

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

No. 7:23-CV-897

IN RE:)
)
CAMP LEJEUNE WATER LITIGATION)
)
This Document Relates to: ALL CASES)

**PLAINTIFFS' LEADERSHIP GROUP'S BRIEF IN SUPPORT OF
MOTION TO COMPEL DEFENDANT UNITED STATES OF AMERICA TO
PRODUCE DIGITIZED MUSTER ROLLS**

The Plaintiffs' Leadership Group ("PLG"), pursuant to Fed. R. Civ. P. 26 and 37, respectfully moves the Court to compel Defendant United States of America to provide electronically stored information ("ESI") concerning scanned muster rolls and other military records.

1. Introduction.

For nearly two years, Plaintiffs have requested Defendant produce all military records and ESI relevant to establishing the basing of servicemembers at Camp Lejeune during the statutory period (1953 to 1987). Muster rolls—which show the location of military personnel at any given time—are an important source of such information. After Plaintiffs filed a prior motion to compel, Defendant produced a first, incomplete set of muster roll data in March 2024. Defendant represented that there was a larger project underway to scan and digitize *all* of the muster roll records and other servicemember records, and that Defendant would produce that information once it was digitized. Defendant now says the project is nearly half-complete, and should be fully complete by the end of January 2026. However, in a reversal of position, Defendant claims that it should not have to produce a copy of the data to the Plaintiffs. This is inexplicable given Defendant’s past representations, and furthermore would be unfair and prejudicial to Plaintiffs. Given its relevance, Plaintiffs are entitled to receive the muster roll information and other information in Defendant’s control reflecting the basing of servicemembers at Camp Lejeune. Accordingly, Plaintiffs request that the Court order Defendant to (1) immediately produce a copy of the partial data that has already

been digitized, and (2) to update that production with a complete copy of the digitized information by January 31, 2026, when Defendant has represented the project will be complete.

2. Background Facts.

As the Court is aware, Plaintiffs have long sought the production of relevant government records for military members based at Camp Lejeune. These military records include muster rolls. Muster rolls are quarterly or monthly reports of military personnel attached to a particular unit or station.¹

Plaintiffs requested a variety of muster roll and other servicemember records in discovery. In Plaintiffs' First Set of Requests for Production, number 3, Plaintiffs requested the production of digitized ESI regarding the muster rolls:

3. Please produce the ESI, as defined herein, and data created as a result of the digitizing of the 61 million pages of USMC Camp Lejeune Muster Rolls representing over 5 million unique Service Members who were stationed at Camp Lejeune from the 1950s to 1971 which was performed by the USMC via contract beginning in 2013 and completed by December 2015 based on the 2013, 2014 and 2015 VA/DoD Executive Committee Annual Reports.

See Copy of First Requests, **Exhibit 1**.

In addition, Plaintiffs' Sixth Set of Requests for Production asked for production of muster roll records, and for all documents related to the Track One Plaintiffs (which would be inclusive of muster rolls).

See Copy of Sixth Requests, **Exhibit 2**, at request numbers 10, 15 and 16, requesting:

10. Please produce all documents, spreadsheets, invoices, contracts, communications, and computer files (not previously produced and saved computer native documents, data and files) whether on individual NAVY or MARINE shared files or personal computers related to all costs associated with the MUSTER ROLL Digitization Project contracted to CH2M Hill and its subcontractors Mountain States Imaging and/or the Scanning Company, as conducted as part of the NAVY CLEAN and Contract No. N62470-11-D-8012 CTO 0003, "Community Involvement/Risk Communication Plan Development and Support, MCB Camp LeJeune".

15. Please produce all documents or information related to any of the Track One Plaintiffs contained within the U.S. National Archives and Records Administration (NARA) records including all archival information, not previously produced.

16. Please produce all muster roll and service records whether in hard copy, electronic or in a database pertaining to any of the Track One Plaintiffs, not previously produced.

¹ See National Archives website, <https://www.archives.gov/research/military/marine-corps/muster-rolls>.

In Defendant's response to Request 16 on June 24, 2024, Defendants represented that there was an ongoing digitization project underway and that upon its completion, Defendant would make the digitized muster rolls available from this project:

Subject to and without waiving the foregoing objections, the United States has produced all digitized muster rolls pertaining to the Track One Plaintiffs that exist, as the United States has informed Plaintiffs previously. The non-digitized muster rolls pertaining to Track One Plaintiffs are on microfilm and microfiche. As previously offered, these muster rolls can be made available for inspection at Plaintiffs' request. Moreover, as the United States has informed Plaintiffs previously, there is an ongoing digitization project (unrelated to this litigation) of muster rolls and similar records; upon completion of that project, the United States will make digitized muster rolls from the project available to Plaintiffs.

See Copy of Responses dated June 24, 2024, **Exhibit 3** (emphasis added).²

This promise was echoed by Defendant on multiple occasions at periodic status conferences and in court filings. For example, at the February 6, 2024 status hearing, Defendant's counsel stated that "we are committed to producing the results of the ongoing digitization process as soon as it is completed, which will be done, you know, in advance of any trial should they need additional corroboration for some of the plaintiffs that are at issue here." Feb. 6, 2024 Hrg. Tr. at 33:4-10 (emphasis added). Defendant added: "They were digitized in two different efforts, the one that was done historically and the one that's ongoing right now.... The ongoing effort which should be completed this summer will provide them with all the information that they're looking for." *Id.* at 45:21-46:17 (emphasis added).

Plaintiffs filed a motion to compel certain muster roll information on February 20, 2024. [D.E. 140]. Plaintiffs' motion pertained to muster rolls that were subject to a prior and now-completed digitization project dating from circa 2013-2015. [D.E. 140] at 1. Defendant filed a brief opposing that motion on March 1, 2024. [D.E. 150]. In that brief, Defendants confirmed that there were two digitization projects – the one that ended in 2015, and one that was ongoing. Defendant explained that it expected to make the production of the data from the 2013-2015 project to Plaintiffs by the end of March 2024. [D.E. 150] at 2-4. Because of this commitment, the Court denied Plaintiff's motion as moot. *See* [D.E. 157] at 2-5.

² Plaintiffs should not be required to serve additional discovery requests on Defendant in order to obtain the sought-after discovery. Production of any and all records for servicemembers related to where they were based or housed is basic discovery information that Defendant should have to produce.

The Court did not address the second digitization project. In opposing Plaintiff's motion, however, Defendant maintained it would produce the results of this project: “[T]he United States has shared details with Plaintiffs regarding an ongoing muster roll digitization project by the USMC that is unrelated to the Camp Lejeune Justice Act (“CLJA”) litigation. This project includes the digitization of not only muster rolls, but also unit diaries, personnel records, and other documents. The United States has provided Plaintiffs with a general timeline for completion of this work and will make this information available to Plaintiffs upon the project's completion.” [D.E. 150] at 2-4 (emphasis added).

In a May 8, 2024 filing, Defendant again reiterated its commitment to produce the digitized information: “In addition, the United States has reiterated to Plaintiffs that the USMC is continuing its work on a muster roll digitization project, unrelated to the Camp Lejeune Justice ACT (‘CLJA’). The United States has provided Plaintiffs with updates on this project and has agreed to make this information available to Plaintiffs upon the project's completion.” [D.E. 199] at 4 (emphasis added).

Over a year later, at the status conference held on October 20, 2025, the issue of muster rolls and the still-ongoing digitization project came up again. *See* Oct. 20, 2025 Hrg. Tr. Plaintiffs' counsel noted that Defendant had previously committed to completing digitization of the muster rolls under the ongoing project by the summer of 2025. *Id.* at 16:7-17:4. However, as of October 2025, when the hearing occurred, the muster roll digitization still had not been produced. In response, Defendant's counsel reiterated the commitment to produce the data: “Your Honor, my understanding is that the digitization of the Muster Rolls has been substantially completed, if not entirely completed, and that we are in the process of inquiring how best to produce that to the Plaintiffs.” *Id.* at 17:6-10 (emphasis added).

On November 7, 2025, Defendant sent Plaintiffs a letter contradicting its prior statements and renegeing on its promise to produce the results of the new muster roll digitization project. *See* Nov. 7, 2025 Letter, **Exhibit 4**. Defendant stated that its vendor had scanned 13.7 terabytes of records out of an estimated 30 terabytes, and that the current estimated date of completion for scanning the remaining records was January 31, 2026. *Id.* But Defendant now stated that it saw no need to produce the digitized ESI once the scanning work was completed. *Id.* at 2. Defendant now contended that the burden of producing the data

outweighed any benefit or relevance and that the discovery was not proportional to the needs of the case. *Id.* at 2. Defendant also stated that it was obtaining proposals for producing a limited subset of the digitized records in PDF format, but that the costs for the production should be shifted to the Plaintiffs and would likely cost “over a million dollars” and take “many months” to complete. *Id.*

PLG’s experts are ready to receive and work with the approximately 13.7 terabytes of records that Defendant states have already been scanned. These experts will be prepared to receive and work with the full 30 terabytes of records, which Defendant states will be digitized by January 31, 2026. The data will be of great value to PLG in its ongoing efforts to comprehensively gather and analyze all relevant data regarding Camp Lejeune base inhabitants.

3. Legal Standard.

Rule 26 of the Federal Rules of Civil Procedure provides that:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). The rules of discovery are to be accorded a broad and liberal construction. *See Herbert v. Lando*, 441 U.S. 153, 177 (1979); *Hickman v. Taylor*, 329 U.S. 495, 507 (1947); *In re Camp Lejeune Water Litig.*, No. 7:23-CV-897 (E.D.N.C. March 8, 2024), slip op. at 2-3. “Relevancy under this rule has been broadly construed to encompass any possibility that the information sought may be relevant to the claim or defense of any party.” *See id.*, quoting *Prasad v. Nallapati*, 597F. Supp. 3d 842, 846 (E.D.N.C. 2022); *Equal Emp’t Opportunity Comm’n v. Sheffield Fin. LLC*, No. 1:06-CV-889, 2007 WL 1726560, at *3 (M.D.N.C. June 13, 2007); *Mainstreet Collection, Inc. v. Kirkland’s, Inc.*, 270 F.R.D. 238, 240 (E.D.N.C. 2010).

4. Argument.

It is legally unsupportable for Defendant to abruptly refuse to provide the relevant muster roll and other servicemember data to the Plaintiffs after nearly two years of assuring Plaintiffs and the Court that it

would make such ESI available. This information—which could show where at Camp Lejeune each servicemember was and for how long—is highly relevant to the claims at issue, and Defendant’s claim of burden is implausible. Defendant should have no burden in providing a copy of the already-scanned information to the Plaintiff. Defendant promised to provide the records as soon as the digitization project was complete, which it now says will be by January 31, 2026. Plaintiffs request that the Court order Defendant to make the digitized ESI available to Plaintiffs on January 31, 2026. Moreover, given the ongoing delay, Plaintiffs request that the Court order Defendant to immediately produce the 13.7 TB of records that have already been digitized.

a. The Digitized Muster Roll Information Is Highly Relevant and in Defendant’s Exclusive Control

Obtaining service records from a half-century ago is no easy task, but such records are the best way to determine who was at Camp Lejeune and when. Such information is necessary to prove any claim under the Camp Lejeune Justice Act. The digitized muster roll and servicemember records are thus critical to assisting the PLG in order to establish the facts regarding the locations of servicemembers during pertinent times. The Marine Corps and Government were obligated to maintain such records for USMC servicemembers. Access to that data would benefit the Plaintiffs in their efforts to represent all affected Camp Lejeune servicemembers, as it would help verify service records.

Plaintiffs appreciate that Defendant previously produced some muster roll documents in March 2024 that resulted from the 2013-2015 record digitization effort. However, the records from the larger ongoing digitization effort have not yet been produced. And the data produced to date by Defendant is incomplete. The March 2024 production, for example, was only 2 terabytes of native records, compared to the 30 terabytes digitized in the latest project. Defendant has acknowledged the shortcomings of the original production, and repeatedly committed to producing the remaining data after it was digitized. *See Background Facts, *supra*.* Defendant should be held to its commitment.

Defendant states that the USMC’s current digitization project “includes, but is not limited to, unit diaries, muster rolls, and individual service records *service-wide*, meaning most of the records are likely

not specific to Camp Lejeune.” Ex. 4, p. 2. But nothing about those facts should prevent production of the data. First, not only muster rolls, but also unit diaries and individual service records may contain relevant evidence that is likely to be useful and admissible to locate Camp Lejeune servicemembers. Second, it is not a credible basis to object to producing relevant evidence simply because the documents may also contain data that is not relevant. Any documents can be produced under the auspices of the Court’s Protective Order if there are any concerns regarding personal information or otherwise regarding confidentiality of information. *Cf. Engage Healthcare Comms., LLC v. Intellisphere, LLC*, 2017 WL 3624262, at *5 (D.N.J. Apr. 26, 2017) (“[N]on-relevant information in an otherwise responsive document should be produced pursuant to Fed. R. Civ. P. 34. Moreover, non-relevant information that is propriety in nature that is contained in an otherwise responsive document should typically be produced pursuant to a [protective order].”).

Defendant states that its contractor is currently scanning physical records and converting them to PDFs, which are saved to an Amazon Web Services facility. The digitized records are said to be currently sorted into two general categories: first, “bulk records,” which consist of unit diaries, muster rolls, and other organizational records; and second, “personnel records,” which include individual service member records and other individualized records. Ex. 4 at 2. Any and all such data and records should be produced, as both categories could contain the keys to determine who was at Camp Lejeune and when. Again, the mere fact that the records may include both Lejeune and non-Lejeune records should provide no basis to object to the production.

Moreover, Defendant contends that “[t]he records that have been digitized thus far are not organized or searchable in any functional format based on content.” Ex. 4 at 2. However, these contentions have no bearing on the discoverability of the documents. The Plaintiffs’ experts should be given a copy of the digitized data to analyze and review. It may be that Plaintiffs and their experts are able to use the data in ways that Defendant cannot or has not attempted. And even if the answer is manual review, this data would still do much to advance the litigation for all servicemembers it would identify as having been at Camp Lejeune during the statutory period.

Finally, Defendant's letter reveals that 13.7 TB of records have already been scanned. Ex. 4 at 2. Plaintiff thus requests that the Court order Defendant to immediately produce a copy of that 13.7 terabytes of data so that Plaintiffs may begin review. Plaintiffs' experts stand ready to receive the data.

b. Any Burden to Defendant Is Minimal.

Plaintiffs request nothing more than a copy of the records Defendant says will be ready in electronic format on January 31, 2026. *See* Ex. 4 at 2. Defendant now maintains that producing a copy will take months and millions of dollars, but it is not clear why. Scanning of the records will be complete by the end of January, and it should be no hardship for Defendant to serve on the Plaintiffs a copy of the completed product shortly thereafter. Plaintiffs understand that there is a significant amount of data, but that is the case in any litigation of this size. It does not obviate Defendant's discovery obligations, especially when the records in question are as pertinent as the muster rolls. It is simply a matter of data transfer, or of allowing Plaintiffs access to the data in its current location.

Defendant argues that it would take a million dollars in costs for some vaguely specified work to be performed regarding the "bulk files" that are being scanned. Ex. 4 at 3. Defendant claims this would include "(i) the transfer of the data from the USMC to DOJ, and (ii) the processing and production of the data from DOJ to Plaintiffs. Based on preliminary estimates, however, this could cost over a million dollars and take many months to complete." *Id.* It is unclear why the data would need to be transferred to separate government entities, or what "processing" is necessary. Plaintiffs are also unaware of the need for Defendant to perform a privilege review or the like for these decades-old and basic servicemember records. As noted, the document production can be placed under the Protective Order if that appears necessary.

Defendant's burden argument rings hollow. Over the course of this litigation, Defendant has routinely compiled and produced data of this size without issue or burden. Using 5TB encrypted hard drives from technology company Apricorn, the Government has made prior productions totaling well over 30TB of data similar to the type of data at issue here. At a cost of \$500.00 per hard drive, the total cost associated with acquiring the hard drives to produce the requested data would amount to approximately \$3,000.00—

a very modest cost given the magnitude of this litigation. Defendant fails to explain how production of the requested data here would impose undue burden and cost when prior productions did not.

Finally, Defendant contends that “the burden of producing the scanned PDFs in their entirety, which would have marginal utility given the limited ability to search them, is not proportional to the needs of the case under FRCP 26(b)(1).” Ex. 4 at 2. This argument ignores the fact that, once they have the data, Plaintiffs can use the documents as they see fit, including employing experts to make the data searchable or conducting manual review. As described above, it would be of value for PLG to receive this information.

c. Cost-Shifting Would Be Inappropriate.

Finally, Defendant provides no basis to support cost-shifting in discovery under the present facts and circumstances. Cost-shifting is disfavored by the courts. In *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 358 (1978), the Supreme Court explained that under the Federal Rules, “the presumption is that the responding party must bear the expense of complying with discovery requests.” *See also* Fed. R. Civ. P. 26(c)(1)(B), Advisory Committee Notes (2015) (“Courts and parties should continue to assume that a responding party ordinarily bears the costs of responding [to discovery requests].”). In general, “expense shifting should be the exception.” *See Panteleakis v. Waypoint Res., LLC*, Case No. 25-cv-80008, 2025 WL 1865772, at *2 (S.D. Fla. May 20, 2025). The producing party bears the burden to establish good cause to shift production expenses to the requesting party, *see Bilek v. Fed. Ins. Co.*, 344 F.R.D. 484, 495 (N.D. Ill. 2023), and cost-shifting motions are often denied. *See Lawrence v. Paducah Ctr. for Health & Rehab., LLC*, No. 5:21-cv-00092, 2023 WL 4552285, at *11 (W.D. Ky. July 14, 2023); *Nanjing CIC Int'l Co., Ltd v. Schwartz*, No. 6:20-CV-07031, 2025 WL 1688376, at *8 (W.D.N.Y. June 17, 2025) (same).

In considering cost-shifting requests, courts typically apply the factors set forth in *Zubulake v. UBS Warburg*, 217 F.R.D. 309, 322 (S.D.N.Y. 2003), including: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the cost of production compared to the amount in controversy; (4) the cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues in the litigation; and (7) the relative benefits to the parties of obtaining

the information. *Id.* at 322. This test should not be “mechanically applied,” but rather aim to answer the question “how important is the sought-after evidence in comparison to the cost of production?” *Id.* at 322-23.

Here, Defendant’s demand to shift costs should be denied. There is no basis to require cost-shifting when Defendant is being asked to do no more than produce basic and fundamental housing and assignment records for servicemembers—in other words, highly relevant evidence to the central issues of this case. Defendant’s records are the best source of location information, and Plaintiffs know of no other place muster rolls have been digitized in one collection. It will benefit both parties to produce this evidence that will help further the litigation by placing servicemembers at Camp Lejeune in the statutory time period. Moreover, the cost of transferring the data is minuscule compared to the potential claims of over 400,000 Camp Lejeune victims. Defendants have also failed to provide any real evidence of high costs. *See Bilek*, 344 F.R.D. at 495 (defendant did not meet burden for cost-shifting where it “offered no support for its assertions, such as affidavits, transcripts, declarations, logs, search results, or invoices, to substantiate its cost-allocation request”). To the extent that the records are being scanned in and digitized, that ESI should be produced to Plaintiffs, and the costs to do so should remain on Defendant.

5. Conclusion.

Plaintiffs respectfully request that their motion to compel be granted.

DATED this 2nd day of December, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2025, I electronically filed the foregoing using the Court's Case Management/Electronic Case Files system, which will send notice to all counsel of record.

/s/ J. Edward Bell, III _____

J. Edward Bell, III