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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ELIZABETH MORT and ALEX RODRIGUEZ, Plaintiffs, v. LAWRENCE COUNTY CHILDREN AND YOUTH SERVICES; LAWRENCE COUNTY; CHRISSY MONTAGUE, Lawrence County Children and Youth Services Caseworker; and JAMESON HEALTH SYSTEM, INC. Defendants.	)	Civil Action No. 2:10-cv-01438-DSC

RESPONSE IN OPPOSITION TO MOTION FOR STAY OF DISCOVERY

Plaintiffs Elizabeth Mort and Alex Rodriguez, by and through their undersigned counsel, submit this Response in Opposition to the Motion for Stay of Discovery filed by Defendants Lawrence County Children and Youth Services, Lawrence County (collectively referred to as "LCCYS") and Chrissy Montague ("Defendant Montague" or "Montague") seeking a stay of discovery until the disposition of the Defendants' pending Motions to Dismiss.[1] For the reasons that follow, this Court should deny the Motion for Stay.

BACKGROUND

On December 30, 2010 and January 17, 2011, respectively, Defendant Jamestown Health System, Inc. ("Jamestown") and Defendants LCCYS and Montague filed separate Motions to Dismiss certain of the claims in Plaintiffs' Amended Complaint. Plaintiffs responded to those Motions on February 23, 2011. In their opposition, Plaintiffs provided substantial authority in

[1] Defendant Jamestown Health System, Inc. joins in the request for the stay.

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support of their claims against Defendants and argued that the motions to dismiss were premature and not appropriately decided at this stage in the proceedings.

On January 13, 2011, while one of the Motions to Dismiss was pending, the parties conferred according to Fed. R. Civ. Proc. 26(f) and discussed, among other things, potential discovery deadlines and the need for discovery prior to the mediation. During the course of that conference neither Defendant raised the possibility of requesting a stay until the Motion to Dismiss was decided. On February 24, 2011, one day after Plaintiffs filed their responses in opposition to Defendants' Motions to Dismiss, this Court held a status conference with counsel of record during which the parties discussed potential discovery deadlines and the parties agreed to a discovery deadline of July 25, 2011. Even though both Motions to Dismiss were already pending at that time of that conference, neither Defendant objected to Plaintiffs' right to take discovery <u>nor</u> asked the Court to issue a stay until the Motions to Dismiss were decided. Further, in the context of the parties' discussion as to when the mediation in this case should be scheduled, Plaintiffs requested the opportunity to take discovery in advance of the mediation. Again, neither Defendant raised any objection. In fact, Defendants indicated that they might proceed to do so as well. Following the conference, the Court issued a Case Management Order on February 25, 2011 setting the discovery deadline for July 25, 2011 and extending the time to complete mediation until April 25, 2011 so as to give Plaintiffs time to conduct discovery beforehand.

Following the conference, Plaintiffs promptly served each Defendant with a First Set of Interrogatories and Request for Production of Documents (the "Discovery Requests). Neither Defendant served timely responses to those Discovery Requests before the mediation and

subsequent to the mediation both Defendants requested thirty-day extensions of time to answer Plaintiffs' discovery requests. Both Defendants have since served their discovery responses.

The Court should reject Defendants' request for a stay of discovery because: (1) a halt to the proceedings is not required legally and is disfavored by the Court; (2) Defendants have offered no particular reason why discovery should be stayed; and (3) a stay of discovery would prejudice Plaintiffs' claims because key evidence may be forgotten or lost with the passage of time.

ARGUMENT

Despite the impending deadline for the completion of discovery, through their current Motion to Stay Discovery, Defendants seek to be relieved, indefinitely, of their obligation to engage in discovery. The sole substantive basis relied on by Defendants in support of their Motion to Stay Discovery are the pending Motions to Dismiss.

In deciding whether to stay discovery pending a Motion to Dismiss, this Court should balance the harm that would result from the delay in discovery against the possibility that the motion to dismiss will be granted and entirely eliminate the need for the discovery. Coca-Cola Bottling Co. v. Grol, 1993 WL 13139559, *2 (E.D. Pa. March 8, 1993). Motions to stay discovery are generally disfavored because prolonging or delaying discovery results in increased litigation expenses and is usually in no one's interest. Id.

For this reason, a party seeking to stay discovery bears a "heavy burden" of making a "strong showing" why discovery should be denied. Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975). Thus, in addition to showing that the benefits of the stay outweigh the burdens imposed by prolonging the discovery schedule, the moving party must present specific facts showing that the interests of justice and considerations of prejudice and undue burden to the

parties require a stay of discovery. Kron Med. Corp. v. Groth, 119 F.R.D. 636, 638 (M.D.N.C. 1988).

Further, as the Court states in its own Chamber Rules:

> Judge Cercone's general policy is not to grant requests for a stay of discovery during the pendency of a dispositive motion unless the grounds for the motion are "obvious." His preference is for the parties to get on with exploring the substance of a case. He will, however, entertain motions to stay.

(Chamber Rules, ¶4).

Defendants are unable to meet the heavy burden of establishing the requisite "good cause" necessary to prevail in their request to stay all discovery. Blankenship, 519 F.2d at 429. Though LCCYS suggests that the pending dispositive motions "could" dispose of some of the issues in the case and that a stay will save the parties time and money, this is true of all cases in which dispositive motions are filed and Defendants have not identified other any exceptional reason why a stay should be imposed here.

In contrast, while Defendants do not meet their burden of showing any exceptional benefit to a stay, the imposition of such a stay would significantly prejudice Plaintiffs' claims because it will impede their right to timely proceed with their claims and key evidence may be become unavailable. Plaintiffs have a right to take discovery in order to prove their claims against Defendants and this discovery will necessarily include requests for production of documents and deposition of witnesses who participated in the events set forth in the Complaint. Inevitably, the more time that passes, the more likely it is that key witnesses' memories could fade and other evidence lost. If the Motion to Stay Discovery is granted, and Defendants are indefinitely relieved of their obligation to participate in discovery, Plaintiffs will be materially prejudiced in their efforts to timely obtain this information. Additionally, the prolongation of discovery, and resulting prolongation of the case as a whole, may create case management

problems and "cause unnecessary litigation expenses and problems." Coca-Cola Bottling Co. v. Grol, 1993 WL 13139559, at *2 (E.D. Pa. Mar. 8, 1993).

Given Defendants' failure to elucidate any particular reason as to why discovery should be stayed in this case and the very real prejudice that could result to Plaintiffs from the imposition of an indefinite stay, Defendant's Motion does not establish the requisite "good cause" to justify staying all discovery until resolution of the Motions to Dismiss.

CONCLUSION

For the reasons above, Plaintiffs Elizabeth Mort and Alex Rodriguez request that the Court deny the Motion to Stay Discovery.

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May 16, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Response in Opposition to Motion for Stay of Discovery was served this 16th day of May, 2011, via the Court's electronic transmission facilities pursuant to Fed. R. Civ. P. 5(b)(3) and Local Rule 5.5 upon the following:

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