



## I. Factual and Procedural Background

1           This case was originally filed on June 26, 2020. *See* Doc. No. 1. The parties describe  
2 the matter generally but accurately as a “RICO conspiracy among nine defendants in the  
3 marketing, sale[,] and administration of several insurance products.” *See* Doc. No. 26 ¶ 1.  
4 After a series of challenges to the pleadings and the entry of default against one of the  
5 defendants (later set aside), plaintiffs filed a Third Amended Complaint on July 28, 2021.  
6 *See generally* Doc. Nos. 2-134. Some of the defendants answered the Third Amended  
7 Complaint. *See, e.g.*, Doc. Nos. 138-49, 151-52. Others, including CCG, moved to dismiss.  
8 *See, e.g.*, Doc. Nos. 142-45, 153. On December 3, 2021, the District Court issued an  
9 omnibus Order ruling on numerous motions. *See generally* Doc. No. 178.<sup>1</sup> As part of the  
10 Order, the District Court granted CCG’s Motion to Dismiss the Third Amended Complaint  
11 for lack of personal jurisdiction [Doc. No. 143]. *See* Doc. No. 178 at 23.<sup>2</sup> The District Court  
12 ultimately concluded the Third Amended Complaint did not present sufficient  
13 “uncontested facts which support a conclusion that CCG directed activities at California”  
14 such that an exercise of the Court’s jurisdiction would comport with due process. *Id.* at 7.

15           At the same time, the District Court treated plaintiffs’ Opposition to CCG’s Motion  
16 as a request for “jurisdictional discovery,” granted that request, and gave plaintiffs leave to  
17 amend the Third Amended Complaint to cure the jurisdictional defects. *See id.* at 11-13.  
18 After the District Court granted CCG’s Motion to Dismiss, the parties, including CCG,  
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22 <sup>1</sup> Specifically, the District Court ruled on the following three motions: Defendant  
23 Health Plan Intermediaries Holdings, LLC and Health Insurance Innovations Holdings,  
24 Inc.’s Motion to Partially Dismiss the Third Amended Class Action Complaint [Doc. No.  
25 142]; Defendant Cost Containment Group Inc.’s Motion to Dismiss For Lack of Personal  
26 Jurisdiction [Doc. No. 143]; and, Defendant Administrative Concepts, Inc.’s Motion for  
27 Judgment on the Pleadings and Joinder in Motion to Partially Dismiss the Third Amended  
28 Class Action Complaint Filed By Health Plan Intermediaries Holdings LLC and Health  
Insurance Innovations Holdings Inc. [Doc. No. 145].

<sup>2</sup> This Court uses the pagination applied by the Court’s CM/ECF case management system throughout this Order, as opposed to the pagination use by the parties.

1 engaged in substantial discovery, often with guidance from (and intervention by) this  
2 Court. *See, e.g.*, Doc. Nos. 198, 201, 204, 210, 213, 216, 228, and 229. Despite being  
3 ordered by the District Court to provide jurisdictional discovery, CCG opposed plaintiffs'  
4 efforts to take a 30(b)(6) deposition consistent with the District Court's Order, which  
5 ultimately required this Court to compel CCG's testimony. *See* Doc. No. 201.

6 On June 8, 2022, having taken jurisdictional discovery, plaintiffs obtained the  
7 District Court's leave to file an amended pleading.<sup>3</sup> *See* Doc. No. 230 at 4-9. The District  
8 Court analyzed Rule 15(a) of the Federal Rules of Civil Procedure, which governs  
9 amendment of pleadings, and determined, *inter alia*, "[f]rom a review of the proposed  
10 [Fourth Amended Complaint], it appears Plaintiffs have incorporated jurisdictional  
11 allegations . . . that were developed through discovery" and that "[t]here are numerous  
12 allegations that may, upon a brief review, serve to show [CCG's] contacts with California."  
13 Doc. No. 230 at 8-9. Consistent with this ruling, the District Court's Order expressly states  
14 "[t]o be sure, allowing Plaintiffs to amend their complaint ***will require CCG to continue***  
15 ***to participate in and litigate this case.***" *Id.* at 7 (emphasis added).

16 Plaintiffs filed the Fourth Amended Complaint on June 9, 2022. *See* Doc. No. 231.  
17 On June 29, 2022, this Court held a hearing attended by counsel for CCG and other parties  
18 to discuss various discovery issues. *See generally* Doc. No. 255. At the hearing, the  
19 following exchange occurred between this Court and counsel for CCG:

20 THE COURT: I understand . . . CCG may proceed [with] filing yet another  
21 motion to dismiss.

22 [COUNSEL]: Yes, your Honor. . . .

23 THE COURT: You do not get a pass on discovery in the meantime. You are  
24 a part in this litigation until such time that Judge Huie grants any motions  
25 dismissing you as a party. ***Discovery is not going to be put on hold for you***

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27 <sup>3</sup> On April 14, 2022, CCG opposed plaintiffs' Motion to File the Fourth Amended  
28 Complaint. Doc. No. 218. The District Court rejected CCG's Opposition in its Order  
Granting Leave to File Fourth Amended Complaint, filed on June 6, 2022. Doc. No. 230.

1            *or any other party pending your filing of yet another motion*. So your  
2            obligation to produce documents is the same as all other defendants. . . .

3            [COUNSEL]: I understand your position.

4            *See* Doc. No. 255 at 21-22 (emphasis added). CCG’s counsel did not at that time raise the  
5            issue of any limitations to discovery based on the District Court’s December 2021 Order.  
6            *See id.* CCG moved to dismiss the Fourth Amended Complaint for lack of personal  
7            jurisdiction on July 7, 2022, which Motion remains pending before the District Court. *See*  
8            Doc. No. 248. CCG neither moved to stay discovery pending determination of the dismissal  
9            motion, nor sought clarification from the District Court (or the undersigned Magistrate  
10            Judge) as to whether discovery from CCG would continue to be limited to jurisdictional  
11            issues.

## 12            **II. The Parties’ Discovery Dispute**

13            After filing the Fourth Amended Complaint, plaintiffs sought written discovery from  
14            CCG on August 25, 2022, which discovery plaintiffs contend is relevant to their impending  
15            motion for class certification. *See* Doc. No. 268 at 8; 268-1 at 5. This discovery included  
16            requests for production of documents, interrogatories, and requests for admission. *See*  
17            *generally* Doc. No. 268-1 at 5, 31-60. On September 28, 2022, CCG responded with  
18            “objections-only” responses to the discovery requests at issue. *See generally id.* at 72-113,  
19            141-43, 172-78. Specifically, it interposed a single, identical objection to each and every  
20            discovery request: “This request exceeds the scope of Judge Curiel’s December 3, 2021,  
21            [Order] . . . regarding jurisdictional discovery.” *Id.*<sup>4</sup> On September 30, 2022, the parties  
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25            <sup>4</sup> Any objections to plaintiff’s discovery requests other than the one based on the  
26            District Court’s prior Order are forfeited because CCG failed to timely raise them.  
27            *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992).  
28            CCG’s boilerplate “general” objections are meaningless and preserve nothing. *See Walker*  
                 *v. Lakewood Condo. Owners Ass’n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999).

1 informed the Court they were at an impasse as to that objection, and the Court ordered the  
2 parties to file the Joint Motion. Doc. No. 266.

3 In the Joint Motion, CCG does not contest the relevance of the discovery to class  
4 certification or assert any belated objections. It only argues the District Court's December  
5 2021 Order limited the scope of discovery by plaintiff as to CCG to issues of personal  
6 jurisdiction. Accordingly, it asserts this Court should issue a protective order staying  
7 discovery pending resolution of CCG's Motion to Dismiss the Fourth Amended Complaint  
8 by the District Court. Doc. No. 268 at 4-5. Plaintiffs contend both this Court and the District  
9 Court have unambiguously ruled CCG is obligated to participate in discovery, and the  
10 interposition of a jurisdictional objection to discovery is nothing more than a delay tactic.  
11 *See id.* at 7, 11-12.

### 12 **III. Analysis**

13 Unless otherwise limited by Court order, the scope of discovery is generally defined  
14 by the claims and defenses set forth in the pleadings. *See* Fed. R. Civ. P. 26(b); *Castillo v.*  
15 *Norton*, 219 F.R.D. 155, 160 n.2 (D. Ariz. 2003); *EEOC v. United States Bakery*, 03-64-  
16 HA, 2004 U.S. Dist. LEXIS 11350, at \*7 (D. Or. Feb. 4, 2004). An amended complaint  
17 has the procedural effect of "superseding" any previous pleadings. *See, e.g., Saddozai v.*  
18 *Davis*, 35 F.4th 705, 709 (9th Cir. 2022); *Ave 6E Invs., LLC v. City of Yuma*, 818 F.3d 493,  
19 503 (9th Cir. 2016); *Truesdell v. S. Cal. Permanente Med. Grp.*, 293 F.3d 1146, 1153 (9th  
20 Cir. 2002).

21 This Court may issue a protective order for good cause. *See* Fed. R. Civ. P. 26(c).  
22 "The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of  
23 discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*,  
24 278 F.R.D. 597, 601 (D. Nev. 2011) (citing *Skellerup Inds. v. City of Los Angeles*, 163  
25 F.R.D. 598, 600-01 (C.D. Cal. 1995)). Any party seeking such a stay carries a "heavy  
26 burden." *See Georgiou Fam. Trust v. Ruthen*, 2:21-cv-1060-JCM-DJA, 2022 U.S. Dist.  
27 LEXIS 11178, at \*14 (D. Nev. Jan. 21, 2022). This Court may nonetheless exercise its  
28 discretion to issue a protective order that stays discovery pending resolution of a dispositive

1 motion when the motion would dispose of the entire case and no further discovery is needed  
2 to resolve the pending motion. *See Pac. Lumber Co. v. Nat'l Union Fire Ins. Co.*, 220  
3 F.R.D. 349, 352 (N.D. Cal. 2003). At the same time, the Court will use its discretion to  
4 balance the convenience of a stay against the risk of unfair prejudice to the party opposing  
5 a discovery stay. *See Universal Elecs., Inc. v. Universal Remote Control, Inc.*, 943 F. Supp.  
6 2d 1028, 1030-31 (C.D. Cal. 2013); *accord Masimo Corp. v. Apple, Inc.*, 2022 U.S. Dist.  
7 LEXIS 111724, at \*4-5 (C.D. Cal. June 23, 2022); *Ahern Rentals, Inc. v. Mendenhall*, C20-  
8 00542-JCC, 2020 U.S. Dist. LEXIS 120948, at \*3-4 (W.D. Wash. July 9, 2020). The Court  
9 generally considers the propriety of a discovery stay under the totality of the circumstances.  
10 *Universal Elecs.*, 943 F. Supp. 2d at 1031.

11 As CCG notes, the facts of this case superficially fit the test set forth in *Pacific*  
12 *Lumber Co.* because the pending Motion to Dismiss would, if granted, completely release  
13 CCG from the case, and there is no further discovery necessary to resolve the jurisdictional  
14 issue. *See Doc. No. 268* at 6. This could support an exercise of this Court's discretion to  
15 stay the case. *See Pac. Lumber Co.*, 220 F.R.D. at 352. But this Court also notes plaintiffs'  
16 impending deadline to move for class certification. Plaintiffs contend, and CCG does not  
17 dispute, the discovery at issue here is relevant and necessary to the class certification  
18 motion. *Doc. No. 268* at 8. Plaintiffs thus persuasively and credibly argue they would be  
19 severely prejudiced by CCG's failure to provide discovery responses. *Id.* at 12. The Court  
20 therefore finds the prejudice to plaintiffs weighs in favor of denying a protective order here,  
21 and under the totality of the circumstances such request should be denied. *Universal Elecs.*,  
22 943 F. Supp. 2d at 1031.<sup>5</sup>

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25 <sup>5</sup> At the time the parties filed the Joint Motion, the deadline was November 4, 2022.  
26 *See Doc. No. 252* at 2. In a separate Order, filed concurrently with this Order, this Court  
27 has continued that deadline until December 19, 2022. This short continuance in no way  
28 eliminates the prejudice faced by plaintiffs in preparing to certify a class because it would  
have been effectively impossible for plaintiffs to compel discovery from CCG and prepare  
the Motion for Class Certification if the Court had not continued the deadline to file that

1 The Court has considered CCG’s argument that a prior Order of the District Court  
2 [Doc. No. 178] limits discovery to material showing whether the Court has personal  
3 jurisdiction over CCG. Doc. No. 268 at 4-5. While the District Court agreed with CCG that  
4 the Third Amended Complaint lacked adequate jurisdictional allegations in the granting of  
5 CCG’s Motion to Dismiss, in granting that Motion without prejudice on December 3, 2021,  
6 the District Court allowed plaintiffs the opportunity to conduct discovery to correct this  
7 deficiency. Doc. No. 178 at 11-13. On June 8, 2022, the District Court concluded plaintiffs  
8 had alleged an adequate basis for jurisdiction when it issued the Order Granting Leave to  
9 File the Fourth Amended Complaint. Doc. No. 230 at 8. As ordered by the District Court,  
10 CCG must now “continue to participate in and litigate this case” exactly like any other  
11 party. *See id.* at 7. This Court delivered the same admonishment to CCG on June 29,  
12 2022—*months* before CCG served the objections to the discovery at issue here. Doc. No.  
13 255 at 21-22. The record in this case supports only one reasonable conclusion: the  
14 “jurisdictional” limitation to discovery ended with Judge Curiel’s Order granting plaintiffs  
15 Motion to Amend on June 8, 2022, which allowed the filing of the Fourth Amended  
16 Complaint. This Fourth Amended Complaint is now the operative pleading in this matter,  
17 and it thus defines the scope of discovery. The District Court and this Court have  
18 unequivocally informed CCG it is a party to this action, and it will produce discovery unless  
19 and until the District Court dismisses it from this case. Rather than supporting the issuance  
20 of a protective order, the District Court’s Orders compel denial of CCG’s Motion.

#### 21 **IV. Conclusion and Order**

22 The Court will not mince words here: CCG’s reliance on the District Court’s  
23 December 2021 Order [Doc. No. 178] is unreasonable and by all appearances is made for  
24 the sole purpose of delaying plaintiffs’ right to obtain discovery from CCG in this action.  
25 The Court expects and trusts that CCG—indeed *all* parties—will take this as a fair warning  
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28 motion. Even with the continuance, and even absent a stay, plaintiffs remain under  
relatively tight time constraints such that equity favors compelling discovery here.

1 that all discovery gamesmanship must cease immediately. **IT IS HEREBY ORDERED**  
2 the Motion for a Protective Order is **DENIED**. CCG must produce substantive responses—  
3 without objections—to plaintiffs’ written discovery on or before **November 10, 2022**.  
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5 Dated: October 27, 2022



Hon. Karen S. Crawford  
United States Magistrate Judge

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