IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CHIANNE D., *et al.*,

Plaintiffs,

Case No. 3:23-cv-00985-MMH-LLL

v.

JASON WEIDA, in his official capacity as Secretary for the Florida Agency for Health Care Administration, and SHEVAUN HARRIS, in her official capacity as Secretary for the Florida Department of Children and Families,

Defendants.
_____/

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR CLARIFICATION REGARDING WITNESS TESTIMONY DURING THE PRELIMINARY INJUNCTION HEARING

Defendants respectfully respond in opposition to Plaintiffs' untimely request for an evidentiary hearing, styled as a Motion for Clarification. ECF No. 46.

Plaintiffs' "Motion for Clarification" does not seek clarification at all. Rather, it is a request for an evidentiary hearing filed 51 days late under Local Rule 3.01(h). To grant the belated request now—after the parties negotiated a narrow scope for class-certification discovery and after Defendants filed their responses to Plaintiffs' pending motions for class certification and for a preliminary injunction—would be incurably prejudicial and is unnecessary under Federal Rule of Civil Procedure 65. This Court should deny the request.

I. PLAINTIFFS' REQUEST VIOLATES LOCAL RULE 3.01(H).

This Court's Local Rules state that "[a] party must request . . . an evidentiary hearing in a separate document *accompanying the party's motion or response and stating the time necessary*." M.D. Fla. Loc. R. 3.01(h) (emphasis added). Plaintiffs did not follow this process.

Under Local Rule 3.01(h), Plaintiffs' request for an evidentiary hearing—now styled as a Motion for Clarification—is 51 days late. It should have been filed with the Motion for a Classwide Preliminary Injunction on August 22, 2023. *See* ECF No. 3. Plaintiffs offer no good cause or exceptional circumstances to explain why they sprung this demand on Defendants and the Court more than seven weeks late and less than three weeks before the hearing date—after the Court's Status Conference, after the parties negotiated a "narrow" scope of document-only discovery, ECF No. 30 at 2, and after Defendants responded to Plaintiffs' Motion for Class Certification and Motion for a Classwide Preliminary Injunction, *see* ECF Nos. 38, 39. Plaintiffs simply contend that Local Rule 3.01(h) does not apply to them, citing Local Rule 6.02. But Rule 6.02 does not even mention evidentiary hearings, let alone grant an automatic right to an evidentiary hearing. As to hearings, the rule merely states that a response to a preliminary-injunction motion must be filed "within seven days after notice of the motion or seven days before the hearing, whichever is later." M.D. Fla. Loc. R. 6.02(c). Nor does Rule 6.02 create a preliminary-injunction exception to the clear and categorical requirements of Rule 3.01(h)—a requirement that applies to all parties and all motions.

Plaintiffs have never explained why they kept their intentions to themselves so long. But no matter the reason, Plaintiffs' belated request plainly violates Local Rule 3.01(h) and should therefore be denied. *See Yellow Bird Real Estate, Inc. v. YellowBird Homebuyers, LLC*, No. 3:22-cv-633, 2022 WL 20668006, at *2 (M.D. Fla. Oct. 7, 2022) (Barksdale, Mag.) (explaining that an evidentiary hearing was "unlikely considering that the plaintiff failed to request one as required by Local Rule 3.01(h)"); *see also Caplan v. All Am. Auto Collision, Inc.*, 36 F.4th 1083, 1093–94 (11th Cir. 2022) (holding that plaintiff was not entitled to an evidentiary hearing on fee issue when plaintiff "failed to meet the first prerequisite for obtaining a hearing (that he plainly request one in the first place)").

II. ORDERING AN EVIDENTIARY HEARING AT THIS LATE STAGE WILL PREJUDICE DEFENDANTS.

Defendants would be incurably prejudiced if Plaintiffs are permitted at this late stage to unilaterally transform the long-planned October 30 hearing into an evidentiary hearing.

Plaintiffs had ample opportunities during the nearly two months that this case has been pending to request an evidentiary hearing, but failed to do so. Their Motion for a Classwide Preliminary Injunction did not request an evidentiary hearing, nor did Plaintiffs contemporaneously file a request for an evidentiary hearing, *see* M.D. Fla. Loc. R. 3.01(h).

Next, during this Court's status conference held on August 29, 2023—more than six weeks ago—the parties and the Court explicitly discussed the hearing on the

pending motions. The status conference's singular purpose was to discuss a hearing date and briefing schedule. But Plaintiffs did not mention the need for an evidentiary hearing. *See generally* Ex. A, Tr. of Status Conf. Nor did Plaintiffs ask for clarification or request an evidentiary hearing when this Court noted that "any evidence supporting a motion for preliminary injunction is to be filed with the motion." *Id*. at 18:20–19:2.

The parties then embarked on a ten-day negotiation over the scope of discovery needed to respond to Plaintiffs' pending motions. At no time during these discussions did Plaintiffs ever mention a need for an evidentiary hearing or disclose their intent to present live testimony. Plaintiffs disavowed the need for discovery at all. In reliance on these negotiations, Defendants agreed to forego depositions in favor of narrow document-only discovery. ECF No. 30 at 2. Obviously, Defendants would have *never* agreed to forego depositions if Plaintiffs had timely sought an evidentiary hearing or disclosed their intent to present live testimony. And Defendants would in turn have relied on deposition testimony in their written responses if that testimony had been available.

On October 3, during the parties' Rule 26(f) conference, Plaintiffs disclosed for the first time that they intend to call Jennifer V. (Plaintiff A.V.'s next friend) via remote videoconference. Plaintiffs did not mention any other witnesses. Defendants were surprised to learn three days before their responses were due that Plaintiffs might seek an evidentiary hearing. Counsel for Defendants asked whether Plaintiffs contemplated a deposition of Jennifer V. before the hearing. Plaintiffs' counsel responded that there was insufficient time for depositions, but that, since Defendants had not planned to

call witnesses, Plaintiffs would confer internally about their own need to present live testimony. Plaintiffs then sat silent for another week before filing their "Motion for Clarification."

Defendants have already filed their written responses to Plaintiffs' Motion for Class Certification and Motion for Classwide Preliminary Injunction. ECF Nos. 38, 39. Defendants have not deposed Plaintiffs or anyone else, and even if leave were granted, cannot properly prepare for and conduct those depositions—in addition to preparing witnesses of their own—in twelve days. Since Plaintiffs did not request an evidentiary hearing pursuant to Local Rule 3.01(h), Defendants did not determine whether the six agency employees who offered declarations in support of Defendants' responses are available to travel to Jacksonville to testify at the October 30 hearing or whether they are available for deposition and witness preparation between now and then. And of course, Defendants' written responses will not reflect information that might be learned during any rushed depositions conducted between now and the hearing.

Had Plaintiffs complied with Local Rules 3.01(h), Defendants would have made different choices at every turn—from the discovery pursued, to the briefing and hearing schedule negotiated, to the contents of their written responses, to the preparation of their own witnesses. The prejudice caused by Plaintiffs' inexplicably untimely request for an evidentiary hearing is clear, and it is not curable at this late stage.

III. RULE 65 DOES NOT REQUIRE AN EVIDENTIARY HEARING HERE.

Finally, an evidentiary hearing is not required by Eleventh Circuit precedent. Rule 65 does not require an evidentiary hearing before a court rules on a preliminary-injunction motion unless "facts are bitterly contested and credibility determinations must be made to decide whether injunctive relief should issue." *Transcon. Gas Pipe Line Co., LLC v. 6.04 Acres*, 910 F.3d 1130, 1169 (11th Cir. 2018) (quoting *Cumulus Media, Inc. v. Clear Channel Commc'ns, Inc.*, 304 F.3d 1167, 1178 (11th Cir. 2002)); *accord CBS Broad., Inc. v. EchoStar Commcn's Corp.*, 265 F.3d 1193, n.18, 1207 (11th Cir. 2001); *McDonald's Corp v. Robertson*, 147 F.3d 1301, 1311–13 (11th Cir. 1998) (collecting cases from other circuits).

Thus, the Eleventh Circuit has explained that district courts need not hold an evidentiary hearing where, as here, there is no "hotly contested" dispute about "critical issues" that are "central" to a plaintiffs' claim, *All Care Nursing Servs., Inc. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1538–39 (11th Cir. 1989), and where the Court need not make credibility determinations to resolve those "bitterly contested" disputes, *Transcon. Gas Pipe Line Co.*, 910 F.3d at 1169; *see also McDonalds*, 147 F.3d at 1313 (district court did not abuse discretion by not holding an evidentiary hearing before ruling on motion for preliminary injunction). Nor is a hearing required when "there is little dispute as to raw facts, but much dispute as to the inferences to be drawn from those facts." *Transcon. Gas Pipe Line Co.*, 910 F.3d at 1169.

Plaintiffs claim that live witness testimony might "aid the Court in assessing the credibility of the declarants and resolving contested factual issues," ECF No. 46 ¶ 12,

and that Defendants' responses and declarations "contest certain facts and take issue with the credibility of Plaintiffs' declarants," *id.* ¶ 15. But these bare-bones, boilerplate assertions fail to establish the necessity of an evidentiary hearing under this circuit's precedents. Plaintiffs never bother to identify for the Court the factual issues and the credibility questions that live testimony will address—or even to name the declarants whose credibility is in doubt or explain how live testimony will bolster their credibility.

The fact that Plaintiffs first approached Defendants about live testimony *three days before* Defendants filed their responses and declarations belies Plaintiffs' assertion that those responses and declarations prompted Plaintiffs' request for an evidentiary hearing.

Likewise, the fact that one of the proposed witnesses—Kimber Taylor—is not mentioned *anywhere* in Defendants' responses and declarations belies the assertion that Defendants' responses and declarations necessitated Plaintiffs' untimely request for an evidentiary hearing.

Plaintiffs failed to make a timely request for an evidentiary hearing under Local Rule 3.01(h), then proposed an evidentiary hearing before they could have reviewed Defendants' responses, and now attribute the asserted need for an evidentiary hearing to those responses, without any attempt to describe the matters that live testimony will elucidate.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiffs' untimely request for an evidentiary hearing.

October 18, 2023.

Respectfully submitted,

/s/ Andy Bardos
Andy Bardos (FBN 822671)
James Timothy Moore, Jr. (FBN 70023)
Ashley H. Lukis (FBN 106391)
GRAYROBINSON, P.A.
301 South Bronough Street, Suite 600
Tallahassee, Florida 32301-1724
Telephone: (850) 577-9090
andy.bardos@gray-robinson.com
tim.moore@gray-robinson.com
ashley.lukis@gray-robinson.com
Attorneys for Defendants, Secretaries Weida and Harris

Exhibit A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CHIANNE D.; C.D., by and through her mother and Next Friend, Chianne D.; and A.V., by and through her mother and next friend, Jennifer V.,

Plaintiffs,

v.

JASON WEIDA, in his official capacity as secretary for the Florida Agency for Health Care Administration, and SHEVAUN HARRIS, in her official capacity as Secretary for the Florida Department of Children and Families,

Defendants.

Case No. 3:23-cv-985-MMH-LLL

Tuesday, August 29, 2023

10:06 a.m. - 10:33 a.m.

Courtroom 10B

(Via Zoom)

STATUS CONFERENCE (VIA ZOOM)

BEFORE THE HONORABLE MARCIA MORALES HOWARD
UNITED STATES DISTRICT JUDGE

OFFICIAL COURT REPORTER:
Katharine M. Healey, RMR, CRR, FPR-C
PO Box 56814
Jacksonville, FL 32241
Telephone: (904) 301-6843
KatharineHealey@bellsouth.net

(Proceedings reported by stenography; transcript produced by computer.)

APPEARANCES

COUNSEL FOR PLAINTIFFS:

KATHERINE DeBRIERE, ESQUIRE
Florida Health Justice Project
3900 Richmond Street
Jacksonville, Florida 32205
(352) 496-5419
debriere@floridahealthjustice.org

- A N D -

LYNN C. HEARN, ESQUIRE
Florida Health Justice Project
3606 Dexter Drive
Tallahassee, Florida 32312
(754) 231-0106
hearn@floridahealthjustice.org

- A N D -

SARAH GRUSIN, ESQUIRE
National Health Law Program
1512 East Franklin Street, Suite 110
Chapel Hill, North Carolina 27514
(919) 968-6308
grusin@healthlaw.org

COUNSEL FOR DEFENDANT WEIDA/AHCA:

ASHLEY H. LUKIS, ESQUIRE
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Tallahassee, Florida 32301
(850) 577-9090
ashley.lukis@gray-robinson.com

- A N D -

CHRISTOPHER N. JOHNSON, ESQUIRE
GrayRobinson, P.A.
333 Southeast 2nd Avenue, Suite 3200
Miami, Florida 33131
(305) 416-6880
christopher.johnson@gray-robinson.com

- A N D -

CHRISTOPHER C. TORRES, ESQUIRE
Agency for Health Care Administration
Office of the General Counsel
2727 Mahan Drive, Building 3, MS #3
Tallahassee, Florida 32308
(850) 412-3646
Torres@ahca.myflorida.com

COUNSEL FOR DEFENDANT HARRIS/DCF:

LOGAN BARTHOLOMEW, ESQUIRE
Department of Children and Families
400 West Robinson Street, Suite S1129
Orlando, Florida 32801
(407) 317-7994
logan.bartholomew@myflfamilies.com

P R O C E E D I N G S

August 29, 2023 10:06 a.m.

- - -

THE COURT: All right. This is Case No. 3:23-cv-985-MMH-LLL. It is the plaintiffs -- I'll just identify the first name as Chianne D. -- vs. Jason Weida, in his official capacity as Secretary for the Florida Agency for Health Care Administration, and Shevaun Harris, in her official capacity as Secretary of Florida Department of Children and Families.

And who do I have on behalf of the plaintiffs?

MS. DeBRIERE: Your Honor, Katy DeBriere, Florida Health Justice Project, appearing on behalf of the plaintiffs.

MS. HEARN: And Lynn Hearn with Florida Health Justice Project as well.

MS. GUSIN: And Sarah Grusin with the National Health Law Program.

THE COURT: All right.

And on behalf of defendants?

MS. LUKIS: Good morning, Your Honor. Ashley Lukis on behalf of Agency for Health Care Administration. I'm joined by my law partner, Chris Johnson, and as well as the Agency for Health Care Administration's chief litigation counsel, Christopher Torres.

Our retention has not been formalized -- or

finalized, rather, yet with the Department of Children and Families, and so Mr. Bartholomew can introduce himself on that front.

MR. BARTHOLOMEW: Good morning, Your Honor. Logan Bartholomew, Assistant Regional Counsel, Orlando, for the Florida Department of Children and Families making a special and limited appearance.

THE COURT: All right. So as you're all well aware, plaintiffs have filed a motion for preliminary injunction, class-wide motion for preliminary injunction. It's document number 3.

You have now -- or defendants have now been served with process, correct?

MS. LUKIS: Yes, Your Honor.

THE COURT: All right. So I thought I would get us together and talk about a briefing schedule and also explore whether there was any potential of an interim agreement with regard to preliminary relief pending resolution of the merits of the case.

Have you-all had any discussions about that, Ms. DeBriere?

MS. DeBRIERE: We have not, Your Honor. We reached out yesterday to determine whether or not defense counsel would like to have discussions, but my understanding, based on the activity on the docket today, is likely the agencies were still

deciding which counsel to retain and so weren't able to engage in those conversations as of yet.

THE COURT: Well, it may be that I set this prematurely.

Would it make more sense for me to give you-all a few days to finalize representation and have those discussions and present me with either the outcome of those discussions or a proposed briefing schedule for the preliminary injunction?

MS. DeBRIERE: Your Honor, on plaintiffs' behalf, just given the need for expedited resolution of this case, what -- if I may suggest, we can set the briefing schedule today, and then counsel for both sides could go back and have a discussion about the potential for an interim agreement and present that to the Court at a later time.

Would that be amenable?

THE COURT: That's probably what we -- yeah, that's fine. That was what I kind of thought we were doing when we came in, but I was -- if there was a way that -- if you-all had a chance to resolve something earlier, I was interested in that.

But let's -- so let me look at a calendar in terms of a briefing schedule.

When were you-all -- I think it was -- was it Thursday or Friday that the defendants were served?

MS. LUKIS: Yes.

MS. DeBRIERE: Your Honor, it was last Wednesday they were formally served, and then Thursday we filed the executed summons on the docket.

THE COURT: Okay.

MS. LUKIS: And, Your Honor, if it's helpful, while reviewing your calendar, defendants have got probably a different view of the proper length of -- length of time that the briefing is going to take in light of the class-wide relief sought. So if Your Honor is open to hearing argument from the parties on that front, I'd be happy to share.

THE COURT: Sure. I'm happy to hear your thoughts, but, of course, keep in mind it is a motion for preliminary injunctive relief. So it's going to get an expedited briefing schedule despite the complexity of the issues of a class-wide relief.

MS. LUKIS: Absolutely, Your Honor. I would only point out that the plaintiffs themselves are individuals, but they've made the strategic decision to couple their request for preliminary injunctive relief with the request for a class-wide certification. And so in order to obtain that preliminary relief, the class certification proceedings must come first.

And in order to respond to the class certification motion, defendants are going to need an opportunity to not only review the 80-plus pages of briefing -- I mean, we formalized our retention by a single party last night. So we're still

getting our arms around basic facts. We're still reviewing the papers.

And we're talking about -- you know, we're talking about millions of people and millions, if not billions, of dollars that are at issue here. And so the defendants submit that they do need a reasonable opportunity to conduct class discovery -- not merits discovery, but class discovery -- in order to comprehensively respond to the motion for class certification. And that must precipitate a ruling on the PI motion because it seeks only class-wide relief.

And class certification, Your Honor, is not emergency relief. And in a case like this, it should not be decided on an emergency basis because the plaintiffs are asking this Court to halt federally-mandated eligibility redeterminations for millions of people. That is going to -- I mean, the relief that they're seeking asks this Court to force the State to provide benefits to ineligible people, to provide benefits to millions of people without regard to their eligibility under federal law. It jeopardizes the State's compliance with the federally-mandated timelines to complete these re-eligibility determinations --

THE COURT: Okay. Ms. Lukis, you're getting into the merits and all the reasons why you think they're not entitled to injunctive relief. And I'm certainly interested in hearing your arguments, but all I'm talking about now is a briefing

schedule and --

MS. LUKIS: And Your Honor --

THE COURT: Whoa, whoa. Let me finish, please.

MS. LUKIS: I apologize, Your Honor. I didn't realize -- there might have been a lag in the video conference. I would never intentionally. I'm sorry.

THE COURT: Okay, Ms. Lukis. What I was trying to say was your arguments are arguments against a preliminary injunction at this stage. You're saying that you have to determine class-wide relief first. That may or may not be the case. I would be very interested in the legal briefing on that. But we're not going to decide that right now.

I'm going to put in place a briefing schedule on the motion for preliminary injunctive relief. And in response to the motion for preliminary injunctive relief you're, I assume, going to argue, in part, that the motion for preliminary injunctive relief cannot be resolved until the class certification is resolved.

That's fine. That's your substantive argument, but that's not what we're here to address right now.

So in terms of a response to the motion for preliminary injunctive relief, understanding that you're going to raise those substantive arguments as a basis for the Court not undertaking such relief right now, what would you like me to consider in terms of a time frame for the defendants'

response?

MS. LUKIS: Your Honor, because the defendants' position is that class-wide discovery would be necessary to respond to a class-wide request for preliminary injunction, our position is that 60 days would be necessary in order to complete that discovery, in order to respond to the class certification motion, and to respond to the preliminary injunction motion which is contingent on the former.

I'm not -- I've apologize if I came across as arguing the merits. I am simply trying to stress the need for a longer timeline to respond to the class certification motion, which is coupled with the preliminary injunction motion.

So we would submit that 60 days would be necessary to complete the class certification portion of the discovery -- or the class certification portion of the briefing.

If plaintiffs were only seeking PI relief as to the individuals, that would be -- that would be a different story. But in order to respond on a class-wide basis, we need to depose the plaintiffs; we need document discovery; we need to probe the allegations in the class action complaint and in the complaint if this is -- we're talking about class-wide injunctive relief. And so our -- I think a reasonable timeline would be 60 days.

And we would also request an order from this Court authorizing us to move forward with class discovery -- of

course not merit discovery at this time, but just class discovery -- so that we can comprehensively and accurately respond to both of the pending motions, which, because of the choice the plaintiffs made, are inextricably inter- -- excuse me, inextricably intertwined.

THE COURT: Ms. DeBriere.

MS. DeBRIERE: Yes, Your Honor. I can address some of the points Ms. Lukis raised.

First of all, as to a strategic decision that was made, that's correct inasmuch as plaintiffs' counsel recognizes the need for class-wide relief given that the agency is using standardized reason codes to terminate individuals' Medicaid eligibility. So it's not just the individual plaintiffs who are being harmed, but there is a class of people who are being harmed.

Secondly, as to the need for class-wide discovery, certainly we're amenable to limited, targeted discovery, but I'm unsure as to why the agencies need significant class-wide discovery given that all the information lives with them and not with us.

So we think that this is actually a very simple, straightforward issue; it is whether or not the Medicaid notices meet constitutional due process and fall in line with the federal Medicaid regulations implementing 42 U.S.C. 1396a(a)(3). So we don't see the need for broad class-wide

discovery. And, in fact, if any class-wide discovery was necessary, again, that information lives with the agencies and not with us.

And then finally, Your Honor, you know, again, I would just like to reiterate that as plaintiffs have set forth in all of their pleadings, the complaint, the motion for class cert, and the motion for PI, we strongly believe this is an issue that is harming people, and so that's why we are seeking the emergency expedited resolution of this matter class wide.

THE COURT: All right.

MS. DeBRIERE: Your Honor, we had proposed the defense -- we didn't get a response yesterday, but we had proposed to defendants scheduling the PI hearing for sometime at the end of September, either the 25th, the 26th, or the 27th. Those were the dates that we thought would work best in terms of ensuring they have an opportunity to respond to the motion and otherwise prepare for the PI hearing.

THE COURT: Ms. Lukis.

MS. LUKIS: Your Honor, I would have two brief points to make. One is in terms of discovery, certainly some documents live with the agencies, but the plaintiffs' contentions certainly don't live with the agencies. The plaintiffs' standing doesn't live with the agencies. And so, I mean, the Eleventh Circuit is pretty clear that we're -- that class discovery is proper. And certainly we're not reaching

into the merits.

As far as the proposed late September PI hearing date, if we were here talking about a preliminary injunction as to three individual plaintiffs, I think that that would be a reasonable timeline. But if we're talking about class-wide injunctive relief, then that simply does not afford these two massive state agencies, one of whom is still finalizing a retention of outside counsel, to explore the necessary class-wide discovery and prepare fulsome responses in order to provide this Court with all of the facts that it needs to decide whether or not plaintiffs' request to, you know, halt these federally-mandated redeterminations is proper. And so we would ask for certainly more time than just a few weeks.

MS. DeBRIERE: Your Honor, may I address one point that Ms. Lukis raised?

THE COURT: Sure.

MS. DeBRIERE: Just as to standing.

The standing here, Your Honor, is conferred on the plaintiffs by the fact that there were erroneous determinations of Medicaid eligibility and lack of inadequate [verbatim] notice. Both the erroneous determinations as well as the lack of inadequate notice are not things that the plaintiffs can actually testify to other than whether they understood them or not.

So again, I -- you know, I don't see how the majority

of the information in which defense counsel needs to rely to prepare for and respond to the PI and class motions -- prepare for the PI hearing and respond to the motions is not something that is already in their possession and control.

THE COURT: All right. Give me a moment.

(Pause in proceedings.)

THE COURT: All right. Here's the problem. Usually we can come up with an agreement on a path forward. We clearly aren't being very successful in doing that this morning. And the problem that I think I have is I don't have enough of an understanding of your competing positions in order to pick a path.

So I think what makes the best sense is for me to let the defendants finalize their representation, let you-all confer with one another and see if you can agree on what discovery needs to be done and how long that will take and see if you can agree on a proposed schedule. And if you can't, then you'll file your competing proposals with me.

But when you file your competing proposals, you're going to explain to me why it is that you need those things, why it is that you need that discovery, what points it goes to, what the relevance is, and why it's necessary at this juncture.

Ms. Lukis, I just need to say out loud that the fact that these are massive agencies with a lot of responsibilities and that they are still finalizing their counsel, that's not --

that isn't going to be a reason to slow things down. The merits -- we have to reach the merits. So the arguments should be based upon what information is necessary for the Court to have all of the facts and circumstances necessary to resolve the merits of the motion for preliminary injunction.

So what I'm going to do is -- I'm sorry, I can't get that to stop.

I really want to say by Friday, but I'm concerned about the darn storm.

MR. BARTHOLOMEW: Your Honor, I'm sorry. If I may be heard.

Speaking of the darn storm, the Department of Children and Families is also responsible for Supplemental Nutritional Assistance Program, SNAP, formerly known as Food Stamps.

Following a major disaster like the one that's been declared by both the Governor and the President, the Department is usually responsible for D-SNAP, disaster SNAP, sometimes known as Food For Florida. And that's an all-hands-on-deck kind of situation for our agency, to the point where even I, as an attorney, sometimes have to man the phones a couple days, a couple weekends.

So that is another factor that might weigh in Your Honor's decision on this briefing schedule. All of our staff is going to be tied up doing sort of second-responder work with

regards to the impending disaster; that is, the hurricane.

THE COURT: Okay. Well, it's fall in Florida. You can count on good college football and hurricanes.

All right. So I'm going to require you-all to give me your joint proposed schedule or your competing schedules by September the 6th at 5 p.m. And if there's something that relates to the storm that prevents that, you can file a motion.

But what I'm asking for isn't -- I'm not -- I don't think it's something that should take that long. And I do think we need to have an idea of the path that this is going to track on.

It's clear to me, Ms. DeBriere, that we're not going to be having a hearing at the end of September. But if you-all can talk about something in terms of time frames that toggle from a September 6th deadline, because you're not going to be getting into any of the merits or any discovery or anything before then. So whatever you're looking at in terms of a period for discovery and in terms of a period for briefing would not start -- really, probably, you shouldn't start before September 11th.

But why don't you propose it in terms of numbers of days because it will -- you'll obviously have to give me the opportunity to resolve it, and I am -- I can tell you that I am in Washington for Judicial Conference meetings September 11th, 12th, and 13th. So unless I can resolve your conflicts by the

8th, it's unlikely that I will be able to resolve it before late in the following week. And I'll just give you-all a heads-up on that so that if that helps you with your planning.

All right. Ms. Lukis, do those time frames work for the Agency for Health Care Administration?

MS. LUKIS: Yes, Your Honor.

THE COURT: And Mr. Bartholomew, can y'all meet that deadline?

MR. BARTHOLOMEW: I believe we're still in the process of retaining counsel, Your Honor, which I'm hoping will actually be Ms. Lukis' firm, so that should work.

THE COURT: Okay.

And Ms. DeBriere, does that schedule work for you?

MS. DeBRIERE: Yes, Your Honor. Thank you.

THE COURT: All right. Then I will look for you-all to give me a proposal by September the 6th.

I will say, if we get to September the 6th and you're making progress but you just haven't come to a final agreement, if you want to tell me that you just need a couple more days, go ahead and tell me that rather than kill yourself to prepare your competing proposals because -- just a moment.

I'm going to bump that date to the 8th because of things I have on my calendar, the truth is I'm not going to be able to look at it or resolve it, and I'd rather you-all take the time to try and -- to try and either reach a proposed joint

plan or give me better papers on your competing plans.

So that will be September the 8th by 5 p.m. And you'll likely hear back from me at the end of the following week. And so keep that in mind when you're proposing your time frames.

Is there anything else that I can address at this time, Ms. DeBriere?

MS. DeBRIERE: No, Your Honor.

Well, actually, Your Honor, if I might just ask a clarifying question.

In terms of filing either the joint or separate proposed briefing schedules, should we include in that a request for a reply on behalf of plaintiffs, or would you like a separate motion?

THE COURT: Actually, you can -- I always have a reply in preliminary injunctions. So it should be -- you should have a deadline for a response and a deadline for replies to both motions.

MS. DeBRIERE: Thank you, Your Honor.

THE COURT: And just to be clear, if there's going to be evidence submitted -- plaintiff has submitted their evidence, the defense will submit their evidence. Ordinarily plaintiffs can file a reply that's argument, but it ordinarily is not additional evidence. Under the rules, any evidence supporting a motion for preliminary injunction is to be filed

with the motion.

MS. DeBRIERE: Understood, Your Honor. Thank you.

THE COURT: Okay.

Ms. Lukis, anything further on behalf of your client?

MS. LUKIS: Your Honor, with respect to the response to the actual complaint, would you like the parties' either joint notice -- joint notice or proposed schedules to address the response deadline for the complaint as well?

THE COURT: That's a good idea, Ms. Lukis. Yes, please.

Anything else, Ms. Lukis?

MS. LUKIS: No, Your Honor.

THE COURT: Mr. Bartholomew, anything further on behalf of DCF?

MR. BARTHOLOMEW: No, Your Honor. Thank you for your time.

THE COURT: All right. I hope everybody stays safe and dry over the course of the next few days. And we will reconvene after -- probably after I receive your proposal on September the 8th.

We're in recess.

MS. LUKIS: Thank you.

MS. DeBRIERE: Thank you, Your Honor.

(Proceedings concluded at 10:33 a.m.)

- - -

CERTIFICATE OF OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT)
MIDDLE DISTRICT OF FLORIDA)

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated herein.

DATED this 5th day of September, 2023.

/s/ Katharine M. Healey
Katharine M. Healey, RMR, CRR, FPR-C
Official Court Reporter