

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Mary McGowan,

Plaintiff,

v.

Civil No. 11-502 (JNE/JJK)
ORDERService Employees International
Union, Local #113 a/k/a SEIU
Healthcare Minnesota, and
Group Health Plan, Inc.,

Defendants.

The case is before the Court on Defendants' motions to dismiss the First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Alternatively, Group Health Plan, Inc. asks the Court to consider its motion as one for summary judgment. Both Defendants submitted materials outside of the pleadings that are not properly considered on a motion to dismiss pursuant to Rule 12(b)(6). *See Mulvenon v. Greenwood*, No. 10-1957, 2011 WL 2272134, at *3 (8th Cir. June 10, 2011) ("In addressing a motion to dismiss, '[t]he court may consider the pleadings themselves, materials embraced by the pleadings, exhibits attached to the pleadings, and matters of public record.'" (alteration in original) (quoting *Mills v. City of Grand Forks*, 614 F.3d 495, 498 (8th Cir. 2010))). The materials submitted by Defendants, as well as the arguments made by the parties, are more appropriately considered in conjunction with a motion for summary judgment. The Court declines to convert the motions to ones for summary judgment, *see* Fed. R. Civ. P. 12(d), and denies Defendants' motions to dismiss. To the extent the parties seek summary judgment, they may move for it pursuant to Federal Rule of Civil Procedure 56. The Court cancels the July 28 hearing.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT
IS ORDERED THAT:

1. The hearing scheduled for July 28, 2011, is cancelled.
2. Defendants' motions to dismiss [Docket Nos. 6, 9] are DENIED.

Dated: July 26, 2011

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge