UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 17-1799 JGB (KKx)**	Date	May 23, 2019
Title	***Aiden Stockman, et al. v. Donald Trump, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Plaintiffs' and Plaintiff-Intervenor's Motions to Vacate the Current Case Schedule (Dkt. Nos. 150, 151); (2) VACATING the Current Case Schedule; and (3) VACATING the June 3, 2019 Hearing (IN CHAMBERS)**

Before the Court are two motions to vacate the current case schedule, one filed by Plaintiffs Aiden Stockman, Nicolas Talbott, Tamasyn Reeves, Jaquice Tate, John Does 1-2, Jane Doe, and Equality California ("Plaintiffs") ("Plaintiffs' Motion" or "P. Mot.," Dkt. No. 150), and the other filed by Plaintiff-Intervenor State of California ("California") ("California's Motion" or "CA Mot.," Dkt. No. 151). The Court determines the Motions are appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Motions, the Court GRANTS the Motions. The hearing set for June 3, 2019 is VACATED.

I. BACKGROUND

On September 5, 2017, Plaintiffs filed a complaint against Donald Trump, James Mattis, Joseph Dunford, Richard Spencer, Ryan McCarthy, Heather Wilson, and Elaine Duke ("Defendants"), each in his or her official capacity. ("Complaint," Dkt. No. 1.) Plaintiffs seek a declaration that Defendants' policy "to exclude transgender people from federal military service, ban the accession of transgender people into the U.S. military, and prohibit the funding of sex reassignment surgical procedures . . . is unconstitutional" and seek to enjoin Defendants from enforcing that policy. (Compl., Prayer for Relief, ¶¶ 1–2.) On November 8, 2017, California filed a motion to intervene (Dkt. No. 52), which the Court granted on November 16, 2017 (Dkt. No. 66).

This action is one of four similar challenges brought in various federal district courts across the country. The three other cases are Doe v. Trump, No. 1:17-cv-1597 (D.D.C.); Stone v. Trump, No. 1:17-cv-02459 (D. Md.); and Karnoski v. Trump, No. 2:17-cv-01297 (W.D. Wash.). (Dkt. No. 96 ¶ 1.) In order to litigate the cases as efficiently as possible, the parties to each of the four cases stipulated to a Protective Order and Cross-Use Agreement. ("Agreement," Dkt. No. 96.) The Agreement provides that any discovery material produced in any of the four actions will also be deemed produced in the other three actions. (Id. ¶ 7.) In response to discovery requests in Karnosky and Stone, Defendants invoked the presidential communications and deliberative process privileges; however, the district courts rejected Defendants' privilege arguments and ordered them to produce the requested documents. See Karnoski Dkt. No. 204 (Mar. 14, 2018); Karnoski Dkt. No. 299 (Jul. 27, 2018); Stone Dkt. No. 227 (Nov. 30, 2018). On August 1, 2018, Defendants filed a petition for a writ of mandamus ("Mandamus Petition") from the Ninth Circuit to vacate the Karnoski district court's July 27, 2018 order and direct the district court to deny the plaintiffs' motion to compel. See Karnoski Dkt. Nos. 302, 302-1; Trump v. Karnoski, No. 18-72159 (9th Cir.). The two Karnoski orders and the Stone order are stayed pending the Ninth Circuit's decision on the Mandamus Petition. (P. Mot. at 3.) The Karnoski parties argued the Mandamus Petition before the Ninth Circuit on October 10, 2018. (Id.)

On July 30, 2018, the Court issued a scheduling order in this case setting the discovery cut-off for March 25, 2019. ("Scheduling Order," Dkt. No. 116.) On February 13, 2019, the parties filed a stipulation to modify the case schedule. ("Stipulation," Dkt. No. 143.) On February 15, 2019, the Court granted the Stipulation. (Dkt. No. 144.) On February 28, 2019, the Court issued an amended order on the Stipulation, setting the deadline to initiate discovery for June 21, 2019; the deadline for initial designation of expert witnesses for May 24, 2019; and the discovery cut-off for August 5, 2019. ("Amended Scheduling Order," Dkt. No. 145.) On May 6, 2019, Plaintiffs and California filed their Motions. Defendants filed an opposition on May 13, 2019. ("Opposition," Dkt. No. 152.) On May 20, 2019, Plaintiffs and California filed replies. ("Plaintiffs' Reply" or "P. Rep.," Dkt. No. 155; "California's Reply" or "CA Rep.," Dkt. No. 156.)

II. LEGAL STANDARD

Districts courts must enter scheduling orders in actions to "limit the time to join other parties, amend the pleadings, complete discovery, and file motions." Fed. R. Civ. P. 16(b)(3). In addition, scheduling orders may "modify the timing of disclosures" and "modify the extent of discovery." Id. A scheduling order "controls the course of the action unless the court modifies it." Fed. R. Civ. P. 16(d). Once a scheduling order has been issued pursuant to Rule 16, the "schedule may be modified only for good cause and with the Court's consent." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking" to modify the scheduling order. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). If the moving party fails to demonstrate diligence, "the inquiry should end." Id. Good cause may be found where the moving party shows it assisted the Court with creating a workable scheduling order, that it is unable to comply with the scheduling order's deadlines due to matters not reasonably foreseeable at the time the scheduling order issued, and that it was diligent in seeking a modification once it became apparent it could not comply with the

scheduling order. Jackson v. Laureate, Inc., 186 F.R.D. 605, 608 (E.D. Cal. 1999) (citations omitted).

III. DISCUSSION

The Court finds good cause exists to modify the scheduling order to allow the parties time to pursue full discovery with the benefit of the Ninth Circuit's decision on the Mandamus Petition in Karnoski. As Plaintiffs point out, because the parties cannot know when the Ninth Circuit will issue its ruling, "adhering to the current case calendar could foreclose Plaintiffs from obtaining relevant, discoverable evidence currently withheld by Defendants, deposing defense witnesses about that evidence, providing that evidence to Plaintiffs' experts, or even retaining new and unanticipated experts as needed to analyze that evidence." (P. Mot. at 7.) Moreover, it makes little sense for the parties to coordinate discovery across the actions through the Agreement only to proceed with discovery in this case as if key discovery disputes relevant to all four cases were not pending before the Ninth Circuit.

Defendants argue the Motions should be denied because little has changed since Plaintiffs agreed to the current schedule three months ago and Plaintiffs have not diligently pursued discovery in that time. (Opp. at 1.) The Court disagrees. At the time the parties stipulated to the current case schedule, some four months had passed since the Ninth Circuit held oral argument on the Mandamus Petition, and Plaintiffs reasonably believed the Ninth Circuit would soon issue a decision. Moreover, the Court finds convincing Plaintiffs' explanation that they "refrained from propounding additional discovery requests until they had reviewed the responses and documents produced in the other pending action." (P. Rep. at 3.) It would be unreasonable to penalize Plaintiffs for their adherence to the purposes of the Agreement. Finally, the Court is not convinced that vacating the scheduling order will prejudice Defendants. As Plaintiffs point out, Defendants may challenge any discovery requests they believe are overly burdensome or in violation of the Agreement.[1] (Id. at 5.)

IV. CONCLUSION

For the foregoing reasons, the Motions are GRANTED. The Amended Scheduling Order is VACATED and the remaining deadlines set forth therein are SUSPENDED. It is FURTHER ORDERED that the parties are to meet and confer and file a proposed amended schedule to reset these deadlines within 21 calendar days after the Ninth Circuit issues its decision on the Mandamus Petition in Trump v. Karnoski, No. 18-72159 (9th Cir.) (argued Oct. 10, 2018).

IT IS SO ORDERED.

[1] Defendants urge the Court, if it "is inclined to defer discovery pending a ruling by the Ninth Circuit[,]" to stay the case until the Ninth Circuit issues its ruling. (Opp. at 5.) The Court declines to stay the case without having before it a properly noticed motion requesting that relief.