

Multiple Documents

Part	Description
1	5 pages
2	Exhibit(s)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JANE DOES I, II, III, et al.,)	
)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 3:20-1260
)	
EUGENE SCALIA, United States)	(JUDGE MANNION)
Secretary of Labor, et al.,)	
)	
)	
Defendants.)	

**BRIEF IN SUPPORT OF DEFENDANTS’ MOTION TO STAY
HEARING PENDING DISPOSITION OF MOTION TO DISMISS**

As set forth in their Motion to Dismiss (ECF #23), Defendants contend that the Plaintiffs’ Complaint and Emergency Petition for Emergency Mandamus Relief must be dismissed for lack of jurisdiction and for failure to state a claim under Fed. R. Civ. P. 12(b). Accordingly, Defendants respectfully ask this Court to stay the evidentiary hearing presently scheduled for July 31, 2020, until the Court has had the opportunity to receive a full briefing and rule on Defendants’ Motion to Dismiss.

1. On July 23, 2020, this Court ordered Defendants to “file a response to the Complaint.” (ECF #6) by 5pm on July 27, 2020. The Court granted a one-day extension on July 27, 2020 (ECF #10).

2. On July 28, 2020, Defendants filed a Motion to Dismiss arguing that this Court lacks jurisdiction and the Complaint fails to state a claim. *See* Fed. R. Civ. P. 12(b) (“A motion asserting any of these defenses [under 12(b)] must be made before pleading if a responsive pleading is allowed.”). *See also* Fed. R. Civ. P. 7(a) (listing “pleadings” allowed).

3. Holding an evidentiary hearing at this juncture will force the Defendants to do the equivalent of filing an Answer to the Complaint, *i.e.*, admitting and denying the factual allegations of the Complaint. Defendants should not be placed in the position of responding to the numerous factual allegations of the Complaint before the Court considers and rules on their Motion to Dismiss.

4. Further, if the hearing goes forward as scheduled, both parties and their counsel will spend considerable time and resources to prepare and present evidence to the Court. Moreover, resolving threshold issues related to the admissibility of such evidence, hearing the

evidence, and ruling upon it will occupy significant Court resources. Plaintiffs' proposed hearing procedures (ECF #27), to which Defendants will file a separate opposition shortly, demonstrate that they expect something akin to a full-blown trial. The judicial resources necessary to resolve threshold issues, such as certifying proposed expert witnesses and the scope of their testimony, to hear and consider the evidence, and to rule upon it, and to consider post-trial briefs, may all be spared depending on the outcome of Defendants' Motion to Dismiss. In short, until the Motion to Dismiss is resolved, considerations of judicial economy weigh in favor staying the hearing.

5. Although Plaintiffs did not consent to filing this Motion jointly, the Court should be aware that Plaintiffs did approach Defendants about staying the July 31, 2020 hearing on July 29, 2020. (See July 29, 2020 email from Plaintiffs' counsel to Defendants' counsel, attached at Exhibit 1.) Tellingly, Plaintiffs indicated in the email that they were not even aware that OSHA had conducted an on-site inspection of the Maid-Rite facility until Defendants stated as much in their Motion to Dismiss. *Id.*

WHEREFORE, Defendants respectfully request that their Motion to Stay Hearing Pending Disposition of Motion to Dismiss be granted and that the Court set an appropriate briefing schedule on Defendants' Motion to Dismiss and stay the evidentiary hearing scheduled for July 31, 2020 pending resolution of Defendants' Motion to Dismiss.

Respectfully submitted,

DAVID J. FREED
UNITED STATES ATTORNEY

Date: July 30, 2020

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Subject: Doe v. Scalia: Proposal for continuing Friday hearing
Date: Wednesday, July 29, 2020 10:55:20 AM

Counsel:

Considering your filings yesterday indicating that OSHA has conducted an onsite inspection of the Maid-Rite facility and has concluded that no imminent danger exists, Plaintiffs would agree to a continuation of this Friday's hearing in exchange for the following:

(1) By July 31, 2020, OSHA provides a written list of questions which Justice at Work will convey to the workers for whom it is an authorized representative, who will in turn provide sworn statements under penalty of perjury responsive to OSHA's questions regarding conditions in the facility by August 3;

(2) OSHA will immediately share with Justice at Work, as authorized representative of workers who have filed complaints under section 13(a), Maid-Rite's responses to OSHA's written requests for information

(3) OSHA will file no later than August 5, a report describing the findings from its ongoing investigation at the Maid-Rite plant in Dunmore, PA, including its reasons for determining that conditions at the Maid-Rite plant have not constituted an "imminent danger" to workers at the facility. The report must include a description of the evidence relied on in making this determination with specific reference to evidence considered relating to the core allegations in Plaintiffs' petition: (1) that Maid-Rite is not providing workers with sufficient PPE, (2) that Maid-Rite is not allowing workers to socially distance along production lines, (3) that Maid-Rite is not providing adequate opportunities for personal hygiene, (4) that Maid-Rite has not sufficiently altered incentive and leave policies, and (5) that Maid-Rite continues to rotate workers from other facilities to work shifts at the Dunmore, PA facility. *See* Compl. & Pet. at paras. 71-79.

The report must also include a description of the dates and contents of communications between OSHA and Maid-Rite respecting COVID-19-related OSHA complaints.

This filing need not disclose confidential information, but it must include a sufficiently comprehensive summary of OSHA's determinations and the facts and evidence upon which those determinations are based for the Court and Plaintiffs to evaluate the reasonableness of OSHA's conclusion.

We ask that you respond to this proposal no later than 11:59 pm ET tonight.

Thank you,

David

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David Seligman, Esq. (pronouns: he/him/él)

Director

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