UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

Civil Action No. 5:17-CV-25-FL

PHIL BERGER, et al.,)
)
Plaintiffs,)
V.) JOINT MOTION OF PLAINTIFFS AND
) FEDERAL DEFENDANTS TO STAY
NORRIS COCHRAN, et al.,) LITIGATION
)
Defendants.)

Plaintiffs and Federal Defendants hereby move the Court to stay this litigation for a period of 60 days to allow time for incoming officials in the new administration to evaluate the issues in this case. While the stay would allow the temporary restraining order to expire as scheduled on January 28, Federal Defendants have agreed that, should State Defendants follow through on their previously announced intention to submit the proposed State Plan Amendments (or any similar proposal seeking to expand Medicaid eligibility) notwithstanding what Plaintiffs contend are violations of N.C. Session Law 2013-5 and federal law, the Federal Defendants will take no action on any such proposal for a period of 89 days other than to review the proposal and request any additional information from the State Defendants that the Federal Defendants determine is necessary for them to complete their review of the proposal. Federal Defendants expressly represent that in no event will the proposal be approved by any federal government agency or official before 89 days have elapsed from the receipt of any submission.

At the end of the 60-day stay of litigation, the parties will file a joint notice (a) alerting the Court whether a live dispute remains in this case, and (b) if there is a live dispute, proposing a new due date for the briefs Defendants otherwise would have been required to file today so that the Court will be in a position to rule on Plaintiffs' motion for a preliminary injunction before Federal Defendants act on any proposed expansion plan.

Plaintiffs' counsel has spoken with counsel for the State Defendants regarding the relief sought in this motion. The Plaintiffs and the Federal Defendants are not aware of the State Defendants' position with regard to the relief sought.

Dated: January 25, 2017

<u>/s/ Nicole J. Moss</u> COOPER & KIRK, PLLC Michael W. Kirk David H. Thompson Peter A. Patterson* Nicole J. Moss (State Bar No. 31958) Haley N. Proctor William C. Marra 1523 New Hampshire Avenue, N.W. Washington, D.C. 20036 (202) 220-9600 (202) 220-9601 nmoss@cooperkirk.com Counsel for Plaintiffs Phil Berger and Tim Moore

**Notice of appearance forthcoming*

<u>/s/James Bickford</u> SHEILA M. LIEBER Deputy Branch Director JOEL McELVAIN Assistant Branch Director JAMES BICKFORD Trial Attorney U.S. Department of Justice Civil Division, Federal Programs Branch 20 Massachusetts Ave., NW Washington, D.C. 20530 202 514-2988 Fax (202) 616-8202 Respectfully submitted,

/s/ Nathan A. Huff PHELPS DUNBAR LLP 4140 ParkLake Avenue, Suite 100 Raleigh, North Carolina 27612 Telephone: (919) 789-5300 Fax: (919) 789-5301 nathan.huff@phelps.com State Bar No. 40626 Local Civil Rule 83.1 Counsel for Plaintiffs Phil Berger and Tim Moore and Tim Moore

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Joel.McElvain@usdoj.gov D.C. Bar No. 448431 Counsel for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which shall send notification of such filing to the following:

John R. Wester David C. Wright, III J. Dickson Phillips, III Adam K. Doerr Erik R. Zimmerman ROBINSON, BRADSHAW & HINSON, P.A. 101 North Tryon Street, Suite 1900 Charlotte, North Carolina 28246 (704) 377-2536 (704) 378-4000 (fax) jwester@robinsonbradshaw.com dwright@robinsonbradshaw.com adoerr@robinsonbradshaw.com

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