

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

MICHAEL SEAN PARTAIN,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

No. 7:23-cv-00110-BO-RJ

RONALD WATTS,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

No. 7:23-cv-00280-BO-RN

KAREN AMSLER,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

No. 7:23-cv-00284-BO

JOHNNY SANDERSON,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

No. 7:23-cv-00285-BO

HARRY JAMES KUCZMA,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

No. 7:23-cv-00294-D

ROBERT NEIL MORIARTY,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

No. 7:23-cv-00297-FL

JEROME M. ENSMINGER,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

No. 7:23-cv-00161-M-RN

JENNIE BROWN,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

No. 7:23-cv-00282-M-RJ

ANDREW HEATH III,)
)
Plaintiff,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)
 _____)
)
FERNANDO PAOLETTI,)
)
Plaintiff,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)
 _____)

No. 7:23-cv-00283-M-RN

No. 7:23-cv-00296-M-BM

**JOINT MOTION FOR COORDINATION OR PARTIAL CONSOLIDATION
AND FOR ISSUANCE OF INITIAL CASE MANAGEMENT ORDER**

The parties, through their respective undersigned counsel and pursuant to Federal Rule of Civil Procedure 42(a), respectfully move the Court for entry of an initial case management order coordinating or partially consolidating these and related matters brought under the Camp Lejeune Justice Act of 2022 (the “CLJA”), and show:

1. The undersigned attorneys for the Plaintiffs herein represent Plaintiffs who have filed suit under the CLJA in the above-captioned matters. The undersigned Plaintiffs’ counsel also state that they represent a significant number of individuals who have filed administrative claims under the CLJA with the United States, and who anticipate filing lawsuits under the CLJA in this Court upon exhaustion of administrative remedies, in due course and as necessary. The undersigned firms also state that they are also local counsel or co-counsel with or otherwise are associated for purpose of this endeavor with numerous other law firms that are also representing

the same or other CLJA clients in connection with claims currently in the administrative claims process before the United States Navy, or that are in the process of being investigated and prepared. Collectively the undersigned Plaintiffs' firms, individually and on behalf of their co-counsel firms, state that they represent thousands of current and prospective Camp Lejeune claimants.

2. The CLJA is a new statute providing a remedy for harm that was caused by exposure to contaminated water supplied by the government at Camp Lejeune, North Carolina. It is anticipated that a large volume of lawsuits will ultimately be filed in this Court alleging claims under the statute.

3. The moving parties respectfully submit that coordination or, alternatively, partial consolidation is appropriate under Fed. R. Civ. Rule 42, and, in keeping with the principles of the Manual for Complex Litigation, affords a superior mechanism to efficiently manage these proceedings. The filed Plaintiffs' cases, the cases filed to date by other Plaintiffs, and the significant number of expected future cases to be filed after administrative remedies are exhausted, implicate multiple common, overlapping, or related issues of law and fact.

4. If the Court is not inclined to consolidate the cases before a single judge, which the United States favors, the parties submit that coordination would allow the Court flexibility in efficiently managing discovery and in providing consistent legal rulings for claims brought under this new statute. This request is both pragmatic and unremarkable, as this Court has previously coordinated other analogous matters. *See, e.g., In re: NC Swine Farm Nuisance Litigation*, No. 5:15-CV-13-BR (coordinating the claims of approximately 500 plaintiffs who had collectively filed 26 lawsuits; three Judges involved in managing).

5. Given the unique nature of the CLJA, and the novelty of the statute likely to give rise to issues of first impression, the parties submit that it will be vitally important to ensure that

present and future-filed Plaintiffs are fairly and adequately represented in any coordinated or consolidated proceedings.

6. It is further critical to ensure that, if possible, fact and expert discovery processes are phased, or staged, such that issues of common import that could have a practical effect on numerous Plaintiffs are resolved in a coordinated, fair, and thorough manner.

7. There have been prior consolidation motions filed by certain other Plaintiffs in this matter. The Court denied those consolidation motions and subsequently dismissed those lawsuits as having been filed prematurely before compliance with administrative remedies.¹ The current motion is being filed in underlying lawsuits that have been timely filed and ripe for filing in this Court, since in each of these cases, the Plaintiff has filed an application for the administrative remedy after passage of the CLJA and at least six months has elapsed since the administrative filing date.

8. The parties are filing this identical motion in cases pending before each of the judges in this District. The parties understand from the Court's rulings on earlier motions that the Court may want each judge to retain a separate docket of CLJA cases.

9. The parties are aware that Judge Dever, by his *sua sponte* Order, dated March 20, 2023, scheduled a status conference in all CLJA cases pending before him to occur on April 5, 2023, and at which the Judge Dever has instructed that topics such as the use of fact sheets and coordination of experts be discussed, as well as other issues. The movants are hopeful that this motion and supporting memorandum may provide additional information for the Court's

¹ *Fancher v. United States*, No. 5:22-CV-315, 2022 U.S. Dist. LEXIS 228319 (E.D.N.C. Dec. 20, 2022) (Dever); *Pugh v. United States*, No. 7:22-CV-124-BO-BM, 2023 U.S. Dist. LEXIS 14691, 2023 WL 1081262 (E.D.N.C. Jan. 27, 2023) (Boyle); *Girard v. United States*, No. 2:22-CV-22-FL, 2023 U.S. Dist. LEXIS 2669, 2023 WL 115815 (E.D.N.C. Jan. 5, 2023) (Flanagan); *Pugh v. United States*, No. 7:22-CV-124-BO-BM, 2023 U.S. Dist. LEXIS 14691, 2023 WL 1081262 (E.D.N.C. Jan. 27, 2023) (Boyle).

consideration, both with respect to the hearing before Judge Dever and for cases pending before Judges Boyle, Flanagan, and Myers.

10. The undersigned respectfully request that this Court initiate the first steps toward the fair and inclusive organization of this matter, including entering an initial case management order coordinating or partially consolidating all now-pending CLJA cases and scheduling a process by which parties can be allowed to make submissions which may inform the Court in determining the next steps in the overall management of the litigation.

11. The undersigned respectfully suggest that as part of any coordination or consolidation process, and in connection with issuing an initial case management order, this Court set forth a process for the submission of proposals for the coordinated or partially consolidated handling of the matter that is transparent, open, and inclusive and that could be followed by a hearing in this regard to ensure fairness and an opportunity to be heard by all affected parties.

12. In further support of this motion, the parties have contemporaneously filed their supporting memorandum of law (the “Memorandum”).

For the reasons stated herein and in the accompanying Memorandum, the parties respectfully request that the Court adopt and enter the proposed order, attached as **Exhibit 1**, coordinating cases brought under the CLJA for limited purposes.

Respectfully submitted by each Plaintiff’s counsel, as docketed in their respective cases, and by undersigned counsel for the Defendant herein.

Date: March 23, 2023.

s/Mona Lisa Wallace

Mona Lisa Wallace, NC State Bar #9021
William M. Graham, NC State Bar #17972
Whitney Wallace Williams, NC State Bar #38574
Mark Doby, NC State Bar #39637
John Hughes, NC State Bar #22126
WALLACE & GRAHAM, P.A.
525 North Main Street
Salisbury, North Carolina 28144
Telephone: (704) 633-5244
mwallace@wallacegraham.com
brgraham@wallacegraham.com
wwallace@wallacegraham.com
mdoby@wallacegraham.com
jhughes@wallacegraham.com

Joel R. Rhine
NC State Bar #16028
RHINE LAW FIRM, P.C.
1612 Military Cutoff Road, Suite 300
Wilmington, North Carolina 28403
Telephone: (910) 772-9960
jrr@rhinelawfirm.com

Thomas W. Henson, Jr.²
North Carolina Bar. No. 16669
HENSON & FUERST, P.A.
3110 Edwards Mill Road, Suite 210
Raleigh, North Carolina 27612
Telephone: (919) 781-1107
thomashenson@lawmed.com

Mikal C. Watts*³
WATTS GUERRA LLC
5726 Hausman Road W., Suite 119
San Antonio, Texas 78249
Telephone: (210) 447-0500
efilemcwatts@wattsguerra.com

² Co-counsel in *Partain*, No. 7:23-cv-00110-BO-RJ and *Ensminger*, No. 7:23-cv-00161-M-RN.

³ Co-counsel in *Partain*, No. 7:23-cv-00110-BO-RJ and *Ensminger*, No. 7:23-cv-00161-M-RN.

Dennis Reich*⁴
REICH & BINSTOCK
4265 San Felipe, Suite 1000
Houston, Texas 77027
Telephone: (800) 622-7271
Dreich@reichandbinstock.com

Mark Lanier*⁵
Richard D. Meadow*
THE LANIER LAW FIRM
10940 West Sam Houston Pkwy N
Suite 100
Houston, Texas 77064
Telephone: (713) 659-5200
Mlanier@lanierlawfirm.com
Rmeadow@lanierlawfirm.com

Mark A. DiCello*⁶
DICELLO LEVITT LLC
Western Reserve Law Building
7556 Mentor Avenue
Mentor, Ohio 44060
Telephone: (440) 953-8888
madicello@dicellolevitt.com

Adam J. Levitt*⁷
DICELLO LEVITT LLC
Ten North Dearborn Street, Sixth Floor
Chicago, Illinois 60602
Telephone: (312) 214-7900
alevitt@dicellolevitt.com

D. Todd Mathews*⁸
BAILEY GLASSER LLP
6170 Bennett Drive
Suite 211
Edwardsville, Illinois 62025
T: 618.693.2462
F: 304.342.1110

⁴ Co-counsel in *Watts*, No. 7:23-cv-00280-BO-RN, *Amsler*, No. 7:23-cv-00284-BO, *Sanderson*, No. 7:23-cv-00285-BO, *Brown*, No. 7:23-cv-00282-M-RJ, *Heath*, No. 7:23-cv-00283-M-RN, and *Paoletti*, No. 7:23-cv-00296-M-BM.

⁵ Co-counsel in *Brown*, No. 7:23-cv-00282-M-RJ.

⁶ Co-counsel in *Heath*, No. 7:23-cv-00283-M-RN.

⁷ Co-counsel in *Heath*, No. 7:23-cv-00283-M-RN.

⁸ Co-counsel in *Heath*, No. 7:23-cv-00283-M-RN.

tmathews@baileyglasser.com

Hunter J. Shkolnik*⁹
NSPR LAW SERVICES LLC
1302 Avenida Ponce de León
Santurce, Puerto Rico 00907
Telephone: (833) 271-4502
hunter@napolilaw.com

Frederick T. Kuykendall III*¹⁰
THE KUYKENDALL GROUP LLC
201 East Second Street Bay
Minette, Alabama 36507
Telephone: (205) 252-6127
ftk@thekuykendallgroup.com

Marcus J. Susen, Esq.*¹¹
SUSEN LAW GROUP
110 East Broward Boulevard, Suite 1700
Fort Lauderdale, Florida 33301
Telephone: (954) 315-3815
Marcus@susenlawgroup.com
pleadings@susenlawgroup.com

Willard J. Moody, Jr.*¹²
THE MOODY LAW FIRM
500 Crawford Street
Portsmouth, Virginia 23704
Telephone: (800) 793-4816
wmmody@moodyrllaw.com

Jessica Paluch Hoerman*¹³
PALUCH LAW
210 South Main Street
Edwardsville, Illinois 62025
Telephone: (618) 917-1634
jess@trulaw.com

⁹ Co-counsel in *Watts*, No. 7:23-cv-00280-BO-RN.

¹⁰ Co-counsel in *Amsler*, No. 7:23-cv-00284-BO.

¹¹ Co-counsel in *Amsler*, No. 7:23-cv-00284-BO.

¹² Co-counsel in *Amsler*, No. 7:23-cv-00284-BO.

¹³ Co-counsel in *Amsler*, No. 7:23-cv-00284-BO.

Andrew Van Arsdale*¹⁴
Kasodie West*
AVA LAW GROUP, INC.
2718 Montana Avenue, Suite 220
Billings, Montana 59101
Telephone: (406) 626-3976
andrew@avalaw.com
kasodie.west@ava.law.com

Tor Hoerman*¹⁵
Tyler J. Schneider
Steven D. Davis
TORHOERMAN LAW LLC
210 S Main Street
Edwardsville, Illinois 62025
618-656-4400 Phone
618-656-4401 Fax
tor@thlawyer.com
Tyler@thlawyer.com
sdavis@thlawyer.com

**(to make special appearance)*

Counsel for Plaintiffs

BRIAN BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

J. PATRICK GLYNN
Director, Torts Branch

BRIDGET BAILEY LIPSCOMB
Assistant Director

s/Adam Bain
ADAM BAIN
Senior Trial Counsel
IN Bar No. 11134-49
LACRESHA A. JOHNSON
HAROON ANWAR
NATHAN J. BU
DANIEL C. EAGLES
Trial Attorneys

¹⁴ Co-counsel in *Sanderson*, No. 7:23-cv-00285-BO.

¹⁵ Co-counsel in *Brown*, No. 7:23-cv-00282-M-RJ.

Civil Division, Torts Branch
U.S. Department of Justice
P. O. Box 340
Washington, D.C. 20044
Telephone: (202) 616-4209
adam.bain@usdoj.gov

Counsel for Defendant

CERTIFICATE OF SERVICE

The undersigned confirms and verifies that on the date indicated below, he or she has caused service of process of this document under the Court's ECF electronic filing system which will transmit a copy to every counsel of record.

This the 23rd day of March, 2023.

s/Mona Lisa Wallace
Mona Lisa Wallace
NC State Bar #9021
WALLACE & GRAHAM, P.A.
525 North Main Street
Salisbury, North Carolina 28144
Telephone: (704) 633-5244
mwallace@wallacegraham.com

EXHIBIT 1 TO MOTION

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

**IN RE: CAMP LEJEUNE
CONTAMINATED WATER
EXPOSURE LITIGATION**

Master Case No.:

Case Management Order No. 1

This document relates to all cases [or: All cases before Judge [name]].

On August 10, 2022, the Honoring our PACT Act of 2022 (“PACT Act”) was signed into law. Pub. L. No. 117-168, 136 Stat. 1759 (2022). The PACT Act addresses, among other things, tort claims related to harm caused by exposure to contaminated water at Camp Lejeune, North Carolina, via the Camp Lejeune Justice Act (“CLJA”), Pub. L. 117-168, § 804, which is part of the PACT Act.

The CLJA is a new statute applicable to any “individual, including a veteran ..., or the legal representative of such an individual, who resided, worked, or was otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, to water at Camp Lejeune, North Carolina, that was supplied by, or on behalf of, the United States....” PACT Act § 804(b).

Congress designated the United States District Court for the Eastern District of North Carolina as the exclusive venue with jurisdiction over these claims. *Id.* § 804(b), (d), (f). *See generally Fancher v. United States*, No. 5:22-CV-315, 2022 U.S. Dist. LEXIS 228319, *9-11 (E.D.N.C. Dec. 20, 2022) (summarizing the CLJA); *Pugh v. United States*, No. 7:22-CV-124-BO-BM, 2023 U.S. Dist. LEXIS 14691, *1-4, 2023 WL 1081262 (E.D.N.C. Jan. 27, 2023) (same).

The statute provides that a claimant or plaintiff must show that the relationship between exposure to water at Camp Lejeune and the harm alleged is either sufficient to show a causal relationship or sufficient to show that a causal relationship is “at least as likely as not.” *Id.* § 804(c).

The CLJA includes pre-suit administrative exhaustion of remedies requirements as well as a fixed time window for filing suit. Other potentially applicable statutes of limitations and repose do not apply. *Id.* § 804(j)(2)-(3).

The CLJA provides that “[a]n individual may not bring an action under this section before complying with [28 U.S.C. § 2675].” *Id.* § 804(h). Section 804(h) references 28 U.S.C. § 2675 of the Federal Tort Claims Act. A claimant must first file an administrative claim and exhaust that remedy prior to filing in Court. See *Pugh*, 2023 U.S. Dist. LEXIS 14691, *14; *Fancher*, 2022 U.S. Dist. LEXIS 228319, *23 (so holding).

All claims under the CLJA must accrue before its date of enactment, and no CLJA claim may be commenced two years after the later of the date of enactment of the CLJA or 180 days after the denial of a claim under 28 U.S.C. § 2675. CLJA § 804(j)(2).

Before the Court is a joint motion for entry of an initial case management order and for coordination or partial consolidation filed in pending cases under the CLJA. Having reviewed the motion and the parties’ submissions, the Court finds that coordinating these proceedings at this stage would achieve significant efficiencies without materially prejudicing the parties.

The Court finds that the cases filed under the CLJA to date on their face present one or more common issues of fact or law. See Fed. R. Civ. P. 42(a). In this regard, the CLJA created a new and unique remedy for Plaintiffs who were affected by the contaminated water in a common location, i.e., the base, over a specified period of time, i.e., 1953 to 1987. The CLJA also establishes

a uniform causation standard for all such claims. Cases under the CLJA will therefore present common, overlapping or related questions of law and fact under the same legal standard.

The Court concludes that there are no specific risks of prejudice or confusion from preliminary coordination of all cases asserting claims under the CLJA, that the burden of such coordination will be minimal as to the parties and the Court, that the time and expense saved by it will be substantial, and that the cost of it will be minimal. *See Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982) (setting out factors). Allowing coordination should reduce duplication and promote efficiency while still preserving claimants' substantive rights.

The Clerk is directed to establish a master docket. The master docket will serve as a central location for any filings that affect multiple CLJA cases and will be denominated *In re: Camp Lejeune Justice Act Litigation* and numbered [Add]. Filings on the master docket shall note the cases to which they apply (e.g., "this document relates to all cases"). The Clerk will continue to docket individual cases asserting any claim under the CLJA. Those individual cases will have their own dockets and their own case numbers. Filings affecting only an individual member case will be made solely on that member case's docket, not the master docket. The Clerk is directed to note the opening or closing of any member case on the master docket with a short text entry.

Accordingly, the Court orders:

1. The Clerk is directed to establish a master docket for this coordinated litigation. The master docket shall be labeled *In re: Camp Lejeune Justice Act Litigation* and numbered [add master case number].

2. Whenever a case making any claim under the CLJA is filed, the Clerk is directed to docket that member case under its own case number. The Clerk is directed to thereafter make the following text entry in the new member case: "Pursuant to CMO No. 1 entered in *In re: Camp*

Lejeune Justice Act Litigation, No. 23-CL-01, the Court has coordinated, for certain purposes, all cases making a claim under section 804 of the Honoring our Promise to Address Comprehensive Toxics Act of 2022. This case has been added to that coordinated proceeding and its opening has been noted on the master docket. Filings having to do only with this member case shall be filed only on this docket, not the master docket. Case management orders and other orders pertaining to multiple cases in this coordinated litigation are filed on the master docket, [Add].”

3. The Clerk is directed to note the opening or closing of any member case on the master docket with a short text entry. Member cases already on file with the Court shall be noted on the master docket as opened today.

4. The Court will schedule an initial case management hearing in due course prior to which the parties will be ordered to submit proposals for how these cases can be further consolidated and coordinated.

IT IS SO ORDERED, this _____ day of _____, 2023.

United States District Judge