

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

John Doe MC-1,

Plaintiff,

v.

The University of Michigan,
the Regents of the University of
Michigan,

Defendants.

Case No. 2:20-cv-10568-VAR-EAS

Hon. Victoria A. Roberts
Magistrate Judge Elizabeth A. Stafford

Master Case Filing

MOTION FOR EXTENSION OF TIME FOR INITIAL PRODUCTION

Because the parties continue to negotiate a proposed protective order and have not yet agreed to terms, Defendants the University of Michigan and the Regents of the University of Michigan (“the University”) hereby move to extend the prior stipulated date for the University’s early production of certain records that contain sensitive information (including victim names). The University stands ready to produce those records within 24 hours after the Court enters a protective order in this litigation.

Pursuant to Local Rule 7.1, on June 29 and 30, 2020, as part of negotiations regarding a proposed protective order, Counsel for the University conferred over the phone and via email with Counsel for John Doe (Case No. 2:20-cv-10629), Counsel

for John Does MC (e.g., Case No. 20-10568), and Counsel for Chuck Christian, et al. (Case No. 20-11294). Plaintiffs agreed to propose that the Court extend the initial production deadline to be “24 hours after the Court’s entry of the protective order in this case,” but they would *only* do so “contingent on” the parties “filing a joint stipulated protective order” by 2:00 p.m. tomorrow. As ought go without saying, the University could not agree to a stipulated extension that is “contingent on” an agreement that may not occur at all, let alone by 2:00 p.m. tomorrow. The University reaffirmed its willingness to produce after a protective order is entered, but that it could not stipulate to an extension with an artificial contingency. While the University continues to negotiate in good faith regarding the terms of the protective order, it could not “obtain concurrence” with respect to an extension of time for the initial production with those parties. *See* E.D. Mich. LCivR 7.1(a)(2)(A).¹

As part of their stipulation concerning the emergency early trial preservation deposition of Mr. Easthope sought by plaintiffs,² the parties previously agreed to “work together on a proposed protective order to submit to the Court” (ECF No. 48 at PageID.1108), and also stipulated that “Plaintiffs’ names shall be covered by the

¹ Counsel for John Does TF (Case No. 20-11170) did not participate in the calls, and the University therefore was “unable to conduct a conference” with those parties. E.D. Mich. LCivR 7.1(a)(2)(B).

² Mr. Easthope’s counsel has since sent correspondence objecting to the timing of the early deposition, and subsequently filed a motion for protective order, (*See* ECF No. 56.), and the Court has directed the parties to meet and confer regarding Mr. Easthope’s objections to the timing of the deposition.

Protective Order” and “depositions should proceed as confidential under the Protective Order.” *Id.*

The parties further agreed that because of the emergency early deposition, the University would produce, *inter alia*, certain records regarding “University of Michigan Police Department Detective Mark West’s investigation into allegations about Dr. Anderson that the University can compile from a reasonable and good faith search” by June 30, 2020. (*Id.* at PageID.1106–07.) The Court’s Order following the stipulation permitted such limited discovery while staying “all other discovery.” (*See id.* at PageID.1131 (“Aside from the discovery described in the Parties’ stipulation, all other discovery shall be stayed until August 31, 2020.”).)

The University does not read the Court’s order to require the early production to occur without a protective order in place. Indeed, the University never contemplated that such a production would occur without a protective order in place, given the sensitive nature of the information at issue. Even so, and out of an abundance of caution while the parties continue to negotiate a protective order or file motions by Friday, July 3 (*see* ECF No. 54 at PageID.1210), the University files this motion because the parties’ stipulation included the June 30 date as the time by which the University would produce the early discovery. (*See id.* at PageID.1107.)

The University has conducted a reasonable and good-faith collection, and it stands ready to produce after a protective order is entered. But because the parties

have been unable to agree to a protective order even as they continue to negotiate, the University cannot produce such records today, June 30, 2020, particularly because the records contain references to the names of victims. Just as the parties have been treating Plaintiffs' names as confidential, the University cannot share records that contain extensive reference to *other* potential victims' names without a protective order in place. The records therefore warrant confidential treatment.

Moreover, the Court has since issued an order indicating that the protective order will protect Plaintiffs' names—so long as they are “revealed to [the University],” “as soon as possible”—and ordered the parties to “work quickly to resolve issues surrounding protective orders.” (*See* ECF No. 54 at PageID.1210.) While the parties remain apart on the terms of a protective order, the University will continue to negotiate in good faith and exchange draft protective orders with Plaintiffs, consistent with the Court's order.

Again, the University is prepared to and commits to producing the records, contemplated in the prior stipulation, that it has collected from a reasonable and good faith search in a tight timeframe during the Covid-19 pandemic and associated government orders that have shut down much of the University.

The University therefore respectfully requests that this Court extend the deadline for which to produce the stipulated-to records to **within 24 hours after this Court enters a protective order governing these records and other information.**

In the alternative, if this Court is inclined to deny the University's motion for an extension of time, the University respectfully requests that this Court enter an order providing that any records produced by the University prior to the Court's entry of a protective order, and information therefrom, must be treated as confidential and not otherwise disclosed, in whole or in part, to any person other than the parties to the litigation, attorneys or staff at the law firms of counsel of record in the litigation, or the parties' retained experts, consultants, or litigation support vendors.

Dated: June 30, 2020

Respectfully submitted,

/s/ Stephanie E. Parker

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