best of his knowledge, Mr. Easthope does not possess any documents responsive to the document requests. Mr. Easthope either never created or possessed such documents, or no longer possesses such documents due to their age.

Second, Plaintiffs seek, and by Stipulation and Order agreed, to depose Mr. Easthope twice in the month of July. Specifically, the Subpoenas command Mr. Easthope's appearance for in-person depositions on July 17, 2020 and July 24, 2020. While Plaintiffs stipulated to such depositions with The University of Michigan and The Regents of the University of Michigan (together, the "University"), the arrangements were made without Mr. Easthope's knowledge or involvement. As explained below, we have reservations about subjecting Mr. Easthope to two in-person depositions in July.

As we understand it, the litigation is in its infancy and discovery has not yet begun. Apparently, the University plans to produce documents related to the allegations against Dr. Anderson on or about June 30, 2020. Of course, we would like to review any such documents as they relate to Mr. Easthope in advance of his depositions. Due to the Coronavirus pandemic, counsel are working remotely, and will be conducting all deposition preparation with Mr. Easthope remotely. Remote preparation demands extra time, effort, and coordination on the part of counsel and Mr. Easthope. Holding Mr. Easthope's depositions on July 17 and July 24 will not allow counsel sufficient time to review the University's production prior to Mr. Easthope's depositions.

AUSTIN
BOSTON
CHICAGO
DALLAS
DENVER

DETROIT
HOUSTON
JACKSONVILLE
LOS ANGELES
MADISON

MEXICO CITY
MIAMI
MILWAUKEE
NEW YORK
ORLANDO

SACRAMENTO
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
TALLAHASSEE

TAMPA
WASHINGTON, D.C.
BRUSSELS
TOKYO



FOLEY & LARDNER LLP

June 19, 2020

Page 2

Further, we have been advised that the independent investigation into the University's handling of the allegations against Dr. Anderson is expected to be released in the early Fall of this year. Surely, counsel for Plaintiffs will want to use information in the report, as well as any other relevant information obtained in discovery, in connection with the depositions of Mr. Easthope. The June 10, 2020 Stipulation and Order provides that after Mr. Easthope's discovery and trial preservation depositions, no further depositions of Mr. Easthope will be permitted except for good cause shown. Absent agreement that neither the investigative report nor any other information obtained through case discovery shall constitute "good cause" for deposing Mr. Easthope again under the Stipulation and Order, we propose that his depositions be conducted after the release of the report and written discovery has been exchanged. Delaying Mr. Easthope's depositions for a short while will avoid subjecting Mr. Easthope to four depositions over the span of a few months.

We are cognizant that you may desire to expedite Mr. Easthope's depositions in light of his advanced age. Mr. Easthope is in good health and has no known memory problems. He reports that he intends to be physically fit for his depositions in a few months. There is no evidence that extending the dates of his depositions for a short period will jeopardize Mr. Easthope's availability as a witness or his ability to meaningfully participate in the depositions. Nevertheless, due to Mr. Easthope's age, he is acutely at risk of potentially fatal complications arising from exposure to the Coronavirus. In order to protect Mr. Easthope's health, we respectfully request that Mr. Easthope's depositions be taken remotely by video. We also suggest breaking each deposition into two four-hour sessions over two days, rather than a single eight-hour day, to be most effective and avoid overtaxing Mr. Easthope.

We are available to discuss the rescheduling of Mr. Easthope's depositions, and look forward to coordinating reasonable, efficient, and safe logistical arrangements for all interested parties.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Belveal'.

Jennifer Z. Belveal

cc: Stephen Cowen (via email: scowen@jonesday.com)
David Shea (via email: david.shea@sadplaw.com)
Ruth Carol Carter (via email: ruth.c.carter@gmail.com)
E. Powell Miller (via email: epm@millerlawpc.com)
Todd Flood (via email: tflood@floodlaw.com)
Richard W. Schulte (via email: rschulte@yourlegallhelp.com)

EXHIBIT D

From: David Shea <david.shea@sadplaw.com>
Sent: Friday, June 19, 2020 4:36 PM
To: mc@mikecoxlaw.com
Cc: scowen@jonesday.com; ruth.c.carter@gmail.com; epmlaw@millerlawpc.com; tflood@floodlaw.com; rschulte@yourlegalthelp.com; Belveal, Jennifer Z.; Czerniawski, Maxwell A.
Subject: RE: June 19, 2020 Letter to M. Cox / Thomas Easthope

**** EXTERNAL EMAIL MESSAGE ****

I guess Foley Lardner is above such pesky things as federal subpoenas and court orders.

My view is if he does not abide by either, we would move for contempt sanctions.

D

David J. Shea

Attorney at Law
Shea Aiello, PLLC
26100 American Drive, 2nd Floor
Southfield, MI 48034
(248) 354-0224 -- **OFFICE**
(248) 894-4758 -- **MOBILE**

[Profile / VCard](#)

From: dstewart@foley.com <dstewart@foley.com>
Sent: Friday, June 19, 2020 4:31 PM
To: mc@mikecoxlaw.com
Cc: scowen@jonesday.com; David Shea <david.shea@sadplaw.com>; ruth.c.carter@gmail.com; epmlaw@millerlawpc.com; tflood@floodlaw.com; rschulte@yourlegalthelp.com; JBelveal@foley.com; MCzerniawski@foley.com
Subject: June 19, 2020 Letter to M. Cox / Thomas Easthope

Please see the attached letter sent on behalf of Jennifer Belveal.

Thank you.

Dorene Stewart
Assistant to Jennifer Belveal
Foley & Lardner LLP
500 Woodward Ave., Ste. 2700
Detroit, MI 48226
dstewart@foley.com
(313) 234-2714



The information contained in this message, including but not limited to any attachments, may be confidential or protected by the attorney-client or work-product privileges. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message and any attachments or copies. Any disclosure, copying, distribution or reliance on the contents of this message or its attachments is strictly prohibited, and may be unlawful. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.