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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Sierra Ott, on behalf of L.O., Chelsea Zimmerman, on behalf of E.Z., and others similarly situated, Plaintiffs, v. State of Alaska, Department of Health; Heidi Hedberg, in her official capacity as Commissioner of the Department; Division of Public Assistance; and Deb Etheridge, in her official capacity as Director of the Division, Defendants.	)	Case No.: 3:24-cv-00153-SLG

DEFENDANTS' MOTION TO STAY DISCOVERY PENDING RESOLUTION OF MOTION TO DISMISS

This case arises from a backlog in the processing of initial Medicaid applications. Requiring State employees to engage in discovery in this case prematurely will only worsen the problem in this and other related cases, to the detriment of Plaintiffs' interests.

Defendants ask the Court to exercise its broad discretion to stay discovery in this case until after resolution of their Rule 12 Motion to Dismiss.

BACKGROUND

This case was filed in Alaska state court and removed by the Defendants to this Court. Defendants have filed a Motion to Dismiss pursuant to Rule 12(b)(1) and (b)(6), arguing that (1) the Plaintiffs' Complaint does not adequately allege standing because they fail to describe harm, causation, or redressability and (2) the federal statute and state regulation upon which Plaintiffs rely do not provide a private right of action enforceable through section 1983.[1]

Federal Rules of Civil Procedure 16 and 26 and Local Civil Rules 16.1 and 26.1 control the timing of discovery. Rule 26(d) provides that a party may not seek discovery until after the Rule 26(f) conference.[2] In accordance with the Court's Order re Initial Scheduling & Planning Conference Report, counsel for all parties conferred yesterday, Monday, August 12, 2024, for purposes of jointly completing a Scheduling and Planning Conference Report.[3] Rule 16(b) provides that the court will issue the scheduling order after receiving the parties' report.[4] Defendants ask this Court to stay all deadlines on the scheduling order until after the Motion to Dismiss is resolved. If the motion is denied,

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1 Docket 9.

2 Fed. R. Civ. P. 26(d) ("A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f) . . . or when authorized by these rules, by stipulation, or by court order.").

3 Docket 7 at 1.

4 Fed. R. Civ. P. 16(b).

Defendants ask this Court to issue an order at that time with deadlines spaced consistently with those on the parties' report.

ARGUMENT

District courts have "wide discretion in controlling discovery,"[5] and that discretion extends to stays of discovery pending the resolution of a dispositive motion.[6] As a general rule, discovery may be stayed or otherwise limited for "good cause," and the Court "may continue to stay discovery when it is convinced that the plaintiff will be unable to state a claim for relief."[7] In determining whether good cause exists to stay discovery pending resolution of a Rule 12 motion to dismiss, courts should bear in mind that "[t]he purpose of [Rule] 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery."[8] As the Ninth Circuit has explained, "[i]t is sound[] practice to determine whether there is any reasonable likelihood that plaintiffs can construct a claim before forcing the parties to

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5 *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988).

6 *Id.; Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir. 1987) (approving of district court order staying discovery pending disposition of motions to dismiss).

7 *Wood v. McEwen*, 644 F.2d 797, 801–02 (9th Cir. 1981); *see also* Fed. R. Civ. P. 26(c)(1).

8 *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (citing *Greene v. Emersons Ltd.*, 86 F.R.D. 66, 73 (S.D.N.Y. 1980) ("A defendant has the right, under Rule 12(b) . . . to challenge the legal sufficiency of the complaint's allegations against him, without first subjecting himself to discovery procedures.")).

undergo the expense of discovery."[9] That is especially true when the costs of discovery are highly burdensome.[10]

Although the Ninth Circuit has not articulated a concrete test for determining good cause, it has noted that a stay is appropriate when discovery will not affect the court's decision on the motion to dismiss.[11] The court has also found a stay is appropriate when a motion to dismiss raises threshold jurisdictional issues.[12] A motion that challenges not only the sufficiency of the complaint, but also Plaintiffs' standing to sue makes a stay of discovery even more appropriate than in the case of a Rule 12(b)(6) motion alone. Here, Defendants' motion to dismiss asserts two threshold arguments: Plaintiffs' Complaint does not contain allegations supporting their standing to bring this case[13] and no private right of action exists under the Medicaid statute upon which the Complaint rests.[14] Either

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9 *Id.*

10 *Id.* (citing *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106–07 (7th Cir. 1984); *Havoco of America, Ltd. v. Shell Oil Co.*, 626 F.2d 549, 553 (7th Cir. 1980) ("[I]f the allegations of the complaint fail to establish the requisite elements of the cause of action, our requiring costly and time consuming discovery and trial work would represent an abdication of our judicial responsibility.")).

11 *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988) ("The stay furthers the goal of efficiency for the court and litigants. Based on the facts presented in this case, discovery could not have affected the immunity decision. The trial court did not abuse its discretion by staying discovery until the immunity issue was decided."); *Lazar v. Kroncke*, 862 F.3d 1186, 1203 (9th Cir. 2017).

12 *Jeter v. President of the United States*, 670 Fed. Appx. 493, 494 (9th Cir. 2016) (citing *Little*, *supra*).

13 Docket 9 at 9–16.

14 *Id.* at 16-25.

argument, if successful, would end the case in this Court—through either dismissal or remand.[15]

If this case goes forward, the cost of discovery for Defendants will be significant, with negative effects on Medicaid applicants like the Plaintiffs. Seven interrogatories were propounded upon the State before this case was removed to federal court.[16] Defendants are making their best efforts to provide the information requested in those interrogatories to Plaintiffs on an informal basis.[17] But even answering these interrogatories, which appear simple enough on their face, will be a time-consuming endeavor requiring collaboration with the Department of Disability Services within the Department of Labor (DDS), where the disability determinations this case is about are made.[18]

History suggests that when and if discovery proceeds in this case, the burden on the Division could be extreme. Counsel for Plaintiffs in this case are pursuing another lawsuit against the Division in this Court, *Della Kamkoff et. al v. Heidi Hedberg*, Case No. 3:23-cv-00044-SLG, concerning the delay in processing applications for the

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15 Plaintiffs have asked this Court to remand the case on the grounds that Defendants have challenged the sufficiency of their Complaint with respect to standing. If Plaintiffs concede that they do not have standing in this Court, dismissal or remand would result. And if the case were remanded, Defendants would have an opportunity to seek dismissal in state court for lack of standing as well.

16 Affidavit of Deb Etheridge, Exhibit B (Discovery Requests).

17 *See* Etheridge Affidavit Exhibit C (Defendants' Objection to First Discovery Requests).

18 Etheridge Affidavit at 3–4, ¶ 10.

Supplemental Nutrition Assistance Program (SNAP Litigation). The *Kamkoff* plaintiffs propounded 86 requests for production of documents, many of which contain multiple subparts.[19] DPA employees have so far spent more than 70 hours responding to these production requests.[20] Their efforts have barely scratched the surface. The production request is so enormous that DPA cannot even guess how many hours it will take to complete.[21] Discovery in this proceeding could be equally burdensome.

The Plaintiffs have also filed a lawsuit in state court, *Edwards v. State*, 3AN-23-05707CI. That case concerns the backlog of applications for Adult Public Assistance, a state benefits program that, like the Medicaid applications at issue here, requires a disability determination from DDS.[22] That case is proceeding to discovery and trial and will drain additional resources that the Division would otherwise devote to processing both Medicaid and SNAP applications.

All this time-consuming discovery is a problem with real consequences for the vulnerable Alaskans the Division serves. The backlog in Medicaid applications is a well-known issue that, as Plaintiffs' counsel knows from other litigation, results from a number of factors, including labor shortages.[23] Requiring DPA to engage in discovery in this case will only exacerbate the issue, shifting employees' limited time—at both DPA

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19 Etheridge Affidavit, Exhibit A (*Kamkoff* Discovery Requests).

20 Etheridge Affidavit, at 3, ¶ 8.

21 *Id.*

22 *Id.* at 4, ¶ 13.

23 *Id.* at 2, ¶ 3; 4, ¶ 11.

and DDS—from addressing the application backlogs for SNAP and Medicaid to responding to discovery requests.

Moreover, Plaintiffs' First Set of Discovery Requests in the state proceeding seek information that will be stale by the time the motion to dismiss is decided. For example, Interrogatory No. 3 requests information about how many initial Medicaid applications the State received "more than 90 days ago."[24] If the Court were to deny Defendants' motion to dismiss, the Division would be required to update its responses to provide current numbers. This is just one example of the type of discovery requests Plaintiffs would likely propound in this case. Rather than asking Defendants to produce information multiple times, it would be more practical to compile and produce current information once, and only if the case proceeds past the motion to dismiss stage.

Plaintiffs may allege prejudice in the form of delay in their efforts to advocate for timely Medicaid determinations, but so far, Plaintiffs have failed to plead that any injury in fact arises from this delay. Covered medical expenses will be reimbursed for eligible applicants, up to three months before the date of the application.[25] In other words, an applicant can seek necessary medical care while their application is pending and then seek reimbursement for any care received up to three months before the date of

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[24] Etheridge Affidavit, Exhibit B.

[25] 42 C.F.R. 435.915.

application.[26] Delay in eligibility determinations does not impact the amount of coverage an applicant will receive if eligible.

As the Ninth Circuit has explained, Rule 12 motions allow defendants to challenge the legal sufficiency of a plaintiff's claims without subjecting themselves to discovery.[27] Consistent with that principle, the Court should stay discovery here. Defendants are endeavoring to informally provide the information requested in Plaintiffs' premature discovery requests from state court. The motion to dismiss will not require discovery to resolve, and it presents two straightforward arguments for dismissal—failure to plead a redressable injury and lack of a private right of action. Discovery will be fully available if the motion to dismiss is denied. Judicial economy would be well-served by the Court deciding threshold issues before opening the floodgates to voluminous discovery requests that will only further hinder Defendants' efforts to process SNAP and Medicaid applications.

CONCLUSION

The State respectfully requests that this Court stay all deadlines in the forthcoming Scheduling Order pending adjudication of their motion to dismiss.

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26 *Id.*

27 *Rutman Wine Co*, 829 F.2d at 738.

DATED: August 13, 2024.

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Certificate of Service
I certify that on August 13, 2024, the foregoing **Defendants' Motion to Stay Discovery** was served by ECF on:

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[PROPOSED] ORDER GRANTING
DEFENDANTS MOTION TO STAY DISCOVERY

Having considered Defendants' Motion to Stay Discovery Pending resolution of the Motion to Dismiss, the Court GRANTS the motion.

This Court issued a scheduling order on _____/has not yet issued the scheduling order in this case. Any existing deadlines for Defendants to respond to discovery requests are hereby STAYED, and no additional discovery may be propounded at this time. This Court will issue a revised scheduling order if and when the State's Motion to Dismiss is denied.

DATED: _____ 2024.

_____
Sharon L. Gleason
United States District Judge

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