

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

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

Plaintiffs,

v.

**Case No.: 3:20-cv-00740
Judge Robert C. Chambers**

**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; and JASON HAUGHT, in his official
capacity as Director of the West Virginia Public
Employees Insurance Agency,**

Defendants.

JOINT MOTION TO STAY DEADLINES

Defendant Jason Haught, in his official capacity as Director of the West Virginia Public Employees Insurance Agency (“Defendant”), by and through counsel, Perry W. Oxley, David E. Rich, Eric D. Salyers, Christopher K. Weed, and the law firm of Oxley Rich Sammons, PLLC, along with Plaintiff, Leanne James, by and through counsel, pursuant to Rule 16.1(f)(1) of the Local Rules for the United States District Court for the Southern District of West Virginia, hereby move this Court to stay the deadlines in the Scheduling Order with respect to the claims of Plaintiff James against Defendant Haught. For the reasons set forth herein, this Motion should be granted.

I. Background

1. A Scheduling Order was entered on August 6, 2021, setting, *inter alia*, the fact

discovery deadline for December 1, 2021, the expert discovery deadline for April 29, 2022, and a conference for May 16, 2022. *See* ECF 75.

2. On September 23, 2021, the Plaintiffs moved for leave to file their First Amended Complaint which sought to add two new Plaintiffs, Shauntae Anderson and Leanne James. *See* ECF 106, 109.

3. Soon thereafter, the Plaintiffs and The Health Plan reached a settlement, which rendered moot the only pending claims against the Director of the West Virginia Public Employees Insurance Agency, and thus the only claims pending against this Defendant were stayed on October 18, 2021. *See* ECF 121.

4. On October 21, 2021, the fact discovery deadline was extended to March 1, 2022. *See* ECF 133.

5. The Plaintiffs' Motion for Leave to file their First Amended Complaint was granted on October 28, 2021, and the First Amended Complaint was filed that same day, raising an Equal Protection claim against Defendant Haught. *See* ECF 139, 140. Thus, the newly added Plaintiff, Leanne James, is the only named Plaintiff with a claim against this Defendant.

6. On November 18, 2021, the Defendant filed a Motion for Abstention based on the newly added Plaintiff, Leanne James', pending complaint with the Equal Employment Opportunity Commission ("EEOC"). *See* ECF 162-163. The Defendant withdrew this Motion on January 18, 2022. *See* ECF 184.

7. The Defendant answered the Amended Complaint on November 19, 2021. *See* ECF 164.

8. On or about December 23, 2021, Plaintiff James received her Right to Sue letter from the EEOC. *See* ECF 184-1.

9. On January 5, 2022, a Stipulation of Dismissal was filed between The Health Plan and the Plaintiffs Martell and McNemar. *See* ECF 180.

10. As a result, those parties were removed from the docket in this matter.

11. On January 21, 2022, the Plaintiffs moved for leave to file their Second Amended Complaint. *See* ECF 187-188.

12. The proposed Second Amended Complaint adds claims by Plaintiff James against the West Virginia Public Employees Insurance Agency (“PEIA”), as well as her employer, the Kanawha County Board of Education.

13. If the Motion for Leave to File the Second Amended Complaint is granted, then PEIA and Kanawha County Board of Education will be brought into the case, which will require Kanawha County Board of Education to participate in discovery with respect to the claims of Plaintiff James as a new party.

14. As a result of the above, the parties bring the instant motion.

II. Argument

Rule 16.1(f) of the Local Rules of the United States District Court for the Southern District of West Virginia governs extensions of Scheduling Orders entered by the Court. Specifically, Rule 16.1(f) states as follows:

Modification of Scheduling Order.

(1) Time limits in the scheduling order for the joinder of parties, amendment of pleadings, filing of motions, and completions of discovery, and dates for conferences before trial, a final pretrial conference, and trial may be modified for good cause by order.

(2) Subject to subparagraph (3), stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the parties making them or their counsel, filed promptly with the clerk, and do not affect the trial date or other dates and deadlines specified in subparagraph (1).

(3) A private agreement to extend discovery beyond the discovery completion date in the scheduling order will be respected by the court if the extension does not affect the trial date or other dates and deadlines specified in subparagraph (1). A discovery dispute arising from a private agreement to extend discovery beyond the discovery completion date need not, however, be resolved by the court.

L. R. Civ. P. 16.1(f).

This case has somewhat of a complicated procedural history, particularly with this Defendant. Parties have been added and removed, and the newly added Plaintiff James' EEOC administrative proceeding is over, thus she has sought leave to file the proposed Second Amended Complaint adding her now-exhausted claims under Title VII. If the Motion for Leave to File the Second Amended Complaint is granted, then PEIA and Kanawha County Board of Education will be brought into the case, with Kanawha County Board of Education participating as a new party.

As a result, the parties move to stay the deadlines with respect to the claims of Plaintiff James against Defendant Haught as follows:

1. The fact discovery deadline of March 1, 2022 (ECF 133) is stayed for Defendant Haught and Plaintiff James until a ruling occurs on the Motion for Leave to File the Second Amended Complaint. This does not affect any other deadline in the case schedule for Defendant Haught and Ms. James, including expert discovery, and all other case schedule deadlines remain in effect.

A. If the Motion for Leave is granted, Defendant Haught, Plaintiff James, PEIA, and Kanawha County Board of Education shall conduct a new Rule 26(f) conference so that the parties can propose a new revised case schedule with a new fact discovery cut-off for Defendant Haught, Defendant PEIA, and Ms. James, and all other relevant deadlines for Defendant Kanawha

County Board of Education. This will allow Ms. James to litigate her claims in a more efficient fashion against the defendants relevant to all of her claims at the same time.

B. If the Motion for Leave is denied, Defendant Haught and Ms. James will submit a joint status report to the Court within seven days of the ruling proposing a plan for the completion of discovery.

Moreover, Defendant Haught will continue to participate in written discovery and any deposition not related to the claims against him to avoid duplicating or delaying discovery unnecessarily.

III. Conclusion

WHEREFORE, the parties move the Court for entry of an Order granting their Motion and for any and all other such relief as the Court deems appropriate.

Dated: February 10, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing “**Joint Motion to Stay Deadlines**” on this 10th day of **February, 2022**, with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

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Defendants.

ORDER GRANTING JOINT MOTION TO STAY DEADLINES

This matter comes before the Court on a joint Motion by Defendant Jason Haught, in his official capacity as Director of the West Virginia Public Employees Insurance Agency (“Defendant”), by and through counsel, Perry W. Oxley, David E. Rich, Eric D. Salyers, Christopher K. Weed, and the law firm of Oxley Rich Sammons, PLLC, along with Plaintiff, Leanne James, by and through counsel, to stay the deadlines in the Scheduling Order with respect to the claims of Plaintiff James against Defendant Haught. For good cause shown, the Court stays the fact discovery deadline for Defendant Haught and Plaintiff James until a ruling occurs on the Motion for Leave to File the Second Amended Complaint.

If the Motion for Leave is granted, Defendant Haught, Plaintiff James, PEIA, and Kanawha County Board of Education shall conduct a new Rule 26(f) conference so that the parties can propose a new revised case schedule with a new fact discovery cut-off for Defendant Haught, Defendant PEIA, and Ms. James, and all other relevant deadlines for Defendant Kanawha County Board of Education.

If the Motion for Leave is denied, Defendant Haught and Ms. James will submit a joint status report to the Court within seven days of the ruling proposing a plan for the completion of discovery.

ENTERED: _____

Honorable Robert C. Chambers
U.S. District Court Judge