IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AUTOCAM CORPORATION, *et al.* Plaintiffs, v. KATHLEEN SEBELIUS, *et al.* Defendants.	Case No. 1:12-cv-01096-RJJ

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO SERVE FIRST WRITTEN DISCOVERY ON DEFENDANTS

INTRODUCTION

Pursuant to the Court's ruling that no discovery would proceed in this case without leave of court, *see* Transcript of Hearing at 73-74, *Autocam Corp. v. Sebelius*, No. 1:12-cv-1096-RJJ (Dec. 19, 2012), plaintiffs now seek leave to serve on defendants a first set of requests for admissions, interrogatories, and requests for production, Pls.' Mot. for Leave to Serve First Written Discovery on Defendants ("Mot."), ECF No. 52. Plaintiffs state that they seek these materials for use in a future motion for summary judgment. *Id.* at ¶¶ 2, 4.

The Court should deny plaintiffs' motion. On February 15, 2013, Defendants moved to dismiss the complaint, a dispositive motion that raises purely legal issues. Plaintiffs have not claimed any need for discovery related to the motion to dismiss; indeed, plaintiffs responded to the motion to dismiss yesterday, *see* ECF No. 53, and their present motion makes clear that they seek discovery for use in a future motion for summary judgment, Mot. at ¶¶ 2, 4. Just as it would be appropriate to stay discovery pending resolution of defendants' motion to dismiss, the Court should defer consideration of what, if any, discovery is appropriate in this case until after the Court has ruled on defendants' motion to dismiss. Allowing discovery now would consume party

and judicial resources unnecessarily, and plaintiffs have offered no compelling reason to think otherwise.

ARGUMENT

It is well-established that "[t]rial courts have broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined." *Gettings v. Bldg. Laborers Local 310 Fringe Benefits Fund*, 349 F.3d 300, 304 (6th Cir. 2003). The factors that ordinarily support staying discovery pending a ruling on a motion to dismiss also support denying (or at least deferring consideration of) plaintiffs' motion for leave to serve discovery.

First, defendants' pending motion to dismiss is a dispositive motion that raises purely legal issues. "Limitations on pretrial discovery are appropriate where claims may be dismissed 'based on legal determinations that could not have been altered by any further discovery,'" such as "whether [a plaintiff] stated a claim" for relief. *Id.* (quoting *Muzquiz v. W.A. Foote Memorial Hosp.*, Inc., 70 F.3d 422, 430 (6th Cir.1995)); *Romar Sales Corp. v. Seddon*, No. 1:12-CV-838, 2013 WL 141133, *2-3 (W.D. Mich. Jan. 11, 2013). Indeed, this Court is well versed in plaintiffs' remaining claims, having reviewed all but one in the context of plaintiffs' motion for preliminary injunction.[1]

Second, plaintiffs make clear that they seek discovery materials for use in a future motion for summary judgment, not the pending motion to dismiss. Mot. at ¶ 2, 4. Plaintiffs "have not argued that they need . . . discovery to address the . . . issues presented in defendants' pending motion to dismiss," a factor that "weighs heavily in favor of" denying their motion for leave to serve discovery. *Romar Sales Corp.*, 2013 WL 141133 at *3; *Chavous v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2001) ("[P]laintiffs have never suggested that they need the discovery they now seek in order to oppose the pending

[1] On December 24, 2012, the Court denied plaintiffs' motion for a preliminary injunction, holding in relevant part that plaintiffs were unlikely to succeed on the merits of their Religious Freedom Restoration Act ("RFRA"), Free Exercise Clause, and Free Speech Clause claims. *Autocam Corp. v. Sebelius*, No. 1:12-CV-1096, 2012 WL 6845677, *4-9 (W.D. Mich. Dec. 24, 2012), *motion for injunction pending appeal denied*, No. 12-2673 (6th Cir. Dec. 28, 2012), *reconsideration denied*, No. 12-2673 (6th Cir. Dec. 31, 2012). Plaintiffs have appealed only the RFRA ruling. *See* Appellants' Principal Br., Feb. 11, 2013, *Autocam Corp. v. Sebelius*, No. 12-2673.

motions to dismiss."). Nor have plaintiffs shown that they will be prejudiced if this Court rules on dismissal before determining what, if any, discovery is appropriate. Plaintiffs suggest that initiating discovery now is appropriate "so that the Defendants have adequate time to respond and plaintiffs are able to use materials gained in discovery in a motion for summary judgment or to amend their complaint if necessary," Mot. at ¶ 4, but plaintiffs' stated interests can be accommodated after the Court rules on the motion to dismiss. A finite delay in awaiting a ruling on a dispositive motion is generally insufficient to overcome the countervailing benefits of staying discovery. *See Romar Sales Corp.*, 2013 WL 141133 at *3 ("Aside from being delayed in their efforts to conduct . . . discovery, plaintiffs have not demonstrated prejudice or any other reason to require the parties to undergo the expense of discovery at this time."). Indeed, any delay appears particularly unlikely to prejudice plaintiffs in this case, given that plaintiffs supported staying all district court proceedings pending plaintiffs' appeal of this Court's denial of their motion for preliminary injunction on their RFRA claim. *See* J. Mot. to Stay District Court Proceedings Pending Appeal, ECF No. 46. In short, plaintiffs' motion offers no reason why discovery, if any, should proceed *now*, rather than after this Court rules on dismissal.

Third, if defendants' motion to dismiss is granted, "then the parties will both be spared unnecessary expense." *Romar Sales Corp.*, 2013 WL 141133 at *3. Defendants, for example, will be saved time and effort reviewing and responding to plaintiffs' requests for admissions and interrogatories, not to mention plaintiffs' request that defendants produce "all documents supporting or referred to" in those responses. *See, e.g.*, Pls.' Request for Production #1 ("Please produce all documents supporting or referred to in your answers to the above interrogatories and requests for admission."), ECF No. 52-1. Judicial economy will also be served, as the Court will be spared reviewing potential disputes over plaintiffs' discovery requests. Further, "[e]ven if the Court does not dismiss [plaintiffs'] claims entirely, a resolution of the motion may narrow the causes of action and relevant issues in this lawsuit." *Williams v. Scottrade, Inc.*, No. 06-10677, 2006 WL 1722224, *2 (E.D. Mich. June 19, 2006). Denying plaintiffs' motion for leave to serve discovery now is, therefore, "an eminently logical means to prevent wasting the time and effort

of all concerned, and to make the most efficient use of judicial resources.'" *Sobczak v. Corr. Med. Servs., Inc.*, No. 1:09-CV-57, 2010 WL 597239, *1 (W.D. Mich. Feb. 17, 2010) (quoting *Chavous*, 201 F.R.D. at *1).[2]

In sum, plaintiffs have shown no need for discovery at this stage, and there "is no reason for the parties to engage in discovery until the court has resolved [defendants' dispositive] motion[]." *Id.* at *1.

CONCLUSION

For the above reasons, defendants respectfully urge the Court to deny plaintiffs' motion for leave to serve discovery, or at least defer consideration of that motion until the Court has ruled on defendants' motion to dismiss this case.[3]

Respectfully submitted this 19th day of March, 2013,

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[2] Defendants also note that plaintiffs challenge an agency regulation, the administrative record for which will contain all non-privileged materials defendants considered in promulgating the contraceptive coverage requirement. Defendants intend to produce that record at the appropriate time if the Court denies their motion to dismiss in part or in whole. At that time, the Court will be in a better position to determine what discovery, if any, is needed to supplement the administrative record.

[3] As explained already, the Court need not resolve what discovery, if any, should be permitted in this case until after ruling on defendants' motion to dismiss. Defendants reserve the right to object to any and all discovery sought by plaintiffs, as well as to raise specific objections to plaintiffs' proposed initial discovery, and to seek relief from the Court, in the event plaintiffs' motion to serve discovery is granted or the Court denies the motion to dismiss.

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Jacek Pruski
JACEK PRUSKI