

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 05-23037-CIV-JORDAN/O'SULLIVAN

**FLORIDA PEDIATRIC SOCIETY/THE
FLORIDA CHAPTER OF THE AMERICAN
ACADEMY OF PEDIATRICS; FLORIDA
ACADEMY OF PEDIATRIC DENTISTRY,
INC., et al.,**

Plaintiffs,

vs.

ELIZABETH DUDEK, et al.,

Defendants.

**PLAINTIFFS' MOTION FOR LEAVE TO TAKE LIMITED DISCOVERY
IN SUPPORT OF REQUEST FOR INJUNCTIVE RELIEF**

BOIES, SCHILLER, & FLEXNER, LLP
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Fort Lauderdale, FL 33301

PUBLIC INTEREST LAW CENTER OF
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1709 Benjamin Franklin Parkway
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July 22, 2015

INTRODUCTION

On December 31, 2014, more than nine years after this case began, this Court issued exhaustive findings of fact and conclusions of law following a 90-plus day bench trial, holding that defendants were in violation of federal law. The parties recently completed briefing on whether the Court should issue a declaratory judgment in this action, and while that issue is pending before the Court, the Court should permit limited and focused discovery into the propriety of injunctive relief, discovery which, if necessary, can be supplemented by additional discovery. Commencing such discovery is appropriate at this point to avoid unnecessary delays in this action, which has already stretched out nearly a decade, to the detriment of children enrolled in Florida Medicaid who are not receiving the care to which they are entitled.

In order to move this case along, plaintiffs respectfully request this Court allow them leave to take five depositions and serve no more than 10 requests for production and 10 interrogatories. Plaintiffs would not oppose defendants taking a similar amount of discovery, but would oppose, defendants' deposing the named plaintiffs, or propounding other discovery concerning the named plaintiffs, because now that this case has been certified as a class action, the propriety of injunctive relief does not depend in any way on the experiences of the class representatives. This request is made without prejudice to either plaintiffs or defendants requesting that the Court allow additional discovery related to injunctive relief as justified.

ANALYSIS

Trial courts have broad discretion over matters of discovery. *See Mutual Service Ins. Co. v. Frist Indus., Inc.*, 358 F.3d 1312, 1322 (11th Cir. 2004) (“control of discovery is committed to the sound discretion of the trial court”); *Patterson v. U.S. Postal Service* (11th Cir. 1990) (“Matters pertaining to discovery are committed to the sound discretion of the district court and, therefore, we review under an abuse of discretion standard.”).

Both parties contemplate that some discovery will be necessary as part of any remedial phase of this action. *See* D.E. 1299 (Corrected Joint Scheduling Report) at 2-3, 7-9. While the parties disagree as to the amount of discovery that is appropriate and necessary, *see id.*, commencing limited discovery focused on plaintiffs' entitlement to injunctive relief is justified. Jan. 25, 2012 Draft Trial Tr. at 96:24-25 (“[E]veryone has agreed that we need a separate phase on relief if there is a judgment adverse to defendants.”); D.E. 1007 at 2 (“if there is a judgment in favor of plaintiffs on liability, I will hold a separate proceeding to determine what, if any, injunctive relief may be appropriate, and at that proceeding I will not bar the introduction of evidence generated after the trial began or testimony about such evidence.”). In the parties' Corrected Joint Scheduling Report, both parties' proposed continued discovery, although they disagreed on scope and timing of that discovery. D.E. 1299 at 2-3, 7-9.

While plaintiffs do not oppose defendants' right to commence focused discovery as well, they do oppose any request to depose the named plaintiffs or take other discovery relating to the named plaintiffs because now that a class has been certified, neither mootness, nor class's entitlement to equitable relief turn on the experience of the class representatives. *See Sosna v. Iowa*, 419 U.S. 393 (1975): (“When the District Court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by appellant.”); *East Texas Motor Freight Syst., Inc. v. Rodriguez*, 431 U.S. 395, 406 n. 12 (1977) (Where class claims have already been tried and initial certification was proper, class members' claims “[do] not need to be mooted or destroyed because subsequent events or the proof at trial had undermined the named plaintiffs' individual claims.”); *Stein v. Buccaneers Ltd. Partnership*, 772 F.3d 698, 704 (11th Cir. 2014) (“Even if the individual claims

are somehow deemed moot, the class claims remain live, and the named plaintiffs retain the ability to pursue them.”

Plaintiffs’ counsel emailed defense counsel regarding Defendants’ position on the instant motion, and Ms. Daniel replied: “Defendants oppose Plaintiffs’ proposed motion. It is premature to the extent that Plaintiffs are seeking discovery on the injunctive relief phase when the court has not yet entered a declaratory judgment. Once discovery for injunctive relief is appropriate, defendants would need to see the details of the proposed discovery before providing their position. Without seeing the details of the proposed motion, the concern is that defendants could be at a substantial disadvantage if it consented to a “similar amount of discovery.”

CONCLUSION

For the reasons stated above, this Court should allow plaintiffs to proceed with five depositions, to be taken within 45 days from the date of the Court’s order on this motion, and to serve up to 10 requests for production and ten interrogatories in support of plaintiffs’ request for injunctive relief.

Dated: July 22, 2015

Respectfully Submitted,

By: /s/ Stuart H. Singer

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 22, 2015, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system and that the foregoing document is being served this day on all counsel of record identified below via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Stuart H. Singer
Stuart H. Singer

SERVICE LIST

**Florida Pediatric Society/The Florida Chapter of The American Academy of Pediatrics;
Florida Academy of Pediatric Dentistry, Inc., et al. v. Elizabeth Dudek in her official
capacity as Secretary of the Florida Agency for Health Care Administration, et al.**

**Case No. 05-23037-CIV-JORDAN/BANDSTRA
United States District Court, Southern District of Florida**

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**[PROPOSED] ORDER ON PLAINTIFFS' MOTION FOR LEAVE TO TAKE LIMITED
DISCOVERY IN SUPPORT OF REQUEST FOR INJUNCTIVE RELIEF**

THIS MATTER comes before the Court on Plaintiffs' Motion for Leave to Take Limited Discovery in Support of Request for Injunctive Relief. The Court has reviewed the motion and is fully advised in the premises.

It is hereby **ORDERED AND ADJUDGED** that Plaintiffs' Motion is **GRANTED**.

Plaintiffs may proceed with five depositions, to be taken within 45 days from the date of this order, and to serve up to 10 requests for production and ten interrogatories in support of plaintiffs' request for injunctive relief.

DONE AND ORDERED in Miami-Dade County, Florida on this _____ day of _____, 2015.

Adalberto Jordan
United States District Judge

Copy to: All counsel of record

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Adalberto Jordan
United States District Judge

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