

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY
MARTELL; BRIAN MCNEMAR; SHAWN
ANDERSON a/k/a SHAUNTAE ANDERSON;
and LEANNE JAMES**, individually and on
behalf of all others similarly situated,

Plaintiffs,

**Civil Action No. 3:20-cv-00740
Hon. Robert C. Chambers, Judge**

v.

WILLIAM CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources;
CYNTHIA BEANE, in her official capacity as
Commissioner for the West Virginia Bureau for
Medical Services; **WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES, BUREAU FOR MEDICAL
SERVICES; TED CHEATHAM**, in his official
Capacity as Director of the West Virginia Public
Employees Insurance Agency; and **THE
HEALTH PLAN OF WEST VIRGINIA, INC.**

Defendants.

**DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL
SERVICES' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO EXTEND
TIME TO SERVE WRITTEN DISCOVERY ON RECENTLY ADDED PLAINTIFF
SHAUNTAE ANDERSON**

Now come Defendants William Crouch, Cynthia Beane, and the West Virginia Department of Health and Human Resources, Bureau for Medical Services (“WVDHHR”), by counsel, pursuant to Federal Rules of Civil Procedure 16(b)(4) and Local Rule 16.1(f)(1), and move the

Court for an extension of time to serve written discovery on recently added Plaintiff Shauntae Anderson.

BACKGROUND

The Scheduling Order in this matter was entered on August 6, 2021, at a time when the only named Plaintiffs were Christopher Fain, Zachary Martell, and Brian McNemar. [ECF No. 75]. The Scheduling Order contained a deadline of October 18, 2021, for serving written discovery.

On September 23, 2021, Plaintiffs filed a Motion and an Amended Motion for Leave to File First Amended Complaint, seeking to add additional Plaintiffs Shauntae Anderson and Leanne James. [ECF Nos. 106, 109]. The amended motion was granted on October 28, 2021. ECF No. 139]. Therefore, Shauntae Anderson was not formally added as a party Plaintiff until the filing of the Amended Complaint on October 28, 2021, after the deadline for serving written discovery had expired.

Because Shauntae Anderson was made a party after the deadline for serving written discovery, these Defendants were unable to serve discovery on Ms. Anderson within the existing deadline.¹ These Defendants seek an extension of time to serve written discovery on Plaintiff Shauntae Anderson, to permit them to serve written discovery on this newly added Plaintiff now that she has been added as a party. If this motion is granted, these Defendants will serve written discovery on Ms. Anderson within seven (7) business days of entry of the order granting the extension of time.

¹ Rule 33 of the Federal Rules of Civil Procedure permits a party to serve interrogatories “on any other party.” F.R.C.P. 33(a)(1). Similarly, Rules 34 and 36 permit requests to be served “on any other party.” F.R.C.P. 34(a) and 36(a)(1).

ARGUMENT

Rule 16 of the Federal Rules of Civil Procedure provides that a schedule may be modified for good cause and with the judge's consent. F.R.C.P. 16(b)(4). "Diligence of the moving party, and prejudice, are [] paramount considerations under Rule 16(b)." *Thaxton v. Harper*, No. CV 2:05-0858, 2007 U.S. Dist. LEXIS 116807, at *11 (S.D.W.Va. July 16, 2007). "District courts have discretion to consider other factors before amending a scheduling, which include: the danger of prejudice to the non-moving party, the length of delay and its potential impact on the proceeding, the movant's reason for the delay, and whether the movant acted in good faith." *Esquire Grp., Inc. v. Columbia Gas Transmission, LLC*, No. CV 3:14-24972, 2016 U.S. Dist. LEXIS 25377, at *7 (S.D.W.Va. Feb. 26, 2016), *citing* *Hunt v. Brooks Run Min. Co., LLC*, 51 F. Supp. 3d 627, 636 (S.D.W.Va. 2014), *aff'd*, 610 F. App'x 340 (4th Cir. 2015).

Good cause for the modification exists in this matter because these Defendants would be prejudiced by their inability to serve written discovery on Plaintiff Anderson, who was not a party at the time the deadline for serving written discovery expired. These Defendants should be permitted to inquire into Ms. Anderson's claims asserted in the First Amended Complaint.

These Defendants have acted diligently in seeking relief. Pursuant to Rule 15 of the Federal Rules of Civil Procedure, responsive pleadings to the First Amended Complaint are to be filed within fourteen days. F.R.C.P. 15(a)(3). This motion and memorandum in support of the requested relief is being timely filed contemporaneously with these Defendants' responsive pleading.

The relief requested in this motion will not prejudice any party. Plaintiffs and Defendants The Health Plan and Cheatham previously requested similar relief, requesting "that the October 18, 2021 deadline to serve discovery requests be stayed as to claims against Defendant Cheatham until seven days after the Court rules on the motion to amend the complaint." [ECF No. 119]. This

relief was granted. [ECF No. 121]. As a result, newly added Plaintiff James recently served three sets of written discovery requests on Defendant Cheatham on November 4, 2021. [ECF No. 145]. Additionally, the deadline for completing fact discovery was recently extended from December 1, 2021, to March 1, 2022. [ECF No. 133]. Therefore, a brief extension of the time for serving written discovery on a newly added Plaintiff would not impact other existing case deadlines.

The brief extension of time will not cause delay and is reasonable in light of the addition of new parties. Plaintiffs and Defendant Ted Cheatham have indicated that they do not oppose this motion.²

Accordingly, William Crouch, Cynthia Beane, and the West Virginia Department of Health and Human Resources, Bureau for Medical Services respectfully request an extension of time for serving written discovery requests on newly added Plaintiff Shauntae Anderson, and if the motion is granted, they will serve such discovery within seven (7) business days of entry of the order granting relief.

**WILLIAM CROUCH, CYNTHIA BEANE, and
WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,
BUREAU FOR MEDICAL SERVICES,
By Counsel**

² The Health Plan of West Virginia, Inc. has not indicated any position on this motion. Deadlines with respect to the claims of Plaintiffs Zachary Martell and Brian McNemar against The Health Plan have been stayed until the Court rules on the anticipated motion for preliminary approval of a class settlement. [ECF No. 121].

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Defendants.

CERTIFICATE OF SERVICE

Now come Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, by counsel, and do hereby certify that on the 12th day of November 2021, the foregoing **“DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES’ MEMORANDUM OF LAW IN SUPPORT OF MOTION TO EXTEND TIME TO SERVE WRITTEN DISCOVERY ON RECENTLY ADDED PLAINTIFF SHAUNTAE ANDERSON”** was electronically filed with the Clerk of the Court

using the CM/ECF system, which will send a Notice of Electronic Filing to, and constitutes service upon:

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