

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(SOUTHERN DIVISION)**

BARRY D. BRAAN, SR.

\*

Plaintiff,

\*

v.

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CASE NO. 8:21-cv-02023-DKC

UNIVERSITY OF MARYLAND  
MEDICAL SYSTEM  
CORPORATION, *et al.*

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**RESPONSE TO SHOW CAUSE ORDER**

Plaintiff, BARRY D. BRAAN, SR., by his undersigned counsel, files this Response to the Show Cause Order (ECF No. 8) entered by the Court in this case and states:

1. Since the filing of the Complaint in this case Plaintiff's undersigned counsel had been in settlement discussions with Mark Saudek, Esq., Gallagher Evelius & Jones LLP, who accepted service by email on behalf of all Defendants in this case pursuant to Fed. R. Civ. Proc. 4(d) on December 17, 2022.

2. Counsel engaged in good faith attempts to attempt to settle and/or to focus the issues thereafter, but the parties have not accomplished settlement.

3. Plaintiff requests that the Court allow the parties an additional 30 days to try to settle, and order that the Defendants file their responsive pleading within thirty (30) days of the Court's order, and that the case proceed in the ordinary course.

4. In *McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir. 1976), the Court stated that "because dismissal is such a harsh sanction...it should be resorted to only in extreme cases." The *McCargo Court*, citing *Reizakis v. Loy*, 490 F.2d 1132 (4th Cir. 1974), set forth the factors that

must be taken into consideration in determining whether dismissal was proper under Rule 41(b), stating, *inter alia*:

First is the degree of personal responsibility on the part of the plaintiff. Dismissal should be ordered "only in the face of a clear record of delay or contumacious conduct by the plaintiff." Second is the amount of prejudice to the defendant caused by the delay. "[Generally] lack of prejudice to the defendant, though not a bar to dismissal, is a factor that must be considered in determining whether the trial court exercised sound discretion." [Citations omitted]

5. The plaintiff in this case has not delayed or engaged in contumacious conduct. He desired to have counsel engage in settlement discussions. Furthermore, defendants have not been prejudiced as they had accepted service, and in light of the discussions have not pled.

6. Accordingly, plaintiff requests that the Court issue the order deferring dismissal as requested, allowing the parties an additional 30 days to attempt to settle and/or to define the issues to be litigated, that the Defendants file their responsive pleading within thirty (30) days of the Court's order, and that the case proceed in the ordinary course

WHEREFORE, Plaintiff, BARRY D. BRAAN, SR., requests that the court issue the order as requested in paragraph 5 hereof.

Respectfully submitted,

/s/ Brian S. Jablon, Esq.  
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Attorneys for the Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of October, 2021, a copy of the foregoing pleading was sent via email and U.S. Mail to Mark Saudek, Esq., 218 North Charles Street, Suite 400, Baltimore, MD 21201, attorneys for Defendants.

/s/  
Brian S. Jablon, No. 11174

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**ORDER**

Upon the consideration of the Response to Show Cause Order filed in this case by the Plaintiff, BARRY D. BRAAN, SR., and any Response thereto, it is this \_\_\_\_ day of October 2022, hereby:

**ORDERED**, that dismissal in this case is deferred, that the Defendants shall file their responsive pleading in this case within thirty (30) days of this Order, and that the case shall proceed in the ordinary course.

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DEBORAH K. CHASANOW  
United States District Judge