

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**SARAH COOK, on behalf of herself and all
similarly situated persons,**

Plaintiff,

v.

No. 2:08-cv-02061-JMP-cgc

**SHELBY COUNTY HEALTHCARE
CORPORATION, d/b/a THE REGIONAL
MEDICAL CENTER, a/k/a THE MED,**

Defendant.

**ORDER DENYING DEFENDANT SHELBY COUNTY HEALTHCARE
CORPORATION'S MOTION FOR PROTECTIVE ORDER**

Before the Court is Defendant Shelby County Healthcare Corporation, d/b/a The Regional Medical Center, a/k/a The Med's Motion for Protective Order (D.E. #46). The motion was filed pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and requests that the Court limit discovery to the claims of prospective class members that are not barred by the applicable statute of limitations. Specifically, Defendant states that "any cause of action which arose prior to January 30, 2007 is outside the one-year statute of limitations governing actions brought for alleged violations of 42 U.S.C. § 1983" and that the Court should determine that the "relevant time period" for certain discovery requests begin on this date.¹ The motion was referred to United States

¹ The discovery requests at issue in this motion are Interrogatory 4 of Plaintiff's First Set of Interrogatories and Request for Production 1 of Plaintiff's First Set of Requests for Documents. (See Motion for Protective Order (D.E. #46), Ex. A. ¶ 11, Ex. B. ¶ 11).

Magistrate Judge Charmiane G. Claxton for determination (D.E. #47).

On November 18, 2009, Chief United States District Judge Jon Phipps McCalla entered an Order Denying Defendant's Motion for Partial Summary Judgment. (D.E. #60). In that motion, Defendant had requested that the Court rule as a matter of law that, "if the Court certifies a class in this matter, the claims of any class members that accrued prior to January 30, 2007 are untimely." (Order Denying Defendant's Mot. for Partial Summ. J. at 2 (citing Def.'s Mot. for Partial Summ. J. (D.E. 45) at 1)). Upon consideration of that request to preemptively limit the class, despite the absence of any pending motion to certify class, the District Court denied the request without holding a hearing and further instructed as follows:

The Med asks the Court to rule on claims of individuals who are not now, and may never be, before the Court. Those individuals would not be bound by such a ruling because they are not parties to this litigation. See Taylor v. Sturgell, 128 S. Ct. 2161 2175 (2008) (Absent a "limited" exception, "a litigant is not bound by a judgment to which she was not a party.") (citations omitted). Although there is an exception for class actions, Taylor, 128 S. Ct. at 2172, the Court has not certified a class in this matter.

If the Court were to nonetheless rule on those individuals' claims, the Court would be issuing an advisory opinion. See Christian Coal. of Ala. v. Cole, 355 F.3d 1288, 1293 (11th Cir. 2004) ("A ruling by us would not grant a party any meaningful relief, but rather would be an impermissible advisory opinion . . ."); Holloway v. United States, 789 F.2d 1372, 1374 (11th Cir. 2004) (where the individual against whom relief is sought cannot be bound by a ruling, the ruling amounts to an advisory opinion). The Constitution forbids this. Mu Ju Li v. Mukasey, 515 F.3d 575, 579 (6th Cir. 2009).

(Order Denying Mot. for Partial Summ. J. at 3-4). Because the District Court has held that it is improper to bar claims of "individuals who are not now, and may never be, before the Court," the Court finds that prohibiting discovery into potential class members on the basis that they are preemptively barred by the statute of limitations is likewise improper.

Furthermore, Plaintiff's discovery requests explicitly define the "relevant time period" as

“the period of time from January 30, 2003” until the response date. (See Motion for Protective Order (D.E. #46), Ex. A. ¶ 11, Ex. B. ¶ 11). Defendant has previously filed a Motion for Protective Order related to the same interrogatories and requests for production at issue in the present motion. (D.E. #26). Defendant noted that the scope of the requests was defined as beginning at January 30, 2003 and argued that the scope of discovery was unduly burdensome and expensive. (See Mot. for Protective Order (D.E. #26) at 3). At that time, the Court considered whether Defendant should be required to comply with Plaintiff’s interrogatories and requests for production, including the proposed scope of time. The Court ordered that Defendant must respond in full to the discovery requests.² Although Defendant now asserts that the “applicability of the ‘relevant time period’” requires further clarification, the interrogatories and requests for production were clearly defined by the scope of Plaintiff’s requests when the Court previously considered this issue and ordered Defendant to fully respond. Accordingly, based upon the Order Denying Motion for Partial Summary Judgment and the Order Granting in Part and Denying in Part Defendant’s Motion for Protective Order, Defendant’s Motion for Protective Order (D.E. #46) is DENIED.

IT IS SO ORDERED this 17th day of May, 2010.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

² The sole limitation imposed by the Court is that the discovery responses would be subject to a qualified protective order to insure that the production complied with the Health Insurance Portability and Accountability Act (“HIPAA”), 42 U.S.C. §§ 1302d et seq. The HIPAA Qualified Protective Order was entered by Chief United States District Judge Jon Phipps McCalla on June 15, 2009.