

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARY SMITH, as Administrator of the)
ESTATE OF MARCUS DEON SMITH, deceased,)

Plaintiff,)

v.)

Case No. 1:19CV386

CITY OF GREENSBORO, et al.,)

Defendants.)

**PLAINTIFF'S RESPONSE TO DEFENDANTS' JOINT
MOTION TO STAY DISCOVERY**

Plaintiff, by her undersigned attorneys, responds to Defendants' Joint Motion to Stay
Discovery as follows:

NATURE OF THE MATTER BEFORE THE COURT

Instead of agreeing to a discovery schedule at the parties' Rule 26(f) conference, all of the Defendants, in furtherance of an apparently unified strategy of avoiding discovery concerning their involvement in, and responsibility for, the death of Marcus Smith, (and despite the City's Mayor linking Marcus Smith to George Floyd in her most recent statement¹) have instead moved for an indefinite stay of all discovery until the question of heirship is determined by the Clerk of probate court. This motion rests on the faulty premise that all discovery, the vast majority of which concerns the liability of the ten City and County Defendants and the City of Greensboro and falls on the Plaintiff to conduct, must be halted before it starts because the Defendants, for purposes of evaluating the Plaintiff's damages claim, purportedly need to know whether the parents of Marcus Smith, who now stand as the putative heirs, will be replaced by

¹ See <https://www.wfmynews2.com/article/news/local/greensboro-protests-mayor-vaughan-nancy/83-8beac4a3-a89f-4263-b0be-ca0ca1a4a007>

one or more children who may or may not be determined in a separate probate proceeding to be the legal heirs of Marcus Smith. Without the support of a single case that addresses the circumstances that lie here, or even a cursory attempt to discuss the parameters of the required discovery on individual and municipal liability, the Defendants repeatedly assert that the identity of the heirs is “critical to the development of the remaining claims,” so that “discovery can be conducted in an orderly and efficient manner” (Def. Br. at 3); that the stay would “promote judicial economy, avoid duplicative litigation,” and would be “for the benefit of all parties” (Def. Br. at 3, 5); that commencing discovery now would “create hardship for the defendants” (Def. Br. at 9); and that an indefinite stay would permit the defendants to “begin discovery on an equal footing with the Plaintiffs.” (Def. Br. at 9). Additionally, the Defendants’ team of lawyers invoke the mantra of “potentially unnecessary legal expenses for the City,” as well as the COVID 19 pandemic as additional reasons for delay. (Def. Br. at 9, at n. 2; 11). This motion, itself an all too obvious example of expending unnecessary legal expenses, must be denied so that discovery can commence forthwith.²

STATEMENT OF RELEVANT FACTS

A. The Parties’ Rule 26(f) Conference

Several days prior to the parties’ Rule 26(f) conference, the Defendants communicated their position that the start of discovery should be stayed in light of their pending Rule 12(c) motion for judgment on the pleadings (Dkt. 62). *See* Correspondence attached as Exhibit A. They claimed that it was necessary to wait for a ruling on their Rule 12(c) motion because the ruling would “provide further definition on the remaining claims and parties.” *Id.* Plaintiff explained that a stay was unwarranted because Plaintiff’s response to the Rule 12(c) motion established that the parties were in

² Public records reveal that the City and County have already expended, before discovery has even begun, more than a quarter of a million dollars defending this case.

agreement on the issues raised therein given Plaintiff's clarification that all of the remaining claims in the case are brought by Mary Smith in her official capacity as administrator of the Estate of Marcus Deon Smith (Dkt. 65). *Id.* Accordingly, Plaintiff proposed that discovery commence and proposed a discovery schedule with dates certain. *Id.*

During the Rule 26(f) conference on June 2, 2020, the Defendants persisted in their position that discovery should be stayed, not because of their Rule 12(c) motion, but rather because the issue of heirship which is pending in the probate case should, in their view, be resolved before discovery commences. *Id.* Specifically, they asserted that in order to conduct discovery as to damages, they need to know the identity of the proper heir(s). *Id.* Plaintiff explained that while it may be true that the issue of heirship prevents Defendants from conducting discovery as to one aspect of damages – the pecuniary value of the decedent to the persons entitled to receive the damages recovered – it does not prevent them from conducting discovery related to other aspects of damages, including pain and suffering of the decedent; medical expenses for care, treatment and hospitalization; funeral expenses; and punitive damages. *Id.* Plaintiff further explained that the monetary value of the decedent is a very narrow area of inquiry that can easily be postponed until later in the proposed twelve month discovery period to whenever the Defendants felt that they had sufficient information from the probate case to proceed, and that since the vast majority of discovery in this case will involve liability, not damages, it behooved the parties to begin that discovery now and not waste time and unnecessarily further prolong this case which has already been on file for more than a year. *Id.* The parties reached an impasse, filed separate Rule 26(f) reports, and the Defendants brought the instant motion to stay.

B. Anticipated Discovery on Liability

As detailed below, discovery on liability is Plaintiff's burden to undertake and complete, it will be time consuming, yet focused, and it should therefore begin now.

1. Documentary discovery³

The vast majority of the documentary evidence is in the files of the City and County defendants.⁴ This evidence is detailed in Plaintiff's First Request for Production of Documents, attached as Exhibit C hereto. These documents include all police and EMT reports; interviews of the defendants and other police and county witnesses; any and all documentation concerning any internal investigation(s) done by the GPD, the County, and/or state and prosecutorial authorities; any and all training and other materials concerning the purchase and use of the RIPP Hobble or similar restraining devices; records of any other incidents where such devices were used to hogtie or otherwise restrain arrestees or persons otherwise in custody; records documenting other cases where the GPD or Guilford County EMTs dealt with homeless persons, people in mental crisis or under the influence of drugs; disciplinary and personnel files of all of the Defendants and their supervisors; any and all City Council, Mayoral, City Manager, Police Chief and supervisory police communications and statements about the Marcus Smith case, the Mayoral and City Council decision not to investigate the case, the decision not to prosecute, the use of hogtying devices, and other relevant *inter* and *intra* agency communications; any and all police regulations, directives and other official GPD and County documents concerning, *inter alia*, the

³ The Defendants also assert that discovery should wait until the pandemic recedes in the next few months. This unscientific assertion in fact is counter to the current expert wisdom, which predicts that there will be a second, potentially more deadly wave of infections sometime in the fall. Hence, it makes more sense to move ahead with discovery this summer, as restrictions lift, to do as much discovery, including as many in person face to face depositions as possible, before the second wave hits in October or November. Additionally, the Defendants' assertion, even if proven true, has no relevance to written discovery, or to depositions that can be conducted remotely by video if health precautions so require.

⁴ Plaintiff has already provided the Defendants a medical release that will permit them to access the only documents germane to the case that are not in their possession and control. *See* Correspondence attached as Exhibit B.

use of force; the use of restraints; dealing with persons in mental crisis, under the influence of drugs, or homeless; and the use of restraints while transporting persons.

2. Occurrence witnesses

At present, since Marcus Smith was killed at the hands of the Defendants, the only occurrence witnesses known to the Plaintiff are the ten Defendants. They must be deposed by Plaintiff's counsel.

3. Other Police and County witnesses

Discovery will help to identify these witnesses, who will include, *inter alia*, supervisor(s) of the Defendants, investigating homicide detectives, and/or other investigators. Some or all of these potential witnesses must be deposed by the Plaintiff.

4. Command and other policy level witnesses

These witnesses include former Chief Wayne Scott, current Chief Brian James, former Deputy Chief James Hinson, Mayor Nancy Vaughan, certain City Council members, and GPD and County supervisor(s) in charge of training. They must be deposed by the Plaintiff.

5. Protective Order and Motions to Compel

At the Rule 26(f) conference, the Defendants indicated that they may propose an overly restrictive protective order that may require litigation. Depending on the cooperation, or lack thereof, on the part of the Defendants, motions to compel may also be required to disgorge this relevant information from the Defendants.

ARGUMENT

"A motion to stay discovery is tantamount to a request for a protective order prohibiting or limiting discovery pursuant to Rule 26(c), Fed.R.Civ.P." *Kron Med. Corp. v. Groth*, 119 F.R.D. 636, 637-38 (M.D.N.C. 1988). "The moving party bears the burden of showing good

cause and reasonableness for such an order.” *Id.* “The moving party may not rely upon stereotyped and conclusory statements, to establish good cause; rather, the moving party must present a particular and specific demonstration of fact as to why a protective order staying discovery should issue.” *Wilson v. Slager*, 2016 U.S. Dist. LEXIS 43062, at *8 (D.S.C. Mar. 31, 2016) (internal quotations omitted). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing.” *Id.* “In the context of a request to stay discovery, the moving party must come forward with a specific factual showing that the interest of justice and considerations of prejudice and undue burden to the parties require a protective order and that the benefits of a stay outweigh the cost of delay.” *Id.* (internal quotations omitted). “Rule 26(c)’s good cause requirement creates a rather high hurdle for the moving party.” *Id.*; *see also Medlin v. Andrew*, 113 F.R.D. 650, 653 (M.D.N.C. 1987) (noting the “heavy burden of demonstrating the good cause” for a Rule 26(c) order).

“Motions for a protective order which seek to prohibit or delay discovery are not favored.” *Id.* “In considering such motions, the Court needs to remain mindful of its responsibility to expedite discovery and minimize delay.” *Kron Med. Corp.*, 119 F.R.D. at 637-38. As this Court explained, “[d]isruption or prolongation of the discovery schedule is normally in no one’s interest. A stay of discovery duplicates costs because counsel must reacquaint themselves with the case once the stay is lifted; [m]atters of importance may be mislaid or avenues unexplored; [a] case becomes more of a management problem to the Court when it leaves the normal trial track;” and “[w]hile time may heal some disputes, in others it merely permits more opportunity for festering.” *Id.* “A request to stay all discovery pending resolution of a motion is rarely appropriate where resolution of the motion will not dispose of the entire case.” *Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261, 263-64 (M.D.N.C. 1988).

A court may consider the following factors when deciding whether to stay discovery: (1) the potential prejudice to the non-moving party; (2) the hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicative litigation if the case is in fact stayed. *Brown-Thomas v. Hynie*, 2019 U.S. Dist. LEXIS 34559, at *9 (D.S.C. Mar. 5, 2019).

In seeking an indefinite stay, the Defendants are akin to a very small tail trying to wag a very large dog. This reality is demonstrated when the very standards that the Defendants seek to rely on are examined in light of the actual facts and legal standards set forth above. First, it is hard to discern from the Defendants' boilerplate arguments how they would be harmed by discovery on liability commencing now. As shown above, there are many documents to be disgorged from the Defendants and other agencies, depositions of their clients and other witnesses relevant to Plaintiff's individual and municipal claims to be conducted, and, potentially, motion practice that may be required. None of this is in any way impacted by who Marcus Smith's heirs turn out to be, and must be conducted, in the same way, either now or later. Additionally, this discovery on liability also serves a benefit to the Defendants, as they will learn, as experienced counsel, about the relevant documentary evidence and the strengths and weaknesses of their defenses as discovery on liability proceeds. Conversely, the limited area of damages discovery that may be impacted by who the heir or heirs might be can easily be conducted, if the Defendants so desire, after the question of heirship is resolved. They have already commenced discovery with regard to pain, suffering and medical and hospitalization expenses by obtaining from Plaintiff a release for all such records. *See* Exhibit B.

Second, judicial economy, efficiency and avoiding duplication do not weigh in the Defendants' favor either. It is in the interests of the judiciary to move this most serious case of

police and municipal misconduct along as swiftly as possible so that justice can be served. It would serve those interests and be much more efficient to begin discovery now on the major issues presented - - - individual and municipal liability - - - while giving the Defendants the option of waiting until heirship is determined to conduct the very limited portion of their damages inquiry that they deem to be connected to who the heirs are. There will be no duplication if the Defendants choose to wait; alternatively, if they wish to proceed now with the examination of one or more potential damages witnesses who could later be determined to be an heir - - - let's take Mrs. Smith as an example - - - they can avoid duplication by conducting the portion of the examination, if any, unrelated to heirship now, and reconvene the deposition later to examine her on questions related to heirship if and only if she is determined to be an heir.

Third, the prejudice, on balance, weighs much more heavily against the Plaintiff if the case is indefinitely stayed than if it proceeds on questions of liability and damages not connected to heirship. The Plaintiff-Administrator, Mary Smith, who is the mother of Marcus Smith, is opposed in her quest for justice by the eight law enforcement officers, two EMTs, and the municipality that caused her son's unconstitutional death. These defendants are represented, at public expense, by highly skilled and experienced private lawyers. Hence, the Defendants' claim that an indefinite stay will "level the playing field," and save taxpayers' money does not even remotely apply here. Mary Smith both as administrator, and mother, wants, and is entitled to, a swift and fair resolution of her case. A further delay in the case will unfairly and unnecessarily re-traumatize Mary Smith who will no doubt legitimately conclude that it is yet another attempt by the City of Greensboro to obstruct her pursuit of justice for her son and his estate. Similarly, the Greensboro community, which has also been traumatized by the homicide of Marcus Smith, is entitled to a swift and transparent resolution of this case so that it can seek to heal the public

harm. Hence, a completely unnecessary indefinite stay is highly prejudicial to the Plaintiff, her case, and the Greensboro community at large, while serving no other purpose than to unfairly delay Plaintiff's pursuit of justice.

Moreover, the cases cited by the Defendants are all factually and legally distinguishable, and none of them support the type of relief sought here. *See Stone v. Trump*, 356 F. Supp. 3d 505, 518 (D. Md. 2018) (staying discovery pending the resolution of a dispositive motion); *City of New Castle v. Purdue Pharma L.P.*, 2018 U.S. Dist. LEXIS 119113 (E.D. Pa. July 16, 2018) (staying class action prescription drug case pending its transfer to a federal multidistrict litigation case); *White v. Ally Fin. Inc.*, 969 F. Supp. 2d 451 (S.D. W. Va. 2013) (denying request for stay where the Supreme Court granted certiorari in a case that could affect the court's ruling on a motion to dismiss); *Bernardo v. E. Associated Coal, LLC*, 2009 U.S. Dist. LEXIS 17493, at *3 (N.D.W. Va. Mar. 3, 2009) (staying workers compensation case where a pending parallel proceeding could result in a statutory offset in the amount of the workers' compensation award); *Ashworth v. Albers Med., Inc.*, 229 F.R.D. 527 (S.D. W. Va. 2005) (staying discovery where the government asserted that its criminal investigation of the defendant drug companies could be severely prejudiced by the allowance of discovery in the civil case).

CONCLUSION

The Defendants have not met their "heavy burden" of showing the good cause required for the extraordinary remedy they seek. The prejudice to the Plaintiff, coupled with the Court's "responsibility to expedite discovery and minimize delay," clearly outweighs any de minimus benefit that a stay may provide the Defendants. *See Kron Medical Corp.*, 119 F.R.D at 637-38. Plaintiff respectfully requests that the Court deny Defendants' Joint Motion to Stay Discovery.

Dated: June 15, 2020

Respectfully submitted,

/s/ Graham Holt

Graham Holt

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Attorneys for Plaintiff

CERTIFICATE OF COMPLIANCE WITH WORD COUNT

The undersigned hereby certifies that the foregoing document complies with Local Rule 7.3(d)'s limitation of no more than 6,250 words (excluding captions, signature lines, certificate of service and any cover page or index) as counted by word processing software.

Dated: June 15, 2020

/s/ Graham Holt
Graham Holt

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Graham Holt
Graham Holt

EXHIBIT A

----- Forwarded message -----

From: **Ben Elson** <ben@peopleslawoffice.com>

Date: Mon, May 25, 2020 at 8:48 AM

Subject: Re: Smith v. City of Greensboro, et al.

To: Gray Wilson <gray.wilson@nelsonmullins.com>, <aduncan@mullinsduncan.com>, <chelsea.barnes@nelsonmullins.com>, <lorin.lapidus@nelsonmullins.com>, <hkies@mullinsduncan.com>, <srussell@mullinsduncan.com>

Cc: Graham Holt <gholtpllc@gmail.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>, Christian Snow <csnow@peopleslawoffice.com>

Dear Defense Counsel,

As you know, we need to have a Rule 26(f) meeting by June 3 and file our IPC report within 10 days thereafter. Gray has indicated that defense counsel are working on a draft of the ICP report and will share it with us in the near future. Can you please provide your draft by Thursday, May 28? And please let us know if either May 29, June 1, June 2 or June 3 works for your side to have the Rule 26(f) meeting, and which date you prefer.

Thanks.

Ben

Ben H. Elson
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Chicago, IL 60642
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f: (773) 235-6699
www.peopleslawoffice.com

----- Forwarded message -----

From: **Steve Russell** <srussell@turningpointlit.com>

Date: Wed, May 27, 2020 at 3:19 PM

Subject: RE: Smith v. City of Greensboro, et al.

To: Ben Elson <ben@peopleslawoffice.com>, Graham Holt <gholtpllc@gmail.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>, Christian Snow <csnow@peopleslawoffice.com>

Cc: Gray Wilson <gray.wilson@nelsonmullins.com>, Alan W. Duncan

<aduncan@turningpointlit.com>, chelsea.barnes@nelsonmullins.com

<chelsea.barnes@nelsonmullins.com>, lorin.lapidus@nelsonmullins.com

<lorin.lapidus@nelsonmullins.com>, Hillary Kies <hkies@turningpointlit.com>

Counsel,

A draft of the Rule 26(f) Report is attached for your review. As you will see, we believe that the parties' and Court's resources would be most efficiently used by staying the start of discovery until the Court rules on the pending Rule 12(c) motion, which will provide further definition on the remaining parties and claims. This draft of the report keys the discovery deadlines off of that ruling, which is termed the "Start of Discovery." We have attempted to structure a discovery period that will be long enough to accomplish needed tasks while anticipating there likely will be further COVID-19 disruptions along the way, so that we hopefully can avoid the need to request extensions of the discovery period from the Court. But as we are all experiencing, it is hard to predict what any of our schedules will look like as things change over the next year. A short stay in the near-term will also help to push more of the discovery period to a point in time when travel and meetings hopefully pose less of a risk and logistical challenge than they do right now. We can discuss these issues further at the Rule 26(f) conference, including discussing the preparation of an accompanying motion to stay.

For the conference, our best availability is:

5/29 in the morning

6/1 in the afternoon

6/2 all day

Please let us know what works for you. I will circulate a conference call number once we have the date and time settled. Thank you, and we look forward to discussing the case with you.

- Steve

Stephen M. Russell, Jr.

Turning Point Litigation

Mullins Duncan Harrell & Russell PLLC

300 N. Greene St., Suite 2000

Greensboro, NC 27401

336-645-3323 (d)

----- Forwarded message -----

From: **Ben Elson** <ben@peopleslawoffice.com>

Date: Fri, May 29, 2020 at 9:13 AM

Subject: Re: Smith v. City of Greensboro, et al.

To: Steve Russell <srussell@turningpointlit.com>

Cc: Graham Holt <gholtpllc@gmail.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>,

Christian Snow <csnow@peopleslawoffice.com>, Gray Wilson

<gray.wilson@nelsonmullins.com>, Alan W. Duncan <aduncan@turningpointlit.com>,

chelsea.barnes@nelsonmullins.com <chelsea.barnes@nelsonmullins.com>,

lorin.lapidus@nelsonmullins.com <lorin.lapidus@nelsonmullins.com>, Hillary Kies

<hkies@turningpointlit.com>

Thanks, Steve. As you'll see from our response to your motion, which we just filed, we think the issues raised in your motion are moot and therefore a stay of discovery would be inappropriate. We'll send you a redlined version of your draft Rule 26(f) report later today, and we'll also let you know what day and time works best for us for the conference.

Ben

Ben H. Elson

People's Law Office

1180 N. Milwaukee Ave.

Chicago, IL 60642

p: (773) 235-0070 ext. 116

f: (773) 235-6699

www.peopleslawoffice.com

----- Forwarded message -----

From: **Ben Elson** <ben@peopleslawoffice.com>

Date: Fri, May 29, 2020 at 2:47 PM

Subject: Re: Smith v. City of Greensboro, et al.

To: Steve Russell <srussell@turningpointlit.com>

Cc: Graham Holt <gholtpllc@gmail.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>,

Christian Snow <csnow@peopleslawoffice.com>, Gray Wilson

<gray.wilson@nelsonmullins.com>, Alan W. Duncan <aduncan@turningpointlit.com>,

chelsea.barnes@nelsonmullins.com <chelsea.barnes@nelsonmullins.com>,

lorin.lapidus@nelsonmullins.com <lorin.lapidus@nelsonmullins.com>, Hillary Kies

<hkies@turningpointlit.com>

Counsel,

A new version of your draft Rule 26(f) report with our suggested changes in redline is attached. Let's have our conference on June 2 at 2:00 p.m. central time (3:00 p.m. eastern time). Please confirm that time works for you and let us know if you'd like to conduct the conference by zoom or phone.

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----- Forwarded message -----

From: **Ben Elson** <ben@peopleslawoffice.com>

Date: Wed, Jun 3, 2020 at 8:52 AM

Subject: Re: Smith v. City of Greensboro, et al.

To: Steve Russell <srussell@turningpointlit.com>

Cc: Gray Wilson <gray.wilson@nelsonmullins.com>, Graham Holt <gholtpllc@gmail.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>, Christian Snow <csnow@peopleslawoffice.com>, Alan W. Duncan <aduncan@turningpointlit.com>, Chelsea Barnes <chelsea.barnes@nelsonmullins.com>, Lorin Lapidus <lorin.lapidus@nelsonmullins.com>, Hillary Kies <hkies@turningpointlit.com>

Dear Counsel,

We are writing to memorialize our discussion during yesterday's Rule 26(f) conference related to your proposed stay of discovery, to further explain the basis for our opposition, and to attempt to resolve this issue so we can submit an agreed Rule 26(f) report.

In your email that accompanied your draft of the Rule 26(f) report, you stated, "we believe that the Parties' and the Court's resources would be most efficiently used by staying the start of discovery until the Court rules on the pending Rule 12(c) motion, which will provide further definition on the remaining claims and parties." As we explained during the conference, our response to your Rule 12(c) motion clarifies that all of the remaining claims in the case are brought by Mary Smith in her official capacity as administrator of the Estate of Marcus Deon Smith; none of the remaining claims are being pursued by Mary Smith and George Smith in their individual capacities. Whether the Court denies your motion as moot or grants your motion, the result will be the same -- the parties agree and the Court will recognize that all of the remaining claims against your clients are being pursued by Mary Smith in her official capacity as administrator of the Estate of Marcus Deon Smith and that none of the remaining claims are being pursued by Mary Smith and George Smith in their individual capacities. Thus, it is unnecessary for us to wait for a ruling on your motion before we begin discovery because your need for "further definition on the remaining claims and parties," which was the basis of your request for a stay, has been satisfied.

Nevertheless, during our conference you again advanced your position that discovery should be stayed, not because of your Rule 12(c) motion, but rather because the issue of heirship which is pending in the probate case should, in your view, be resolved before discovery commences. Specifically, you asserted that in order to conduct discovery as to damages you need to know the identity of the proper heir(s). We disagree for several reasons. First, while it may be true that the issue of heirship prevents you from conducting discovery as to one aspect of damages -- the pecuniary value of the decedent to the persons entitled to receive the damages recovered -- it does not prevent you from conducting discovery related to other aspects of damages, including pain and suffering of the decedent; expenses for care, treatment and hospitalization; funeral expenses; and punitive damages. Moreover, the monetary value of the decedent is a very narrow area of inquiry that can easily be postponed until later in the 12 month discovery period to whenever you feel that you have sufficient information from the probate case to proceed. Indeed, the vast majority of discovery in this case will involve liability, not damages, and there is nothing

preventing us from moving forward on that front now. To not do so would waste time and unnecessarily further prolong this case which has already been on file for more than a year. In short, the degree of hardship associated with your being unable to conduct extremely limited discovery related to the decedent's monetary value to his heir(s) is minimal and does not warrant the drastic relief you are seeking, especially balanced against the serious prejudice to plaintiffs that an indefinite delay would entail.

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EXHIBIT B

----- Forwarded message -----

From: **Gray Wilson** <gray.wilson@nelsonmullins.com>
Date: Tue, May 12, 2020 at 1:53 PM
Subject: Smith v. City of Greensboro, et al.
To: gholtpllc@gmail.com <gholtpllc@gmail.com>

Graham, you will recall that we represent the paramedic defendants in the above case. We will likely be asked to produce any medical records of Guilford EMS once discovery in this case commences. Could we have your consent to go ahead and obtain those records from that body, since it employs the two defendants we represent? The parties can of course request further medical records once discovery commences, but it would be helpful of us to acquire just the EMS records now. Let me know, thanks.

----- Forwarded message -----

From: **Graham Holt** <gholtpllc@gmail.com>
Date: Tue, May 12, 2020 at 1:40 PM
Subject: Re: Smith v. City of Greensboro, et al.
To: Gray Wilson <gray.wilson@nelsonmullins.com>
Cc: Ben Elson <ben@peopleslawoffice.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>, Christian Snow <csnow@peopleslawoffice.com>

Gray,

You have my consent to go ahead and obtain medical records from Guilford EMS. In future emails, please copy Ben Elson, Flint Taylor and Christian Snow, who are copied to this email. Thank you.

The Law Office of Graham Holt

P.O. Box 41023
Greensboro, NC 27404
(336) 501-2001
gholtpllc@gmail.com

----- Forwarded message -----

From: **Gray Wilson** <gray.wilson@nelsonmullins.com>

Date: Wed, May 20, 2020 at 2:53 PM

Subject: RE: Smith v. City of Greensboro, et al.

To: Graham Holt <gholtpllc@gmail.com>

Cc: Ben Elson <ben@peopleslawoffice.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>, Christian Snow <csnow@peopleslawoffice.com>

Gentlemen, we are working on an IPC report to the court which defense counsel hope to share with you in the near future for review. In the meantime, I enclose a medical authorization for your review and execution so that all parties can obtain access to the EMS records in this matter. If you could obtain the necessary signature and return this release with a copy of the death certificate attached, we will obtain these records and furnish a copy to all counsel at our expense. At some point, we can also work on a cooperative agreement to produce any other medical records regard plaintiffs' decedent. Thanks.

----- Forwarded message -----

From: **Graham Holt** <gholtpllc@gmail.com>

Date: Thu, May 21, 2020 at 3:22 PM

Subject: Re: Smith v. City of Greensboro, et al.

To: Gray Wilson <gray.wilson@nelsonmullins.com>

Cc: Ben Elson <ben@peopleslawoffice.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>, Christian Snow <csnow@peopleslawoffice.com>

Gray,

I will get the signed authorization to you as soon as possible.

The Law Office of Graham Holt

P.O. Box 41023

Greensboro, NC 27404

(336) 501-2001

gholtpllc@gmail.com

----- Forwarded message -----

From: **Graham Holt** <gholtpllc@gmail.com>

Date: Wed, Jun 10, 2020 at 12:28 PM

Subject: Medical Release

To: Gray Wilson <gray.wilson@nelsonmullins.com>, Ben Elson <ben@peopleslawoffice.com>, Christian Snow <csnow@peopleslawoffice.com>, Flint Taylor <flinttaylor@peopleslawoffice.com>

Gray,

Attached are the Medical Records Release(1 page) and the Certificate of Death(2 pages). Original Medical Records Release is in the mail with a copy of the Certificate of Death.

The Law Office of Graham Holt

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Greensboro, NC 27404

[\(336\) 501-2001](tel:(336)501-2001)

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EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARY SMITH, as Administrator of the)
ESTATE OF MARCUS DEON SMITH, deceased,)

Plaintiff,)

v.)

Case No. 1:19CV386

CITY OF GREENSBORO, et al.,)

Defendants.)

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND
MATERIAL THINGS TO DEFENDANT CITY OF GREENSBORO, JUSTIN PAYNE,
ROBERT DUNCAN, MICHAEL MONTALVO, ALFRED LEWIS, CHRISTOPHER
BRADSHAW, LEE ANDREWS, DOUGLAS STRADER, AND JORDAN BAILEY**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff requests that each Defendant produce documents responsive to the following requests within thirty days of service of this demand. As required by Rule 26(e), Defendants must promptly amend or supplement answers or disclosures within thirty days after additional information or material is acquired.

All documents should be produced in the form, order, and condition that they are in on the day that these document requests are served, including all comments, notes, remarks, or other materials which may have been added to documents subsequent to their initial preparation.

Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Documents not otherwise responsive to a request shall be produced if such documents refer to, relate to, or explain the documents called for in this Request, or if such documents are attached to documents called for in this Request and constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar documents.

If documents are not in your possession but within your control, you are required to comply with the definition and instructions for “control” below. If you object to any request on the grounds of privilege, your response must identify the nature of the responsive information and specify the claimed privilege in a log, consistent with Rule 26(b)(5).

DEFINITIONS

The following definitions and principles shall be deemed to have the meaning set forth herein, and are incorporated herein and throughout this and each succeeding set of discovery requests, if any, as though fully set forth at length, unless expressly stated to the contrary.

- A. The term, “document” includes, without limitation, writings, reports, memoranda, transcripts, docket entries, e-mails, exhibits, drawings, graphs, charts, photographs, phonorecords, tapes, videotapes, computer files, electronic recordings, datebooks, time sheets, logs, electronic or computerized data compilations, and any other data compilation from which information can be obtained, including all metadata. A draft or non-identical copy is a separate document within the meaning of this term.
- B. The term “communication” shall include documents and any oral statements made or transmitted by any person.
- C. The term “person” shall refer to any natural person or persons, and any firm, corporation, association, partnership, or any other form of legal entity, unless expressly stated otherwise.
- D. The term “you” refers to the party to whom these requests for production are propounded, its agents, employees, representatives, and attorneys, and those employed by its attorneys.
- E. “Control” shall be defined so as to apply to any document, if you have the right to secure the document or a copy thereof from another person or public or private entity having actual possession thereof. If a document is responsive to a request for identification or production and is in your control, but is not in your possession or custody, identify the person in possession or custody. If any document was, but is no longer, in your possession or subject to your control, state what disposition was made of it, by whom, and the date or dates or approximate date or dates on which such disposition was made, and why.
- F. Where the term “identify” is used in reference to an individual or person, it includes the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. In reference to a document or writing, the term “identify” calls for a description of the type of document or writing, its general subject matter, the date it bears, the author, the present or last known location, the date of transfer, and the custodian,

including the same identifying information for the custodian as required for all "persons" as set forth in this paragraph above.

REQUESTS FOR PRODUCTION

1. All documents and communications pertaining to the death of Marcus Deon Smith, including but not limited to:
 - a. All police reports and interviews of the defendants;
 - b. All City Council, Mayoral, City Manager, police Chief and supervisory officer files, documents, communications and statements about the Marcus Smith case, the Mayoral and City Council decision not to investigate the case, the decision not to prosecute, the use of hogtying devices, and other relevant *inter* and *intra* agency communications;
 - c. All documentation concerning any internal investigations done by the GPD, Guilford County, and/or state and prosecutorial authorities.
2. All documents and communications pertaining to Marcus Deon Smith, including but not limited to all GPD contacts with Marcus Deon Smith.
3. All documents and communications pertaining to any other incidents where RIPP Hobble or similar restraint devices were used to hogtie or otherwise restrain arrestees or persons otherwise in GPD custody.
4. All documents and communications pertaining to all incidents, from January 1, 2014 to January 1, 2019, in which GPD officers responded to calls involving homeless persons, people in mental crisis, and people under the influence of drugs.
5. The complete personnel and disciplinary files for Defendants Justin Payne, Robert Duncan, Michael Montalvo, Alfred Lewis, Christopher Bradshaw, Lee Andrews, Douglas Strader, and Jordan Bailey, including but not limited to the following categories:
 - a. Job applications;

- b. Any index of allegations of misconduct;
 - c. Complete training records from the time each Defendant entered the Police Academy to the present, including but not limited to all syllabi, course descriptions, records of attendance in any in-house or outside training courses, and training-related evaluations and testing results;
 - d. All documents relating to any internal allegations, complaints, or investigations of police misconduct or criminal activity by each Defendant, whether or not created in connection with a full investigation, and regardless of the disposition of the allegations or complaints;
 - e. All documents relating to any allegations, complaints, or investigations concerning, in any way, each of the Defendants, initiated or conducted by any agency or entity, including but not limited to the Greensboro Police Department, the City of Greensboro, the FBI, any District Attorney's Office or United States Attorney's Office, or any inter-agency task force;
 - f. Any and all documents reflecting any criticism, discipline, or remediation, in any form, concerning police misconduct or criminal conduct by each of these defendants.
 - g. Any and all use of force reports and reviews of use of force.
6. All documents and communications relating to any psychological treatment or counseling of Defendants Justin Payne, Robert Duncan, Michael Montalvo, Alfred Lewis, Christopher Bradshaw, Lee Andrews, Douglas Strader, and Jordan Bailey related to their employment with the GPD, including but not limited to psychological treatment or counseling they received related to their involvement in the death of Marcus Deon Smith.
7. All documents, communications and GPD policies, practices, and standard operating procedures from January 1, 2014 to the present relating to the use of the RIPP Hobble of similar restraint devices; use of force; dealing with persons in mental crisis; dealing with persons under the influence of drugs; and dealing with persons who are homeless.
8. All documents and communications pertaining to the purchase, maintenance and

control of RIPP Hobble or other similar restraint devices from January 1, 2014 to the present.

9. Any and all videotapes, audiotapes or other recordings of the September 8, 2018 encounter with Marcus Deon Smith.

10. Any and all documents, communications, analyses, reports, files, etc. that deal with or refer to the videotapes, audiotapes or other recordings of the September 8, 2018 encounter with Marcus Deon Smith.

11. All documents and communications that support a claim that any of the defendants acted inconsistently with any of the policies and practices of the GPD at any time during the incident involving Marcus Deon Smith.

12. Any “demonstrative” aids or exhibits, which may be used at trial of this cause. To the extent responsive documents become available prior to the close of the discovery period, please seasonably supplement your Responses.

13. All physical evidence relating to any of the allegations in Plaintiffs’ complaint or the Defendants’ defenses thereto.

Dated: June 15, 2020

Respectfully submitted,

/s/ Graham Holt

Graham Holt

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, I served the foregoing document to all counsel of record by e-mail and U.S. mail.

/s/ Graham Holt
Graham Holt