

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

| | | |
|---|---|---------------------------------|
| ANDREA SCHMITT; ELIZABETH |) | |
| MOHUNDRO; and O.L. by and through her |) | CASE NO. 2:17-cv-1611-RSL |
| parents, J.L. and K.L., each on their own behalf, |) | |
| and on behalf of similarly situated individuals, |) | |
| |) | DECLARATION OF MEDORA A. |
| Plaintiffs, |) | MARISSEAU IN SUPPORT OF |
| |) | DEFENDANTS' OPPOSITION TO |
| v. |) | PLAINTIFFS' MOTION FOR LEAVE TO |
| |) | FILE FIFTH AMENDED COMPLAINT |
| KAISER FOUNDATION HEALTH PLAN OF |) | |
| WASHINGTON; KAISER FOUNDATION |) | |
| HEALTH PLAN OF WASHINGTON |) | |
| OPTIONS, INC.; KAISER FOUNDATION |) | |
| HEALTH PLAN OF THE NORTHWEST; and |) | |
| KAISER FOUNDATION HEALTH PLAN, |) | |
| INC., |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

I, Medora A. Marisseau, hereby declare and state as follows:

1. I am one of the attorneys of record for the Defendants (collectively, "Kaiser") in the above-captioned matter. I make this declaration based on personal knowledge and am otherwise competent to testify to the matters stated herein.

2. A few weeks ago, in early March 2023, after the parties completed briefing on Plaintiffs' pending motion for class certification (Dkt. # 90), Plaintiffs' counsel suggested that the expert disclosure deadline (which was March 17, 2023) be continued for a short time along with

1 certain other pre-trial deadlines (but *not* the deadline for amendment of pleadings, which had
2 already passed). Because the deadlines under discussion could be adjusted without changing the
3 dispositive motion and trial dates, Kaiser consented, and new expert disclosure and discovery
4 deadlines were set by stipulated order on March 13, 2023 (Dkt. # 110).

5 3. Two days later, on March 15, 2023, without warning, Plaintiffs' counsel advised
6 they would seek to add brand new claims for disparate impact. I requested that Plaintiffs reconsider
7 given the undue delay, prejudice and futility. I received no response. Attached hereto as **Exhibit A**
8 is a true and correct copy of my email exchange with Plaintiffs' counsel.

9 4. Kaiser has been engaged in producing discovery in this case since 2018. Prior to
10 the filing of Plaintiffs' Motion to Amend, Plaintiffs last took a deposition on December 13, 2022.
11 I am aware of nothing new that Kaiser produced in discovery that would suddenly make previously
12 (supposedly) unforeseen grounds for a disparate impact claim apparent.

13 5. Kaiser has not conducted investigation on issues related to a disparate impact claim.
14 To prepare for defense of such a claim, expert testimony and actuarial analysis will be needed and
15 that will take significant time and effort to develop. Kaiser will need more than a month to evaluate
16 its defenses, locate relevant evidence and experts. This would be extremely difficult to complete
17 in the time remaining for experts and discovery under the current (extended) schedule. Kaiser
18 would be prejudiced if it now needs to litigate the new proposed disparate impact claims.

19 I declare under penalty of perjury of the laws of the United States that the foregoing is true
20 and correct.

21 Executed this 10th day of April, 2023, at Seattle, Washington.

22
23
24 s/Medora A. Marisseau

25 Medora A. Marisseau, WSBA #23114
26
27

CERTIFICATE OF SERVICE

I, Luci Brock, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to this action. My business address is: 701 Fifth Avenue, Suite 3300, Seattle, Washington 98104. On this day, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the parties listed below in the manner indicated.

Eleanor Hamburger
 Richard E. Spoonemore
 SIRIANNI YOUTZ SPOONEMORE HAMBURGER
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 Seattle, WA 98121
 206-223-0303
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Attorneys for the Plaintiffs



Via U.S. Mail
 Via Hand Delivery
 Via Electronic Mail
 Via Overnight Mail
 CM/ECF via court's website

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Attorneys for the Plaintiffs



Via U.S. Mail
 Via Hand Delivery
 Via Electronic Mail
 Via Overnight Mail
 CM/ECF via court's website

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, to the best of my knowledge.

Executed on this 10th day of April, 2023, at Seattle, Washington.

s/Luci Brock

Luci Brock
 Legal Assistant

Exhibit A

From: Medora A. Marisseau <mmarisseau@karrtuttle.com>
Sent: Friday, March 17, 2023 8:38 AM
To: Ele Hamburger <ele@sylaw.com>
Cc: Mark Bailey <m Bailey@karrtuttle.com>; Rick Spoonemore <rick@sylaw.com>; John Waldo <johnfwaldo@hotmail.com>; Daniel Gross <Daniel@sylaw.com>
Subject: RE: Schmitt v. Kaiser - Fifth Amended Complaint

Hi Ele. I am rather shocked at receiving your request to amend the complaint yet again at this stage in the litigation and only AFTER you got my agreement to extend certain pretrial deadlines.. Why is this coming up now? You included disparate impact claims in the Regence case and so this is an 11th hour attempt to add a whole new claim that Plaintiffs have been aware of for years. This does prejudice Kaiser since there are entirely different defenses and facts that apply. Nevertheless, Judge Jones just dismissed the disparate impact claim in the Regence case so there is a strong chance the amendment is futile in any event. I request you reconsider.

Thanks,

Medora A. Marisseau

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Global Resources for KTC Clients, Law Firm Alliance

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From: Ele Hamburger <ele@sylaw.com>
Sent: Wednesday, March 15, 2023 9:23 AM
To: Medora A. Marisseau <mmarisseau@karrtuttle.com>
Cc: Mark Bailey <m Bailey@karrtuttle.com>; Rick Spoonemore <rick@sylaw.com>; John Waldo <johnfwaldo@hotmail.com>; Daniel Gross <Daniel@sylaw.com>
Subject: Schmitt v. Kaiser - Fifth Amended Complaint

Dear Medora,

Based on the discovery produced and the recent Rule 30(b)(6) deposition, as well as Ninth Circuit caselaw since this case was remanded, we intend to amend the complaint to clearly articulate, within the Section 1557 claim, allegations for disparate impact discrimination. Attached is a redlined copy of the operative version of the Complaint.

Please let me know whether your client will stipulate to the Amendment by no later than Friday, or any concerns you may have.

Thank you,

Ele

Ele Hamburger
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I am presently working remotely but regularly checking voice messages left on my direct line.