

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

YASHICA ROBINSON, M.D, et al.,

Plaintiffs,

v.

STEVEN MARSHALL, et al.,

Defendants.

CIVIL ACTION

Case No. 2:19-cv-365-MHT-SMD

Notice of Stipulated Partial Dismissal of the First Amended Complaint

Per the Court's May 18, 2020 Order (Doc. No. 164), and pursuant to Federal Rule of Procedure 41(a)(1)(A)(ii), the Parties stipulate to a partial dismissal, without prejudice, of claims in the First Amended Complaint (Doc. No. 79) pertaining to the "medical restrictions" language. In support of this Notice, the Parties state as follows:

1. On March 30, 2020, Plaintiffs sought leave to file a Supplemental Complaint (Doc. No. 72) and filed a Motion for Temporary Restraining Order and Preliminary Injunction (Doc. No. 73) against the medical restrictions in the March 27 Order. The Court granted both leave to file an Amended Complaint and a Temporary Restraining Order the same day. Doc. Nos. 78, 83, 145.

2. Following a telephone conference with the Parties, on April 3 the Court modified the Temporary Restraining Order. Doc. No. 111. That same day, the State issued the April 3 Order, which contained the same medical restrictions.¹ Doc. No. 113. The April 3 Order was set to expire at 5:00 p.m. on April 30, 2020. *Id.*

¹ Because the "medical restrictions" language continued in the March 27 Order merged into the April 3 Order, the parties will refer to the April 3 Order as the operative order.

3. The Court conducted an evidentiary hearing on April 6 and granted the Preliminary Injunction on April 12. Doc. Nos. 124, 138. Defendants appealed the Preliminary Injunction on April 13 (Doc. No. 139) and filed a partial Motion to Dismiss on April 27. Doc. No. 156.

4. The April 3 Order expired at 5:00 p.m. on April 30, 2020.

5. On April 28, the State Health Officer issued an order effective April 30, 2020 at 5:00 P.M. until 5:00 P.M. on May 15, 2020, or until rescinded by the State Health Officer. *See* Doc. No. 159-1 ¶¶ 1, 14–15. The April 28 Order contained different language regarding “medical restrictions” than in ¶ 14 of the April 3 Order.

6. Specifically, the April 28 Order permitted “dental, medical, and surgical procedures” to proceed “unless the State Health Officer or his designee determines that performing such procedures, or any category of them (whether statewide or regionally), would unacceptably reduce access to personal protective equipment or other resources necessary to diagnose and treat COVID-19.” *See* Doc. No. 159-1 ¶ 12.

7. On May 8, the State Health Officer issued an order amending the April 30 Order. The May 8 Order is effective until 5:00 P.M. on May 22, 2020 or until rescinded by the State Health Officer. *See* Doc. No. 163, Ex. A ¶¶ 16–17.

8. The May 8 Order contains the same language concerning dental, medical, and surgical procedures as contained in the April 28 Order. *See id.* ¶ 14.

9. The Parties agreed that the April 12 Preliminary Injunction (Doc. No. 138) was moot to the extent it was tied to the pre-existing “medical restrictions” language, which has since been lifted.

10. Accordingly, on May 5, the Parties submitted a joint motion to the Eleventh Circuit, pursuant to Fed. R. Civ. App. 42(b) and 11th Cir. R. 42-1(a), to dismiss Defendants’ appeal (Doc.

No. 139) of the Preliminary Injunction (Doc. No. 138), and to transfer jurisdiction over any claim for attorney's fees on appeal to this Court.

11. That same day, the Eleventh Circuit granted the Parties' motion, dismissed Defendants' appeal of the Preliminary Injunction, and transferred consideration of attorney's fees on appeal to this Court. *See* Doc. No. 161 at 2.

12. Per the Parties' request in the May 15 Joint Status Report (Doc. No. 163), on May 18 this Court ordered that the Preliminary Injunction be dissolved as moot. *See* Doc. No. 165.

13. In that Joint Status Report, Defendants represented that they have no intention at that time to impose restrictions on dental, medical, or surgical procedures in future emergency orders. *See* Doc. No. 163 at 2. Defendants' representation continues to this day.

14. On the basis of Defendants' representation, and pursuant to Federal Rule of Procedure 41(a)(1)(A)(ii), the Parties now stipulate to the dismissal, without prejudice, of those portions of the First Amended Complaint (Doc. No. 79) concerning the medical restrictions language in the now-expired April 3 Order.

15. Specifically, the Parties stipulate to the dismissal of the following claims without prejudice:

- a. The portions of Count I concerning the medical restrictions language in the now-expired April 3 Order, *see* Doc. No. 79 ¶ 129; and
- b. The entirety of Count II, *see id.* ¶¶ 130–31.

16. The Parties intend to discuss whether it will be possible to come to a negotiated agreement on attorney's fees relating to the challenge to the medical restrictions language. To facilitate these discussions, Plaintiffs intend to move for an unopposed extension of time to file a motion for attorney's fees after dismissal as set forth above.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2020, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Middle District of Alabama using the CM/ECF system, thereby serving all counsel of record.

/s/ Randall Marshall

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