

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-897

IN RE:)	PLAINTIFFS' REPLY TO MOTION
CAMP LEJEUNE WATER LITIGATION)	TO STRIKE DR. JULIE
)	GOODMAN'S
This Pleading Relates to:)	UNTIMELY AND IMPROPER
)	SUPPLEMENTAL EXPERT
ALL CASES)	REPORTS [D.E. 724]

INTRODUCTION

Defendant's Opposition [D.E.740] is based on the false premise that Dr. Goodman's appendices ("charts") that she re-wrote in response to the PLG's motion to exclude her reports contain no analysis, opinions, or conclusions. *Id.* at 2-3, 7-11. Defendant must make this argument because Rule 26 does not permit Dr. Goodman to "revise her disclosures in light of her opponent's challenges to the analysis and conclusions therein ... after the court's deadline for doing so has passed." *EEOC v. Freeman*, 961 F. Supp. 2d 783, (D. Md. 2013) (quoting *Luke Family Care & Urgent Med. Clinics*, 323 Fed. App'x 496, 500 (9th Cir. 2009)).

But that argument fails. The charts are the factual basis for the narrative portions of her reports, are incorporated by reference in them, and contain her conclusions about the scientific literature—many of which her supplements effectively reverse. Defendant seeks to minimize the scope of the changes, but critically, it concedes that reversing her conclusions in her updated charts "involved [Dr. Goodman] making judgments" about the science. [D.E. 740] at 3. And courts reject a party's attempt to place expert material in charts in an effort to circumvent the rules. *See, e.g., Lemon v. Harlem Globetrotters Int'l, Inc.*, Nos. CV 04-0299, CV 04-1023, 2006 WL 3499969, at * 3-4 (D. Ariz. Dec. 5, 2006); *Patriot Contracting, LLC v. Star Ins. Co.*, No. 15-6634, 2018 WL 10797881, at * 3-4 (E.D. La. Mar. 21, 2018). This Court should do the same here and strike Dr. Goodman's updated reports both because they contain hundreds of substantive changes, which is improper, and because the new materials are not timely.

ARGUMENT

I. DR. GOODMAN'S CHARTS CONTAIN ANALYSES AND CONCLUSIONS AND SO ARE PART OF HER OPINIONS.

Defendant's opposition repeatedly asserts that Dr. Goodman's opinions are only "found in the body of her reports." [D.E. 740] at 7. Because she has not changed the body of her reports,

Defendant claims she has not substantively changed her opinions. *Id.* But courts routinely hold that expert work performed in attachments is part of an expert's report and constitute their opinions. In *Lemon*, for example, a plaintiff attempted to circumvent Rule 26 by supplementing an expert's damages report with "a number of charts and other materials" that increased the estimated damages by \$10 million. *Lemon*, 2006 WL 3499969, at *3. Plaintiff argued these supplements were not "expert reports" but only calculations in charts, so they were not untimely under the rules. *Id.* Notably, the charts were produced directly in response to arguments made by the defense as to deficiencies in the opinions of the expert (like Dr. Goodman did here). *Id.* The court rejected the argument, finding that the charts "use technical or other specialized knowledge to assist the trier of fact in understanding the damages suffered by the Plaintiffs, within the meaning of Federal Rule of Evidence 702." *Id.* The court found the supplemental charts untimely, rejected the argument they were not part of the expert's report, and granted defendant's motion to exclude them. *Id.* at *3-4. The court reasoned that documents that "do not purport merely to summarize evidence" but instead involved "apply[ing] analysis" to the evidence, and are part of expert reports—regardless of how a party wants to portray them. *Id.* at *4.

Similarly in *Patriot*, the defendant's expert produced "a collection of measurements" after the deadline for expert disclosures had passed and discovery had closed. *See* 2018 WL 1079881, at *3. The defendant argued that these measurements were not a report subject to the court's scheduling order. *Id.* at *4. The court disagreed, finding that the data was prepared by the expert and was intended to fill in the gaps from the expert's previous expert report. *Id.*

As the PLG pointed out in its motion, Dr. Goodman's appendices contain her opinions about, among other things, the strength and weaknesses of certain studies. These are scientific opinions that inform her causation opinions in the narrative portions of her reports. *See, e.g.*,

[D.E. 785-5] (Changes to the Charts Contradicting Dr. Goodman's Conclusions). Defendant concedes that Dr. Goodman changed her conclusions as to the facts of many studies' strengths and weaknesses, and indeed confesses that doing so involved "making judgments." [D.E. 740] at 8. A scientist that makes judgments about the strength or weakness of a scientific study is plainly performing analysis and rendering an opinion about the quality of the study. Indeed, Defendant acknowledges that these charts are important. *Id.* at 15 ("striking these tables would serve only to deprive the Court of the best evidence of the epidemiologic literature applicable to this case"). They are important because Dr. Goodman's conclusions about these studies are critical to her causation opinions and therefore can only be considered part of her reports and opinions.

As in *Lemon* and *Patriot*, Dr. Goodman's charts contain expert analysis and opinions, and she plainly tried to correct the gaps in her reports through her updated appendices. Accordingly, they are substantive, not timely, and should be excluded.

II. DR. GOODMAN CANNOT DISASSOCIATE HER NARRATIVE REPORTS FROM HER CHARTS.

Dr. Goodman testified that the narrative texts of her reports are based on her charts. Goodman Dep. Tr. at 212:24-214:15 (JA Ex. 172, D.E. 471-1). The charts are "where [she] get[s] the data from to put in the report[.]" *Id.* at 373:20-374:4. Dr. Goodman's assessment of the strengths and weaknesses of studies reflected in her charts are incorporated directly into the narrative portion of her reports. *See, e.g.*, Goodman Rep. (PD) at 34-35, C-1 (JA Ex. 134, D.E. 467-17); Goodman Rep. (Kidney) at 83, 85, C-28 (JA Ex. 94, D.E. 464-15); Goodman Rep. (Bladder) at 74-75, C-50 (JA Ex. 75, D.E. 463-14); Goodman Rep. (NHL) at 79, C-16 (JA Ex. 117, D.E. 466-11). Indeed, many statements in her narrative reports are taken almost verbatim from her charts. *See, e.g.*, Ex. A at 1-19 (Examples of Analyses Reported in the Charts Being

Directly Incorporated Into the Body of Her Narrative Reports, attached hereto). Accordingly, Defendant's attempt to differentiate the reports from the charts fall flat. [D.E. 740] at 7-11.

In fact, the same errors found in Dr. Goodman's charts are also found in the narrative portions of her reports, rendering her reports inconsistent with themselves. [D.E. 785-4] (Inconsistencies Between the Body of Dr. Goodman's Reports). For example, in the narrative section of Dr. Goodman's Parkinson's Disease ("PD") report, she states that Bove 2014b¹ did not account for smoking in its analysis. Goodman Rep. (PD) at 35 (JA Ex. 134, D.E. 467-17). This corresponds to the error she now seeks to correct in her PD charts. [D.E. 686-12] at C-1. However, the narrative section of Dr. Goodman's Kidney Cancer report states that the same study, Bove 2014b, did take into account smoking by utilizing "smoking-related diseases" in the analysis. Goodman Rep. (Kidney) at 45 (JA Ex. 94, D.E. 464-15). This corresponds to the statement found in her kidney cancer chart. [D.E. 686-6] at C-26. There are many other errors in her narrative reports that stem from the erroneous data from her charts.² The reports do not exist independently of the charts, but copy conclusions from them.

Even where Dr. Goodman's reports are not explicitly copied from the charts, her opinions are drawn from the data in the charts. For example, Dr. Goodman's kidney cancer report states that "[f]ive cohort studies evaluated kidney cancer risk based on concentrations or levels of exposure." Goodman Rep. (Kidney) at 54 (JA Ex. 94, D.E. 464-15). This corresponds directly to the data from her charts. *See id.* at D-6–D-14 (reporting five cohort studies that evaluated kidney

¹ As noted in Plaintiffs' motion, Dr. Goodman mixed up the titles of certain studies, so when she says Bove (2014a) in her Parkinson's report, she is actually referring to the Bove (2014b) civilian mortality study. [D.E. 725] at 7 n.5.

² For example, Dr. Goodman misquotes data in both her narrative reports and charts, indicating that she uses her charts as the data for her narrative reports. Goodman Rep. (Kidney) at 47, D-13 (JA Ex. 94, D.E. 464-15). For example, she misquotes a confidence interval range from ATSDR 2018 as "(OR = 41.54, 95% CI: 0.30 – 76.10)" when in fact it is (OR = 41.54, 95% CI: 10.20 – 169.23). *Compare id.*, with ATSDR 2018 Morbidity Study at 88 (JA Ex. 184, D.E. 472-5).

cancer risk based on concentrations/levels of exposure). Where there are errors in the narrative section of her reports because she failed to account for key studies, the same key studies were omitted from her charts.³

Finally, to dispel any doubt, Dr. Goodman incorporates data directly from her original charts into the “Conclusion” sections of her narrative reports, which are now in conflict with her new proposed charts. *See [D.E. 785-5] (Changes to the Charts Contradicting Dr. Goodman’s Conclusions).* Defendant admits she made many errors, but argues that the PLG did not point out any actual inconsistencies. [D.E. 740] at 12 n.6.⁴ The PLG has thoroughly documented the inconsistencies that would result from permitting her new charts, because her narrative reports were based on the old charts. *See [D.E. 785-3] (Inconsistencies Between Dr. Goodman’s New Charts and Her Reports).* Dr. Goodman cannot divorce her narrative reports from her charts.

Unable to credibly assert that these charts are not part of her opinions, Defendant equates Dr. Goodman’s wholesale revisions, made in response to a motion to exclude, with the correction of a single numerical calculation in Dr. Howard Hu’s report. The comparison fails. Dr. Hu’s update was limited to correcting a single numerical calculation and providing the underlying data at the request of the Government. Dr. Hu’s correction fits squarely within the supplementation contemplated by Rule 26(e), namely the correction of an inadvertent error while maintaining unchanged core opinions. *See Ex. C at 1-2 (Dr. Hu Response to Post-Dep. Inquiry, attached hereto).*⁵

³ *See, e.g.*, Goodman Rep. (Kidney) at 77 (JA Ex. 94, D.E. 464-15) (“Of the 17 studies that examined at least three levels of exposure . . . Only two studies reported statistically significant estimates based on duration, intensity, and/or frequency (Sorahan et al., 2002; ATSDR 2018b)”; Goodman Dep. Tr. at 368:12-376:18 (JA Ex. 172, D.E. 471-1) (testifying that she missed Hu 2002 and Partanen 1991 from her count of “only two studies” and acknowledging that those two studies were also omitted from the charts).

⁴ Defendant’s assertion that Plaintiff’s cited example is not a true inconsistency is incorrect on its face and the Court need only review Dr. Goodman’s own inconsistent language to understand why Defendant’s assertion is false. *See [D.E. 686-6] at C-47; Goodman Rep. (Leukemia) at 68 (JA Ex. 102, D.E. 465-7); see also [D.E. 785-3] at 1 (Inconsistencies Between Dr. Goodman’s New Charts and Her Reports).*

⁵ Following Dr. Hu’s deposition, Defendant requested the underlying documentation related to this specific calculation. Ex. B at 1 (Def. July 25, 2025 Letter re. Dr. Hu, attached hereto). Dr. Hu provided it.

III. THE PLG'S REQUESTED RELIEF IS WARRANTED.

When a party fails to make a timely supplemental disclosure, the directive of this Court and Rule 37(c)(1) is clear: “the remedy is to exclude the improper disclosure from trial ‘unless the failure was substantially justified or is harmless.’” *Lightfoot v. Georgia-Pacific Wood Prods., LLC*, No. 7:16-cv-244, 2018 WL 4517616, at *6 (E.D.N.C. Sept. 20, 2018) (quoting Fed. R. Civ. P. 37(c)(1)). Defendant makes no argument that its failure to timely supplement was justified or harmless under Rule 37(c)(1). Defendant instead analyzes the PLG’s motion under Rule 37(b)(2), treating its failure to timely supplement as a violation of a Court scheduling order under the more flexible standards of that rule.⁶ [D.E. 740] at 6-7. While the PLG asserts that exclusion of the untimely supplemental reports is warranted under both rules, Defendant’s failure to justify or articulate why its untimely supplementation was harmless is fatal to its argument.

Defendant’s attempt to distinguish the PLG’s cases on the facts underscores the impropriety of Dr. Goodman’s supplementation. [D.E. 724] at 10-14. Defendant simply repeats its mantra that Dr. Goodman’s opinions have not changed because her reports remain the same. Dr. Goodman has done exactly what the Fourth Circuit affirmed in *Freeman*: she has “chang[ed] analyses … based on materials available to [her] prior to [her] initial submission.” *E.E.O.C. v. Freeman*, 961 F. Supp. 2d 783 (D. Md. 2013), *aff’d in part sub nom. E.E.O.C. v. Freeman*, 778 F.3d 463 (4th Cir. 2015). Moreover, the court in *Gallagher* found that the expert’s reports

Ex. C at 2 (Dr. Hu Response to Post-Dep Inquiry, attached hereto). Defendant initially characterized Dr. Hu’s correction as “impermissible bolstering” and threatened to file a motion to strike the supplementation altogether. *See* Ex. D at 2 (Def. Sept. 25, 2025 Letter re Dr. Hu, attached hereto). To avoid burdening the Court, the PLG permitted an additional three-hour deposition of Dr. Hu about the single change to his report. Ex. E (Notice of Nov. 6, 2025 Dep. for Dr. Hu, attached hereto).

⁶ As the Fourth Circuit in *Southern States* noted, “[t]he Rule 37(c) advisory committee notes emphasize that the ‘automatic sanction’ of exclusion ‘provides a strong inducement for disclosure of material that the disclosing party would expect to use as evidence.’ The alternative sanctions referenced in the rule are primarily intended to apply when a party fails to disclose evidence helpful to an opposing party.” *S. States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596 n.2 (4th Cir. 2003) (internal citation omitted) (quoting Fed. R. Civ. P. 37(c) advisory committee note (1993)).

changed in light of criticism leveled at that expert in briefing, as here. *Gallagher v. S. Source Packaging, LLC*, 568 F. Supp. 2d 624, 630-32 (E.D.N.C. 2008). And in *Pierce*, the court found that the expert was attempting to provide a “new and improved report,” which is exactly what Dr. Goodman has done by substantively changing hundreds of her conclusions. *Pierce v. N.C. State Bd. of Elections*, No. 4:23-cv-193, 2024 WL 5170738, at *4 (E.D.N.C. Dec. 18, 2024).⁷

Finally, the *Akeva* factors also warrant the PLG’s requested relief.⁸ First, Defendant has no answer as to why it waited to supplement Dr. Goodman’s reports until after Plaintiffs moved to exclude her. The case law is clear that this is too late. *Lightfoot*, 2018 WL 4517616, at *6, 8. Indeed, Dr. Goodman knew about internal inconsistencies at her deposition in April. Goodman Dep. Tr. at 230:22-258:13 (JA Ex. 172, D.E. 471-1). Second, Defendant’s emphasis that “the importance of Dr. Goodman’s testimony cannot be overstated,” [D.E. 740] at 12, undercuts its argument that nothing in the proposed changes alters her opinions or analyses in any way. Third, Defendant says any prejudice is “minimal” without providing any analysis, [D.E. 740] at 13, ignoring the PLG’s argument that the experts relying on Dr. Goodman would have to be re-deposed about, for example, their assertions that Dr. Goodman’s reports were “more compelling” and “more thorough” than PLG’s experts. *See* Kates Dep. Tr. at 137:23-138:13 (JA Ex. 586, D.E.

⁷ It is true that this Court in *Lightfoot* re-opened discovery after a late disclosure of an expert report. *Lightfoot*, 2018 WL 4517616, at *9. But the Court in *Lightfoot* found that reopening discovery on a limited basis would adequately remedy the situation. *Id.* at *9. Here, allowing the fair and necessary discovery that stems from these wholesale changes would inevitably delay the trials in this case. It is also unclear if engaging in the discovery listed by PLG would lead to the need for even more discovery if new information came to light.

⁸ These factors are: “(1) the explanation for the failure to obey the order; (2) the importance of the expert opinion; (3) the prejudice to the opposing party by allowing the disclosures; and (4) the availability of alternative or lesser sanctions ([5]) the interest in expeditious resolution of litigation; ([6]) a court’s need to manage its docket; and ([7]) public policy favoring disposition of cases on the merits.” *Akeva L.L.C. v. Mizumo Corp.*, 212 F.R.D. 306, 311 (M.D.N.C. 2002).

507-7).⁹ Fourth, Defendant asserts that a lesser sanction is warranted because the PLG can depose Dr. Goodman again. This is not sufficient for the same reason. Moreover, the PLG would need to depose Dr. Goodman’s staff to understand why these opinions changed. Dr. Goodman’s staff read the studies at issue and were the ones to fill out the charts at issue. [D.E. 654] at 17-19; [D.E. 725] at 4 n.3, 9 n.6. Their testimony is now relevant to assess how those changes occurred.

Defendant ignores the fifth and sixth *Akeva* factors, which both support the PLG. There is a strong interest in the expeditious resolution of this litigation. Plaintiffs are dying, have awaited their day in court for decades, and evidence would be lost were they to die before their trials. Moreover, a court’s need to manage its docket weighs in favor of the PLG, because curing these deficiencies would delay the schedule in this case and add unnecessary expenses. Finally, as to public policy, Defendant emphasizes how critical Dr. Goodman’s opinions and charts are, arguing they are the “best evidence of the epidemiologic literature applicable to this case.” [D.E. 740] at 15. But, again, this contradicts its argument that these amendments do not alter any of Dr. Goodman’s opinions or analyses. *Id.* at 7-11. Defendant cannot have it both ways, and public policy does not support litigation gamesmanship that burdens the court and the opposing party.

CONCLUSION

For the foregoing reasons, this Court should grant the PLG’s motion [D.E. 724] and strike the proposed alterations to Dr. Goodman’s chart appendices, [D.E. 686-3 to 686-12]. This Court should also take into account Dr. Goodman’s mass and belated revisions and resulting inconsistency when considering the PLG’s motion to exclude her testimony [D.E. 654], or, if admitted, the weight of her testimony.

⁹ Defendant claims that “Plaintiffs do not explain how or why it would be necessary to question the United States’ other experts on the corrections to the summary tables.” [D.E. 740] at 14. This is not accurate. The PLG’s motion [D.E. 724] at page 14 and in footnote 11 spells out the exact need.

Dated: December 30, 2025.

/s/ J. Edward Bell, III

J. Edward Bell, III (admitted *pro hac vice*)
Bell Legal Group, LLC
219 Ridge St.
Georgetown, SC 29440
Telephone: (843) 546-2408
jeb@bellegalgroup.com

Lead Counsel for Plaintiffs

/s/ W. Michael Dowling

W. Michael Dowling (NC Bar No. 42790)
The Dowling Firm PLLC
Post Office Box 27843 Raleigh, North
Carolina 27611 Telephone: (919) 529-3351
mike@dowlingfirm.com

Co-Lead Counsel for Plaintiffs

/s/ James A. Roberts, III

James A. Roberts, III
Lewis & Roberts, PLLC
3700 Glenwood Ave., Ste. 410
Raleigh, NC 27612
Telephone: (919) 981-0191
jar@lewis-roberts.com

Co-Lead Counsel for Plaintiffs

/s/ Elizabeth J. Cabraser

Elizabeth J. Cabraser (admitted *pro hac vice*)
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000
ecabraser@lchb.com

Co-Lead Counsel for Plaintiffs

/s/ Robin L. Greenwald

Robin L. Greenwald (admitted *pro hac vice*)
Weitz & Luxenberg, P.C.
700 Broadway
New York, NY 10003
Telephone: 212-558-5802
rgreenwald@weitzlux.com

Co-Lead Counsel for Plaintiffs

/s/ Mona Lisa Wallace

Mona Lisa Wallace (N.C. Bar No.: 009021)
Wallace & Graham, P.A.
525 North Main Street
Salisbury, North Carolina
28144 Tel: 704-633-5244
mwallace@wallacegraham.com

Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, J. Edward Bell, III, hereby certify that the foregoing document was electronically filed on the Court's CM/ECF system on this date, and that all counsel of record will be served with notice of the said filing via the CM/ECF system.

This 30th day of December, 2025.

/s/ J. Edward Bell, III
J. Edward Bell, III (admitted pro hac vice)
Bell Legal Group, LLC
219 Ridge St.
Georgetown, SC 29440
Telephone: (843) 546-2408
jeb@belllegalgroup.com

Co-Lead Counsel for Plaintiffs