**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

DISABILITY RIGHTS CONNECTICUT, INC., on behalf of its constituents,

Plaintiff,

v.

CONNECTICUT DEPARTMENT OF CORRECTION;

ANGEL QUIROS, Acting Commissioner, Connecticut Department of Correction, in his official capacity; and

ROGER BOWLES, Warden, Northern Correctional Institution, in his official capacity,

Defendants.

Civil Action No. 3:21-cv-00146-KAD

April 5, 2021

**PLAINTIFF DISABILITY RIGHTS CONNECTICUT'S**
**OPPOSITION TO DEFENDANTS' MOTION TO STAY**

Defendants' motion to stay — filed after they refused to participate in the Rule 26(f) Conference — is frivolous. Every factor weighs strongly *against* a stay. Defendants' arguments in support of their motion to dismiss are meritless. Defendants' claim that a stay will "benefit" DRCT betrays a stunning disregard for the barbaric conditions that Defendants continue to subject prisoners with mental illness to even as this motion is briefed. And Defendants' generalized complaints about the burdens of discovery would not merit relief from a single discovery request, let alone warrant a wholesale stay of all discovery in this case.

Moreover, Defendants' repeated suggestion that they will stop abusing prisoners just as soon as DRCT works the right "administrative channel" is further revealed as a ruse with each passing day. On November 24, 2020, Defendants received DRCT's letter demanding that they

**ORAL ARGUMENT REQUESTED**

stop subjecting prisoners with mental illness to prolonged isolation and in-cell shackling. ***One hundred and thirty-two days have passed*** without any substantive response.

Even worse, Defendants today revealed that they have not been working on any substantive response at all. Just one business day after DRCT highlighted Defendants' silence in DRCT's opposition to Defendants' motion to dismiss (ECF No. 38), Defendants whipped a letter off to DRCT in a shameless attempt to avoid being *again* called out in this opposition brief for failing to respond. Stunningly, Defendants nowhere mention the "substantive response" that they promised "in the near future," and instead ask that DRCT provide "more detailed information" in order to facilitate mediation. DRCT stands ready and willing to discuss a negotiated resolution to its claims but Defendants have no basis to stop DRCT from prosecuting those claims in the interim.

Defendants' motion should be denied.

## RELEVANT BACKGROUND

Following a multi-year investigation, DRCT dispatched a letter via overnight courier to Defendants on November 23, 2020, demanding that they stop inflicting cruel and unusual punishment on prisoners with mental illness in, or at risk of transfer to, isolative status ("DRCT's Constituents"). (Lin ¶¶ 3, 4, Exs. 1, 2.)[1] DRCT reiterated that the UN Special Rapporteur had recently found that Defendants' abhorrent mistreatment of prisoners "may well amount to torture." (Lin Ex. 1.) DOC received the letter on November 24, 2020. (Lin ¶ 5, Ex. 3.)

Eight weeks later, Defendants wrote to DRCT and stated that they had not received the

[1] References herein take the following forms: "Lin ¶ __" and "Lin Ex. __" are to the Declaration of Eric W. Lin, dated April 5, 2021, and exhibits thereto; "MTS at __" are to Defendants' Motion to Stay Discovery (ECF No. 33); "Def. Mem. at __" are to Memorandum of Law in Support of Defendants' Motion to Dismiss (ECF No. 31-1); "DRCT Opp'n at __" are to DRCT's Opposition to Defendants' Motion to Dismiss (ECF No. 38); and "FAC ¶ __" are to the First Amended Complaint (ECF No. 24).

letter until January 12, 2021, "for reasons unknown." (Lin Ex. 4.)[2] Defendants explained that DRCT's letter included "detailed allegations and claims," that Defendants "required[d] a little more time" to complete a substantive response, and that they would provide that response "in the near future." (*Id.*) On April 2, 2021, DRCT emphasized in its opposition to Defendant's motion to dismiss that Defendants had still not provided any substantive response to DRCT's letter. (DRCT Opp'n at 5, 15, 16, 19.) On April 5, 2021, Defendants sent a letter to DRCT that requests "more detailed information" about DRCT's claims and that no longer promises a substantive response to DRCT's November 23, 2020 letter. (Lin Ex. 13.)

On February 4, DRCT filed this lawsuit. (ECF No. 1.) That same day, the Court issued an Order on Pretrial Deadlines, stating, *inter alia*, "[t]he filing of a motion to dismiss shall not result in a stay of discovery or extend the time for completing discovery." (ECF No. 7 ¶ (b).) On February 18, DRCT filed its First Amended Complaint. (ECF No. 24.)

On March 12, Defendants moved to dismiss DRCT's First Amended Complaint. (ECF No. 31.) Defendants advanced two arguments. First, Defendants argued that DRCT's claims were not prudentially ripe because DRCT failed to exhaust administrative remedies in violation of the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801, *et seq.* ("PAIMI"). (Def. Mem. at 12-30.) Second, Defendants argued that DRCT's claims should be dismissed based on the prudential third-party standing doctrine. (*Id.* at 30-33.)

On March 12, DRCT emailed Defendants to arrange a Rule 26(f) Conference, offering multiple dates and times. (Lin Ex. 5.) Defendants responded that they were "not available on the dates [DRCT] suggested," offered no alternative dates, and claimed that it was "premature to

[2] Defendants later claim to have learned that entire "batches of mail addressed to the Commissioner's office that were received between the end of November 2020 and the beginning of January 2021, were delayed in being opened and processed" due to a single employee being out with a COVID-19 infection. (ECF No. 31-1 at 7, n.9.)

do discovery." (Lin Ex. 6.) DRCT informed Defendants that the applicable rules required that the parties hold a Rule 26(f) Conference within 30 days of Defendants' appearance, and again requested Defendants' availability. (Lin Ex. 7.) On March 17, Defendants agreed to meet and confer and stated that "[i]t would be helpful if you would forward a draft of your proposed 26f prior to our meeting." (Lin Ex. 8.) On March 23, DRCT sent its draft Joint Rule 26(f) Report to Defendants. (Lin Ex. 9.)

On March 24, the parties held a telephonic Rule 26(f) Conference. (Lin ¶ 12.) DRCT proposed that the parties walk through the issues in the draft Rule 26(f) Report, but Defendants refused to discuss the report. Instead, Defendants took the position that DRCT had failed to exhaust its administrative remedies, that discovery should not proceed, and that they would not sign a Rule 26(f) Report.

DRCT explained that it was not aware of any reason that the parties were not obligated to comply with their Rule 26(f) obligations. Accordingly, DRCT stated that they would finalize a Rule 26(f) Report and submit it as DRCT's Rule 26(f) Report. DRCT also told Defendants that they intended to serve discovery as soon as that afternoon.

Defendants stated that they intended to move to stay discovery and request a status conference and asked for DRCT's position. DRCT responded that it was not aware of any basis to stay discovery, but invited Defendants to send any authority that they believed supported a stay. Defendants sent an email stating that they intended to move to stay this action and identified a handful of cases. (Lin Ex. 10.) DRCT pointed out that the cases did not support a stay and that DRCT, therefore, opposed a stay. (Lin Ex. 12.) DRCT also asked that Defendants reengage in the Rule 26(f) process:

> [W]e ask that Defendants re-consider their refusal to continue the Rule 26(f) process and submit a joint Rule 26(f) Report. Should you have a change of heart,

> we would be happy to meet and confer with you to try to reach agreement on as much as possible so as to minimize any burden on the Court.

(*Id.*)

On March 24, DRCT filed its Rule 26(f) Report. (ECF No. 32.) DRCT also served its initial discovery requests. (Lin Ex. 11.) Defendants then moved to stay this case. (ECF No. 33.)

## ARGUMENT

A "stay of discovery is the exception and not the rule in this District," *Metzner v. Quinnipiac Univ.*, No. 3:20-CV-00784 (KAD), 2020 WL 7232551, at *6 (D. Conn. Nov. 12, 2020) (Dooley, J.), and "[t]he filing of a motion to dismiss shall not result in a stay of discovery," Order on Pretrial Deadlines ¶ (b) (ECF No. 7). Accordingly, the Court expects parties to move their cases forward while it considers motions to dismiss. *See Covenant Imaging, LLC v. Viking Rigging & Logistics, Inc.*, No. 3:20-CV-00593 (KAD), 2020 WL 5411484, at *1 (D. Conn. Sept. 9, 2020) (Dooley, J.).

A party hoping to sidestep the Court's general practice and Order on Pretrial Deadlines must clear a high hurdle. A party seeking a stay must prove that there is good cause to stay all discovery based on (1) the strength of the motion to dismiss, (2) the absence of prejudice to the non-moving party, and (3) the breadth of the discovery sought. *See Covenant Imaging, LLC*, 2020 WL 5411484, at *1; *Metzner*, 2020 WL 7232551, at *1-2.[3] Defendants fail to establish that any of those factors weigh in favor of a stay. In fact, they all weigh strongly against a stay.

[3] PAIMI and the *Gonzalez v. Martinez* decision (Def. MTS at 4-5) do not obviate the need for Defendants to establish that these factors support a stay. In *Gonzalez v. Martinez*, the district court merely denied defendants' summary judgment motion and *sua sponte* stayed the case for 90 days so that the parties could try to resolve the claims. *Gonzalez v. Martinez*, 756 F. Supp. 1533, 1539 (S.D. Fla. 1991).

## I. DEFENDANTS' MOTION TO DISMISS IS FUTILE

Defendants' motion to dismiss is futile and does not weigh in favor of staying discovery in this case.

To obtain a stay pending resolution of their motion to dismiss, Defendants must show that DRCT's claims are "clearly without merit," *Metzner*, 2020 WL 7232551, at *3-5, or "frivolous or glaringly deficient," *Levinson v. PSCC Servs., Inc.*, No. 3:09-CV-00269 (PCD), 2009 WL 10690157, at *2 (D. Conn. Sept. 16, 2009). *See also Covenant Imaging, LLC*, 2020 WL 5411484, at *2 (defendant must demonstrate that their arguments are "so obviously correct" that they have a "strong likelihood" of prevailing).[4] Courts in this Circuit require that rigorous showing because it matches the standard for a stay pending appeal, and an "overly lenient standard for granting motions to stay all discovery is likely to result in unnecessary discovery delay in many cases." *Hong Leong Fin. Ltd. v. Pinnacle Performance Ltd.*, 297 F.R.D. 69, 72-73 (S.D.N.Y. 2013) (internal quotation omitted).

Defendants fall woefully short of meeting that standard. In fact, Defendants' motion to dismiss is doomed because their arguments are obviously incorrect. Defendants do not cite even a single decision in which this Court — or any other court — dismissed a P&A System's claims on either of the two grounds advanced in their motion. As demonstrated below, Defendants also do not articulate any justification for this Court to be the first to do so.[5]

[4] *See also Stanley Works Israel Ltd. v. 500 Grp., Inc.*, No. 3:17-CV-01765 (CSH), 2018 WL 1960112, at *3 (D. Conn. April 26, 2018) (denying stay motion where claims were not "wholly unmeritorious"); *Republic of Turkey, v. Christie's, Inc.*, 316 F. Supp. 3d 675, 678-79 (S.D.N.Y. 2018) (denying stay motion where claims were not "utterly devoid of merit").

[5] DRCT does not repeat all of its arguments in opposition to Defendants' motion to dismiss. Instead, DRCT incorporates by reference the arguments raised in DRCT's Opposition to Defendants' Motion to Dismiss (ECF No. 38).

**A. Defendants' Prudential Ripeness Argument Is Meritless**

There is no merit to Defendants' argument that DRCT's claims should be dismissed as prudentially unripe because DRCT purportedly failed to exhaust its administrative remedies.

As a threshold matter, the prudential ripeness doctrine that Defendants hang their hat on is evaporating. *See Susan B. Anthony List. v. Driehaus*, 573 U.S. 149, 167 (2014). Just two months ago, this Court recognized that the Supreme Court had "cast doubt on the continuing vitality of the prudential ripeness doctrine." *Phila. Indem. Ins. Co. v. Enter. Builders, Inc.*, No. 3:20-CV-00056 (KAD), 2021 WL 681148, at *2 n.1 (D. Conn. Feb. 22, 2021) (Dooley, J.) (applying the prudential ripeness doctrine and denying dismissal on that basis).

Even applying this doctrine of questionable endurance, Defendants fail to demonstrate that they are likely to succeed on the six-part trick-shot that they have called. Defendants' motion requires that they prevail on each of the following successive legal and factual issues.

First, the Court must find that Defendants' proposed open-ended mediation process is an "administrative remedy" despite that this argument is contradicted by PAIMI, the implementing regulations, and Second Circuit precedent. (DRCT Opp'n at 8-12.)

Second, the Court must find that DRCT did not institute this case to prevent or eliminate imminent serious harm to a mentally ill individual — despite that DRCT's Constituents at this very moment continue to suffer abuse causing long-term psychological damage and physical harm. (DRCT Opp'n at 12-13.)

Third, the Court must find that PAIMI does not vest DRCT with the ability to file suit if DRCT determines that its claims will not be resolved within a reasonable time — despite that the plain text of PAIMI says exactly that. (DRCT Opp'n at 13-14.)

Fourth, even if there were an objective standard, the Court must find that DRCT's decision to file suit was objectively unreasonable despite that DRCT filed the case 73 days after

DOC received DRCT's November 23 letter. (DRCT Opp'n at 14-16.) To the extent that there were any doubt about the reasonableness of that decision (there is not), Defendants' continuing silence on the substance of DRCT's claims (132 days and counting) speaks volumes: Defendants' strategy is to *avoid* the issues raised in this lawsuit, not to *resolve* them.[6]

Finally, Defendants must win a doubleheader. They must establish (1) that DRCT's claims are not fit for judicial resolution and (2) that DRCT and its Constituents will not be harmed if a decision is withheld. (DRCT Opp'n at 16-20.)

Defendants' prudential ripeness argument can succeed if and only if they prevail on all of those issues. If Defendants had even odds (the flip of a coin) on ***all*** of those issues, their motion would stand a 1.5% chance of success. In fact, Defendants should not prevail on ***any*** of those issues. (*See* DRCT Opp'n at 8-20.) But even accepting equal odds across the board, a 1.5% chance of success does not establish that DRCT's claims are without merit; it establishes that Defendants' motion is without merit.[7]

**B. Defendants' Prudential Standing Argument Is Meritless**

Defendants' second grounds for dismissal — the third-party standing doctrine — is no less of a lead balloon. Defendants presumably appreciate that fact, and do not even attempt to argue in the stay motion that this argument has a strong likelihood of success. It does not.

This Court has ***twice*** held that DRCT's predecessor (OPA) has standing to bring claims to enforce the rights of its Constituents, precedent that Defendants chose to ignore. *See Laflamme*

[6] Defendants, in fact, confirmed their focus on appearances and delay earlier today when Defendants suggested that they had not, in fact, been working on any substantive response at all. (Lin Ex. 13.) Despite acknowledging that DRCT had provided "detailed allegations and claims" more than two months ago (Lin Ex. 4), Defendants are now suddenly claiming that they require "more detailed information" than what was provided for in DRCT's seven-page letter and 60-page First Amended Complaint. (Lin Ex. 13.)

[7] Defendants' argument that they have a strong likelihood of success on their "stay motion" because they asked for a stay in a footnote of their motion to dismiss (Def. MTS at 6) makes no sense.

*v. New Horizons, Inc.*, 605 F. Supp. 2d 378, 395-98 (D. Conn. 2009); *State of Conn. Office of Prot. and Advocacy for Persons with Disabilities v. State of Conn.*, 706 F. Supp. 2d 266, 280-83 (D. Conn. 2010). Defendants do not articulate any grounds to reverse course now.

* * *

In sum, Defendants have not established that DRCT's claims are "clearly without merit" and this factor weighs heavily against a stay. *See Covenant Imaging, LLC*, 2020 WL 5411484, at *2 (denying stay pending motion to dismiss based on arguments that were not "obviously correct"); *Metzner*, 2020 WL 7232551, at *1-2 (denying stay pending motion to dismiss implicating complex arguments on both sides).

## II. A STAY WILL SEVERELY PREJUDICE DRCT'S CONSTITUENTS

DRCT's Constituents would be severely prejudiced by a stay. In fact, it is difficult to conceive of any more grievous harm than would be caused by further delay here.

DRCT's allegations, which at this stage must be taken as true, make clear that DRCT's Constituents are being subjected to barbaric mistreatment and suffering horrific psychological and physical injury. (*See, e.g.*, FAC ¶¶ 55-162.) DRCT's Constituents "spend at least 22 hours per day on weekdays, and 24 hours per day on weekends, in concrete cells where they live in a world of near total social and sensory deprivation." (*Id.* ¶ 3; *see also id.* ¶¶ 55-76.) DRCT's Constituents are also being subjected to in-cell shackling, a practice in which "DOC staff shackle a prisoner's wrists and legs with metal cuffs," "bind the cuffs with a heavy, metal tether chain," and then "leave them shackled for hours or even days in filthy and freezing 'strip cells.'" (*Id.* ¶¶ 4, 77; *see also id.* ¶¶ 77-94.) This mistreatment "exacerbates mental illness" (*id.* ¶ 68), "causes long-term psychological harm" (*id.* ¶ 72), and "causes negative long-term physiological effects" (*id.* ¶ 74). DRCT further alleges, and Defendants do not dispute, that Defendants' abuse "often causes prisoners with mental illness to harm themselves or attempt suicide." (*Id.* ¶ 69.)

DRCT further alleges, and Defendants do not dispute, that DRCT's allegations give rise to a reasonable inference that Defendants are inflicting cruel and unusual punishment on DRCT's Constituents in violation of the Eighth Amendment to the United States Constitution, the Americans with Disabilities Act, and the Rehabilitation Act. (*See, e.g.*, *id.* ¶¶ 163-187.)

Defendants' response that DRCT identifies "only three inmates" and that delay will not cause "any significant hardship" (Def. MTS at 8) rings hollow. The ongoing cruel and unusual punishment of even a single prisoner with mental illness constitutes a hardship that weighs overwhelmingly against a stay. That is particularly true here where Defendants' own exhibit — inexplicably attached in *support* of their motion to dismiss — reveals how utterly unresponsive they were when told that a single prisoner was at "high imminent risk for potentially lethal suicide."[8] Here, as Defendants well know, DRCT has filed suit on behalf of all prisoners with mental illness in DOC custody who are in, or at risk of transfer to, isolative status. (FAC ¶ 14.)

Finally, Defendants' argument that a stay will not delay resolution of DRCT's claims because DRCT has proposed a one-year fact discovery period (Def. MTS at 8-9) fails as a matter of basic logic. DRCT intends to complete fact discovery as expeditiously as possible and proposed a schedule contingent on moving forward now — not one that assumes that this case is stopped in its tracks until the Court rules on Defendants' motion to dismiss.

In sum, each day that Defendants continue to delay resolution of DRCT's claims facilitates their abuse of DRCT's Constituents with impunity. The resulting severe psychological and physical harm far outweighs the prejudices that this Court and others have routinely found to weigh against a stay. *See, e.g.*, *Covenant Imaging, LLC*, 2020 WL 5411484,

[8] Defendants' counsel in this very case ignored two emails seeking the "immediate" transfer of an inmate with mental illness deemed "a high imminent risk for potentially lethal suicide" and then, in response to a third email, stated that the inmate should move "in the next few weeks." (*See* Def. Mem. at 22 n.15, Ex. F.)

at *3 (denying stay motion where non-movant had been trying "for many months" to get information from movant and would be able to obtain that information even if pending motion to dismiss were granted); *Weizel v. Main St. Connect, LLC*, No. 3:12-CV-831 (JCH), 2012 WL 3937007, at *1 (D. Conn. Aug. 28, 2012) ("each day that passes before plaintiffs can seek conditional certification, and send notice to putative opt-in plaintiffs, is a day the plaintiffs lose off of their claims").[9]

## III. DEFENDANTS' GENERALIZED COMPLAINTS ABOUT DISCOVERY DO NOT SUPPORT A STAY

Defendants' generalized complaints about participating in discovery fall far short of supporting relief from a single discovery request, let alone a wholesale stay of this case.

To merit a stay, Defendants must articulate specific concerns about the breadth of discovery that cannot adequately be addressed under the Federal Rules governing discovery and the Court's authority to manage the discovery process. *See, e.g.*, *Metzner*, 2020 WL 7232551, at *5-6. Defendants come up short of meeting that rigorous standard.

Defendants have not identified even a single discovery request that is overbroad or unduly burdensome. *See Stanley Works Israel Ltd.*, 2018 WL 1960112, at *3 (denying motion to stay where "Defendants do not provide any information with respect to how the requests would result in an undue burden or expense"); *In re Priceline.com Inc. Sec. Litig.*, 233 F.R.D. 83, 85 (D. Conn. 2005) ("[a]n objection to a document request must clearly set forth the specifics of the

[9] *See also Weber v. McCormick*, No. 3:06-CV-2009 (PCD), 2007 WL 9754633, at *2 (D. Conn. Apr. 24, 2007) ("a stay of all discovery as to Defendant Leslie would effectively impede the just and speedy administration of the progress of this lawsuit"); *Johnson & Johnson v. Advanced Inventory Mgmt., Inc.*, 2020 WL 5097076, at *4 (N.D. Ill. Aug. 28, 2020) (plaintiffs would "suffer substantial prejudice" where stay would "potentially deprive plaintiffs" timely access to bank records); *Lifetime Prods., Inc. v. Russell Brands, LLC*, 2013 WL 12182103, at *1 (D. Utah Mar. 5, 2013) (prejudice that plaintiff would suffer "if the motion to stay were granted would be serious, given the unknown term for disposition of the [patent] reexamination proceedings"); *Adriana Castro, M.D., P.A. v. Sanofi Pasteur Inc.*, 2012 WL 12918261, at *2 n.2 (D.N.J. July 18, 2012) ("blanket stay" would "prejudice plaintiffs by forcing them to wait an indefinite period of time to pursue their [antitrust] claims").

objection and how that objection relates to the documents being demanded" (citation omitted)). Defendants' boilerplate claims that discovery will be "expansive," "extremely broad," and "extensive," and will impose a "substantial" burden (MTS at 6-7) do not justify relief of any kind, but are the "paradigm of discovery abuse" that this Court has turned aside time and again. *See, e.g.*, *Tourtelotte v. Anvil Place Master Tenant*, No. 3:11-CV-1454 (WWE), 2012 WL 5471855, at *2 (D. Conn. Nov. 9, 2012) (internal quotation omitted).

Defendants also do not articulate any reason to believe that DRCT will not in good faith meet and confer with them to try to resolve any specific concerns that they might have, if and when they are raised. Indeed, DRCT provided a Rule 26(f) Report and sought at least twice to negotiate the subjects and scope of discovery but Defendants' refused to discuss those issues. In fact, Defendants never even bothered to respond to DRCT's invitation that they "meet and confer [with DRCT] to try to reach agreement on as much as possible so as to minimize any burden on the Court." (Lin Ex. 12.) Defendants' refusal to even discuss discovery belies their generalized claim that discovery is so burdensome that it cannot be managed in the ordinary course.

Moreover, Defendants do not articulate any reason that the discovery disputes between the parties, should they arise, cannot be resolved by the Court in the normal course just as they are in every other case. *See* D. Conn. Local R. 37(a); *Metzner*, 2020 WL 7232551, at *5-6; *see also Owens v. Starion Energy, Inc.*, No. 316-CV-01912 (VAB), 2017 WL 11017283, at *2 (D. Conn. June 30, 2017) ("It is well-established that the Court has 'authority to manage discovery in a civil suit, including the power to enter protective orders limiting discovery as the interests of justice require.'" (quoting *Degen v. United States*, 517 U.S. 820, 826 (1996))).[10]

[10] *See also Kollar v. Allstate Ins. Co.*, No. 3:16-CV-01927 (VAB), 2017 WL 10992213, at *2 (D. Conn. Nov. 6, 2017) (denying stay request and explaining that where defendants "have concerns about the scope and proportionality of . . . discovery requests, they may seek to address those concerns in the appropriate way").

In sum, Defendants have failed to establish that the breadth of discovery weighs in favor of a stay. *See Metzner*, 2020 WL 7232551, at *5–6; *Stanley Works Israel Ltd.*, 2018 WL 1960112, at *3.

## CONCLUSION

For all of the reasons set forth above, Defendants' motion to stay discovery should be denied.

Dated: April 5, 2021

Respectfully submitted,

*/s/ Kyle Mooney*

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